



**General Assembly**

Distr.  
GENERAL

A/HRC/11/36  
19 May 2009

Original: ENGLISH

---

HUMAN RIGHTS COUNCIL  
Eleventh session  
Agenda item 9

**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, Githu Muigai\***

---

\* The present document was submitted late in order that information on the Durban Review Conference could be included.

## Summary

The present report is submitted pursuant to Human Rights Council resolution 7/34. It is the first report submitted to the Council by the present mandate holder, whose appointment started on 1 August 2008. It was prepared after the conclusion of the Durban Review Conference, held in April 2009, and examines in detail its outcome document, as well as the Special Rapporteur's reflections on the Durban Review process. The Special Rapporteur also addresses the issue of poverty and racism, which he considers one of the fundamental challenges in the fight against racism.

The Durban Review Conference was particularly important to mark the renewal of the international engagement against racism. During the preparatory process leading up to the Conference, the Special Rapporteur requested Member States to approach the Review Conference constructively and in a cooperative spirit, arguing that the problems relating to racism were too important for the Conference to be allowed to fail. Despite the absence of some Member States, the outcome document of the Durban Review Conference was adopted consensually by all Member States attending the Conference; a remarkable achievement, particularly in the highly tense political atmosphere surrounding the Conference.

A central dimension of the fight against racism is the overlap between two key social indicators: class and race or ethnicity. Throughout his mandate, the Special Rapporteur intends to examine this question in depth in order to provide sound and policy-oriented recommendations to Member States. For many reasons, including the lack of ethnically disaggregated data, the links between race and poverty have yet to be fully elucidated. In particular, there are no existing instruments for this type of data collection worldwide, which would allow for cross-regional comparison of the levels of poverty in minorities. However, national data for many countries unambiguously show that racial or ethnic minorities are disproportionately affected by poverty. The Special Rapporteur recalls that the socio-economic vulnerability of minorities is frequently the result of historical legacies, such as slavery across the American continent, systems of inherited status in other continents and also of systems of formalized and State-sponsored discrimination against minorities that were long in place in many parts of the world. Because of the inaction of Governments, imbalances that were historically created continued to profoundly affect minority groups long after formalized discrimination was dismantled. The Special Rapporteur highlights that a number of concrete measures are needed in order to address the disproportionate levels of poverty enjoyed by members of minorities.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1	4
II. DURBAN REVIEW CONFERENCE .....	2 - 15	4
A. Renewing international engagement against racism .....	2 - 4	4
B. Outcome document of the Durban Review Conference .....	5 - 6	5
C. Freedom of expression and the fight against racism .....	7 - 11	5
D. Next steps: transforming pledges into action .....	12 - 15	6
III. POVERTY AND RACISM .....	16 - 39	7
A. Gathering data on poverty and race .....	20 - 27	8
B. Right to non-discrimination .....	28 - 35	10
C. Special measures to correct historical imbalances .....	36 - 39	12
IV. ACTIVITIES OF THE SPECIAL RAPPORTEUR .....	40 - 47	13
A. Visits by the Special Rapporteur .....	40 - 41	13
B. Other activities of the Special Rapporteur .....	42 - 47	13
V. RECOMMENDATIONS .....	48 - 54	15
 Annex		
Commitments of Member States in the outcome document of the Durban Review Conference .....		17

## **I. INTRODUCTION**

1. The present report, prepared pursuant to Human Rights Council resolution 7/34, is the first report to be submitted to the Council by the current mandate holder, whose appointment commenced on 1 August 2008. Prepared after the conclusion of the Durban Review Conference, it examines in detail its outcome document, and the Special Rapporteur's reflections on the Durban Review process (part I). The Special Rapporteur also addresses the issue of poverty and racism, which he considers a fundamental challenge in the fight against racism (part II).

## **II. DURBAN REVIEW CONFERENCE**

### **A. Renewing the international engagement against racism**

2. The holding of the Durban Review Conference in April 2009 marked the renewal of international engagement against racism. During the preparatory process leading up to the Conference, the Special Rapporteur requested Member States to approach the Review Conference constructively and in a cooperative spirit, arguing that the problems related to racism were too important for the Conference to be allowed to fail. In particular, in a press release issued on 21 March 2009, on the occasion of the International Day for the Elimination of Racial Discrimination, the Special Rapporteur called upon States and civil society organizations alike to participate in the negotiations leading to the Review Conference. The Special Rapporteur stressed that the Durban Declaration and Programme of Action remained the most comprehensive international framework to fight racism.

3. The Special Rapporteur would like to recall his statement made at the plenary session under item 9 of the Durban Review Conference, when he stated that, by showing their commitment to the international anti-racism movement, Member States were also sending an important signal to their relevant domestic constituencies: that racism was unacceptable and would be vigorously combated by the different institutions of the State within all possible parameters of the law. He added that engaging in the Durban Review process also meant leaving political agendas outside; ideological divides only made people lose sight of the real and concrete problem of racism and those who suffer from it. A renewed international engagement against racism was as urgent as it had ever been. For that reason, he once again called upon all members of the international community, in particular those who had chosen not to participate in the Durban Review Conference, to re-engage internationally on the common cause of eradicating racism. He particularly called on the United States and President Obama to provide leadership in this process, building on its historical experience of combating racism.

