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Racismo, discriminación racial, xenofobia y formas conexas de intolerancia: seguimiento y aplicación de la Declaración y el Programa de Acción de Durban

Visita a Portugal

Informe del Grupo de Trabajo de Expertos sobre los Afrodescendientes* **

Resumen

El Grupo de Trabajo de Expertos sobre los Afrodescendientes visitó Portugal del 29 de noviembre al 6 de diciembre de 2021. En el presente informe, el Grupo de Trabajo describe el actual marco jurídico, institucional y normativo y las medidas adoptadas para prevenir el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia a que hacen frente las personas de ascendencia africana en Portugal, destacando los acontecimientos positivos y las lagunas en la aplicación. El Grupo de Trabajo también pone de relieve las buenas prácticas y los principales problemas que ha identificado, y formula recomendaciones concretas.

* El resumen del presente informe se distribuye en todos los idiomas oficiales. El informe propiamente dicho, que figura en el anexo, se distribuye únicamente en el idioma en que se presentó.

** Se acordó publicar este informe tras la fecha prevista debido a circunstancias que escapan al control de quien lo presenta.



Annex

Report of the Working Group of Experts on People of African Descent on its mission to Portugal

I. Introduction

1. The Working Group of Experts on People of African Descent undertook a visit to Portugal at the invitation of the Government from 29 November to 6 December 2021. The members of the delegation were Dominique Day (Chair), Catherine S. Namakula (Vice-Chair) and Miriam Ekiudoko. This was a follow-up visit to a previous visit undertaken by the Working Group to the country in 2011.¹

2. During the visit, the Working Group assessed the situation of human rights of people of African descent living in Portugal and gathered information on the racism, racial discrimination, xenophobia and related intolerance that they face. It examined the official measures taken and mechanisms intended to prevent structural racial discrimination and protect people of African descent from racism, and the responses to multiple forms of discrimination including intersectional racial discrimination. The Working Group visited Lisbon, Setúbal and Porto.

3. The Working Group met senior representatives of several government ministries in Lisbon, including the Minister of the Presidency, the Minister for Justice and Home Affairs, the Secretary of State for Citizenship and Equality; the Secretary of State for Integration and Migration; the Deputy Minister for Education; the Deputy Minister for Health; the Secretary of State for Social Security; the Secretary of State for Housing; the Secretary of State for European Affairs and other senior officials from the Ministries of Culture, Home Affairs and Justice. It also met with parliamentarians from the Subcommittee for Equality and Non-Discrimination, including parliamentarians of African descent. The Working Group met with the judges of the Supreme Court and with national law enforcement officials, officials of the Prosecutor General's Office and the Ombudsperson. It held meetings with the Commission for Equality and against Racial Discrimination, and visited the National Support Centre for the Integration of Migrants, along with the Authority for Working Conditions and the Institute of Employment and Vocational Training. It also observed the "Projecto gira no bairro – uma esquadra aberta a comunidade", a community-level project between a local police station and neighbourhood children and youth on the outskirts of Lisbon. The Working Group also undertook a visit to the Estabelecimento Prisional de Lisboa.

4. The Working Group met with the mayors of Setúbal and Porto and held discussions with officials of the local governments regarding human rights, including citizenship and identity, education, health, employment, housing and culture. In each location visited, the Working Group met with a considerable number of people of African descent, human rights activists, lawyers, academics, health professionals and representatives of non-governmental organizations. It also met with people living in Portugal from Portuguese-speaking African countries, representatives of civil society, and United Nations entities working to promote the rights of people of African descent.

5. The Working Group thanks the Government of Portugal for its invitation and the authorities in the districts of Lisbon, Setúbal and Porto for their support and cooperation during the visit. It thanks in particular the Ministry of Foreign Affairs. It also expresses its appreciation to civil society working on promoting the human rights of people of African descent in various parts of the country and for the feedback from all those who shared their views on the situation of human rights of people of African descent in the country.

¹ [A/HRC/21/60/Add.1](#).

II. Historical overview

6. In 1444, Prince Henry, (known as the Navigator) first introduced the sale of Black Africans in Lagos (Algarve) in Portugal.² Reportedly, 927 enslaved Africans were brought from the Saharan coast of Guinea to Portugal between 1441 and 1448.³ Subsequently, Portugal “mounted the largest number of slave trading expeditions and deported more than 5.5 million captives out of a total of around 13 million. The Portuguese colony of Angola, in Africa, supplied the largest number of captives and the colony of Brazil was the leading destination, receiving more than 40 per cent of the transatlantic slave trade”.⁴ The Portuguese had established the foundations of a large-scale plantation economy in Brazil by the end of the sixteenth century, using enslaved Africans to produce sugar.⁵ Portugal accounted for 46 per cent of the total volume of the transatlantic trade in slaves between 1519 and 1867.⁶ Enslavement was followed by the era of colonization on the African continent until several colonies sought independence in the aftermath of the Second World War. As just one legacy of the centuries of robust Portuguese trade and trafficking in enslaved Africans and colonialism in Africa, Portuguese is an official language in a number of countries today, referred to as *países africanos de língua oficial portuguesa* (Portuguese-speaking African countries).⁷ These include Angola, Cabo Verde, Guinea-Bissau, Mozambique and Sao Tome and Principe. Citizens from these countries, along with Brazil, also constitute the majority of people of African descent in present-day Portugal.

III. Legal framework and steps taken to protect the human rights of people of African descent

A. Legal framework

7. Portugal has ratified all major international human rights treaties with the exception of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. All human rights enshrined in the international instruments to which Portugal is a party apply directly and, following their official publication, are directly binding on all public and private bodies in accordance with article 8 of the Constitution.

8. Article 13 of the Constitution establishes the principles of equality and prohibition of discrimination on the basis of ancestry, gender, race, language, territory of origin, religion, political or ideological beliefs, education, economic situation, social condition and sexual orientation. Law No. 93/2017 establishes the legal framework for the prevention, prohibition and fight against discrimination on the basis of racial and ethnic origin, colour, nationality, ancestry and territory of origin, whose application is monitored by the Commission for Equality and against Racial Discrimination. Article 240 of the Penal Code sets forth penalties for certain public acts involving racial hatred, religious hatred, and hatred based on colour,

² See Joaquim Romero Magalhaes, “Africans, Indians, and slavery in Portugal”, *Portuguese Studies*, vol. 13 (1997). See also Isabel Castro Henriques, *A Presença Africana em Portugal, uma História Secular: Preconceito, Integração, Reconhecimento* (Lisbon, High Commission for Migration, 2019) available from https://ec.europa.eu/migrant-integration/library-document/african-presence-portugal-secular-history-prejudice-integration-recognition_en (in Portuguese only).

