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种族主义、种族歧视、仇外心理和相关的不容忍现象：
《德班宣言和行动纲领》的后续行动和执行情况

非洲人后裔问题专家工作组第十一届会议的报告

增编

对葡萄牙的访问*

概要

2011 年 5 月 16 日至 20 日，非洲人后裔问题专家工作组应葡萄牙政府邀请对葡萄牙进行了正式访问。工作组成员赞赏在访问期间与葡萄牙政府和民间社会代表进行的全面和坦率的讨论，并感谢有机会会见非洲裔葡萄牙人社区成员。工作组在报告中简要介绍了访问期间了解到的葡萄牙境内非洲人后裔的总体情况以及使其遭受歧视的各种情况，并概述了各级为维护非洲人后裔的福祉而采取的行动。最后，报告提出了工作组认为若得到实施，将会显著改善葡萄牙境内非洲人后裔境况的一些建议。

在访问期间，工作组发现，非洲人后裔在葡萄牙面临的挑战主要涉及他们作为一个特定群体在葡萄牙国家政策和立法框架中得不到承认；其在历史上对该国的建设和发展作出积极贡献得不到承认；没有按种族或族裔分列的定性和定量的分类数据；贫困、获得教育、公共服务和就业机会不平等，以及在行政和司法制度运作方面的歧视，形成恶性循环；存在种族貌相和警察暴力；在政治和体制决策进程中代表不足，以及葡萄牙缺少针对非洲人后裔或其他少数群体的具体措施或扶持行动政策。

* 本文件的概要以所有正式语文分发。报告本身载于概要附件，仅以提交语文分发。附录未经编辑。

请回收

工作组建议的具体措施包括执行具体国家政策和方案，处理非洲人后裔面临的歧视问题，包括生活在葡萄牙的非洲人后裔移民和葡萄牙籍非洲人后裔面临的歧视问题；修订相关国家法律并使其与国际人权准则相一致；修订妨碍收集按种族或族裔分列的分类信息的政府政策；采取具体措施，减轻和补救结构性歧视的情况；并修订学校课程。工作组还建议有效保护非洲裔儿童的权利，如《儿童权利公约》所载各项权利，包括取得国籍和得到国家充分承认的权利。

Annex

[English only]

Report of the Working Group of Experts on People of African Descent on its mission to Portugal (16 to 20 May 2011)

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I. Introduction

1. Bearing in mind its status as a special procedure of the then Commission on Human Rights, the Working Group of Experts on People of African Descent decided at its fourth session to undertake country visits as a means of effectively discharging its mandate. The Working Group recognized that such visits could contribute to in-depth understanding of the situation of people of African descent in various regions of the world (E/CN.4/2005/21, para. 98).

2. At the invitation of the Government of Portugal, the Working Group undertook a visit to this country from 16 to 20 May 2011. The delegation, headed by Mirjana Najcevska, the Chairperson of the Working Group, also included the experts Verene Shepherd and Monorama Biswas. During their visit, the experts held meetings with Government representatives, the Community of Portuguese-Speaking Countries (Comunidade dos Países de Língua Portuguesa, CPLP) and civil society organizations and visited two communities of African descent in Lisbon.

3. The Working Group members met with various non-governmental organizations (NGOs) and held meetings with the Minister of the Presidency of the Council of Ministers; the High Commissioner for Immigration and Intercultural Dialogue; the Secretary of State for European Affairs and President of the National Commission for Human Rights; the Deputy Attorney General; the Acting Portuguese Ombudsman, the Deputy Mayor of Lisbon and representatives of the Office of International Relations and Human Rights; the Department of Associations and Intercultural Dialogue Support; the Support Programme for Immigrants' Entrepreneurship; the Technical Assistance Office for Immigrant Associations; the Central Office of the Civil Registry; the Ministry of Education; the Ministry of Social Security and Labour; the Commission for Equality in Labour and Employment; the Commission for Citizenship and Gender Equality and the Ministry of Health. The experts also met with the Executive Secretary and staff of the Community of Portuguese Speaking Countries, United Nations agencies and members of the Afro-descendant community in the neighbourhoods of Almada and Alto da Cova da Moura.

4. The experts wish to thank the Government for its invitation and for its valuable assistance before, during and after their visit to the country. They would also like to thank the NGOs and people of African descent with whom they met during their visit. In the present report the experts describe the information received by the members of the Working Group during their visit to Portugal, identify good practices and make recommendations for actions that may assist in remedying challenges that were identified.

II. Context of people of African descent in Portugal

A. General situation

5. Between 1975 and 1980, there was a wave of immigration from Africa to Portugal, with people coming or returning from the ex-colonies after decolonization. Amid this wave came Africans, especially from Cape Verde, Angola, Mozambique, Guinea-Bissau, and Sao Tomé and Principe. Since the 1990s there has been a constant increase in the number of immigrants in the country, including from Brazil and Portuguese-speaking African countries. There are today approximately 450,000 immigrants in Portugal, i.e. about 4.2 per

cent of the total population of 10.7 million.[1] Immigrants living in Portugal are not acknowledged as ethnic minorities but rather as foreigners.

6. Despite the holistic approach taken by Portugal to deal with racial discrimination, the generality of the approach to dealing with racial discrimination may not allow sufficient attention to the concerns of groups of citizens as well as immigrants and foreigners who may be susceptible to direct and indirect discrimination. Notwithstanding innovative measures by Portugal to promote integration, prevent and address racial discrimination of immigrants and ethnic minorities, racial stereotypes and prejudices against immigrants, foreigners and some citizens prevails.[2] Studies on immigrants and ethnic minorities reveal cases where members of these groups have complained of racial discrimination in a number of situations. Discrimination of this kind has occurred in matters relating to access to employment, housing and health care.[3] Some of these cases have been reported to the High Commission for Immigration and Ethnic Minorities (ACIME).

7. In the area of education, children from certain immigrant groups, in particular Africans, still have lower levels of education than Portuguese pupils and are less likely to continue their education. Difficulties with the language of instruction and a lack of accompaniment in the educational process are part of the problem, leading to structural discrimination. While there are several programmes specifically directed at supporting the social inclusion of children and youngsters within vulnerable social and economic contexts, particularly children of immigrants and ethnic minorities, the integration process of immigrants is aimed more specifically at recently arrived immigrants, overlooking slightly those who arrived longer ago and for whom no special integration measures were available at the time.