4. Despite the absence of some Member States, the outcome document of the Durban Review Conference was adopted consensually by all Member States attending the Conference. This is a remarkable achievement, particularly in the highly tense political atmosphere surrounding the Review Conference. The Special Rapporteur therefore regrets that 10 Member States decided not to participate in the Conference. The Special Rapporteur is convinced that the outcome document reflects the able manner in which the preparatory process was managed, in particular by the Chairperson of the intersessional working group, as well as the important but difficult concessions that were made by many parties. The Special Rapporteur underlines that this is the way the United Nations has been designed to work, focusing on common ground rather than division.

## **B. Outcome document of the Durban Review Conference**

5. The Special Rapporteur notes that, eight years since the Durban Conference, there remains an unprecedented level of disinformation and misinformation concerning the contents of the Durban Declaration and Programme of Action. In this regard, the Special Rapporteur believes that specific awareness-raising activities regarding the content of both the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference should be undertaken in order to ensure that public information concerning the objectives of these landmark texts are widely disseminated, particularly among the media. In this regard, the Special Rapporteur also recalls that the outcome document called on the United Nations system, in particular the Department of Public Information, to undertake effective media campaigns to enhance the visibility of the message of the Durban Declaration and Programme of Action and its follow-up mechanisms (para. 143).

6. The outcome document of the Durban Review Conference also contains a number of provisions that will directly and specifically guide the work of international mechanisms and the Office of the United Nations High Commissioner for Human Rights (OHCHR) in the fight against racism. The Special Rapporteur makes particular reference to the recommendation that examples of best practices be compiled and duly publicized by OHCHR (para. 50) as a means to inform policymaking around the world. Creating the institutional framework for the adequate promotion and sharing of best practices in the fight against racism will help the international community draw on positive lessons that can be transferred to other contexts, which is indeed one of the important roles the United Nations system can play in this process.

## **C. Freedom of expression and the fight against racism**

7. The issue of freedom of expression and the fight against racism has been one of the key questions during negotiations on the outcome document of the Durban Review Conference. The Special Rapporteur believes that the text agreed upon at the Review Conference represents a landmark in the way the United Nations human rights system will approach this question in the years to come. In this regard, he commends all Member States involved in the negotiations for ably finding such common ground, which will facilitate the implementation of these commitments in the future.

8. The Special Rapporteur welcomes the fact that the outcome document unambiguously recognizes the positive role that freedom of opinion and expression can play in combating racism, racial discrimination, xenophobia and related intolerance (para. 54) and that it constitutes one of the essential foundations of a democratic and pluralistic society (para. 58).

9. At the same time, the outcome document also expresses concern over the rise in recent years of acts of incitement to hatred, which have targeted and severely affected racial and religious communities and persons belonging to racial and religious minorities. In this regard, the Special Rapporteur recalls that the outcome document resolved to, as stipulated in article 20 of the International Covenant on Civil and Political Rights, fully and effectively prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In addition, the outcome document also makes reference to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and general recommendation No. 14 of the Committee on the Elimination of Racial Discrimination, by

reaffirming that “all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts shall be declared an offence punishable by law, in accordance with the international obligations of States and that these prohibitions are consistent with freedom of opinion and expression”.

10. The Special Rapporteur welcomes the fact that the outcome document focused exclusively on the language of legal provisions as established by international instruments, in particular the International Covenant on Civil and Political Rights and International Convention on the Elimination of All Forms of Racial Discrimination. The fact that the outcome document was adopted by consensus confirms that the language from these instruments is indeed the way forward in the approach to difficult questions, such as that of incitement to racial or religious hatred.

11. The Special Rapporteur would also like to highlight the joint statement he delivered with the Special Rapporteur on freedom of religion or belief, Asma Jahangir, and the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, during a side event at the Durban Review Conference on incitement to racial or religious hatred.<sup>1</sup> In particular, the three mandate holders stated that it was necessary to anchor the debate on these issues in the relevant existing international legal framework, provided for by the International Covenant on Civil and Political Rights. Whereas the Covenant provided for freedom of expression, it also clearly defined limitations to it, such as in articles 19 and 20. Furthermore, article 20 (2) required States to prohibit expressions if they amount to advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence. However, defining which acts might trigger article 20 remained difficult. They asked what constituted incitement to violence, hostility or discrimination and where the line between criticism - even if deemed offensive - and hate speech should be drawn. From a legal perspective, they affirmed that each set of facts was particular and could only be assessed and adjudicated, whether by a judge or another impartial body, according to its own circumstances and taking into account the specific context.

