

## **UN Permanent Forum on People of African Descent**

### **Inaugural Meeting**

**5-8 December**

### **Presentation by Gay McDougall**

*Revised*

I have been asked to give some essential elements of a Declaration on the Rights of People of African Descent (PAD). What I have attempted to do is to use the International Convention on the Elimination of Racial Discrimination and particularly General Recommendations 34 on racial discrimination against People of African descent, the UN Declaration on the Rights of Minorities, and the Declaration on the Rights of Indigenous peoples as initial models. I also pay respect to and attempt to include the contributions of Pastor Martinez and Jon Anton.

First a few words about the process for the drafting of these other Declarations: The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly in 2007, but took 20 years to draft and gain positive acceptance by the GA. The Declaration on the Rights of Minorities took a much shorter time and was adopted in 1992. In 2005, the Independent Expert on minority issues was appointed to promote the implementation of the 1992 Declaration. And the Forum on Minorities was created in 2007, to provide a platform for promoting dialogue and cooperation in that field as well as thematic contributions to the work of the Independent Expert.

But this Declaration on the Rights of PAD must be based explicitly on the ICERD, a treaty that codifies the peremptory customary law against racial discrimination. This gives it a strong underpinning and, I believe, an easier route to acceptance by states.

But the lesson from the history of these other Declarations teaches us that drafting of a declaration of this sort must be based on a broad consultative process with PAD in all regions and then with States that may take time.

But, back to what I have put forward today based on these earlier Declarations.

The result is a framework for further thoughts and additions. It should be seen as deliberately general rather than overly specific. Hopefully it is like a tree on which additional leaves can be hung to populate the document with more specific provisions. But we must be practical, every aspect of our desires and aspirations cannot be put in the Declaration. That's not what a Declaration is to do. Also keep in mind that if we want the Declaration to be adopted by the GA of all States around the world. In order to achieve that, we will have to accept a certain amount of generalities.

## **A Contribution to a Zero of the Declaration on People of African Descent**

*The General Assembly,*

*Guided* by the purposes and principles of the Charter of the United Nations, and with good faith in the fulfilment of the obligations assumed by States in accordance with the Charter,

*Affirming* that People of African Descent are equal to all others, while recognizing the right of all people to be different, to consider themselves different, and to be respected as such,

*Affirming also* that all people contribute to the diversity and richness of civilizations and cultures, which constitute the common heritage of humankind,

*Affirming further* that all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust,

*Reaffirming* that People of African Descent, in the exercise of their rights, should be free from discrimination of any kind,

*Concerned* that People of African Descent have suffered from historic injustices as a result of, inter alia, their forced enslavement, colonization and dispossession of their lands, territories and resources, thus preventing them from exercising, in particular, their right to development in accordance with their own needs and interests free from discrimination,

*Considering also* that treaties, agreements and other constructive arrangements, and the relationship they represent, are the basis for a strengthened partnership,

*Acknowledging* that the Charter of the United Nations, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as the Vienna Declaration and Programme of Action, affirm the fundamental importance of the right to self-determination of all peoples, by virtue of which they freely determine their political status and freely pursue their economic, social and cultural development,

*Acknowledging* other important initiatives of the General Assembly aimed at raising awareness about the suffering of victims of racism, racial discrimination, xenophobia and related intolerance and forms of discrimination, including in the historical perspective, in particular regarding commemoration of the victims of slavery and the transatlantic slave trade,

*Stressing* the seminal importance of the outcome of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance which share equal status to the outcomes of all the major United Nations conferences, summits and special sessions in the human rights and social fields, and that the Durban Declaration and Programme of Action remains a solid basis which prescribes comprehensive measures for combating all the scourges of racism and adequate remedies for victims, and noting with concern the lack of effective implementation thereof,

*Bearing in mind* that nothing in this Declaration may be used to deny any people their right to self-determination, exercised in conformity with international law,

*Convinced* that the recognition of the rights of People of African Descent in this Declaration will enhance harmonious and cooperative relations between States and People of African Descent, both in the territories and globally, based on principles of justice, democracy, respect for human rights, non-discrimination and good faith,

*Emphasizing* that the United Nations has an important and continuing role to play in promoting and protecting the rights of People of African Descent,

*Believing* that this Declaration is a further important step forward for the recognition, promotion and protection of the rights and freedoms of People of African Descent and in the development of relevant activities of the United Nations system in this field,

*Recognizing and reaffirming* that People of African Descent are entitled without discrimination to all human rights recognized in international law, and that People of African Descent are subjected to violations of rights on the basis of assumptions about their collective inferiority,

*Recognizing* that the situation of People of African Descent varies from region to region and from country to country and that the significance of national and regional particularities and various historical and cultural backgrounds must be taken into consideration,