8. However, as with the issues of access to education, employment and housing, it is difficult to say with any degree of accuracy the role played by racist prejudices and racial discrimination in the treatment of immigrants and people from immigrant backgrounds since no relevant data disaggregated by racial or ethnic origin have yet been compiled

B. Framework for the protection of the human rights of people of African descent

1. The international legal framework for the protection of the human rights of people of African descent

9. Portugal has demonstrated its commitment to combating racism and discrimination by signing and ratifying a series of international conventions that deal with racism and discrimination: the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the two International Covenants, on Civil and Political (ICCPR) and on Economic, Social and Cultural Rights (ICESCR), the International Conventions for the Elimination of Racial Discrimination and for the Elimination of Discrimination against Women (CEDAW) and the Convention on the Rights of the Child (CRC). In each case, and having ratified the relevant Optional Protocols, Portugal recognizes the full range of the Committees' competences to monitor the implementation of these core international human rights treaties, including the powers to examine individual and inter-State communications, and to undertake inquiry procedures. Portugal is also a State party to both Optional

[1] European Commission against Racism and Intolerance, third report on Portugal, CRI(2007)4, para.
[2] CERD/C/PRT/CO/12-14, para. 14
[3] European Commission against Racism and Intolerance, Third report on Portugal, CRI(2007)4

Protocols to the CRC. Portugal has also ratified the Convention on the Rights of Persons with Disabilities and its Optional Protocol without any reservations.

10. Portugal ratified the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. Portugal is also a party to the Rome Statute of the International Criminal Court and recognizes as compulsory the jurisdiction of the International Court of Justice, having made the declaration under article 36.2 of the Statute of the Court.

11. Regionally, Portugal is a member of the Council of Europe and a party to the European Convention on Human Rights. It is also a party to the Revised European Social Charter. Portugal accepts the jurisdiction of the European Court of Human Rights and recognizes the competence of both the European Committees on Social Rights and for the Prevention of Torture. It also recognizes International Labour Organization (ILO) and United Nations Educational Scientific and Cultural Organization (UNESCO) procedures.

2. The national policy and legal framework

12. In 1996, Portugal created the High Commission for Immigration and Ethnic Minorities to manage the integration and welfare of immigrants and ethnic minorities. In 2007, this institution was fused with several related programmes and was renamed the High Commission for Immigration and Intercultural Dialogue (ACIDI), which operates under the authority of the Government Ministry for the Presidency of the Council of Ministers. The function of ACIDI is to "collaborate in the design, implementation and evaluation of transversal and sectorial public policies which are relevant for the integration of immigrant and ethnic minorities, as well as to promote the dialogue between different cultures, ethnic groups and religions". To facilitate its dissemination of information, ACIDI has a television programme, a radio programme and a magazine. In 2004, the then ACIME created two National Immigration Support Centres (CNAIs), in Lisbon and Porto, which operate as "one-stop shops" for the attention of immigrants. These centres offer support to immigrants in areas such as legalization and visa issues, professional and educational skills recognition, family reunification, employment, access to education, health care, social security, legal aid and support for immigrant associations, among others. The members were informed that the creation of CNAI was in response to the European Union's common agenda on immigration which recommended the "one-stop shop" approach to attending to the needs of migrants. According to Government representatives with which the Working Group met, the Portuguese model has often been cited as a best practice and goes even further than that envisaged by the common agenda in that it provides services to all migrants regardless of their legal status and also to long-term migrants. The CNAIs are presented as an example of good practice in the "Handbook on Integration for policy-makers and practitioners" of the Directorate-General of Justice, Freedom and Security at the European Commission.

13. A range of services are offered by the sociocultural mediators who staff the CNAIs in a variety of languages (Portuguese, Cape Verdean and Guinean Creole, Romanian, Russian and English). The Lisbon CNAI involves six Government agencies from five Ministries (Immigration and Border Service, the Labour Inspectorate, Social Security, Regional Health Administration, Regional Directorate of Education and the Central Registry Office), together with other support offices for issues such as family reunification, legal advice and employment. The Working Group was also told that most of the users of the CNAIs were of African descent.

14. Faced with a lack of data disaggregated by racial or ethnic origin, ACIDI maintains contacts with a network of research teams in universities (Immigration Observatory), which provide recommendations regarding the policies that ACIDI implements, including for people of African descent. Currently, the main overarching policy that ACIDI implements is the Second Plan of Action for the Integration of Immigrants, the broad objective of which is to favour the situation of immigrants by promoting their integration into Portuguese

society. The Plan has a duration of four years (2010 to 2013) and involves intervention in 17 areas by 14 ministries. This plan, which is monitored by the Consultative Council for Immigration Affairs (COCAI), is based on an evaluation of the First Plan of Action that included public consultation, a needs assessment of immigrant support professionals and recommendations made by the Immigration Observatory. The Working Group was informed that neither ACIDI nor the Second Plan of Action have special measures directed at people of African descent or any other particular ethnic group.

15. At the local level, Centres for the Integration of Immigrants (CLAII) replicate on a smaller scale what the ACIDI does through projects to promote interculturalism at the municipal level. There are 87 CLAIIs throughout Portugal, which are funded by national and local authorities. Some of them are run by non-governmental organizations.

16. The Commission for Equality and Against Racial Discrimination (CICDR) is an independent commission financed by ACIDI which has 18 members. The President of the Commission is always the High Commissioner for Immigration and the other members are made up of parliamentarians, the Minister of Education, the Minister of Labour, immigrant associations, anti-racism associations, labour unions, employers associations and others. The Commission collects information on acts of racism and the sanctions imposed. It makes recommendations concerning legislation and promotes studies and other research. It publishes an annual report on the state of racism in Portugal. On the CICDR website there is a form with which complaints of racism can be made.

17. The National Commission for Human Rights is presided over by the Secretary of State for European Affairs and includes different relevant Ministries and the Office of the Ombudsman. The Commission alerts responsible Ministries when Portugal is not up to best practice on a given human rights issue, including racism and racial discrimination, so that they may adopt corrective measures. Non-governmental organizations alert the Commission to human rights problems, as do research institutions in universities.