#### **D. Next steps: transforming pledges into action**

12. Many of the provisions contained in the outcome document of the Durban Review Conference would not have been needed had the Durban Declaration and Programme of Action been properly and effectively implemented. Unfortunately, not only is racism still pervasive around the world, but the appropriate institutions, legislation and policy needed to adequately fight this problem are not in place in most countries.

13. The key challenge in the next few years is therefore to transform the pledges and commitments made in the outcome document of the Durban Review Conference, as well as in the Durban Declaration and Programme of Action itself, into concrete actions that truly have an impact on the lives of those directly affected by racism, racial discrimination, xenophobia and related intolerance. The Special Rapporteur recalls that most of the responsibility for implementing such actions lies with the State, as the outcome document recognizes. National

---

<sup>1</sup> [http://www2.ohchr.org/english/issues/racism/rapporteur/docs/Joint\\_Statement\\_SRs.pdf](http://www2.ohchr.org/english/issues/racism/rapporteur/docs/Joint_Statement_SRs.pdf).

authorities should therefore start a process of reflection, based on the clear-cut commitments made in the outcome document, to assess national legislation and public policies. Civil society also has a fundamental role to play, not only by holding Governments accountable, but also by participating in policymaking and implementation.

14. More specifically, the Special Rapporteur believes that concrete yardsticks are needed to effectively measure the implementation of the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference and to evaluate how responsive each Member State has been in fulfilling its obligations under these documents. Since the changes needed to combat racism, racial discrimination, xenophobia and related intolerance are long term, some concrete criteria are needed in order to evaluate the performance of States and their progress in achieving these commitments. International human rights mechanisms have a key role to play in this regard by constantly holding Member States accountable for their commitments and by monitoring their performance.

15. In this regard, and in view of his mandate, the Special Rapporteur will use the outcome document of the Durban Review Conference as a blueprint and theoretical framework for analysing issues relevant to his mandate during his country visits and in other regular activities. In particular, the Special Rapporteur analysed the commitments made by Member States under section 5 of the outcome document on the identification of further concrete measures and initiatives at all levels for combating and eliminating all manifestations of racism, racial discrimination, xenophobia and related intolerance, in order to foster the implementation of the Durban Declaration and Programme of Action and to address challenges and impediments hereto, including in light of developments since its adoption in 2001. A list of the action-oriented commitments made by Member States as well as some initial indicators to monitor performance to meet those commitments are set out in tables (see annex). While this framework will be used primarily for the fulfilment of his mandate, the Special Rapporteur urges Member States to adopt similar approaches when assessing their domestic efforts to implement the outcome document of the Durban Review Conference. The Special Rapporteur also reiterates his availability to assist Member States meeting these commitments in a spirit of cooperation and constructive engagement.

### **III. POVERTY AND RACISM**

16. During his activities over the past year, the Special Rapporteur analysed some of the links between poverty and racism, including those based on the body of empirical work and country visits carried out in his mandate since its inception, as well as on academic and policy-oriented research on this topic. The Special Rapporteur is convinced that a central dimension of the fight against racism lies in the overlap between two key social indicators: class and race or ethnicity. Throughout his mandate, he intends to examine this question in depth in order to provide sound and policy-oriented recommendations to Member States. The Special Rapporteur's analysis in this section is therefore a work in progress, which will be gradually refined and expanded.

17. For many reasons, including the lack of ethnically disaggregated data collection, the links between race and poverty have yet to be fully elucidated. In particular, the Special Rapporteur recalls that there are no existing instruments for this type of data collection worldwide, which would allow cross-regional comparison of the levels of poverty among minorities. National data for many countries, however, unambiguously show that racial or ethnic minorities are

disproportionately affected by poverty; for example, in her report, the independent expert on minority issues (A/HRC/4/9) provides concrete examples of higher levels of poverty among Afro-descendants in Brazil; Dalits, Muslims and hill Janajatis in Nepal; British Indians, British African-Caribbeans, British Black Africans, British Pakistanis and British Bangladeshis in the United Kingdom; the San-speaking minority in Namibia; ethnic minorities in Viet Nam; immigrant and ethnic minorities in the European Union; and African Americans, American Indians and Alaska Natives and Hispanic or Latinos in the United States of America. There is no doubt that there is a very close association between race and poverty in most countries.

18. The Special Rapporteur notes that the socio-economic vulnerability of minorities is generally the result of historic legacy, such as the impact of slavery in the American continent, systems of inherited status in other continents and also of systems of formalized and State-sponsored discrimination against minorities that were long in place in many parts of the world. Because of the inaction of States, the imbalances that were historically created continued to profoundly affect minority groups long after formalized discrimination was dismantled.

19. A number of concrete measures are needed in order to address the disproportionate levels of poverty of members of minorities. While the Special Rapporteur intends to analyse specific measures further in future reports, he will concentrate on three broad issues in the present one: the need for data-gathering that provides policymakers with reliable information concerning the socio-economic situation of minorities; the need to fully implement the obligation not to discriminate; and the need for special measures to redress historical imbalances.