³ See A. J.R. Russell-Wood, “Iberian expansion and the issue of black slavery: changing Portuguese attitudes, 1440–1770”, *American Historical Review*, vol. 83, No. 1 (February 1978).

⁴ Legacies of Slavery: a Resource Book for Managers of Sites and Itineraries of Memory (Paris, United Nations Educational, Scientific and Cultural Organization (UNESCO), 2018), p. 56.

⁵ Hilary McDonald Beckles, *Slave Voyages: the Transatlantic Trade in Enslaved Africans* (Paris, UNESCO, 2002), p. 47.

⁶ *Ibid.*, p. 95. See also, David Eltis, *The Volume and Structure of the Transatlantic Trade: A Reassessment*, Paper presented at Nigerian Hinterland Project Conference: York University, Toronto, 12–15 October, 2000.

⁷ See also the Community of Portuguese-speaking Countries, an international intergovernmental organization of Lusophone countries, which has Portuguese as an official language. The members are Angola, Brazil, Cabo Verde, Equatorial Guinea, Guinea-Bissau, Mozambique, Portugal, Sao Tome and Principe and Timor-Leste.

ethnic or national origin. In addition, racial hatred is an aggravating circumstance for certain crimes including, inter alia, homicide (article 132 (2) (f) of the Code).

B. Institutional and policy measures

9. The Government has adopted its first National Plan to Combat Racism and Discrimination 2021–2025 (#Portugalagainstracism).⁸ The Government has acknowledged that the National Plan is the political recognition that there is racism in Portugal, in both interpersonal and structural dimensions, which results from historical processes and perpetuates structural discrimination models. Portugal has shown important leadership as the first member of the European Union to adopt a national plan to combat racism.

10. The National Plan is organized into four cross-cutting principles, namely the deconstruction of stereotypes; coordination, integrated governance and territorialization; and an integrated intervention in the fight against both inequality and intersectionality. It espouses an additional 10 lines of intervention, focusing on governance, information and knowledge for a non-discriminatory society; education and culture; higher education; labour and employment; housing; health and social welfare; justice, security and rights; participation and representation; sport; and digital and other forms of communication. A key intended outcome of the National Plan is the planned creation of an independent observatory on hate speech, racism and xenophobia, with a view to producing, collecting, processing and disseminating information and knowledge in the various areas and sectors covered by the National Plan, as well as training and stimulating research on preventing and combating racism and racial and ethnic discrimination, including multiple and intersectional discrimination.

11. In the National Plan, the Government envisages assessing the possible revision of the legislation on combating discrimination and hate speech. The Government has announced the goal of strengthening the system of sanctions for misdemeanours and reviewing the framework of fines and sanctioned conduct. That will entail a revision of article 240 of the Penal Code in the light of the international instruments that bind Portugal, in order to address all the prohibited forms of discrimination in its human rights framework.

12. Since 1999, Portugal has had a Commission for Equality and against Racial Discrimination, a specialized body that combats racial discrimination. In 2017, the Commission's legal powers were enhanced as a result of Law No. 93/2017. Any person who has been subject to discrimination or becomes aware of a discriminatory situation may file a complaint with the Commission using the electronic form available on its website⁹ or by email¹⁰ or in person. Regardless of the type of discrimination felt by a victim, a complaint may always be directed to the Commission, which is entitled to submit it to the responsible entity within 10 days. All victims may have access to compensation through the civil courts for damage to property and personal injury caused by discriminatory practices. The Commission reported that it had received 655 complaints in 2020, in comparison to only 60 in 2014. Of the 655 complaints, the largest groups of people identified as victims included "Brazilians or of Brazilian nationality", followed by people identified as "of black skin colour, black or of the black race". While acknowledging the progressive growth in the number of complaints as demonstrative of better social awareness of the subject of racial and ethnic discrimination, as well as growing knowledge and trust in its activities, the Commission recognizes that these numbers do not represent the real universe of ethnic and racial discrimination in the national context. Prevention, deterrence and the punishment of discriminatory practices are a constant challenge. The Commission has also reported that between 2014 and 2020, there the growing number of complaints reported related to phenomena of manifestations of hate, xenophobia and intolerance in Portuguese society.

⁸ <https://www.portugal.gov.pt/en/gc22/communication/document?i=national-plan-to-combat-racism-and-discrimination-2021-2025>.

⁹ <https://www.cicdr.pt/queixa>.

¹⁰ cicdr@acm.gov.pt.

13. The Commission works closely with the Council for Migration, a consultation body that participates in the definition and implementation of the country's migration policy. The Working Group was informed that the High Commission for Migration, which chairs the Council for Migration, undertook regular activities to promote the International Decade for People of African Descent, focusing on awareness-raising among the youth of issues related to discrimination, equality and dialogue across cultures, among others. The first approach to this thematic challenge took place in 2016 and it has been replicated on a yearly basis. The High Commission for Migration also reported that it had elaborated a national plan of activities to promote the International Decade, with various activities divided along four axes: recognition, justice, development and multiple and intersectional discrimination.¹¹ It also envisaged a dedicated web page and the production of various publications, as well as different moments to celebrate the African presence in Portugal through exhibits and an international conference. That includes a publication entitled *Historical Road Map of an African Lisbon between the Fifteenth and Twenty-first Centuries*,¹² depicting the historic and modern-day presence of Africans in the city.¹³

14. The Working Group took note of initiatives such as the National Support Centres for the Integration of Migrants, which allow migrants to access various services, including intercultural mediators who mitigate barriers to accessing human rights; the "Hate no more" campaign (2016–2017); and victim protection and support measures.

