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Racism, racial discrimination, xenophobia and related forms of intolerance, follow-up to and implementation of the Durban Declaration and Programme of Action

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere*

Summary

The Durban Declaration and Programme of Action underlines the central role of measures of prevention aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels. The outcome document of the Durban Review Conference further stresses the need to increase appropriate preventive measures to eliminate all forms of racial discrimination and emphasizes the important role that Governments, international and regional organizations, national human rights institutions, the media, non-governmental organizations and civil society can play in developing such measures. For his first report to the Human Rights Council, the Special Rapporteur has chosen to focus on the prevention of racism, racial discrimination, xenophobia and related intolerance in line with the provisions of the Durban documents.

* Late submission.

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I. Introduction

1. The mandate of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance was created by the Commission on Human Rights in its resolution 1993/20. In 1994, the mandate was made more explicit and precise through resolution 1994/64. The mandate was further extended by Human Rights Council resolutions 7/34 on 28 March 2008 and 16/33 on 25 March 2011. During the eighteenth session of the Council, the current Special Rapporteur, Mutuma Ruteere, was appointed to his position and took office on 1 November 2011. The Special Rapporteur very much values and appreciates the wealth of data and knowledge generated in the last 18 years by the three previous mandate holders: Maurice Glèlè-Ahanhanzo, Doudou Diène and Githu Muigai. During his tenure, he will build on this wealth of information and knowledge. He also wishes to highlight the excellent support provided by the Office of the United Nations High Commissioner for Human Rights, in particular its Special Procedures Branch.

2. The Durban Declaration¹ and Programme of Action² underline the central role of measures of prevention aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels. The outcome document of the Durban Review Conference further stresses the need to increase appropriate preventive measures to eliminate all forms of racial discrimination and emphasizes the important role that Governments, international and regional organizations, national human rights institutions, the media, non-governmental organizations and civil society can play in developing such measures.³

3. Previous mandate holders have underscored the need for States to pay attention to preventive measures in addition to enforcement. In his first report, the Special Rapporteur has chosen to focus on the prevention of racism, racial discrimination, xenophobia and related intolerance in line with the provisions of the Durban documents. Whereas there exists a fairly robust legal framework for punishing racism and racial discrimination, the prevention framework at both national and international levels remains weak. Punitive measures provided for in the legislation of various countries and at international level cannot be effective unless equally robust preventive mechanisms are adopted and implemented. While the deterrent effect of these punitive measures can be considered an aspect of prevention, punishment is a downstream intervention coming into effect after the violation has taken place. What the Special Rapporteur seeks to highlight in this report is the other upstream measures provided for in the Durban documents to combat racism, racial discrimination, xenophobia and related intolerance.

4. During his tenure the Special Rapporteur intends to lay equal emphasis on both prevention and enforcement. In future reports, he will seek to further clarify preventive measures and in particular highlight good practices from different parts of the world. In his view effectively combating racism, racial discrimination, xenophobia and related intolerance will depend on a combination of legal, policy and programmatic measures as envisaged in international human rights law and standards. Like his predecessor, the Special Rapporteur will pursue a victim-centred approach and seek to engage States, regional and international organizations and non-State actors in a solution-seeking dialogue

¹ Durban Declaration, paras. 76-97.

² Durban Programme of Action, paras. 58-156.

³ Outcome document of the Durban Review Conference, para. 19.

to improve the conditions of victims of racism, racial discrimination, xenophobia and related intolerance and prevent violations which fall under his mandate.

5. In the present report the Special Rapporteur expounds on the need for a comprehensive approach to preventing racism, racial discrimination, xenophobia and related intolerance (part II); possible preventive measures and policies (part III); the role of key actors in preventing racism, racial discrimination, xenophobia and related intolerance (part IV); and further tools to be considered in the prevention of racism and racial discrimination (part V). He then gives an overview of the mandate activities since November 2011 in part VI. The conclusions and recommendations of the Special Rapporteur are outlined in part VII.

II. The prevention of racism, racial discrimination, xenophobia and related intolerance and the need for a comprehensive approach

6. Racism is a complex and multidimensional issue that necessitates a comprehensive approach to address it in all its political, economic, social and cultural aspects. In such a comprehensive approach, the importance and value of preventive measures cannot be overemphasized. Prevention measures are particularly important since racial discrimination is also driven by attitudes and ideas of racial and cultural hierarchies and superiority. Indeed as stated in the Durban Declaration one of the main obstacles in overcoming racial discrimination and achieving racial equality is the prevalence of racist attitudes and negative stereotyping.⁴ In this regard paragraph 144 (c) of the Durban Programme of Action urges States to combat the proliferation of ideas of racial superiority, justification of racial hatred and discrimination in any form. Furthermore the International Convention on the Elimination of All Forms of Racial Discrimination commits States parties to prevent and combat racist doctrines and practices among others. Reports by previous Special Rapporteurs have noted that beliefs and attitudes are part of the complexity of racism and that it rests on a bedrock of attitudes and ideas of racial superiority. Combating racism effectively requires that these ideas and attitudes be challenged and corrected. This calls for attention on the role of institutions and processes that shape behaviour and attitudes.