#### **A. Gathering data on poverty and race**

20. Despite the significance of the correlation between poverty and race, the Special Rapporteur notes that very limited knowledge has been acquired concerning it. As mentioned above, one problem is the refusal of many Governments to collect ethnically disaggregated data, an activity that, in some situations is even prohibited by law. The reasons for not collecting this type of data are often grounded on legitimate concerns regarding the pernicious uses of such data in the past, such as during the Holocaust. However, in some instances, refraining from collecting ethnically disaggregated data is also a refusal to recognize the existence of certain minority groups within a country and the vulnerable situation those groups face.

21. The Special Rapporteur emphasizes that the lack of ethnically disaggregated data collection has led to an important information gap that obstructs policymaking. Without knowing which minority groups are more affected by poverty and lack of access to economic, social and cultural rights, devising specific public policies to redress these problems becomes virtually impossible. Lack of data means that minorities are officially “invisible” and that policies towards them, when existent, will be based on assumptions rather than on empirically sound information.

22. The key reason why ethnically disaggregated data are needed is the heterogeneous character of minority groups. Not only do these groups have different needs vis-à-vis “majorities”, but they also differ substantially among themselves. Lack of data that inform policymakers of such heterogeneity will inevitably lead to sweeping “one size fits all” approaches directed at all minority groups alike, which are bound to fail. In order to design

effective policies, we need to understand the specific needs and situation of each minority group. While housing may be the most important problem for a certain group, employment discrimination could be the key issue for another. A common policy would fail to meet the expectations of either.

23. Some arguments against the collection of ethnically disaggregated data also allude to the possibility that such data would lead to further prejudice and stereotypes about the exclusion of certain groups. The Special Rapporteur rejects this notion. If certain groups are excluded within a country, it is already likely that they are victims of discrimination and subject to stereotypes. Data that further confirm this condition cannot be denied on the grounds that it would lead to further discrimination; rather, it is precisely the lack of data that would lead to less visibility and, probably, to more exclusion.<sup>2</sup>

24. In this regard, the Special Rapporteur would like to make reference to a particularly useful suggestion made by a scholar analysing the two dimensions of ethnic statistics:

(a) A right: the fundamental right to be free from racial discrimination should be interpreted as implying the right of the victim to obtain statistical data broken down by race/ethnicity, if such data would be critical evidence proving discrimination;

(b) A duty: the positive obligation of the government to ensure effective equality irrespective of race or ethnicity should be interpreted as including the collection, processing, analysis and use of impersonalized statistics disaggregated by ethnicity.<sup>3</sup>

25. The potential problems raised by the collection of ethnically disaggregated data, in particular the possibility of misuse of such data for racist and exclusionary policies, can be overcome by the introduction of key safeguards. The Special Rapporteur would like to note, in this regard, some of the principles mentioned in the outcome document of the Durban Review Conference: the right to privacy and the principle of self-identification (para. 104).

26. Self-identification should be a pillar of the collection of ethnically disaggregated data. This principle flows directly from the interpretation of the Committee on the Elimination of Racial Discrimination of the International Convention on the Elimination of Racial Discrimination under General Recommendation VIII, in which it states that identification as members of a particular racial or ethnic group should, if no justification to the contrary, be based upon self-identification by the individual concerned. While self-identification is not without problems - for example, individuals belonging to minorities may refrain from self-identifying as such for fear of persecution or prejudices - it is based on the important notion that the State should not impose an identity on the individual.

---

<sup>2</sup> See for example K. Ramsay, *Disaggregated Data Collection: A Precondition for Effective Protection of Minority Rights in South East Europe*, Minority Rights Group International, August 2006.

<sup>3</sup> D. Petrova, "Ethnic statistics", *Roma Rights: Quarterly Journal of the European Roma Rights Centre*, No. 2, 2004.

27. A key principle in the set-up of data collection programmes should also be the involvement of minority communities in all stages of the exercise, including design and implementation. Minority groups often do not have confidence in Government authorities and the uses that will be made of ethnically disaggregated data. By including them in the design and implementation of data-gathering exercises, not only will mutual confidence be built, but it will also lead to a better design of surveys that take into account the concerns of minorities from the onset.

### **B. Right to non-discrimination**

28. The first obligation of States when addressing the socio-economic vulnerability of minorities is to implement fully the right to non-discrimination in all realms, and specifically in areas of economic, social and cultural rights. The right to non-discrimination is enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the main international human rights instruments. As such, non-discrimination is a cornerstone and cross-cutting right that affects the enjoyment of all other human rights. In addition to international instruments, non-discrimination is considered a constitutional right in most legal systems.

29. Despite the robustness and overarching nature of the right to non-discrimination, the Special Rapporteur recalls that this obligation is still far from being fulfilled by States across the globe. Many forms of discrimination, including racial discrimination, are still pervasive, often formalized in State policies and legislation. Such cases have been the subject of attention by the mandate of the Special Rapporteur since its inception.