15. Despite a lack of data disaggregated by race, Portugal is in the midst of a national conversation that offers considerable qualitative data on how people of African descent experience their lives. As recommended by the Working Group in its previous visit, the Government has acknowledged the need for an integrated national policy that recognizes people of African descent specifically and the need to address related issues, such as producing data, information and knowledge, promoting more representation and participation, and developing concrete measures in a range of areas from education and housing to security and justice.

16. The Government stated that Statistics Portugal is conducting a pilot survey on the living conditions, origins and trajectories of the resident population, whose main purpose is to test a questionnaire containing a question on the respondents' ethnic origin and self-identification, as well as modules specifically focused on experience of discrimination.

17. The Government also highlighted its role in the international arena, as Portugal jointly facilitated with South Africa the negotiations on the commemoration of the twentieth anniversary of the Durban Declaration and Programme of Action. It also co-sponsored General Assembly resolution 75/170 proclaiming 31 August as the International Day for People of African Descent.

18. The Working Group was informed of the 2020 amendment to the Nationality Act by the Portuguese parliament, which widens the scope for acquisition of nationality at birth by children born in Portugal to foreign nationals. Migrant children now qualify to become Portuguese citizens if their parents have held residence permits in the country for one year.

19. The Government considers the first National Plan to combat racism and discrimination as a baseline for the definition of future public policies. On the issue of reparatory justice, it has recognized that Portugal is in the process of acknowledging the past.

¹¹ See

https://www.acm.gov.pt/documents/10181/27754/Plano_Decada_contributos_ACM.pdf/4975041d-122e-4734-9d1e-83cd60b9cb25 (in Portuguese only).

¹² Isabel Castor Henriques, *Roteiro Histórico de uma Lisboa Africana. Séculos XV-XXI* (Lisbon, High Commission for Migration, 2019), available from https://ec.europa.eu/migrant-integration/library-document/historical-roadmap-african-lisbon-between-15th-and-21st-centuries_en (in Portuguese only).

¹³ See also <https://www.acm.gov.pt/-/decada-internacional-de-afrodescendentes-2015-2024>.

IV. Manifestations of systemic racial discrimination

A. Identity and language

20. During its visit, the Working Group found that Portuguese identity continues to be defined by its colonial past and its direct involvement in the trafficking of half of all enslaved Africans in the transatlantic slave trade.¹⁴ Even existing racial discrimination complaint mechanisms and equality efforts appear to have failed to acknowledge the importance of a broad-based renegotiation of Portuguese identity away from the idea of an empire based on racial hierarchy and to acknowledge the true diversity and contributions made by people of African descent and others to successful inclusion efforts.

21. The valorization of the colonial past persists implicitly and explicitly continues to define Portuguese identity and expectations. That perpetuates systemic racism in ways not contemplated by the State or addressed by the existing human rights framework, but which violate both human rights and public policy. As is evident in public life, time and modernity have not revised these paradigms, including the idea of a “luso-tropical consensus”. Some public officials refer to Portuguese-speaking countries in Africa as “the colonies” as a present-tense dialogical shorthand. Many public officials contrasted “people of African descent” with “Portuguese people” in discussions, despite the fact that many Portuguese of African descent were born in Portugal, are embedded in the society and have always known Portugal as their homeland. Portugal also faces internal criticism regarding the message sent by colonial monuments and relics as contemporaneous signals of essentialized national identity. For example, a statue installed only in 2017 of Padre António Vieira, carrying a Roman Catholic cross and surrounded by indigenous children, erases the violence of colonization and enslavement, and fails to acknowledge or confront his role or the role of the Church as a colonial ambassador, and was subject to protest.

22. The valorization of the colonial past also licenses inaction and impunity, even in the face of clear violations of human rights and clear opportunities, authority and jurisdiction to intervene in order to influence and protect the human rights of people of African descent. At national and municipal levels, officials were able to recognize and recount some instances of racism and racialized inequality, but failed to acknowledge their own role in or responsibility for combating racism to ensure non-discrimination and to promote equality. Particularly outside Lisbon, municipal officials were unaware of the National Plan to combat racism and discrimination, denied their ability to specifically counter or address clear incidents of racial discrimination and generally failed to see themselves as custodians of combating racism on behalf of their constituents of African descent.

23. The Working Group found that the global systemic racism conversations of 2020 and the death of George Floyd had catalyzed important discussions in Portugal. Large demonstrations had taken place and demands for the revision of colonial apologist narratives and the expectation that the multigenerational contributions and presence of people of African descent to Portuguese identity and society be recognized were growing. The similarity in the experiences of people of African descent of systemic racism, racial hierarchy and legacy mindsets of the trade and trafficking in enslaved Africans and colonialism became evident. In one case, those involved in a series of online meetings occurring throughout the pandemic reported over 80 sessions where people of African descent recounted surprisingly similar experiences of exclusion, racial injustice and bias, despite their very different backgrounds.

24. Language is an important reflection and expression of culture. Portuguese is proudly claimed as the fifth most spoken language in the world, but an insistence on maintaining the purity of the European dialect does reflect hierarchy and operates as a de facto limit to the human rights of people of African descent. The Working Group was consistently informed that the Portuguese language is a site of persistent racial profiling, with serious impacts on people of African descent in terms of education and employment, as a result of ongoing linguistic supremacy as a pervasive form of white supremacy, whereby European-inflected

¹⁴ <https://www.slavevoyages.org/assessment/estimates>.

Portuguese created access and African-inflected Portuguese created barriers in a hierarchy that could be defined precisely by region or nation. Language variety was reported as a basis for filtering students, downgrading performance and prejudging intellectual aptitude.

25. The Working Group was informed that children of African descent who are native speakers of Portuguese are categorized as “Portuguese second language speakers”, depriving such children of appropriate intellectual education and classmates if their Portuguese contained markers of Brazil or Portuguese-speaking African countries. The Working Group also heard reports that white Portuguese children, whose speech was influenced by Brazilian media content, faced corrective or remedial speech interventions to regain the purity of their language. One retail employer forbade employees to speak in creole in the workplace, even during their lunch breaks, despite using the same employees’ ability to speak English, French and Italian with customers as a key hiring criteria and employment expectation for employees of African descent. Portuguese speakers of African descent faced barriers to accessing health services and other public services because their Portuguese did not sound European.