7. The Special Rapporteur is of the view that the connection between racism and conflicts as highlighted by his predecessor remains accurate and should be taken into account in any efforts at national, regional and international levels. Preventing armed conflicts and the attendant human rights violations such as genocide and ethnic cleansing that may occur in this context calls for decisive and comprehensive prevention of racism. The Special Rapporteur builds on the work of his predecessors, who have analysed how the concepts of national identity that construct some groups as “others” and “outsiders” to be excluded from the full enjoyment of human rights, may foster racism and racial discrimination if not handled carefully and thereby lead to the creation of tension or conflict.⁵ In a number of contemporary armed conflicts grave human rights violations have been perpetrated against individuals or groups of individuals who have been singled out and stigmatized on the basis of their ethnicity and race. For instance in the genocides in Rwanda and the Balkans, racial and ethnic stereotypes were exploited and violence directed against individuals on ethnic and racial lines. The Special Rapporteur shares the view of his predecessor that the ethnic or racial dimension of a conflict should be acknowledged and

⁴ Durban Declaration, para. 79.

⁵ A/HRC/14/43; E/CN.4/2005/18.

addressed as part of the post-conflict reconstruction of countries emerging from armed conflict to avoid its resurgence.

8. The Special Rapporteur further points out that the prevention of racism, racial discrimination, xenophobia and related intolerance is key to meeting some of the contemporary global challenges such as terrorism. In this regard, the Special Rapporteur recalls General Assembly resolution 60/288 on the United Nations Global Counter-Terrorism Strategy in which States resolved to undertake measures to address the conditions conducive to the spread of terrorism, including ethnic, national and religious discrimination. He emphasizes that the prevention of racism, racial discrimination, xenophobia and related intolerance should be an integral part of any strategy to prevent and fight against terrorism. Without adequate mechanisms and measures to prevent the spread of racist and xenophobic stereotypes and attitudes, States' counter-terrorism policies may be ineffective and lead to human rights violations and racial or ethnic profiling targeting specific groups. The Special Rapporteur is of the view that States should ensure that their counter-terrorism strategies incorporate concrete measures to prevent racism, racial discrimination, xenophobia and related intolerance. In order to combat terrorism, all human rights and freedoms must be guaranteed to all individuals without any discrimination based on race, colour, descent, or national or ethnic origin as enshrined in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination.

III. Possible preventive measures and policies

A. Ensuring the participation of discriminated and marginalized groups in public and political life

9. The need to promote the effective and equal participation in public and political life of individuals and groups of individuals subjected to racism, racial discrimination, xenophobia and related intolerance is recognized in the Durban Declaration and Programme of Action.

10. It is the view of the Special Rapporteur that meaningful participation of groups or individuals discriminated in political life and decision-making processes on the grounds of their race, colour, descent, or national or ethnic origin is crucial to preventing and combating racism, racial discrimination, xenophobia and related intolerance. Ensuring the right to effective participation in the public and political life of discriminated individuals, including members of minorities, in particular with regard to decisions that affect them, has also been highlighted as a broad area of concern by the Independent Expert on minority issues.⁶

11. The invisibility of poor and excluded ethnic groups in public life contributes to their vulnerability to violations and reinforces prejudices and the structures of discrimination. The Special Rapporteur considers that effective participation of individuals from these groups in political and public life would ensure that their voices are heard and that the challenges and problems they face are given due attention. Their participation is key to informing policy decisions on issues related to preventing and combating racism, racial discrimination, xenophobia and related intolerance. Broader participation will also contribute to improving interaction and relations among different ethnic groups and thereby dispel the atmosphere of distrust and misunderstanding. The Special Rapporteur also shares

⁶ A/65/287.

the view of his predecessor that political leaders and their parties need to promote the participation and representation of groups that are vulnerable to racism, racial discrimination, xenophobia and related intolerance in the decision-making process in national governments, parties, parliaments and civil society in general, taking into consideration their contribution to reinforcing the anti-discrimination perspective in political and social life with a view to strengthening democracy.⁷ In this regard, the Special Rapporteur would like to underline that it is important to remove legal obstacles and eliminate discriminatory practices that hamper some specific groups of individuals from fully participating in the public and political life of the countries they live in. This includes for instance legal and practical obstacles such as discriminatory regulations regarding voter registration, the lack of identification documents, administrative and financial barriers, and discrimination in the access to citizenship. Furthermore, appropriate measures should be taken to eliminate persisting negative stereotypes, assuming that some groups of individuals including minorities have no interest in politics or do not have the capacity to engage, as such prejudices contribute to their political and social exclusion.

B. Promoting equality of opportunity in social and economic areas and eradicating poverty

12. The Special Rapporteur is convinced that there is a strong correlation between socio-economic inequality and racial discrimination and that these reinforce each other. Additionally, it is important to note that social and economic exclusion and disparities foster racial discrimination already experienced by the victims.