30. The Special Rapporteur has previously reported on the unequal provision of economic, social and cultural rights to minority groups. Some key examples include health installations, such as hospitals and clinics, as well as water pipelines and other projects that have been deliberately excluded from geographic regions that are predominantly inhabited by minority and indigenous groups; members of minority groups are unable to have access to medical services because of administrative measures and regulations that demand official authorization from Government officials for travel outside certain areas; and persons arbitrarily deprived of their nationality were denied access to health care and basic medical treatment.<sup>4</sup>

31. Discrimination on the provision of the right to education has also contributed to perpetuating imbalances among members of minorities. Clear examples of this form of discrimination include authorities refusing to issue identity documents to members of certain ethnic minorities, preventing them from attending school or university;<sup>5</sup> students from ethnic minority or lower castes being prevented by schoolteachers from attending school;<sup>6</sup> lack of

---

<sup>4</sup> A/HRC/4/19/Add.1, paras. 122, 126 and 178.

<sup>5</sup> A/HRC/7/19/Add.5, paras. 82-84.

<sup>6</sup> E/CN.4/2005/18/Add.1, para. 31.

official recognition of minority schools, in turn leading to barriers to the eligibility of students from minority schools for university;<sup>7</sup> and the absence of reference to minority or indigenous culture and history in school curricula.<sup>8</sup>

32. Similar examples abound in other areas, such as housing, employment, access to justice and relations with law enforcement. Furthermore, the Special Rapporteur recalls that the prohibition of non-discrimination has two main dimensions: not only banning non-discrimination itself, which would be required in the examples described above, but also prohibiting policies and actions that are prima facie non-discriminatory, but which in practice have discriminatory effects. Such effects can arise from the discriminatory application of otherwise race-neutral measures or the design of seemingly race-neutral measures that in fact have a disproportionate impact on the situation of minorities.

33. A clear example of non-discriminatory policies with a disproportionate impact on minorities relates to drug enforcement actions. In many countries, there is a large gap between the distribution of drug users among the general population and the distribution of persons convicted of drug offences, which is heavily skewed towards minorities. This generally indicates that drug policies, though non-discriminatory in practice, are implemented in a discriminatory manner that targets minorities, such as by a heavier police presence in areas predominantly inhabited by minorities.

34. In other instances, even when the application of a given policy is race-neutral, its design may lead to a disproportionate impact on minorities; for example, different sanctions are foreseen for drugs that have similar psychotropic and physiological effects. The classic example is that between crack cocaine and powder cocaine; due to its cheaper price, crack is more widely consumed by members of minorities. Therefore a disparity in sentences, with longer sanctions for crack consumption, also tends to disproportionately affect such minorities.<sup>9</sup>

35. With regard to the promotion of non-discrimination, the Special Rapporteur welcomes in particular the general recommendation on non-discrimination currently being drafted by the Committee on Economic, Social and Cultural Rights. This broader and overarching general comment will further complement the work of the Committee on non-discrimination for specific rights, such as housing (general comments No. 4 and 7), food (general comment No. 12), education (general comment No. 13), health (general comment No. 14), water (general comment No. 15), work (general comment No. 18) and social security (general comment No. 19). As such, it will provide more clarity and precision for policymakers. However, the Special Rapporteur would like to stress that most cases of discrimination occur in clear-cut realms of the law and are therefore caused not by ambiguous assessment of a State's obligations, but rather by explicit policies targeting minorities.

---

<sup>7</sup> E/CN.4/2006/16/Add.2, para. 57.

<sup>8</sup> E/CN.4/2005/18/Add.2, para. 40.

<sup>9</sup> A/HRC/11/36/Add. 3, para. 87.

### C. Special measures to correct historical imbalances

36. Non-discrimination is essential to create a level playing field and to prevent the repetition of past mistakes that created large imbalances. The Special Rapporteur notes, however, that because of the historical legacies of racism in most parts of the world, simply implementing the right to non-discrimination will not help redress the large disparities created over the course of decades or centuries of discrimination; rather, they will simply maintain the current gap between minorities and majorities. Specific actions are therefore needed to redress these historical imbalances in order to promote real equality to minorities. The Special Rapporteur recalls that the need for such special measures has already been affirmed by article 1.4 of the International Convention on the Elimination of All Forms of Racial Discrimination.<sup>10</sup>

37. While the Special Rapporteur recalls the caveat established by the Convention regarding the temporary character of such special measures, he is concerned at the recent trend in many parts of the world of the retreating from and dismantling of such measures before the goals of integration have been attained.