18. In the Office of the Portuguese Ombudsman, complaints related to immigrants and foreigners are handled by one of six groups, headed by a Coordinator. The Office of the Ombudsman has dealt with few cases of racism or racial discrimination. The Ombudsman is the Portuguese National Human Rights Institution in accordance with the Paris Principles.

19. In Portugal's legal regime, racism and its prohibition are referred to in article 13 of the Constitution, article 240 of the Criminal Code, Law 134/99 and Law 18/2004. Article 13.2 of the Constitution states that "no one may be privileged, favoured, prejudiced, deprived of any right or exempted from any duty for reasons of ancestry, sex, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social circumstances or sexual orientation". Article 240 of the Criminal Code prohibits racist organizations, incitement to discrimination or racist violence, racial vilification and making racist threats. Law 134/99 on the Prohibition of Discrimination in the Exercise of Rights due to Motives based on Race, Colour, Nationality or Ethnic Origin covers direct and indirect discrimination. According to this law, racial discrimination includes any distinction, exclusion, restriction or preference based on race, colour, descent, nationality or ethnic origin which results in annulling or restricting the recognition or exercise of a person's economic, social and cultural rights. Law 134/99 establishes the CICDR to assist with the law's implementation. Law 18/2004 makes racial discrimination an administrative offence as well which is actionable by the relevant Inspector General.

III. People of African descent in Portugal: general comments

A. Participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of the country

20. The Working Group acknowledges the efforts of the Government of Portugal to address the challenges that face people of African descent in this country. Although there were no programmes directly targeted at people of African descent, in their meetings with Government departments, the members gathered information on the many programmes that benefited people of African descent as migrants and promoted their integration into Portuguese society. A comprehensive understanding of the situation of people of African descent and an accurate evaluation of the success of these programmes was hampered, however, by the lack of data disaggregated by racial or ethnic origin. The members were repeatedly informed by Government officials and others with whom they met that it was Government policy not to collect information disaggregated by race and that, in any event, the collection of data disaggregated by racial or ethnic origin was prohibited by the Constitution. Therefore, the evaluation that the Working Group can make of the situation of people of African descent in Portugal can be characterized as more of an impression than an assertion of fact, the latter requiring the sort of empirical evidence that is simply not available in this country.

21. As regards the Constitutional prohibition of the collection of data disaggregated by racial or ethnic origin, the members found no such constitutional prohibition to exist. The article referred to in the Constitution to support the notion of a constitutional impediment to the collection of such data, article 35.3, in fact contemplates the collection of data disaggregated by race provided that certain safeguards and other conditions are met. In a meeting with the Secretary of State for European Affairs and President of the National Commission for Human Rights, the Working Group were informed that the prohibition of collecting data disaggregated by racial or ethnic origin had been discussed by the Commission, which arrived at the conclusion that the prohibition is appropriate and in line with the policy of taking measures to combat any form of discrimination.

22. The Working Group, while taking note that the Portuguese Law on Data Protection (article 7/1 of Law No. 67/98 of 26 October 1998) expressly prohibits the treatment of personal data dealing with racial or ethnic origin, regrets the lack of disaggregated statistical data on the racial or ethnic composition of the population, both citizens and non-citizens.

23. Through its many meetings with State officials and civil society representatives, the Working Group found the following issues to be the most pressing ones in Portugal as regards the participation of people of African descent in all political, economic, social and cultural aspects of society and in the advancement and economic development of their country.

1. Employment

24. During a presentation on the Government's Immigrant Job Centre Network, the Working Group was informed that the centres provide support to immigrants searching for employment through training and job matching. The centres cross-reference immigrants looking for work with vacancies. The members were informed that about one third of the centres' clients were of African descent. In a meeting with the Institute of Employment and Professional Training (IEFP), the members were informed that their mandate was to promote the creation and quality of jobs and fight unemployment. In order to register at one

of the 86 job centres throughout the country a person must present identification, Portuguese or foreign, and a valid wok permit in the case of foreigners. The members were told that the IEFP does not have programmes that target foreigners or immigrants, except "Portugal Welcomes You", which provides Portuguese-language classes and classes in citizenship. Thirty-two (32) per cent of the foreigners registered in the job centre's programmes were Africans. Under the "Portugal Welcomes You" programme, the Training for Citizenship course contains useful information for migrants, such as rights and duties, paying taxes, respecting the laws, access to education, gaining approval for qualifications, accessing accommodation etc. The members were informed that the IEFP did not have any specific policies or programmes for people of African descent.

25. In a meeting with the Organisation of Portuguese Speaking Countries, the members were informed that migrants of African descent, particularly irregular migrants, have difficulty finding employment. Irregular migrants from Eastern Europe are steadily replacing the work done by irregular migrants of African descent, as they are less visible and less likely to be spotted by the relevant authorities. Due to the difficult employment situation that irregular and regular migrants of African descent face, exacerbated by the economic crisis that Portugal is going though, many would like to return to Africa but do not have the financial resources to do so.

26. The Working Group was informed that people of African descent were often found performing manual labour and not in decision-making positions. There is a general tendency for men of African descent to be employed in construction and women in domestic work. Whereas child labour used to be a considerable problem in Portugal, legislation has been enacted and an appropriate programme put in place which has improved the situation significantly. The members were told that the economic crisis that Portugal was suffering had particularly affected the most vulnerable members of society, such as migrants of African descent.

27. The results of a sociological survey of Afro-descendant youths provided by the Government gives some indication as to general trends in the areas of employment. The survey was conducted between 2003 and 2005 and was of 1,000 individuals aged 15 to 29 years old, living in Lisbon and its surrounding area, and also included 22 interviews. The results indicated that in 2004 18.1 per cent of the samples of youth of African descent were unemployed, compared to 10.5 per cent of youth in general living in Portugal. The survey also showed that about 40 per cent of young employed men of African descent, and about 50 per cent of Afro-descendant fathers, worked in construction, while 66 per cent of young women of African descent and 75 per cent of Afro-descendant mothers were employed as service workers or sellers. According to the survey, 60.3 per cent of the samples of young people of African descent were employed as blue-collar workers, compared to 35.1 per cent of Portuguese youth in general living in Portugal while 0.6 per cent of the samples were employed as entrepreneurs, managers and professionals compared to 7.6 per cent of youths in general.