B. Law enforcement and administration of justice

26. The Working Group heard many credible accounts of racially motivated violence and ill-treatment, racial profiling, abuse of authority, frequent police brutality and excessive force deployed by different police entities, sometimes concealed, involving both on- and off-duty officers, towards people of African descent.

27. In the communities of African descent that the Working Group visited, every young man present reported stops and searches by police as an everyday occurrence, often accompanied by beatings. Their accounts recalled not only violence that was normalized for young men of African descent, but a systemic expectation of impunity and a wholesale disregard for dignity and human rights, often on the basis of their race and particularly in areas designated as “sensitive urban zones”. Women also reported being searched by male officers and victims of police misconduct also reported retaliation for reporting or resisting police misconduct, including false criminal accusations. In one case, a woman was severely beaten by non-uniformed police called over by a bus driver who claimed her young daughter lacked a transportation pass (which is not required for young children). Their expectation of impunity was so significant that they consented to her recording aspects of the encounter as they beat her, inappropriately explored her body and used racial slurs. Notably, one positive intervention presented to the Working Group during its earlier country visit, as well as during the present visit, the Choices Programme,¹⁵ is in its twentieth year, yet police violence continues to plague communities of African descent and particularly young men.

28. The Working Group was informed of some good initiatives, including a plan to prevent discriminatory practices in the police force and accountability measures for law enforcement officers, such as body-worn cameras and video surveillance. However, the Working Group learned that officers easily evaded the influence of reform efforts by conducting beatings in police vans and away from precincts. Importantly, the Working Group also heard of significant public incidents of police brutality conducted with the expectation of impunity. Although police and ministry authorities reaffirmed their commitment to the law, they denied that there was a systemic problem or any racialized concern, instead referring to training initiatives and embedded human rights officers, despite data showing that only a fraction of complaints, where made, are subject to discipline or prosecution. Nor did the human rights officers embedded pursuant to the plan to prevent discriminatory practices in the police force, with whom the Working Group met, acknowledge a systemic concern or the need to consider this, despite existing evidence. In addition, according to the Government, prosecutions for police misconduct, when they do occur, are characteristically individual, namely that several cases may pertain to one incident only, suggesting the full scope of misconduct may not be captured. As that data is not disaggregated by race, it appears that the Ministry of Home Affairs or the police may not know the scope of the police abuse

¹⁵ See <http://www.programaescolhas.pt/>.

of authority, misconduct and violence that was widely reported in communities of people of African descent.

29. Incarcerated people of African descent experience arbitrary beatings, degrading treatment and inadequate conditions of confinement. There is a lack of discharge planning, rehabilitation or re-entry programmes. People who were incarcerated also reported inadequate access to effective legal aid as a driver of ongoing injustice. The Working Group learned of the death of a young man of African descent incarcerated in the Lisbon Prison Establishment that was initially declared, twice, as occurring from natural causes. The family's pleas for an investigation and justice were initially ignored. Only after the family raised money to hire private counsel, approached the media and presented inconsistencies in the case publicly, was the investigation into the conduct of the prison and the cause of death reopened. From several people incarcerated at the same facility, the Working Group also heard credible reports of frequent night raids and regular beatings by prison personnel, committed with impunity and checked only by the occasional prison commander who did not allow such misconduct on their wing.

30. Despite some positive efforts referenced above, which may bring police officers closer to the communities they serve, issues of police brutality and abuse of authority persist with impunity and do not appear to be effectively deterred by existing measures in law or policy. In addition, the lack of data disaggregated by race indicates that efforts to remediate this concern should be broad-based and uncompromising, as existing complaints may be the only evidence of a much larger problem. For example, the Government discussed the Cova da Moura case of 5 February 2015, involving accusations of aggravated kidnapping, torture and other crimes by police agents in a neighbourhood in Lisbon that is overwhelmingly inhabited by people of African descent. The inquiry led to disciplinary investigations of nine officers, two of whom were ultimately penalized. Those penalties were appealed and the outcome is unknown. Nevertheless, seven years later, residents of Cova da Moura continue to report severe and frequent brutality, impunity and frequent stops and searches of all young Black men and, to a lesser extent, women. This has created a near expectation that their dignity and human rights will be disregarded by public officials.

31. Portugal recognizes the administration of justice as an important site of remediation for racial injustice. While there have been some exemplar cases of racialized misconduct addressed in the courts, the Working Group also heard significant qualitative reports of severe racial disparities in criminal prosecutions, convictions and sentencing, and harsh penalties for people of African descent in the criminal legal system. Justice system officials, including the courts, consistently cited limits to their ability to address racialized misconduct, even when they generally acknowledged that it did occur. In the case of the courts, the justices stated that their jurisdiction was limited to the cases and controversies that came before them. However, they also acknowledged the important pedagogical role the Supreme Court played and its ability to influence how justice was understood and implemented in the country. Other personnel from the administrative and justice system cited the limits of the complaints that were made. Nevertheless, the Working Group also heard numerous testimonies of complaints made to which there was no response or no charge was ultimately brought against perpetrators. The Government's own data corroborated the fact that disciplinary proceedings against the police, for example, resulted in few actual disciplinary outcomes or penalties.

32. The existing legal framework for addressing racism exists largely within the criminal law, principally embedded in article 240 of the Penal Code. This was confirmed by justice professionals as inadequate for addressing the gravity of anti-black racism. Its application has also replicated the challenge it is meant to address. The Working Group heard of an unjustified charge of reverse racism, which was speedily imputed to a woman of African descent who complained against racism by a police officer. She paid an exorbitant and prohibitive fine.

C. Barriers in access to education, health, housing and employment

33. The Working Group heard several reports of students being diverted from higher-level high school trajectories and toward professional or vocational education programmes,

including at very young ages. Although the Government reported dismantling several formal barriers, including testing requirements for university and the availability of university for students with professional certificates from high school, civil society offered credible and comprehensive narratives of ongoing formal and informal barriers to accessing higher education, particularly once a student had been diverted from a scientific high-school certificate. Even well-intentioned teachers may be involved in diverting students from university-bound education and even students with very high achievements reported racially abusive conduct by university professors, including in graduate and postdoctoral education.