13. Policies and legislation to address discrimination in the areas of economic, social and cultural rights are crucial. Therefore measures to prevent racism, racial discrimination, xenophobia and related intolerance should also focus on the promotion of equality in the enjoyment of economic, social and cultural rights.

14. As highlighted by the Independent Expert on minority issues⁸ minorities continue to be excluded from economic life. Indeed the inequality and the socio-economic vulnerability of minorities are entrenched historically and continue to create conditions conducive to discrimination. Furthermore, unequal distribution of resources and infrastructure to the disadvantage of minority groups reinforces their exclusion and prevents them from exercising their economic and social rights.

15. Poverty, economic and social exclusion constitute both causes and effects of racism, racial discrimination, xenophobia and related intolerance. As stated in the outcome document of the Durban Review Conference, poverty, underdevelopment, marginalization, social exclusion and economic disparities are closely associated with racism, racial discrimination, xenophobia and related intolerance and contribute to the persistence of racist attitudes and practices which in turn generate more poverty.⁹ It should be noted that the previous Special Rapporteur devoted attention and work to elucidating the link between poverty and racism. He found that the intersection between race and poverty was a key dimension to the struggle against racism.¹⁰ This link was further demonstrated by the then Special Rapporteur while addressing racism and racial discrimination against Roma and discrimination based on work and descent, including discrimination based on caste and

⁷ A/HRC/5/10, para. 8.

⁸ A/65/287.

⁹ Outcome document of the Durban Review Conference, para. 8.

¹⁰ A/HRC/11/36, para. 16-39.

analogous systems of inherited status.¹¹ The Independent Expert on minority issues has also noted that ethnic minorities are disproportionately affected by poverty in different parts of the world.¹²

16. There is a need to further recognize the interrelation between racism, racial discrimination, xenophobia, intolerance and poverty that contributes to the denial for some individuals and groups of individuals of the enjoyment of their civil, cultural, economic, social and political rights. Indeed the structural nature of poverty reinforces structural discrimination which traps the victims into a vicious cycle of social exclusion and marginalization. The Special Rapporteur shares the view of his predecessor that in developing effective and informed policy measures, there is a strong need for ethnically and racially disaggregated data. This would enable policymakers to make an in-depth analysis of social and economic exclusion of individuals and groups of individuals facing racial discrimination. Furthermore in the design and implementation of economic and social programmes at local and national levels, it is essential that attention be paid to the disadvantaged position of excluded ethnic groups and in particular those living in poverty. The Special Rapporteur is of the view that one of the means of promoting the inclusion of excluded individuals is to ensure that such programmes are consultative, involve a diversity of actors and provide mechanisms for securing their views.

C. Mainstreaming a gender perspective

17. Racism, racial discrimination, xenophobia and related intolerance reveal themselves in a differentiated manner for women and girls, and can be among the factors leading to the deterioration in their living conditions and the limitation or denial of their human rights. There are circumstances in which racial discrimination affects women in a different way or to a different degree than men and where certain forms of racial discrimination are directed towards women specifically because of their gender. As stated by the Committee on the Elimination of Racial Discrimination in its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, these include sexual violence including during conflicts, coerced sterilization and the lack of access to remedies and complaint mechanisms for racial discrimination, because of gender-related impediments.

18. Furthermore women and girls often suffer multiple forms of discrimination, including on the basis of race, colour, descent, or national or ethnic origin and gender. They are regularly more marginalized and discriminated in comparison to men in key areas such as education, public and political life, health, and access to labour markets, and remain particularly vulnerable to trafficking, racial abuse, sexual exploitation and domestic violence.

D. Education

19. In stressing the centrality of education in combating all forms of discrimination, the Special Rapporteur on the right to education has noted that education is embedded in the existing values but also helps create new values and attitudes.¹³ Children enter the education system at an impressionable age and the kind of education they are exposed to shapes the kind of adults and citizens they become. The mere removal of barriers in access

¹¹ A/HRC/17/40.

¹² A/HRC/4/9.

¹³ E/CN.4/2002/60.

to education is not enough. Rather, it is important that States establish school systems that are inclusive and representative of society's ethnic and cultural diversity; ensure training for teachers on racism and racial discrimination; prescribe unbiased schoolbooks, and promote the teaching of classes which include the history and positive contribution of minorities, their cultures, languages and traditions. As the Special Rapporteur on the right to education has correctly stressed, schools are not isolated from the larger community but rather reflect the surrounding setting and may reinforce prejudicial portrayals of victims of discrimination.¹⁴ For this reason, it is important that awareness-raising initiatives targeting teachers, students and parents, including for instance anti-racism days, be implemented. It is important to ensure that human rights education is included as an integral part of any national policies or strategies developed to prevent and combat racism.

20. The Special Rapporteur notes with appreciation efforts made by different States to prohibit segregation in schools and improve access to education opportunities for all individuals and groups. He is however concerned about reports, including by his predecessors, indicating that racial discrimination and segregation in schools, poorer educational achievements and a low quality level of education still characterize the experiences of certain groups of individuals, including minorities, Roma, victims of caste-based discrimination, people of African descent, migrants, refugees and asylum seekers. The persistence of racial discrimination in the enjoyment of the right to education remains a major obstacle in building an inclusive educational system and thus a tolerant society.