2. Access to education

28. In a meeting with the Ministry of Education, the Working Group was told about the "Between Cultures" programme, which promotes intercultural dialogue through sensitising sessions, teacher training and the training of intercultural mediators. This training is offered throughout the country and online as well. The intercultural mediators are placed in public institutions to help support the interaction of immigrants with the institution by, for instance, facilitating communication. The mediators are appointed by immigrant associations and have been, in practice, of the national origin of the majority of the immigrants in the region serviced by the particular institution. The Between Cultures programme recognizes the

importance of working with the host community as well as the immigrants in order to promote smooth integration.

29. In a meeting with the Minister of the Presidency of the Council of Ministers, the members were informed that in 2012 a kit would be delivered to all schools to promote the celebration of diversity. In a meeting with the National Agency for Qualifications (ANQ), the members were informed that ANQ had an office in the CNAI that advised immigrants on educational options and the homologation of qualifications. ANQ does not have programmes directed at a specific ethnic group, such as people of African descent, but 60 per cent of the people involved in their programmes aimed at immigrants are of African descent. Another ANQ programme is the "New Opportunity Centre", which provides adults the opportunity to improve their qualifications. There are about 450 of these centres throughout the country. ANQ has a cooperation protocol with the High Commissioner for Immigration to ensure that the immigrant population has the same access to the New Opportunities programme as the rest of the population. They also have an agreement with a university that has a special programme, or stream, in first year that is for people issued with a certificate from New Opportunities. This initiative has assisted migrants of African descent gain entry into university.

30. The Working Group was told by non-governmental organizations that access to education was often a problem for people of African descent due to difficulties with the language of instruction, a lack of accompaniment in the educational process and problems in the home environment. This leads to structural discrimination whereby the lack of successful education outcomes for students of African descent in turn leads to a lack of employment opportunities, a lower income and a compromised environment for their children. While there were no programmes in schools to promote non-discrimination, the Working Group learnt, however, that in those schools with a large proportion of students of African descent, the curriculum is sometimes modified to make it more culturally appropriate.

31. In a meeting with non-governmental organizations, the Working Group was told that school textbooks did not include the contributions of people of African descent in the development of Portugal. The contributions to Portugal of former colonies are not reflected in school texts and children of African descent are not taught to be proud of their heritage and background. Another deficiency is the lack of bilingual teaching programmes. One reason for such shortcomings, it was explained, is that the Afro-descendant community is not involved in the design of the school curriculum. It was also noted that there are very few teachers of African descent.

32. A representative of a non-governmental organization informed the Working Group that, as many adults of African descent were illiterate manual labourers, their children quickly become more educated than them and there is a transfer of authority from the adult to the child. This has adverse social and psychological effects upon the family.

3. Access to housing

33. In a meeting with the Deputy Mayor of Lisbon, the Working Group was told that there are areas within certain neighbourhoods which are inhabited predominantly by people of African descent, but they are to be found living in all parts of the city except for the historical centre. Lisbon, the Working Group was informed, does not have ethnic "ghettos" as such. There may be certain areas in the city where a certain ethnic community are more often found, but these neighbourhoods are not particularly impoverished.

34. During their visits to the predominantly Afro-descendant neighbourhoods of Almada and Cova da Moura, the Working Group found the housing there to be modest but providing a dignified standard of accommodation, with access to all the utilities that one

would expect to find in a developed country. In a meeting with non-governmental organizations, the Working Group was informed, however, that on occasion buildings housing families of African descent had been demolished with no alternative housing assured.

35. Access to dignified housing did not appear to the Working Group to be as urgent a challenge for the Afro-Portuguese community as they have found it to be for Afro-descendant communities in other countries.

4. Access to health care

36. It was explained to the Working Group that youth pregnancy was a big problem for many migrant communities, including people of African descent and that more needed to be done to educate migrant teenagers on avoiding unwanted pregnancy. The members were also informed that there are insufficient information campaigns on human immunodeficiency virus (HIV) and other health issues directed at migrants. Such campaigns would assist immigrants of African descent in understanding these issues and how to gain access to treatment when necessary.

37. In a meeting with CPLC, the Working Group was informed that some Africans and people of African descent come to Portugal to receive medical treatment, but because the public health system takes so long they end up becoming unintentional immigrants.

38. In a meeting with non-governmental organisations, the Working Group was told that one of the difficulties faced by people of African descent was receiving medical care if they were irregular migrants. As with the issue of access to housing, it was difficult for the Working Group to arrive at a conclusive opinion regarding the quality of access to health care enjoyed by people of African descent in Portugal. This was again due to the lack of relevant data disaggregated by racial or ethnic origin.

5. Participation in public life

39. In a meeting with the Minister of the Presidency of the Council of Ministers, the Working Group was informed that the relatively low parliamentary participation by people of African descent was not due to discrimination but more to do with the low level of political participation by communities of African descent.

40. In a meeting with non-governmental organizations, the Working Group was informed that there is no effective political representation of people of African descent in Portugal and that there was only one parliamentarian of African descent in the Portuguese parliament. The Working Group was told that there is poor leadership among people of African descent, that there are many neighbourhood organizations of Afro-descendant communities and that some receive financial assistance from the Government but that these organizations were often manipulated by politicians for their own interests.

41. One problem that the Working Group was informed of in several meetings was the difficulty that many people of African descent have in acquiring Portuguese citizenship. In a meeting with non-governmental organizations, the Working Group was informed that a child born in Portugal is given Portuguese nationality provided that their parents' situation was regularized at the time of birth. Civil society representatives suggested that the law should be changed so as to confer citizenship upon all those born in Portugal, regardless of the situation of their parents.

6. Administration of justice

42. In a meeting with the Acting Ombudsman, the Working Group was informed that, although there were no statistics to verify it, there is a perception that there are a high

number of men of African descent in Portuguese prisons, particularly young men. Although there are no statistics disaggregated by racial or ethnic origin, there are statistics disaggregated by nationality. These statistics indicated that just over 1 per cent of the population in Portugal are citizens of African countries, while 11.66 per cent of the inmates in Portuguese prisons are citizens of an African country. People of African descent with Portuguese citizenship and those from countries outside of Africa (such as Brazil) are not included in this figure. The Ombudsman's office does not have complaints that identify the complainant as being of African descent but they do characterize complainants as being foreigners when appropriate. One problem allegedly faced by foreign inmates, including those of African descent, is that they do not have access to the special leave from jail programme. The Ombudsman informed the members that his office has received very few complaints based on racial discrimination during the last 10 years.