38. The Special Rapporteur recalls three main reasons why such special measures are needed and indeed beneficial. First, they are designed to correct historical injustices and remedy past damage, such as slavery, segregation or apartheid. Affirmative action helps correct the present-day legacy of these historical events. Second, special measures in areas such as schools help improve the quality of education, particularly for those pupils that have left segregated schools and joined integrated ones. Sociological and pedagogical studies have indeed shown that more integrated schools have a better overall academic performance than more segregated ones. Finally, integrated schools and workplaces help foster democratic culture in pluralistic societies, establishing different degrees of cooperation and interaction among people of diverse racial or ethnic backgrounds.<sup>11</sup>

39. One of the key difficulties in overcoming racism and discrimination is the lack of interaction and everyday relations among different racial or ethnic groups. By correcting these historical distortions, special measures such as affirmative action help build a more solid and democratic society, in which different groups cooperate on a regular basis. In this regard, they help create the most solid defence against future forms of racism, racial discrimination, xenophobia and related intolerance.

---

<sup>10</sup> “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 such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the 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.”

<sup>11</sup> For an in-depth review of these arguments, see the dissenting opinion by Justice Stephen Breyer of the United States Supreme Court in the case *Parents Involved in Community Schools v. Seattle School District*.

#### **IV. ACTIVITIES OF THE SPECIAL RAPPORTEUR**

##### **A. Visits by the Special Rapporteur**

40. Upon taking up his functions on 1 August 2008, the Special Rapporteur made requests to visit a number of countries. He also renewed requests for country visits that had been made by his predecessor. In the planning and undertaking of country visits, the Special Rapporteur takes into account the underlying principle that racism is a universal problem with global implications and therefore considers the importance of achieving geographical balance and of addressing a wide range of situations of concern to his mandate.

41. The Special Rapporteur is particularly pleased to have received positive responses from the Governments of Bolivia, Bosnia and Herzegovina, Germany and the United Arab Emirates. The Special Rapporteur believes that the very act of inviting a mandate holder for a country visit is an expression of the State's willingness and commitment to fighting racism and to engage in a constructive dialogue with the mandate holder. In this regard, the Special Rapporteur is pleased that he will carry out visits to Germany in June 2009 and to the United Arab Emirates in October 2009. Reports on those visits will be presented to the Council in 2010.

##### **B. Other activities of the Special Rapporteur**

42. On 24 and 25 August 2008, the Special Rapporteur attended the Africa Regional Preparatory Meeting for the Durban Review Conference, held in Abuja. The Meeting was attended by Member States and civil society from Africa in order to draft a common position with regard to the Durban Review Conference. In his remarks, the Special Rapporteur highlighted that racism, xenophobia and intolerance were universal problems of global reach. The common recognition of racism as a fundamental problem of the present time was the first step in mounting the fight against it. The collective experience in the fight against racism had shown that no society was free from the scourge of racism. In such a context, the only possible response to a truly global problem lay in concerted international action at all levels. The Special Rapporteur further noted that the past international conferences against racism, including the Durban Conference in 2001, allowed for the creation of a solid legal framework in international law that not only prohibited racism, but pointed to concrete ways to overcome it. He further observed that the outcome document produced at Durban could undoubtedly be regarded as the most comprehensive and ambitious international effort ever made in the fight against racism. He concluded by noting that the Durban Review Conference, and in particular the Africa Regional Meeting, was a unique opportunity for a renewed engagement and expression of unrelenting political will to promote the fight against racism and to implement the Durban Declaration and Programme of Action.

43. On 6 October 2008, the Special Rapporteur addressed the Preparatory Committee of the Durban Review Conference at its second substantive session, which met in Geneva. The Special Rapporteur praised the breadth and ambition of the Durban Declaration and Programme of Action, which was a beacon of hope for those working against all forms of racism, racial discrimination, xenophobia and related intolerance. He added that the Durban Declaration and Programme of Action identified clearly the key international, regional and national strategies that had to be implemented to redress historical wrongs and current injustices. The Special Rapporteur noted, however, that the unprecedented framework established by the Durban

Declaration and Programme of Action had yet to be fully implemented around the world. The Review Conference was therefore a unique chance to redress these serious implementation gaps, to consolidate effective strategies to achieve the ambitious goals set out in the Durban Declaration and Programme of Action, and to rebuild the strong international consensus that was shaped in Durban in the fight against all forms of racism.

44. On 12 November 2008, the Special Rapporteur, at the invitation of the Council of Europe, attended the Conference on Human Rights in Culturally Diverse Societies, held in The Hague. In his intervention, the Special Rapporteur focused on issues related to hate speech and incitement to racial hatred. He explained that discussions over hate speech, and how to balance prohibitions thereof with freedom of expression, currently lay at the centre of debates in the United Nations human rights system. He noted that this debate had developed around the notion of “defamation of religions”, put forward for the first time in the Commission of Human Rights in 1999. After highlighting some key aspects of the debate, the Special Rapporteur noted that the debate at the international level was moving from the concept of “defamation of religions” to the existing legal notion of “advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility and violence”, which was considered a positive shift, as it helped better understand the existing legal obligations of States. The Special Rapporteur also addressed some technical and legal issues involved in the application of incitement laws, including their threshold of application, the need for contextualized information and case-by-case analysis and some of the criteria needed when applying such laws. The Special Rapporteur made reference, in particular, to the expert seminar organized by the United Nations High Commissioner for Human Rights in October 2008. To conclude, he also highlighted that a much broader set of policy measures were necessary, particularly at the domestic level, to eliminate the root causes of racism.