21. Furthermore it is important to stress the critical role of education as a facilitative right whose realization is linked to the effective enjoyment of all other human rights and freedoms. While underlining this fulcrum role of education the Special Rapporteur on the right to education has pointed out that education operates as a multiplier, enhancing the enjoyment of all individual rights and freedoms where the right to education is effectively guaranteed, while depriving people of the enjoyment of many rights and freedoms where the right to education is denied or violated.¹⁵ Therefore preventing racial discrimination in the exercise of civil, cultural, economic, social and political rights depends on the extent to which victims of racial discrimination are guaranteed the enjoyment of the right to education.

E. Special measures

22. In its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee for the Elimination of Racial Discrimination concluded that special measures may have preventive as well as corrective functions. The Special Rapporteur shares the view of the Committee regarding the preventive role of special measures and he encourages States to adopt such measures as recommended on several occasions by his predecessor. In this regard he recalls in particular article 1, paragraph 4, of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides that special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure equal enjoyment or exercise of human rights and fundamental freedoms by such groups or individuals shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the

¹⁴ Ibid.

¹⁵ E/CN.4/2001/52.

maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

IV. The role of key actors in preventing racism, racial discrimination, xenophobia and related intolerance

23. Preventing racism, racial discrimination, xenophobia and related intolerance is a multidimensional challenge and any effective preventive agenda must recognize the key roles of a diversity of actors. Whereas States bear the primary responsibility in combating racism, racial discrimination, xenophobia and related intolerance, the complex nature of racism requires cooperation between, inter alia, political parties, States, civil society, national human rights institutions, the media and private actors. In areas such as education, capacity building and training, awareness-raising, research and monitoring many non-State actors have a central role to play.

A. States

24. States are the key actors responsible for creating a legal and policy framework for the prevention of racism, racial discrimination, xenophobia and related intolerance as well as for the effective implementation of the prevention measures and practices. The Special Rapporteur urges States to take legislative and policy initiatives specifically targeted at the prevention of racism. To complement enforcement measures, States should step up their efforts towards prevention of racism, racial discrimination, xenophobia and related intolerance in areas such as immigration policy, policing and administration of justice. Human rights training for State officials is also central in this regard.

25. Furthermore, and notwithstanding the diversity of views with regard to multiculturalism, it is crucial that cultural diversity is not denied or suppressed through coercive assimilationist policies and measures. The Special Rapporteur concurs with his predecessors that even well-intentioned assimilationist policies can be in contradiction with international human rights law and exacerbate the problem of marginalization and invisibility of discriminated ethnic groups. Moreover, as stated by the Committee on Economic, Social and Cultural Rights in its general comment no. 21 (2009) on the right of everyone to take part in cultural life, this right imposes three types or levels of obligations on States parties: (a) the obligation to respect; (b) the obligation to protect; and (c) the obligation to fulfil. The obligation to respect includes the adoption of specific measures aimed at achieving respect for the right of everyone, individually or in association with others or within a community or group to freely choose their own cultural identity, to belong or not to belong to a community, and have their choice respected. This includes the right not to be subjected to any form of discrimination based on cultural identity, exclusion or forced assimilation.¹⁶

26. Monitoring and reporting on progress in addressing the challenges of racism, racial discrimination and xenophobia is important for meaningful prevention and enforcement. States have an obligation to their citizens as well as to the international community to report on such progress particularly through the universal periodic review process of the Human Rights Council and reports to the relevant treaty bodies.

¹⁶ E/C.12/GC/21, paras. 48-49.

B. Political parties

27. The Durban Declaration and Programme of Action underlines the role that politicians and political parties can play in combating racism, racial discrimination, xenophobia and related intolerance. The Programme of Action encourages political parties to take concrete steps to promote equality, solidarity and non-discrimination in society, inter alia by developing voluntary codes of conduct which include internal disciplinary measures for violations thereof, so their members refrain from public statements and actions that encourage or incite racism, racial discrimination, xenophobia and related intolerance.¹⁷

28. The existing economic uncertainty, slowdown of growth and the rise of unemployment in many parts of the world due to the global economic crisis have intensified social anxieties and created an environment conducive to xenophobic and racist attitudes and discriminatory policies and practices. The Special Rapporteur is concerned at the resurgence of political parties with racist and xenophobic ideologies and programmes that incite discrimination against certain groups of individuals which they blame for the insecurity and socio-economic problems experienced by the population. The Special Rapporteur is concerned in particular by the fact that such political parties may also sometimes go beyond racist, xenophobic and intolerant rhetoric and explicitly incite or justify the perpetration of acts of violence against vulnerable groups such as minorities, migrants, non-citizens, refugees and asylum seekers. Furthermore, in some instances traditional political parties have endorsed, through coalitions, the racist and xenophobic agenda and programmes of such political parties for electoral purposes. These worrying developments have been at the centre of the attention and work of the previous Special Rapporteur¹⁸ and will continue to be examined further by him.