43. In a meeting with the Deputy Attorney General, the Working Group was informed that there had been two criminal convictions for racial discrimination. One was a case of defamation but the person was also convicted of discrimination, while the other case concerned the distribution of racist leaflets. The two cases involved a message directed at a racial group, not an individual, and the courts are tending to convict on the ground of racism only in those cases where the racism is directed at groups. There are other cases where, for the purposes of sentencing, racism has been found to be an aggravating factor in the commission of other crimes. The Constitutional Court has abolished a neo-Nazi organisation for inciting racial hatred and in January 2011 a far-right leader was convicted of racism and sentenced to 17 years prison. This conviction is currently under appeal. The Deputy Attorney General told the Working Group that there was no data concerning access to justice by people of African descent due to the legislative constraints upon the collection of such data.

44. In a meeting with non-governmental organizations, the Working Group was informed that racism in Portugal is mostly subtle and not immediately apparent. Very few cases of racism have been tried, perhaps three in the past 10 years. There is, however, a problem with racial profiling and police violence directed at people of African descent. The Working Group was informed by a non-governmental organization that the rate at which people of African descent are killed by the police in Portugal was higher than any other country of the European Union.

45. According to non-governmental organizations with which the members met, police target Afro-descendant immigrants and carry out large-scale operations in neighbourhoods where they live. They are racially profiled by the police and stigmatized. Several members of a predominantly Afro-descendant community informed the Working Group of incidents of police brutality and cases where the police had broken into homes in the neighbourhood of Cova da Moura without a search warrant on the pretext of looking for somebody. According to those interviewed, young people of African descent from the community were often the victims of racial profiling by the police, who stop them in the street for questioning simply because of the colour of their skin.

7. Poverty

46. In its meeting with the National Commission for Human Rights, the Working Group was informed that Portugal's policies to combat poverty and discrimination against the impoverished had been very successful and that this had greatly benefited people of African descent as they were frequently impoverished. These, and the generous nationality laws, had been in place of affirmative action measures, which were not possible in Portugal.

47. According to a non-governmental organization with which the Working Group met, there are many people of African descent in Portugal who live below the poverty line. The Working Group visited a community of predominantly Afro-descendants on the outskirts of

Lisbon in the neighbourhood Alto da Cova da Moura. A non-governmental organization that has programmes in this neighbourhood explained to the members that the community was established in the 1980s, mostly by people from Cape Verde, but also from Guinea-Bissau and other countries. The non-governmental organization began in the early 1980s, initially as a local association to obtain water for the neighbourhood, but it went on to build a library which now has 700 readers. The organization received funding from the European Union for several of its programmes, which include training programmes for domestic employees and teaching aids. Although poverty alleviation is a necessity in this neighbourhood, the organization does not provide charity as it believes that this would create dependence. Instead, it focuses on education and training as well as running a crèche and cultural activities. The organization also works in the prevention of domestic violence.

8. Citizenship

48. In several of the meetings that the Working Group had with non-governmental organizations, concerns were raised about the difficulties that migrants of African descent could face in obtaining Portuguese citizenship. Non-governmental organizations were concerned at the negative impact upon access to fundamental services by children who did not have Portuguese citizenship and recommended that a *jus solis* approach be adopted whereby all children born in Portugal have the right to Portuguese citizenship.

49. In a meeting with the Citizenship Department of the Civil Registry, the Working Group was informed that children of irregular migrants parents were always given identity documents at birth and that abandoned children were always given Portuguese citizenship. Babies born to foreigners are given a birth certificate in the hospital. While home births are very rare these days, in these cases a medical certificate is produced at the registry's office and a birth certificate is issued. Minors can obtain citizenship when one of their parents has been in Portugal regularly for five years.

B. Policies for the integration of people of African descent

50. At a meeting with the Minister of the Presidency of the Council of Ministers, the Working Group was informed that Portugal's immigration policy was recently ranked second in the list of European countries and was the most improved in the top 10. According to the Minister, migration was not a topic that causes conflict in Portugal and racist attitudes towards people of African descent were not very prominent. Diversity is value in the Portuguese model of society and there is funding for community projects that celebrate diversity.

51. One of the programmes implemented by ACIDI is specifically directed at supporting the social inclusion of children and youngsters within vulnerable social and economic contexts, particularly children of immigrants and ethnic minorities and is called "Choices". It was created, inter alia, to address the physical isolation, language problems and other challenges that the children of immigrants faced. The Choices programme currently supports 132 other programmes in 71 municipalities throughout the country. Under the Choices programme, projects compete for funding according to set criteria. Civil society organizations that wish to benefit from Choices funding may select from an à la carte menu of projects that can be implemented by them or present their own project. The most common implementers of Choices programmes are schools and there were 170 schools benefiting from such funding when the members visited the country. The Choices programme includes projects on vocational training, civic and community participation, computer literacy, entrepreneurship and empowerment and most beneficiaries are between 14 and 18 years old.

52. One of the barriers facing many immigrants, including those of African descent, is that of language. The members were informed by the Portuguese authorities about the programme "Portuguese for All", whereby all those in possession of a valid title of residence, regardless of citizenship status, are entitled to a Portuguese language and culture course that has a duration of 150 hours. The course contributes significantly to the integration of immigrants into Portuguese society.

53. In a presentation made by the Office for Technical Assistance to Immigrant Associations (GATAI), the Working Group was told that the Office supports the planning, implementation and evaluation of initiatives by immigrant associations. Certain criteria must be satisfied by an immigrant association before it is recognized as such by GATAI. The association must have at least 100 members, an elected governing body, published statutes, at least two years' existence and be registered on the National Register of Corporations. The Consultative Council for Immigration Affairs (COCAI) takes the decisions concerning recognition of associations. At the time of the members' visit, there were 125 immigrant associations recognized by GATAI and 70 per cent of them represented people of African origin.