45. On 21 January 2009, the Special Rapporteur participated in a seminar on the prevention of genocide, chaired in Geneva by the Special Adviser on the Prevention of Genocide, Francis Deng. Apart from co-signing a statement delivered by several mandate holders, the Special Rapporteur focused on explaining how racism and genocide were connected. He stated that genocide, ethnic cleansing and other war crimes had been traditionally linked to the emergence of exclusionary ideologies based on race or ethnicity. For example, the actions perpetrated by those guided by Nazi or Hutu power ideology showed how extreme forms of racism, often hidden behind the guise of radical nationalism, could lead to unspeakable catastrophes. The Special Rapporteur praised the work carried out by the Committee on the Elimination of Racial Discrimination on issues related to genocide, combining both a focus on long-term and short-term factors and root causes with more immediate factors that could trigger mass violence at particular times. Understanding these factors could lead to a more robust response by the international community. The Special Rapporteur added that an anti-racism and anti-discrimination approach was thus essential in post-conflict situations, particularly in post-genocide contexts, to ensure that such tragedies would not recur. In particular, the racial or ethnic fractions that opened during conflict had to be addressed, such as with broad programmes of national reconciliation that foster inter-ethnic cooperation. While the easier short-term fixes could sometimes point to virtual separation among ethnic groups (such as by the creation of ethnically-defined political parties), the only lasting solutions were those that build bridges among communities and allow them to identify with a common future.

46. On 23 January 2009, the Special Rapporteur participated in the Wilton Park Conference on Contemporary and Future Human Rights Challenges, held in West Sussex, United Kingdom. At the conference, he addressed some substantive aspects of the Durban Review Conference and its centrality in the fight against racism. In particular, he addressed the possible implications of the financial crisis for the fight against racism. The Special Rapporteur stated that, with soaring unemployment and decreasing salaries, some groups might try to manipulate public opinion to generate a strong anti-immigration backlash and to blame migrants for current economic problems. These xenophobic expressions were at times intertwined with racial prejudice and stereotypes, as migrants could often be differentiated based on their race or ethnicity. The Special Rapporteur also addressed the issue of the overlap between poverty and race. He stated that, in many areas, owing to historical legacies and present discrimination, one could quickly identify that the poorest segments of the population were disproportionately composed of racial or ethnic minorities. This structural situation posed numerous challenges to the promotion of equality. Poverty created a vicious circle for members of a minority: lack of education, adequate housing and health care transmitted poverty from generation to generation, and perpetuated racial prejudices and stereotypes towards them. Breaking with the double trap of racism and poverty was therefore an essential requirement to the promotion of equality and non-discrimination.

47. On 19 March 2009, the Special Rapporteur participated in a high-level panel to celebrate the International Day for the Elimination of Racial Discrimination. He recalled that the International Day was particularly meaningful in 2009 in view of the Durban Review Conference, scheduled to be held only a month later. The Special Rapporteur also highlighted a number of substantive issues, including the dual impact that the financial crisis would have on minorities, with devastating consequences for their socio-economic vulnerability. Just like others, minorities would suffer from decreasing wages, increasing unemployment and, even more critical, lower standards of living. In addition, they were also more vulnerable to many expressions of racism, racial discrimination, xenophobia and related intolerance, which could take the form of increased intolerance of foreigners, particularly migrants. In the current context, the positive contribution of migrants to economic growth, social interaction and cultural diversity tended to be forgotten. Rather, migrants were more likely to be seen as competitors for scarce jobs and social services. Political parties were often ready to capitalize on these fears for political ends. Racist and xenophobic political platforms were still widespread, attesting to our collective failure to combat racism effectively.

## V. RECOMMENDATIONS

48. **The Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference provide the most comprehensive frameworks for the fight against racism. The main challenge lies in the implementation of these two documents. The Special Rapporteur strongly recommends that Member States formally establish specific implementation mechanisms that will allow for adequate implementation of the pledges that they made in the Durban Review Conference. In particular, the Special Rapporteur recommends that Member States adopt concrete targets and yardsticks for the implementation of the outcome document.**