29. The Special Rapporteur would like to emphasize that political parties bear considerable responsibility for promoting solidarity, tolerance and respect for diversity, especially against the backdrop of the current global economic crisis and disturbing spread of racist and xenophobic discourse including by high-ranking State representatives. He believes that keeping racism and racial discrimination out of politics requires a strong commitment on the part of politicians and political parties, and encourages them to publicly condemn racism, racial discrimination, xenophobia and related intolerance. Moreover, the Special Rapporteur shares the view of his predecessor that political parties should work towards fair representation of national or ethnic, religious and linguistic minorities within and at all levels of their party system, to ensure that their political and legal systems reflect the multicultural diversity of their societies.

30. The Special Rapporteur believes that in order to prevent the proliferation of political parties with racist and xenophobic platforms and the use of racist and xenophobic discourse that incites racism, racial discrimination, xenophobia and related intolerance, the underlying structural, legal and policy conditions should be properly assessed and changed.

C. The media

31. In addition to their central role in democratic society the media also wield immense power in influencing and shaping people's mindsets and attitudes through their coverage of events and through advertisements. As stated in the Durban Declaration, the exercise of the

¹⁷ Durban Programme of Action, para. 115.

¹⁸ A/HRC/15/45, A/HRC/18/44; A/64/295; A/66/312; A/65/323.

right to freedom of expression, particularly by the media, can make a positive contribution to the fight against racism, racial discrimination, xenophobia and related intolerance (para. 90). In this regard the Special Rapporteur would like to encourage the media to strengthen their role in the fight against racism, including by continuing to draw attention to the occurrence of racist incidents while putting them into the right context, giving publicity to the sanctions incurred by racist offenders and developing awareness-raising initiatives to sensitize the population to the adverse effects of racism. Furthermore it is important that when reporting on different groups of individuals, the media avoids negative stereotyping, stigmatization and racial prejudices against these groups of individuals and refrains from any incitement to hatred against them. Instead, the media should recognize its responsibility to present a balanced, contextualized image of discriminated groups such as minorities, refugees, asylum-seekers and migrants.

32. The diversity of the content of media coverage is somehow shaped by the extent of diversity in newsrooms and media houses. In this connection it is important that the media strive to ensure multicultural diversity in their personnel. It is also crucial that States extend support to community media which give voice to the victims of racism and related intolerance. The Special Rapporteur therefore recommends that States develop and implement policy and legal frameworks to support such community media and to consider providing them with the necessary technical, financial and human resources as part of their obligation to prevent racism, racial discrimination, xenophobia and related intolerance.

33. The Special Rapporteur would further like to emphasize that the media can play an important role in creating an environment conducive to peace and reconciliation in post-conflict situations. In this regard he reaffirms the position expressed by his predecessor (A/HRC/14/43) that meaningful dialogue involving all the relevant actors, including the media, should be strongly encouraged and supported to prevent fostering and or resurgence of violence. In this context self-regulatory media bodies can also play a positive role including in helping to rebuild the war-shattered and ethnically divided media landscape, through adoption of measures such as enforceable or voluntary media codes of conduct.

D. National human rights institutions

34. National human rights institutions in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993) can play an important role in preventing racism especially if they are provided with the necessary means to perform their mandate. The Special Rapporteur notes that States have the flexibility in designing institutions to address the problem of racism. He is of the view that both institutions with a general human rights mandate and institutions with a specific mandate to fight against racism and racial discrimination can effectively discharge a preventive and protective role. Whichever design a State chooses, it is important that such institutions enjoy legal and operational independence, are well resourced, and that they are accorded the necessary political support and cooperation to deliver on their mandate. In view of this, the Special Rapporteur reiterates the Durban provisions encouraging States to establish such institutions and calls upon the authorities and society in general in those countries where they already exist to extend their cooperation to them to the maximum extent possible, and to provide them with adequate technical, financial and human resources while respecting their independence. He further recalls paragraph 91 of the Durban Programme of Action, which urges States to take steps to ensure that those individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance can participate fully in these institutions. States should further support these institutions and similar bodies, *inter alia* through cooperation with institutions in other countries, so that knowledge and best practices can be shared in designing strategies to prevent, combat and eradicate racism.

E. Civil society

35. The importance of the role and involvement of civil society in combating racism, racial discrimination, xenophobia and related intolerance has been recognized in the Durban Declaration and Programme of Action.

36. The Special Rapporteur is of the view that civil society has an essential role to play by holding Governments accountable. Furthermore, in various countries, civil society groups have built up vast experience and expertise in working with victims of racism, racial discrimination, xenophobia and related intolerance. This experience and expertise should be tapped by States to assist in developing and implementing laws, regulations, policies and actions directed at the prevention of racism, racial discrimination, xenophobia and related intolerance.