54. The members were informed that there were no special measures or affirmative action policies in Portugal for people of African descent or other minorities. Such measures would, according to Government policy, be deemed to be favouritism towards one population group and be in conflict with the country's non-discrimination policy. Non-governmental organizations pointed out that there was a need for special programmes to assist people of African descent in integrating into mainstream Portuguese society. Such programmes could be based on sport and other recreational activities, for example, and serve to address the current social exclusion that many Afro-descendants feel. Non-governmental organizations recognised that the Government had had success in social integration with its "New Opportunities" programme which provides vocational training to immigrants, including those of African descent. The Working Group was informed that, within the Consultative Council for Immigration Affairs, there are five seats reserved for people of African descent and one seat for each of five largest African national communities in Portugal.

55. In its meetings with non-governmental organizations, the Working Group was told that there was a general feeling among people of African descent that they belong to a separate society from the mainstream Portuguese population. Academic institutions informed the members that the official policy for the inclusion of people of African descent into Portuguese society is one more approximating assimilation than multiculturalism. The official disinclination to collect data disaggregated by racial or ethnic origin is offered as evidence of assimilation being the official inclusion policy. Contrary to this, several of the Government bodies with which the Working Group met described the official policy as one of "interculturalism". In a meeting with ACIDI the Working Group was informed that the Choices programme for the social inclusion of migrant youths and children was based upon interculturalism rather than multiculturalism, as the latter ends in stereotyping and tokenism. Interculturalism offers young people the choice of the best aspects of both mainstream Portuguese culture and their culture of origin, placing an emphasis on what they share rather than what differences may exist.

56. The Working Group was taken to visit a project funded by the Choices programme in the neighbourhood of Almada. The project, a youth drop-in centre, had a computer room and lounge area and was run by a charitable organization. The centre is open to all the youths from 12 to 18 years old of the local area, which has a large Afro-descendant population. The programmes that the centre offers are in the areas of social inclusion, computer skills, dancing, football and entrepreneurship. The members were told that 1,500 people use the centre every month. Some of the major problems among the youths of the

neighbourhood are those of unemployment, teenage pregnancies, lack of documentation, petty crime and school dropout rates. The centre intercedes with schools on behalf of troubled students when there are problems and implements a special class in schools for children at risk of dropping out. As well as the projects already mentioned, the centre tries to address these issues using positive role models from among 18 to 24 year olds.

57. In a meeting with the Deputy Mayor of Lisbon, the Working Group was told about the planned project "Africa.cont", which aims to be a cultural centre and focal point between Africa and Portugal. It is to be supported by both the local and national Governments. The cultural centre will be developed in a renovated warehouse by the river and will contain exhibitions of African art, literature and other items that showcase African creativity.

58. The Working Group was informed that there was no national day to commemorate the slave trade or emancipation and that because slaves were generally taken by Portuguese slave traders to the colonies there was not such an interest in the history of slavery in Portugal itself.

59. The Working Group was informed that the discrimination against people of African descent that exists in Portugal is covert and not perhaps immediately apparent. It is often structural in nature and reflected in stereotypes that are perpetuated in the media. If, for instance, a crime is reported in the media, the racial origin of the person will often be reported if that person is black; or the neighbourhood where the crime is committed will be reported if that neighbourhood is known as one where Afro-descendants live. The effect is to link people of African descent with criminality. Although not all journalists do this, there are those that do. The general attitude of the Portuguese media towards Africa and people of African descent was described as patronizing by academic institutions with which the Working Group met.

60. In a meeting with non-governmental organizations, it was explained to the members that the African community in Portugal had a very low profile and that African culture was still considered to be on the margins of Portuguese society. It is not, for example, represented on mainstream television. They were informed that the official characterization of racism and colonisation was that (a) racism is individual behaviour, which eliminates collective responsibility, and that (b) Portuguese colonization was a "benign" or "soft" form of colonization. This has resulted in an inaccurate version of Portugal's colonial past being taught in classrooms along with the idea that racism was not a particularly relevant issue in Portugal today. In contrast to this, the Working Group was also told that there are a growing number of racist movements in Portugal.

C. Gender perspective

61. In a meeting with the Commission for Citizenship and Gender Equality, the Working Group was informed that Portugal was currently implementing the IV National Plan Against Domestic Violence. Police statistics on domestic violence, which are disaggregated by migrant communities, show that the Brazilian and Cape Verde communities had made the most complaints among migrants. The information was not, however, disaggregated by racial or ethnic origin. Portugal is also implementing the IV National Plan for Equality, Gender Equality, Citizenship and Non-discrimination, which has a priority the mainstreaming of gender in public policy. The gender aspect needed to be considered in all forms of discrimination, including racial discrimination.

62. A problem that women of African descent face in Portugal that also occurred in other countries is that they are forced to work several jobs at the same time in order to support their families as single mothers. This results in their spending little time with their

children and often leads to youth behavioural problems such as involvement in gangs and petty crime.

IV. Conclusions and recommendations

A. Conclusions

63. **The Working Group greatly appreciates the comprehensive and informative meetings that were held with Government agencies during the country visit. It notes with satisfaction the existence of several institutions, including the High Commission for Immigration and Intercultural Dialogue (ACIDI), the National Commission for Human Rights, the Office of the Portuguese Ombudsman and their positive work for the promotion and protection of the rights migrants, including people of African descent.**

64. **The Working Group welcomes the existence of several programmes and other governmental initiatives aimed at the integration of migrants into Portuguese society, including a large number of measures in fields such as education, employment, and culture. These programmes positively affect people of African descent, particularly the implementation of the Second Plan of Action for the Integration of Immigrants. The Working Group also welcomes the fact that diversity is valued in the Portuguese model of society and notes with appreciation the allocation of financial resources for community projects that celebrate diversity.**

65. **The Working Group notes with satisfaction that Portugal's immigration policy was recently ranked second in the list of European countries and was the most improved in the top 10.**

66. **The Working Group notes that there are no racial or ethnic minorities recognized as such in Portugal. People of African descent living in the country are not acknowledged as racial or ethnic minorities but rather as immigrants. When speaking about treatment of people of African descent, the Government refers to the integration of people coming from abroad; there is no special recognition of people of African descent who are nationals. As a result of the above, relevant legislation and institutional structures are related to the integration of immigrants. As people of African descent are not recognized as a racial or ethnic minority in the national legal framework or as a specific group out of the groups of immigrants, there are no specific national policies or programme addressing their human rights situation of people of African descent.**