*Solemnly proclaims* the following United Nations Declaration on the Rights of People of African Descent as a standard of achievement to be pursued in a spirit of partnership and mutual respect:

## **Article 1 Identity and Recognition**

**People of African Descent have the right to their identity as a group that shares characteristics within a national context and a trans-national or global context. Its identity is based on self-identification and shared histories of origin, historical injustices and cultures of resistance and resilience.**

**That shared identity forms the basis of their inherit right to self-determination and legal personality within national and international contexts, within the understanding of the Charter of the United Nations, the Universal Declaration of Human Rights, and international law.**

**All the rights and freedoms recognized herein are equally guaranteed to all People of African Descent, in all our intersecting glory: men, women, those who identify as Indigenous, Morons, Quilombolas, LGBTQI+, disabled, young, older; those who are the majority who control sovereign states and those who are a minority in States controlled by others, whether in the global south and global south.**

**These rights demand equality within and between States, in recognition that colonialism and the Slave Trade were global economic systems that have shaped the contemporary realities of the have and have not nations.**

**All States and international institutions have an obligation to recognize and to respect the identity, legal personality and right to self-determination of People of African Descent**

**All States and international institutions shall take effective steps to protect and shall encourage conditions for the promotion of identity and furtherance of the self-determination of People of African Descent.**

**States shall take measures to ensure that persons of African Descent may exercise fully and effectively their human rights and fundamental freedoms without any discrimination and in full equality before the law.**

**Nothing in this Declaration may be construed as diminishing or extinguishing the rights People of African Descent have now or may acquire in the future.**

## **Article 2 Right to Life and Security of Physical and Mental Health**

**People of African Descent have the right to life and security of person, physical and mental health.**

**People of African Descent have a right to exist, as individuals and collectively, in freedom, peace and security; free from violence and with the resources and supports necessary to thrive.**

**States have an obligation to protect, respect and ensure that they are not subjected to violence of any kind, whether from State or non-state actors, whether by intentional acts of violence or acts of harmful neglect, exclusion or marginalization.**

**The right of People of African Descent to exist free from violence includes the destructive violence emanating from the criminal justice system in many countries with histories of colonialism and slave labor, which misuse the police, courts, and prisons to be instruments of control and destruction of People of African Descent, leading to their suppression physically and spiritually.**

**States have an obligation to guarantee that People of African Descent, individually and collectively, live in safe and healthy environments that are conducive to a full and productive life, which includes a climate that will continue to sustain healthy life on an equal basis, without transforming the countries and communities of People of African Descent into racial sacrifice zones.**

**States shall take effective measures to ensure that no storage or disposal of hazardous materials shall take place in or adjacent to lands, territories, or communities of People of African Descent and will take immediate and effective measures to clean-up and restore to health the lands, territories and communities where People of African Descent live that have in the past been used as toxic dumping grounds and further will ensure programs are established for monitoring, maintaining and restoring those areas.**

**States have an obligation to prevent the proliferation of racist hate speech in all its forms because it promotes racism and racist hate crimes which threaten the safety of and right to existence of People of African Descent.**

### **Article 3 Right to Culture and History**

**People of African Descent have the right to enjoy their own culture, to profess and practice their own religion, and to use their own language (if applicable), in private and in public, freely and without interference or any form of discrimination.**

**People of African Descent have the right to the dignity and diversity of their cultures, traditions, histories and aspirations which shall be appropriately reflected in education systems and public information.**

**People of African Descent have a right to know and to celebrate their histories and the cultural artifacts and sacred spaces of remembrance, in spite of efforts to deny or erase those histories. States have a responsibility to reveal the truth of past injustices, to protect sacred spaces of remembrance, such as slave cemeteries, and to promote the importance of public awareness of these histories as a vital element of democracy, social cohesion and respect for human rights.**

**People of African Descent have the right to participate effectively and on an equal basis in the cultural, religious, social, economic and all other aspect of the public life of nations and the international community. To these ends, People of African Descent should have ample opportunities through publicly funded education to gain knowledge of the society as a whole and international affairs.**

**States should take measures, particularly in the fields of education, public information, culture and media, with a view to combating prejudices which lead to racial discrimination and to promoting knowledge of the history, traditions, languages and cultures of People of African Descent, existing within their territory, regionally and globally, as well as to propagating the purposes and principles of the Charter of the United Nations, the Universal Declaration of Human Rights ,the International Convention on the Elimination of Racial Discrimination , and of this Declaration.**

#### **Article 4 Right to Voice and Self-Determination**

**People of African Descent have the inherit right to self-determination as embraced by international law and as must be recognized, inter alia, in the following manner.**