37. The complex and multifaceted nature of racism and racial discrimination requires a diversity of expertise that civil society is able to provide. Civil society actors can contribute to research and policy analysis by collecting relevant data and identifying trends on racism, racial discrimination, xenophobia and related intolerance. They can also provide training to law enforcement officials, legal aid and capacity building to groups or individual victims of racism, racial discrimination, xenophobia and related intolerance, and undertake awareness-raising activities. The Special Rapporteur believes that civil society actors are key in preventing and combating racism and intends in future reports to examine in more specific terms some of the models that can be replicated elsewhere as good practices.

V. Further tools to be considered in the prevention of racism, racial discrimination, xenophobia and related intolerance

A. New information technologies including the Internet

38. The Internet has become a global and public online space for exchanging information and ideas and an indispensable tool which offers individuals the means to make their voices and demands heard. It is undoubtedly now one of the most important vehicles by which individuals exercise their right to freedom of opinion and expression. Thus, notwithstanding the adverse effects of the Internet such as its use by some individuals to disseminate racist ideas, hate messages and to incite racial hatred and violence, the Internet can be a useful preventive tool in combating racist and xenophobic ideologies and attitudes. In this regard the Special Rapporteur strongly encourages States to use the opportunities provided by the Internet to counter the dissemination of ideas based on racial superiority or hatred; promote equality, non-discrimination and diversity; improve mutual understanding; and build a culture of peace. Given the insidious intersection of poverty and discrimination mentioned earlier, victims of racial discrimination are more likely to lag behind in digital connectivity and access to the Internet. The absence of their voices in digital conversations leaves racist ideas unchallenged. He shares the view that States should adopt effective and concrete policies and strategies to make the Internet widely available, accessible and affordable to all, based on the principles of non-discrimination of any kind, including on the grounds of race, colour, descent, ethnic or national origin.

39. Promoting more speech via the use of the Internet therefore remains an effective approach to preventing racism while fully implementing articles 19 to 22 of the International Covenant on Civil and Political Rights, and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. The Special Rapporteur reiterates the opinion of his predecessor that the determination of which acts or expressions may meet the thresholds in the above-mentioned articles is ultimately a

decision that is best made after a thorough assessment of the individual circumstances of each case. This decision should always be guided by well-defined criteria, in accordance with international standards, and be made by an independent and impartial court or tribunal, taking into account the local conditions, history, culture and political context.

B. Sport

40. Promoting the message of tolerance and non-discrimination through sport constitutes one of the important approaches in the prevention of racism, racial discrimination, xenophobia and intolerance. In the past, the General Assembly has underscored the role of sport in promoting tolerance while expressing concern over an increase in racist incidents in sport activities. The Special Rapporteur notes that his predecessors have stressed that sports are well positioned to play a dynamic role in the promotion of interculturalism in all societies, based on the principles of equality, solidarity and respect for diversity. He recalls that paragraph 86 of the Durban Programme of Action calls upon States to counter ideologies which promote racial hatred and racial discrimination, including by taking measures to combat the negative influence of such ideologies, especially on young people, through formal and non-formal education, the media and sport.

41. The Special Rapporteur further recalls resolution 13/27 of the Human Rights Council and emphasizes the importance of enhancing and establishing cooperation among States, intergovernmental organizations, international, regional and national sporting bodies and civil society to prevent racism. Moreover paragraph 218 of the Durban Programme of Action also urges States, in cooperation with intergovernmental organizations, the International Olympic Committee and international and regional sports federations, to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practised without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity.

42. The Special Rapporteur is however concerned that despite the immense potential of sport in promoting tolerance, racism in sport is still a serious problem. He notes that sport federations in some parts of the world have committed themselves to and often taken measures to punish and prevent racist incidents in sporting events such as football. The efforts by States, international sporting bodies and civil society actors interested in combating racism in sport can serve as best practices that can be shared. In this regard the Special Rapporteur proposes to highlight such measures in future reports.

VI. Activities of the Special Rapporteur

A. Country visits

43. Country visits are an essential part of the Special Rapporteur's mandate. They provide an important opportunity for the mandate holder to interact with Government representatives and members of civil society. In the planning of such visits the Special Rapporteur will take into account the underlying principle that racism is a universal problem and therefore considers the importance of achieving geographical balance and addressing a wide range of situations of concern to his mandate.

44. Following his appointment the Special Rapporteur has renewed formal requests sent by his predecessor to visit Bolivia and Sudan. He would like to thank the Government of the Plurinational State of Bolivia and the Government of the Republic of Sudan, which have accepted his requests for visits. He hopes to undertake the fact-finding missions to

these countries before the end of 2012. The Special Rapporteur has also renewed the formal request sent by the previous Special Rapporteur to the Government of South Africa to visit the country.

45. The Special Rapporteur would like to acknowledge the letter of invitation extended by Honduras. While he has not yet been able to honour this invitation, the Special Rapporteur hopes that he will be able to do so.