67. **The Working Group recognizes the very unique relationship between Portugal and people of African descent, including the colonial past, long historic, economic and political relations with several African countries and Brazil, and long-standing and newer waves of immigration by people of African descent to the country. As such, it notes with concern the non-existence of specific national policies directly targeting nationals or migrants of African descent.**

68. **The Working Group expresses concern at the lack of acknowledgment of the legacy and influence of Portugal's colonial past and the specific role played by people of African descent during this period. It is also concerned about the insufficient recognition of people of African descent as part of contemporary Portuguese society and of their positive contribution throughout history to the construction and development of the country**

69. **The Working Group learnt that the school texts and curriculums do not reflect the contribution to Portugal of its former colonies nor promote pride for children of African descent in their heritage and background. Afro-descendant communities are not involved in the design of the school curriculum and there are very few teachers of African descent. This has resulted in an inaccurate version of Portugal's colonial past being taught in classrooms along with the idea that racism is not a particularly relevant issue in Portugal today. In contrast to this, the Working Group was also told that there are a growing number of racist manifestations in the country.**

70. **The Working Group observes that national legislation expressly prohibits the treatment of personal data dealing with racial or ethnic origin and regrets the lack of statistical disaggregated data on the ethnic or racial composition of the population, both citizens and non-citizens. The lack of reliable statistic data prevents the much needed analysis of the socio-economic living conditions of people of African descent living in Portugal.**

71. **Despite the lack of disaggregated data, the Working Group observes that people of African descent suffer from social exclusion and marginalization. They also face high poverty rates; unequal access to quality education, health and other public services and employment; and discrimination in the administration and functioning of the justice system, including disproportionate rates of incarceration. These problems affect people of African descent on multiple levels and are not being sufficiently addressed, at the federal, state and local levels.**

72. **The Working Group expresses concern about the existence of racial profiling and police violence, directed at people of African descent. The Working Group learnt that the rate at which people of African descent were killed by the police in Portugal was higher than any other country of the European Union.**

73. **The Working Group also notes the relatively low levels of participation and the underrepresentation in political and institutional decision-making processes of people of African descent in Portugal, particularly at the parliamentary level.**

74. **Although the Working Group recognizes that racism is addressed in several laws and programmes, the experts learnt that racism in Portugal is mostly subtle and not immediately apparent. This necessitates institutions and programs tailored to the specific situation of people of African descent in order to change current official policy for inclusion into Portuguese society from an approach approximating assimilation to one of multiculturalism.**

75. **Related to this, the Working Group notes that that there are no affirmative-action policies or special measures in Portugal addressed for people of African descent or other minorities. Such measures would, according to Government policy, be deemed to be favouritism towards one population group and be in conflict with the non-discrimination policy. Non-governmental organizations pointed out that there was a need for special programmes to assist people of African descent in integrating into mainstream Portuguese society.**

76. **Many of those consulted believe the Government had not adequately implemented the existing legislative framework and national policies with respect to people of African descent and had failed in several aspects to respond adequately to their problems or to devise meaningful and enforceable solutions, leaving them and their communities in a neglected situation.**

B. Recommendations

77. **In view of the above, the following recommendations are proposed by the Working Group to the Government of Portugal. It is recommended that it:**

(a) Adopt legal and institutional measures to promote equality and address racial discrimination experienced by people of African descent who are Portuguese citizens and ensure that the issues related to people of African descent are not treated exclusively as migrants' issues;

(b) Tackle racism and racial discrimination faced by people of African descent by using a holistic approach, touching all levels of society. The particular history and context of all people of African descent leaving in Portugal, including nationals and migrants, should be taken into account and reflected in a comprehensive action agenda of legislation, practical measures, and monitoring compliance mechanisms;

(c) Review the Government policy that impedes the collection of information disaggregated by ethnic or racial origin. Such data would enable to make a real analysis and evaluation of the living conditions of people of African descent in Portugal;

(d) Develop school curriculums, texts and programmes which reflect the rich heritage and positive contribution of people of African descent in Portugal, and include an accurate version of Portugal's colonial past in classrooms;

(e) Take all necessary steps to counter structural discrimination in the access to justice for people of African descent, by supplying the requisite legal information of their rights and take measures to significantly increase the confidence of the population in the judicial system, shorten the judicial procedures where possible and allow victims to access legal remedies;

(f) Adopt special measures, including quota systems, to alleviate and remedy disparities in the enjoyment of human rights affecting people of African descent in Portugal, in order to protect them from discrimination and overcome structural discrimination and breaking the circle of poverty, inadequate education and unemployment;

(g) Ensure the participation of people of African descent in projects that affect them, including appropriate forums to consult them regarding their particular needs;

(h) Ensure that the rights of children of African descent are respected and protected in accordance with the Convention on the Rights of the Child, including the rights to education, citizenship and full recognition by the State.

Appendix

Submission by Portugal of information regarding the report on the visit to Portugal of the Working Group of Experts on People of African Descent (16 to 20 May 2011)

The information that Portugal is submitting has been provided by the Ministries of Justice, Home Affairs, Education and Science, Solidarity and Social Security, Economy and Labour, as well as by the High Commissioner for Immigration and Intercultural Dialogue, the Commission for Citizenship and Gender Equality and the Attorney's General Cabinet of Documentation and Compared Law.

As a general preliminary comment, it is important to bear in mind that a large number of the persons of African Descent in Portugal are Portuguese citizens. Many of them were already born in Portugal. Furthermore, in Portugal persons of African descent are not exclusively black-skinned. Therefore, to limit the concept of African Descent exclusively to black-skinned persons risks excluding other persons.

1. Information regarding the acquisition of the Portuguese nationality (Para. 41, 48 and 49)

According to the Nationality Law, as amended by Organic Law 2/2006, a child born in Portugal to foreign parents is entitled to Portuguese nationality if **at least one of parents** has been legally living in Portugal for **five years**. This requirement applies to all foreigners living in the country, **irrespective of their origin** (article 1º/1/e) of the Nationality Law).