34. The Working Group heard reports in multiple cities that colourism played a significant role in student achievement and in the recognition of student aptitude. Even within families, many people reported different treatment and opportunities based on the skin colour of the individual child, with darker-skinned children from the same families pushed away from university-bound educational opportunities and programmes at a very early age. In many communities, parents with limited literacy were told that their children were having problems, despite very high testing scores, and only ad hoc intervention by community members deterred the diversion of the children away from educational opportunities. The often involved well-intentioned narratives that were given invoked children's own priorities to earn money, take care of their families and have stable employment. In some cases, the Working Group heard students who had returned to school as adult learners to attempt to resume their educational goals and achieve university degrees after recognizing the ways in which they had been diverted.,

35. The Working Group consistently heard that school curricula and textbooks had embedded in them a colonial narrative that minimized the violence of colonialism and portrayed Portugal as “the good colonizer”, despite the brutal effects of colonialism, and the trade and trafficking in enslaved Africans. The Ministry of Education reported that new norms for textbook development will involve the replacements of all textbooks and a revision of colonialist narratives presented in these texts within a few years, but the Working Group also heard reports that the discretion given to the textbook publishers, and their relative power to shape those messages, was already compromising the strength of this as a reform mechanism. As just one example, a consistent concern has been expressed that these reforms will recharacterize the historical acts as atrocities but entirely fail to make a connection to the operation of systemic racism in society today.

36. During the coronavirus disease (COVID-19) lockdown, the Government stated that it regarded the situation of migrants and asylum seekers with pending applications as regular, ensuring that hundreds of thousand had full access to health-care services and social benefits, and all documents and visas were extended. The Government also made sure that immigrant children and youth were supported, weekly, with meals and schoolwork. The extension of essential services was therefore to all persons, including those with irregular status, during the COVID-19 pandemic. The Government also stated that with regard to migratory flows for health reasons, Portugal has established international agreements that guarantee access to health care, such as cooperation agreements in the field of health with the Portuguese-speaking African countries, whose nationals come to Portugal specifically to receive medical treatment that their country cannot provide.¹⁶

37. People of African descent experience significant difficulties in securing private rentals and other types of housing. Some city officials did not acknowledge any responsibility to ensure non-discrimination by private landlords. Illegal evictions of people of African descent took place during the pandemic in some municipalities, particularly those experiencing gentrification, often targeted at people of African descent who may not be aware of tenancy rights. The Working Group also heard reports of landlord self-help, including the abrupt cut-off of utilities to try to force tenants out. Even for those who were aware of their rights, and for those who held written leases, hiring private counsel was necessary to preserve their housing.

38. People of African descent report racialized exclusion from certain employment, based on their names or ongoing requirements that job applications include photographs. That

¹⁶ CERD/C/PRT/18-19, para. 198.

quietly and structurally facilitates systemic racism by allowing the private use of discretion to perpetuate racialized beliefs about who belongs in certain institutions. This has been effective overall. High-achieving Afro-Portuguese persons report experiencing consistent surprise at their presence in elite spaces, as well as frequent comments reflecting racial hierarchy and exclusion.

39. The Working Group heard several testimonies of racial violence that was publicly suborned or minimized. The Working Group heard reports of racist jokes, comparisons of people of African descent to monkeys or other animals and a general minimizing of the violence of racist humour or its role in habituating communities to the expectation of lesser human rights or even increased violence against people of African descent. In another case, a woman was severely impacted by public racial slurs from a training supervisor at her workplace but was ultimately fired for bringing them forward, even as the supervisor continued to work there.

D. Intersectional and multiple forms of discrimination

40. People of African descent consistently report the expectation that their societal role should be the same as it was during enslavement and colonization, with women serving in the domestic roles of cooking, cleaning and caring for white children, and with men serving as labourers and construction workers. These expectations are maintained in the discretionary decisions and authority of those who influence the lives of people of African descent, including teachers and employers.

41. Stereotypes about women of African descent impact their sexual and reproductive health and human rights. People of African descent reported racialized inequities in accessing and benefiting from health-care services in Portugal. Gynaecological and obstetric violence and disregard of post-partum health and mental health needs were also reported by women who also experienced abusive conduct by medical personnel, including in some cases, blatant interrogation as to whether their Afro-Brazilian background meant that they were stealing the husbands of white Portuguese women, acting as sex workers or carrying sexually transmitted diseases. The exceptional pain and violence of the resulting procedures conducted by State personnel, including failures to use care, painkillers or anaesthesia at times, despite physically invasive procedures, comprises cruel, inhuman or degrading treatment and raises the spectre of torture on the basis of race.

42. In asylum and refugee determination processes, people of African descent reported the imposition of European norms and standards for the recognition of lesbian, gay, bisexual, transgender, queer or intersex status, the effect of which is to erase those identities of Portuguese-speaking people from African countries.

43. Finally, although the fact-finding country visit of the Working Group took place 10 years after the Working Group's initial visit to Portugal, significant human rights abuses and violations persist. Much of what the Working Group observed in its previous visit remains unchanged, both with respect to existing interventions and the concerns raised by the Working Group. The Government presented similar programmes as examples of its long-term investment in improving police-community relations and combating systemic racism. The failure to see either (a) clear measures of success linked to community satisfaction with policing, the growth of conflict-resolution methods not grounded in the use of force, widespread elimination of police brutality or a decrease in racial disparities in police targeting in communities or (b) a dramatic expansion and/or rigorous review and revision of community impact-driven indicators of relevant projects, such as Choices (which the Working Group observed in both its initial and its follow-up visits) raises significant concerns about complacency, namely that similar projects are being lauded as adequate interventions without independent confirmation of their effectiveness, adequacy or positive impact on the human rights of people of African descent. Positive new interventions, including for migrants, did touch people of African descent but high financial or other barriers pose an ongoing challenge.