46. From 23 to 27 May 2011, the previous Special Rapporteur visited Hungary. The Special Rapporteur would like to reiterate the sincere gratitude expressed by his predecessor to the Government of Hungary for its cooperation and openness in the preparation and conduct of the visit. The report containing the observations and conclusions of the then Special Rapporteur on the visit is included in document A/HRC/20/33/Add.1 and the observations of the Government contained in an addendum to this report.

B. Other activities

47. The Special Rapporteur participated in the High-Level Thematic Debate on the Achievement of the Goals and Objectives of the International Year for People of African Descent held in New York on 6 December 2011, for the closure of the Year. He also attended the first meeting of the special procedures of the United Nations Human Rights Council and the Special Mechanisms of the African Commission on Human and Peoples' Rights organized by the Office of the High Commissioner for Human Rights, in cooperation with the African Commission on Human and Peoples' Rights, in Addis Ababa, Ethiopia, from 18 to 19 January 2012. The meeting aimed at exploring ways to improve cooperation and coordination in promoting and protecting human rights in Africa.

48. On 21 March 2012, on the occasion of the International Day for the Elimination of Racial Discrimination the Special Rapporteur issued a joint press release with the Independent Expert on Minorities Issues, which stressed that racism is still fuelling violence and conflict.

VII. Conclusions and recommendations

49. **The Special Rapporteur is aware of efforts made by States to prevent and combat racism, racial discrimination, xenophobia and related intolerance, including through building a legal framework to punish racism and racial discrimination. He however notes that the prevention framework both at national and international levels remains weak and that consequently human rights violations persist with regard to racism, racial discrimination, xenophobia and related intolerance. He points out that the importance and value of preventive measures cannot be overemphasized. Indeed there is a significant need to further reinforce and implement preventive measures for more progress in the elimination of all the manifestations of racism, racial discrimination, xenophobia and related intolerance. In this respect the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference, which underscore the need for States to adopt appropriate preventive measures, constitute the most comprehensive framework.**

50. **While measures taken to sanction racism, racial discrimination, xenophobia and related intolerance can be considered as an aspect of prevention, they cannot be effective unless other equally robust preventive measures and mechanisms are developed and implemented. In this regard the Special Rapporteur recalls that preventing and combating racism, racial discrimination, xenophobia and related intolerance is a primary responsibility of States. He therefore encourages States to**

develop a comprehensive approach that would include preventive measures and their effective implementation as an integral part of any national strategy developed to combat racism. He recalls in particular that the outcome document of the Durban Review Conference (para. 56) calls on States to take effective, tangible and comprehensive measures to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

51. States should develop and implement national action plans to combat racism and racial discrimination and establish specialized bodies and mechanisms. National action plans are vital as they provide a comprehensive approach and roadmap to tackling the problems of racism and racial discrimination in national contexts. Such plans should incorporate a framework of action for the prevention of racism with concrete legal, policy, and programmatic measures specifically targeted at preventing racism, including in the areas of immigration policy, policing and administration of justice. Institutions and specialized bodies established to ensure adequate implementation should be provided with the necessary resources, including human, financial and technical. Human rights training focusing on the prevention of racism and racial discrimination should also be regularly provided to State agents.

52. The Special Rapporteur notes that the convergence between racism and poverty has been highlighted by his predecessor and reiterates that any measures to prevent racism must take this intersection into account. Consequently, he recommends that States consider linking their development programmes and priorities for the improvement of the socio-economic conditions of individuals and groups experiencing racial discrimination, social exclusion and marginalization. These linkages should be reflected *inter alia* in States' reports to the universal periodic review process of the Human Rights Council and to relevant treaty bodies.

53. Preventing conflicts and the attendant human rights violations such as genocide and ethnic cleansing that may occur in this context calls for decisive preventive measures. The Special Rapporteur recommends that States and all relevant actors pay due attention to, and effectively address, the early warning signs of racism and racial discrimination that may lead to tension, violence and conflict situations with serious violations of human rights. Ensuring equality for all in the enjoyment of civil, cultural, economic, social and political rights including the rights of minorities, without any discrimination based on race, colour, descent, national or ethnic origin is one effective way through which States may prevent and address the rise of tension and conflict. Good governance, democracy, respect for the rule of law, and meaningful participation of minorities in political institutions are also essential to prevent and defuse tensions which may lead to situations of conflict. In this regard the Special Rapporteur recommends in particular that States effectively implement the recommendations made by his predecessor in his report to the Human Rights Council (A/HRC/14/43).

54. The Special Rapporteur recommends that concrete measures and adequate mechanisms to prevent racism, racial discrimination, xenophobia and related intolerance be incorporated in national strategies developed to combat terrorism. In this regard the Special Rapporteur recalls general recommendation No. 30 (2004) on discrimination against non-citizens of the Committee on the Elimination of Racial Discrimination, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin.

55. Women and girls often suffer multiple forms of discrimination, including on the basis of race, colour, descent, or national or ethnic origin and gender. They are more marginalized and discriminated against in comparison to men. The Special

Rapporteur urges States to incorporate a gender perspective in the design and development of measures of prevention aimed at the elimination of racism, racial discrimination, xenophobia and related intolerance at all levels, to ensure that they effectively target the distinct situations of women and men, including by giving particular consideration to multiple forms of discrimination experienced by women.