**People of African Descent have a right to equality of Voice and to define and pursue their individual and collective destiny.**

**People of African Descent have the right to participate effectively in decision-making on the national, and where appropriate, regional levels concerning matters that affect them as a group, and on an equal basis in matters that affect the entire national polity to which they belong or the regions in which they live. States have an obligation to ensure that the political rights or People of African Descent are not suppressed or limited in any way or for reasons that are not in conformity with the International Covenant on Civil and Political Rights and the International Convention on the Elimination of Racial Discrimination.**

**In States where the right to Self-Determination of People of African Descent has been recognized Constitutionally or legislatively, those States shall take all effective measures to respect, promote, and guarantee the full enjoyment of those rights.**

**In particular, States shall give legal recognition and protection to lands, territories and resources which have been traditionally owned, occupied or otherwise used or acquired by People of African Descent. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the People of African Descent concerned.**

**Where they have been breached, the State shall take swift and effective measures to punish violators and guarantee reparations to victims.**

## **Article 5 Right to Equality in Distribution of Economic Goods and Progress**

**People of African Descent have a right to participate equally, without discrimination, in the economic and social benefits, along with the progress and development of the State in which they exist and proportionately of the region.**

**States and regional governance structures have an obligation to guarantee the right of People of African Descent to these economic and social rights by effective and robust affirmative special measures to swiftly equalize the enjoyment of these rights and to end marginalization and deficits in this regard, particularly in regard to quality housing, equal education outcomes, equal health and care outcomes, sharply reduced poverty levels equal to national level, and rapidly improving participation in the labor force in higher wage employment, as required by the ICERD.**

**States must also take meaningful and effective measures to prevent the marginalization of People of African Descent and rapidly increase their participation in successful entrepreneurial engagement and in meaningful participation at all levels of private sector ownership and governance.**

**States must guarantee that the land and resources of People of African Descent, whether held under individual or collective titles, are safeguarded for their ownership and are alienated only pursuant to their free, prior and informed consent under circumstances to their benefit.**

## **Article 6 The Right to Justice and Reparations**

**People of African Descent have a right to effective remedies for acts of racism and racial discrimination which violate human rights and fundamental freedoms and also for the historical crimes of colonialism, the slave trade and the system of chattel slavery. People of African Descent have a right to seek just and adequate reparations proportionate to the injuries suffered as a result of such violations and crimes.**

**States have an obligation to guarantee to People of African Descent to establish competent and impartial tribunals to provide justice and reparations or satisfaction for injuries from acts of racial injustice.**

**States have an obligation to ensure that courts and tribunals are available to redress acts of racial discrimination, historical and contemporary, perpetrated by State or non-state**

**actors against People of African Descent. Because of the global nature of the colonial and slave labor economy, all states have an obligation to cooperate in guaranteeing just and adequate reparations for those international crimes.**

**States and the international community have a collective responsibility to ensure that these crimes are fully investigated, that the full picture of those that engaged in the direct exploitation of enslaved People of African Descent and the theft of resources of colonized nations are identified, along with the larger economies that indirectly benefited.**

## **Article 7 International Cooperation to Guarantee these Rights**

**States should cooperate to promote respect for the rights set forth in the present Declaration.**

**Measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not prima facie be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights, the International Covenants on Civil and Political and Economic, Social and Cultural Rights, or the International Convention on the Elimination of Racial Discrimination.**

**The organs and specialized agencies of the United Nations system and other intergovernmental organizations shall contribute to the full realization of the provisions of this Declaration through the mobilization, inter alia, of financial cooperation and technical assistance. Ways and means of ensuring participation of People of African Descent on issues affecting them shall be established.**

**The United Nations, its bodies, including the Permanent Forum on People of African Descent, and specialized agencies, including at the country level, and all States shall promote respect for and full application of the provisions of this Declaration and follow up the effectiveness of this Declaration.**

**Nothing in this Declaration may be interpreted as implying for any State, people, group or person any right to engage in any activity or to perform any act contrary to the Charter of the United Nations or construed as authorizing or encouraging any action which would dismember or impair, totally or in part, the territorial integrity or political unity of sovereign and independent States.**

**The exercise of the rights set forth in this Declaration shall be subject only to such limitations as are determined by law and in accordance with international human rights obligations. Any such limitations shall be non-discriminatory and strictly necessary solely**



**for the purpose of securing due recognition and respect for the rights and freedoms of others and for meeting the just and most compelling requirements of a democratic society.**

**The provisions set forth in this Declaration shall be interpreted in accordance with the principles of justice, democracy, respect for human rights, equality, non-discrimination, good governance, and good faith.**

**END**