V. Conclusions and recommendations

A. Conclusions

44. The Working Group welcomes the good practices and positive steps taken to guarantee the human rights of people of African descent in Portugal including the following:

(a) The emerging discourse on systemic racism in Portugal and its roots in historical processes and the Government's engagement with civil society in defining its anti-racism agenda;

(b) The adoption of the National Plan to combat racism and discrimination, 2021–2025;

(c) The affirmation of the Durban Declaration and Programme of Action and activities in the framework of the International Decade for People of African Descent. That includes the joint facilitation with South Africa of the commemoration of the twentieth anniversary of the Durban Declaration and Programme of Action and its co-sponsoring of General Assembly resolution 75/170 proclaiming 31 August as the International Day for People of African Descent;

(d) Creation of an independent observatory on hate speech, racism and xenophobia, with relevance to the National Plan to combat racism and discrimination 2021–2025;

(e) Initiatives such as the National Support Centres for the Integration of Migrants, where migrants can access various services, including intercultural mediators who mitigate barriers to accessing human rights, the “Hate No More” campaign (2016–2017), and victim support and protection measures;

(f) The emerging representation of people of African descent in leadership and policymaking roles, including the Minister of Justice and Home Affairs and three parliamentarians of African descent, all women;

(g) Amendment of the Nationality Act in favour of citizenship for all children born in Portugal;

(h) The extension of essential services to all persons, including those with irregular status, during the COVID-19 pandemic;

(i) Law 93/2017 on combating racial discrimination, the application of article 240 of the Penal Code in certain instances to combat racial discrimination and the efforts under way to modify it in line with international human rights standards;

(j) Accountability measures for law enforcement officers such as body-worn cameras and video surveillance;

(k) Adoption of the plan for the prevention of manifestations of discrimination in the security forces.

45. Despite the positive measures referred to above, the Working Group is concerned about the prevalence of racial discrimination and the human rights situation of people of African descent in Portugal.

46. People of African descent in Portugal experience systemic racism in similar ways despite varied individual circumstances. Following the murder of George Floyd in the United States of America, in 2020, large anti-racism protests in Portugal called for the revision of colonial narratives, consistent with global conversations on systemic racism. Civil society continues to drive the calls for racial justice in the country. The Working Group notes that although this was a follow-up visit, many of the Working Group's previous observations, conclusions, recommendations and concerns persist unabated, as the Working Group observed many of the same programmes and the same or similar conditions in many sectors for people of African descent in Portugal.

47. The Working Group observed inaction even in the face of clear violations of human rights. Particularly outside Lisbon, municipal officials were unaware of the National Plan to combat racism and discrimination, and generally did not see themselves as custodians of the combat against racism on behalf of their constituents of African descent, including those directly under their jurisdiction. There is a gap between the commitment of Portugal to eradicating racism at the international level and the resolve of local government authorities.

48. Lack of racially disaggregated data significantly limits the ability of the State to recognize and acknowledge severe human rights violations taking place in communities of African descent, develop a systemic understanding of how racial disparities may indicate the improper, racialized use of discretion in ways that sustain and perpetuate racial discrimination, inequality and inequity, repair or redress this ongoing harm, and target the perpetrators of racialized misconduct.

49. Abuse of authority, police brutality and the use of excessive force cannot be mitigated by mere training efforts or by replacing “bad apples” with “good apples” (that is to say, defining the issue as rogue conduct rather than a self-reinforcing and systemic issue) in communities where the policing approach is based on blanket surveillance and control of black bodies, as appears to be the case in certain Black communities in Portugal.

50. Despite the availability of free legal aid, the Working Group learnt about financial barriers to accessing justice. In many cases, people of African descent experiencing racial discrimination or police violence reported an inability to move their cases forward without crowdfunding initiatives to gather adequate money to hire a lawyer.

51. With respect to existing systemic racism and racial discrimination, jurists and justice system professionals in Portugal do not construe their individual responsibilities as including the role of guarantors of substantive justice or directly relevant to anti-racism guarantees in international treaties or Portuguese law, other than those cases squarely presenting an issue of potential racism under the relevant law. However, a State’s commitment to eradicating racism, in intent or effect, under the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant treaties applies across State functions and branches. Of particular relevance, and fairly recently in several Member States, the courts have decided to play an important role in articulating and reframing evidentiary inquiries to allow interrogation of the ways that systemic racism, racial discrimination or racial animus might influence the use of discretion, policymaking, police stops and searches or arrests are used, often using civil society research, scientific studies and racial disparity analyses to amplify the courts’ understanding of how racism may influence decision-making and create a risk of persistent injustice inside the justice system. This understanding, or even a nascent conversation about it, appears to be non-existent in Portugal.

52. In many cases, the dignity of people of African descent was neither respected nor protected by public officials or private actors, even where legal remedies existed. The Working Group heard testimonies that addressing racialized misconduct was impossible without hiring private counsel, which often proved inadequate in itself.

53. People of African descent reported that formal and informal barriers to accessing health care persisted, including a lack of registration and a lack of assistance at times.

54. The Working Group noted with concern the significant indicators of racially discriminatory practices in the education system, including issues relating to colourism and exceptionalism and the discrediting of research and knowledge production by people of African descent.

55. The Working Group was informed that the primacy of the European dialect of the Portuguese language is a driver of persistent racial profiling, with serious impacts on people of African descent in education. The African-inflected version of Portuguese

and Portuguese-based creole make up the linguistic system specifically created in the trade and trafficking in enslaved Africans and is a legacy of the colonial history of Portugal.

56. Researchers indicated that the expansion of vocational education in communities of African descent might indicate institutional racism and the importance of an affirmative strategy to monitor risks in that regard. The Working Group heard reports that the diversion of students of African descent toward vocational education created formal and informal barriers to higher education.

57. Decolonization of the school curricula and textbooks are long overdue, as they have inadequately addressed the violence of colonialism and the enslavement, trade and trafficking of Africans.

58. The paucity of faculty members of African descent in universities and schools is a failure of representation that drives systemic racism and fuels barriers for the achievement, recognition of excellence and potential self-identification of students as future academics. Students of African descent consistently report lower expectations, dismissiveness toward topics relating to African studies, disdain for thought leadership and the academic contributions of people of African descent and Africans, deterrence from rigorous educational programmes by white faculty members and insistence on the inclusion of white writers and academic analyses in their theses and dissertations. All of which suggest a failure to deal with embedded notions of white supremacy that influence determinations of excellence. Reports from Portugal indicate that academia is a closed system that cannot reform its complicity in systemic racism without the expertise of professors of African descent, who may bring lived experience, personally and professionally, as well as deeper intellectual engagement with issues of particular interest or relevance to people of African descent.