The loosening of the requirements to acquire the Portuguese Nationality expressed above is part of the wider 2006 reform in the Nationality Law aimed at reinforcing the *jus solli* approach, in order to address the profound demographic changes that have occurred in the country, mostly due to the increasing flux of immigration which started in the 1990's.

Three new subjective rights to the acquisition of the Portuguese Nationality, reinforcing the *jus solli* criterion, have been established:

- a child born in Portugal to foreign parents is entitled to Portuguese Nationality if at least one of the parents was also born in Portugal and resides in Portugal (irrespective of his/her legal or illegal status) at the time of the birth of the child (article 1º/1/d of the Nationality Law);
- a minor, born in Portugal to foreign parents, can be naturalised Portuguese if, at the time of the request for naturalization, one of the parents has been legally residing in Portugal or, alternatively, if the said minor has concluded the Portuguese basic schooling system;
- in addition the anti-statelessness clause (article 1.º/1/f) of the Nationality Law) states that all those born in Portugal, who otherwise would be stateless, are entitled to the Portuguese Nationality. This rule also applies to foundlings.

2. Access of foreign inmates to the special leave from jail programme (Para 42)

The access to special leave from jail is regulated under Law 115/2009. The criteria established under article 78 do not include any reference, impediment or discriminatory treatment based on nationality, origin or descent of the inmate. One of the criterion taken into account when deciding on special leave from jail is the existence of a social or family environment where the inmate can be housed during the leave period Prison services contact organizations which could host those inmates (nationals or foreigners) who meet all the criteria for the jail leave, but who would otherwise not be granted it due to the lack of a social or family environment.

The statement contained in paragraph 42 that "foreign inmates do not have access to the special leave from jail" is therefore not correct.

3. Alleged "racial profiling" and police violence (Para. 44, 45, 72)

Regarding the allegations of "racial profiling" by the police, "stigmatization", "police brutality", or "the rate of people of African descent killed by the police in Portugal", it is important to note that police agents can only act in accordance with the required legal procedures. All cases of illegal use of force have disciplinary and criminal sanctions.

To prevent such illegal instances, inspection actions are undertaken by independent institutions (namely the Inspectorate General for Home Affairs).

Furthermore, all police bodies in Portugal receive initial and continuous training regarding the respect of human rights. Training includes issues related to racial discrimination, the use of violence and the constitutional and legal principles of necessity, adequacy and proportionality in performing their tasks of keeping public order and security.

4. Alleged "racial profiling" in the media (Para. 59)

Notwithstanding the constitutionally granted freedom of press and expression, the conduct of the media is also subject to the general law which criminalises racism and racial discrimination.

In addition, the Commission for Equality and Against Racial Discrimination (High Commission for Immigration and Intercultural Dialogue) has issued a communication addressed to all media urging them not to reveal nor to focus reports on the nationality, ethnicity, religion or the legal status of a certain person or group of persons. If these guidelines are not respected, the Commission directly contacts the responsible media actor asking it to consider revising its report. The Judiciary Police also follows these guidelines in all its official statements.

5. Alleged growing number of racist movements and manifestations (Para 60 and 69)

The sole extreme right party in Portugal has never had significant electoral results. It has never had a member elected to the Parliament. During the last general elections, in 2011, it had 0.32% of the votes.

In 2010/2011, the Judiciary Police did not receive a single complaint relating to racist propaganda.

6. Para 19

In addition to the referred legislation it could be added that the Foreigners Law (32/2007) and the Asylum Law (27/2008) contain explicit references to the respect for Human Rights and for the international human rights treaties that Portugal is a party to.

7. Allegation that the Portuguese model of inclusion favours assimilation rather than multiculturalism (Para. 55 and 74)

If considered appropriate, a reference could be made to article 3 e) of Decree-Law 167/97, which defines the mandate of the High Commission for Immigration and Intercultural Dialogue as *"Promoting interculturalism, through intercultural and interreligious dialogue, valorising cultural diversity in a framework of mutual respect"*.

8. Access to medical care by irregular migrants (Para. 38)

The information contained in this paragraph is out dated. Since 2009 (DGS 12/DQS/DMD), all migrants, irrespective of their legal status, benefit from the health care provided by the National Health Service.

9. Access to health by foreigners from Portuguese Speaking African Countries (Para 37)

A reference could be made in this paragraph to the "Health Support Programme to Foreigners from Portuguese Speaking African Countries (PADE)", developed by ACIDI and the Institute for Social Security aiming at providing temporary accommodation and financial support to foreigners from these countries, who come to Portugal seeking health care.

10. Access to education: difficulties with the language of the instruction (Para. 7 and 30)

The new curricular guidelines (Decree-Law 1397/2012 of 5th. July) and the new Law on the Autonomy of Schools enable, as the Working Group already recognises in the same paragraph, schools to modify the curriculum to make it more culturally appropriate, namely through the adoption of measures which favour the equality of opportunities and academic success.

One of these measures is the introduction in the curriculum of the subject of "Portuguese as a Foreign Language". This subject's aim is to avoid that the insufficient knowledge of the Portuguese language hampers access to education by all children in Portugal, irrespective of their origin or background.

11. Ensuring the right to education of children of African descent (Para. 84)

All children resident in Portugal, irrespective of their nationality and legal status are granted access to the free public school system and can benefit, on an equal basis with Portuguese children, from school social support such as free meals and school books.

It is also worth noting that most of the children of African descent in Portugal, likewise adults, are actually Portuguese citizens, most of them born in Portugal.

12. School texts and curricula do not reflect the contribution to Portugal of its ex-colonies (Para. 31 and 69)

The curricula of History are designed according to rigorous and scientific criteria resulting from the exhaustive research of all available sources of information. It also stimulates further individual research by the student from all sources of information, namely the internet.

The maritime expansion and the following the colonialism period, including the slave trade, are compulsory parts of the History curricula in various academic years.

The school curricula reflect the rich and important cultural diversity and of our common heritage. As an example, the curricula of Portuguese Language in the basic and secondary education, foresee the compulsory reading of texts from Portuguese-speaking authors from Africa and Brazil (José Eduardo Agualusa, Lourenço do Rosário, Mia Couto, Ondjaki, José Craveirinha, Machado de Assis, Carlos Drummond de Andrade or Fernando Sylvan).