56. Regarding measures to ensure the participation of discriminated and marginalized groups in public and political life, and the promotion of equality of opportunity for all in social and economic areas and combating poverty, the Special Rapporteur recommends, as provided for in the Durban Programme of Action, that States:

(a) develop or elaborate national action plans to promote diversity, equality, equity, social justice, equality of opportunity and the participation of all. These plans should aim at creating conditions for all to participate effectively in decision-making and realize civil, cultural, economic, political and social rights in all spheres of life on the basis of non-discrimination (para. 99);

(b) establish programmes to promote the access without discrimination of individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance to health care, and promote strong efforts to eliminate disparities, inter alia in the infant and maternal mortality rates, childhood immunizations, HIV/AIDS, heart diseases, cancer and contagious diseases (para. 101);

(c) promote residential integration of all members of the society at the planning stage of urban development schemes and other human settlements, as well as while renewing neglected areas of public housing, so as to counter social exclusion and marginalization (para. 102).

57. To effectively combat racism, it is important to address both its manifestations and the infrastructure of ideas, attitudes and stereotypes on which it thrives. It is important to remember that racism is not just manifested in the overt denial of access to certain human rights but also the social environment of hostility and stereotyping that victims have to endure every day. Consequently, the Special Rapporteur recommends that States invest in education as a tool for transforming attitudes and correcting ideas of racial hierarchies and superiority.

58. The Special Rapporteur recommends that States adopt and implement special measures as stated on several occasions by his predecessors, while duly taking into account their preventive role. In this regard the Special Rapporteur recommends inter alia, as stated by the Committee on the Elimination of Racial Discrimination in its general recommendation No. 32 (2009), that States include and implement provisions on special measures in their legal systems, whether through general legislation or legislation directed to specific sectors and through plans, programmes and other policy initiatives at national, regional and local levels.

59. Monitoring and reporting progress made in the elimination of racism is essential to meaningful prevention and enforcement. In this regard ethnically disaggregated data can be a useful tool to assess the effectiveness of the measures taken, monitor progress made and better understand the nature and extent of the situation of the victims of racism and racial discrimination. Therefore the Special Rapporteur recommends that States collect ethnically disaggregated data with a view to setting up concrete targets and designing appropriate and effective anti-discrimination legislation, policies and programmes aimed at promoting equality, preventing and eliminating racism, racial discrimination, xenophobia and related intolerance.

60. The Special Rapporteur recommends that States, as part of their prevention agenda, extend partnerships to civil society, and establish and strengthen national human rights institutions in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134 of 20 December 1993). National human rights institutions and civil society are key partners in the development and implementation of policies and programmes designed to prevent racism. States should provide them with adequate support.

61. The Special Rapporteur also recommends that States cooperate with the media in order to promote the multicultural diversity of their societies. This is in recognition of the influence and power of the media in shaping opinions and attitudes on ethnic groups. States should also encourage diversity of voices in the media through incentives and support to community media providing visibility and voice to victims of racism.

62. The Special Rapporteur recommends that States implement the recommendations of his predecessors regarding the challenges posed by political parties with racist and xenophobic platforms. In particular, as stated by his predecessor, the Special Rapporteur would like to emphasize the key role that political parties and leaders could and should play in the fight against racism, racial discrimination, xenophobia and related intolerance. Because of the audience that they reach and the moral authority that they carry, it is all the more important for political leaders to condemn and counter all political messages fuelling racism and xenophobia. It is also essential for political parties to base their programmes and activities on respect for human rights and fundamental freedoms, democracy and the rule of law.

63. The Special Rapporteur recommends that States take into account the important role the Internet has come to play both in providing voice to individual victims of racial discrimination and, insidiously, as a new arena for the spreading of racist ideas and views. In this regard he recommends that States promote and ensure more speech via the use of Internet as an effective means to prevent racism, racial discrimination, xenophobia and related intolerance while fully implementing articles 19 to 22 of the International Covenant on Civil and Political Rights, and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. In addition, given the influence of the Internet, States should adopt concrete measures to address and remedy the digital exclusion of individuals from discriminated groups who may not be able to access the Internet to challenge racist views and ideas because of poverty and lack of education. As stated in the Durban Programme of Action, the Special Rapporteur calls upon States to consider encouraging access and use of the Internet by all as an international and equal forum, aware that there are disparities in use of and access to the Internet; and examining ways in which the positive contribution made by the new information and communications technologies, such as the Internet, can be enhanced through replication of good practices in combating racism, racial discrimination, xenophobia and related intolerance.

64. The Special Rapporteur underscores the role of sport in promoting cultural diversity, tolerance and harmony and recommends that States take advantage of sports events such as the World Cup and the Olympics to promote racial and ethnic harmony. Further, the Special Rapporteur recommends that States and sports associations invest in programmes to prevent racism and racist violence and incidents at sports events.