59. The dismantling of social housing and the relocation of families of African descent to the periphery of cities leads them farther away from the sources of their livelihood, while also disrupting long-standing support networks, relationships and extended families.

60. People of African descent face consistent discrimination in accessing formal employment. They are subjected to exploitation in precarious working conditions and have been heavily impacted by the COVID-19 pandemic.

61. Civil society reported the racialized removal of children of African descent from their families and their placement in foster care.

62. Despite the welcoming environment in Portugal for migrants, refugees and asylum seekers, people of African descent report significant bureaucratic and financial barriers to integration. Undocumented people of African descent, who are long-term or intergenerational residents of Portugal face particular challenges to regularize their status and navigate the Portuguese administration.

63. The Working Group heard reports of racist jokes, racial harassment and the deployment of negative racial stereotypes in conversation and public comments, comparisons of people of African descent to monkeys or other animals, and a general minimizing of the violence of racist humour, despite its role in creating an enabling environment for racist violence. It notes that street names such as *rua das Pretas* (street of the Blacks) and *rua Poço dos Negros* (street of the Pit of the Blacks) are reflective of the colonial past and drive current notions of identity linked to racial hierarchy and the valorization of empire explicitly linked to racial atrocity.

64. A false dichotomy between fighting racism and empowering far-right fascist extremism has begun to characterize public discourse, including statements made to the Working Group by some public officials. This is accompanied by a false equivalence between anti-racism and fascism as purported extremes, a claim that disregards how the quest for equality seeks to repair a historical wrong, grounded in normalized racial atrocity, as well as that anti-racism exists fully within existing obligations to human rights enshrined in domestic and international law.

B. Recommendations

65. Portugal's commitment to inclusion should be characterized by action. The Working Group calls upon all public officials to embrace the fight against racism and racial discrimination as a fundamental element of their work.

66. The Constitution of Portugal does not prohibit the development of racially disaggregated data, with adequate protections for individual privacy and other concerns. Portugal could look to countries currently using racially disaggregated data for guidance.

67. The Government is urged to facilitate the process of reparatory justice for people of African descent.

68. Community experience determines the legitimacy and effectiveness of anti-racism efforts. The impact of government programmes among communities of African descent needs to be measured.

69. Special measures for people of African descent are required in public administration and all other areas of society. These include incentives such as tax reliefs or tax credits for entities that meet the stipulated goals.

70. Regarding the National Plan to combat racism and discrimination 2021–2025, the Working Group calls for the development of benchmarks, targets and indicators on the basis of the impact, involving community feedback. Portugal should engage in a comprehensive and targeted campaign to raise awareness of the National Plan and build an understanding of the authority and obligation for public officials at every level of society and governance to be a custodian of Portuguese values of anti-racism, racial equity and racial equality.

71. The Government should ensure the implementation of national plans to combat racism and discrimination at municipal levels. Awareness-raising should be central to such efforts.

72. The amendment of the Nationality Act should be complemented by institutional adjustment in the Immigration and Border Service to expedite documentation and a reduction in the backlog and management of the influx of cases as a result of the legal reforms.

73. Reporting processes for racial discrimination should be simplified and the management of such cases should be swift and highly responsive to the urgency of them.

74. A clear and effective distinction between migration policy and policies against racism is required. To this end, the Commission for Equality and against Racial Discrimination should be separated from the High Commission on Migration and elevated to the status of a national equality body, with independence and financial autonomy.

75. The Government should, in consultation with civil society, recognize and give visibility to Africans and people of African descent who have played an essential role in building Portugal, and acknowledge the cultural, economic, political, scientific and intellectual contributions of people of African descent through the establishment of monuments, memorial sites and other such means in their honour.

76. The Government should expedite the amendment to article 240 of the Penal Code. Once amended, the Government should closely monitor its implementation and effectiveness in ensuring justice for people of African descent facing racial discrimination.

77. An independent inquiry should be carried out into widespread allegations of police brutality with a view to identifying the victims and affording them redress. The Government should constitute an independent oversight mechanism to address allegations of police misconduct.

78. The Portuguese courts should embrace and use their role as protectors of the equality and non-discrimination guarantees enshrined in Portuguese domestic law and in its international treaty obligations.

79. There can be no meaningful commitment to equality, anti-racism or non-discrimination without respect for dignity. Public officials should count the dignity of people of African descent as a non-negotiable priority and derogations from respect for individual or collective dignity should be subject to discipline.

80. The Government should redeploy the strong organizational culture of the police and the chain-of-command structure toward the immediate priority of stopping police brutality and the excessive force used on people of African descent, instead of relying on training as an adequate intervention. This could include efforts to develop peer/bystander interventions by fellow officers, leadership training or mandated de-escalation tactics, in addition to strong and immediate initiatives to promote early intervention against police misconduct and enforce discipline, including enhanced internal and external discipline and prosecution of misconduct.

81. The Government should build awareness of the right to and availability of free legal aid in various contexts. Such awareness-raising should also be accompanied by clear capacity-building for legal aid attorneys to specifically recognize, acknowledge and address racialized concerns facing their clients. When cases of clear public misconduct are not adequately addressed without private counsel and individuals incurring costs, the State should reimburse the victims for their costs and expenses in assisting the State to play its important role in the administration of justice.

82. The agenda towards transformative change for racial justice and equality set out by the United Nations High Commissioner for Human Rights is relevant to the context of Portugal and offers an important approach to guiding reform efforts.

83. Following the adoption of Human Rights Council resolution 47/21 and the establishment of an international independent expert mechanism to address violations of international human rights law against Africans and people of African descent by law enforcement officials, including in relation to legacies of colonialism, enslavement and the transatlantic trade and trafficking in enslaved Africans. The Government is encouraged to extend an invitation to the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement to conduct a country visit and develop concrete and specific interventions.

84. The Government should implement recommendations from international human rights mechanisms including, inter alia, the universal periodic review and the Committee on the Elimination of Racial Discrimination.

85. Portugal should devote the same care and commitment to unravelling the systemic racism in its institutions as it did to developing the social construct of Blackness and race to normalize the atrocities of colonialism and the trade and trafficking of enslaved Africans to the Portuguese population hundreds of years ago. That includes acknowledging that the persistent downgrading of people of African descent implicates racial hierarchy and legacy mindsets. That is evident in education, housing, employment and elsewhere.

86. The State and courts should lead revision and reform of the methods used to ensure the justice system actually confers racial justice. For example, justice professionals should recognize the importance of considering race and racial equality (that is to say the targeting of policing toward Black communities) as a relevant factor in evaluating the reasonableness of police conduct in stops, searches and other interactions with citizens, and embed such analyses into their judicial decision-making and their guidance for lower courts.¹⁷

¹⁷ See, for example, *United States v. Carrillo-Lopez*, case No. 3:20-cr-00026-MMD-WGC (2021), in which immigration law was said to specifically involve racial discrimination and must be subject to equal protection analysis; and *Commonwealth v. Long*, case No. 485 Mass. 711 (September 2020), in which it was claimed that race is a relevant factor in individual police stops and searches.

87. **The Working Group urges the Government to adopt a systematic and more effective policy for fighting poverty among people of African descent.**
88. **The Government should monitor all health interventions among vulnerable communities, including people of African descent.**
89. **The Government should enact a new preventive and affirmative public policy to reduce racial disparities, including in the use of discretion in medical interventions, and narrow the gaps in access to health care and in the quality of care provided to people of African descent.**
90. **Even in the absence of racially disaggregated data, a vibrant academic literature exists to describe the situation of people of African descent. The Government should draw upon and support such research as a resource in its anti-racism efforts.**
91. **The Government should adopt measures to increase the number of teachers of African descent in educational institutions.**
92. **The Government should enact new preventive and affirmative public policy to address the attrition of children of African descent from schools.**
93. **To ensure that the vocational track does not persist to formally or informally bar students of African descent from higher education, the Government should closely track and monitor racial disparities and community satisfaction with educational programmes and opportunities.**
94. **The Government should revise and develop specific curricula and corresponding teaching materials that respect and recognize history, including colonialization, enslavement, the transatlantic trade and trafficking in Africans, the role of people of African descent in the construction of Portugal and their contribution to the development, diversity and richness of the country.**
95. **Textbooks and educational materials should be revised and educators should be trained to teach all Portuguese students accurate history, including with reference to the colonialism, enslavement and trade and trafficking in enslaved Africans and their connection to present-day manifestations of systemic racism.**
96. **The relocation of families of African descent from temporary residential areas should be guided by the need to maintain cohesion among these communities. Particularly at local levels, public officials should intervene where private landlords discriminate against people of African descent and others seeking to rent housing. This should include public awareness initiatives, individual advocacy in particular cases and mechanisms to deter landlords and owners from racialized misconduct.**
97. **Portugal should engage in awareness-raising efforts to ensure employers, educators and public officials are fully aware that racial discrimination is prohibited.**
98. **The temporary measures taken during the COVID-19 pandemic to extend the access of migrants to essential rights should be made permanent.**
99. **The Government should adopt strong measures to prevent and condemn the use of racial slurs, hate speech and incitement to hatred. The Working Group calls upon the Government to publicly condemn racist, Afrophobic and xenophobic acts to counter any tendency, especially by politicians, to stigmatize and negatively stereotype people of African descent or use racist propaganda for political purposes.**
100. **The Government should ensure that children are not separated from their parents on the basis of racialized evaluation of parental fitness.**
101. **The commitment of Portugal to inclusion should also embrace, rather than fight, the dynamic growth of Portuguese language varieties in order to mobilize the resources, excellence and innovation of its diverse population. School curricula and teaching manuals should include the study of Portuguese language diversity and specific varieties thereof to dismantle the racial profiling invoked by normalizing European Portuguese as the only valid expression of language or culture, and as the only marker of excellence or intellect.**

102. The Working Group urges the Government to adequately fund and strengthen the capacity of civil society of African descent and adopt effective measures to prevent reprisals against anti-racism human rights defenders.

103. The Government should increase efforts to dismantle the racism, racial stereotypes and persistent erasure of people of African descent in the Portuguese media and facilitate greater representation of people of African descent in the media.

104. The Government should actively dismantle the apologist and denialist narrative around colonialism and the trade and trafficking in enslaved Africans. This should be an active and rigorous consideration in public decision-making. The voices of people of African descent, as well as specifically impacted communities, are essential in this endeavour.

105. The campaigns against racism should include mainstream media content to ostracize words from public discourse that are used against people of African descent. Such campaigns should make it clear to all that freedom of expression is not an absolute right. It is limited when exercised to violate the rights of others.

106. The Government should reject the idea that its anti-racism commitments represent extremist initiatives and lead the public discourse to expose the false equivalence between fascism and anti-racism. Instead, the Government should build understanding and awareness of the history and contributions of people of African descent, including the impact of wealth-building during the colonial period on the stability of nations in Africa and on the diaspora; and the legacies of colonialism and the trade and trafficking in enslaved Africans on individual, family and community wealth, health and access. In addition, it should impart the welcoming narrative it has built in the migration space to demonstrate the important ways excellence and innovation rely on embracing racial diversity, inclusion, equity and belonging. Human rights should not be undermined by political considerations.

107. The Government's plan to create memorials to honour people of African descent and African victims of historic tragedies should be implemented in consultation with people of African descent. An inclusive consultative process should take place to determine the future of street names that are insulting to people of African descent.

108. The Working Group calls upon the Government to officially launch the International Decade for People of African Descent.

109. The Working Group calls upon the Government to develop clear interventions that recognize the need for clear measures of success, given the National Plan to combat racism and discrimination and these recommendations, over the next 10 years, including the importance of impact-oriented metrics that are not satisfied by intentions or processes, namely the mere conducting of training, changes of policy or statements of intention, but instead grounded in results co-created with communities of African descent and the relevant experts of African descent.

110. These recommendations are intended to assist Portugal in its efforts to combat all forms of racism, racial discrimination, xenophobia and related intolerance. The Working Group would like to reiterate its satisfaction at the Government's willingness to engage in dialogue, cooperation and action to combat racial discrimination. It hopes that the present report will support the Government in this process and expresses its willingness to assist in this important endeavour.