49. **The Special Rapporteur strongly recommends that the countries that did not participate in the Durban Review Conference publicly acknowledge their support for its outcome document and commit to its implementation.**
50. **With regard to the issue of incitement to racial or religious hatred, the Special Rapporteur recommends that the constructive agreement reached in the outcome document of the Durban Review Conference be seen as the basis for further understanding of the thresholds established by article 20 of the International Covenant on Civil and Political Rights and article 4 of the International Convention for the Elimination of All Forms of Racial Discrimination, including in the series of regional seminars that will be organized by OHCHR.**
51. **The Special Rapporteur invites Member States to adopt a comprehensive approach to tackle the problems related to the overlap of poverty and race or ethnicity prevalent around the world. In particular, the Special Rapporteur recommends that Member States review and redesign policies and programmes that may have a disproportionate effect on racial or ethnic minorities in view of their socio-economic vulnerability, and implement effective measures to improve the access of such groups to civil, cultural, economic, political and social rights.**
52. **As a key prerequisite of any action aimed at tackling the socio-economic vulnerability of persons belonging to ethnic or racial minorities, the Special Rapporteur recommends that States collect ethnically disaggregated data and indicators that allow for the identification of the main problems these groups face and inform policymaking in this regard. The principles of privacy, self-identification and involvement of all communities in such data-gathering activities should be respected at all times.**
53. **The Special Rapporteur recalls the overarching and cornerstone prohibition of discrimination on national, racial, ethnic or religious grounds according to international human rights law, and strongly recommends that States review legislation and policies that may directly or indirectly discriminate against particular groups.**
54. **In order to redress the historical imbalances created by racism and discrimination, including slavery, segregation, apartheid and other forms of exclusion, the Special Rapporteur recommends that Member States take special measures to foster integration of racial or ethnic minorities into education, health, housing, the workplace and other areas.**

## Annex

### Commitments of Member States in the outcome document of the Durban Review Conference

**Table 1**

#### Institutional framework

Paragraph	Issue	Commitments by Member States	Concrete measures
56	Actions to prevent, combat and eradicate racism	To take effective, tangible and comprehensive measures to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.	National Action Plan to fight racism designed and implemented.
105	National programmes	To establish national programmes that facilitate the access of all to basic social services without discrimination.	Prohibition of discrimination in economic, social and cultural rights provided by law. National programmes to facilitate access to basic social services established.
112	Role of Parliament and anti-racism legislation	To encourages Parliaments to regularly address the issue of racism, racial discrimination, xenophobia and related intolerance, with a view to consolidating their legislation, including anti-discrimination legislation, and to enhance policies to fight racism, racial discrimination, xenophobia and related intolerance.	Anti-racism legislation adopted. Racism issues regularly discussed in Parliament.
114	National action plans	To elaborate national action plans to combat racism, racial discrimination, xenophobia and related intolerance and monitor their implementation in consultation with relevant stakeholders.	National action plans to fight racism established and implemented.
115	National human rights institutions	When implementing paragraph 90 of the Durban Declaration and Programme of Action, ensure that national human rights institutions have focal points on racism, racial discrimination, xenophobia and related intolerance, as well as the capacity to contribute to effective remedies to victims.	National human rights institutions have focal points or departments dealing with racism issues.

**Table 1 (continued)**

Paragraph	Issue	Commitments by Member States	Concrete measures
116	Institutional mechanisms	To establish and equip specialized bodies and mechanisms for the implementation of public policies to eradicate racism, racial discrimination, xenophobia and related intolerance.	Specific institutions to address issues of racism established within the structure of the State.
120	Independent bodies to receive complaints	To establish independent bodies, where they do not already exist, to receive complaints from victims of racism, racial discrimination, xenophobia and related intolerance.	Independent bodies/ombudsperson which receive complaints about racism established.
123	Universal periodic review	Include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to prevent and combat racism, racial discrimination, xenophobia and related intolerance.	Discussion of racism included in national universal periodic review reports.

**Table 2**

**Domestic legislation and international human rights framework**

Paragraph	Issue	Commitments by Member States	Concrete measures
69	Incitement to racial or religious hatred	As stipulated in article 20 of the International Covenant on Civil and Political Rights, to fully and effectively prohibit any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence and implement it through all necessary legislative, policy and judicial measures.	Article 20 of the International Covenant on Civil and Political Rights implemented in domestic legislation. National jurisprudence on incitement to racial or religious hatred in conformity with international standards.
99	Prohibiting racist organizations	To declare illegal and prohibit all organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote national, racial and religious hatred and discrimination in any form, and to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination.	Prohibition of such organizations provided for by law.
96 97	International legal framework	To sign and ratify or accede to all instruments mentioned in paragraph 78 of the Durban Declaration and Programme of Action;  To sign and ratify or accede to all instruments adopted after the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.	Ratification of the Convention on the Rights of Persons with Disabilities and the Optional Protocol. Ratification of the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. Ratification of the Convention on the Protection and Promotion of the Diversity of Cultural Expressions.
123	Universal periodic review	Include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to prevent and combat racism, racial discrimination, xenophobia and related intolerance.	Discussion of racism included in national universal periodic review reports.

**Table 3**  
**Justice, law enforcement and impunity**

Paragraph	Issue	Commitments by Member States	Concrete measures
57 60 98	Punish racist and xenophobic activities  Combating impunity for such acts	To combat impunity for acts of racism, racial discrimination, xenophobia and related intolerance, to secure expeditious access to justice, and to provide fair and adequate redress for victims. To punish violent, racist and xenophobic activities by groups that are based on neo-Nazi, neo-Fascist and other violent national ideologies. To combat impunity for crimes with racist or xenophobic motivations, including through adopting appropriate legislation, as well as amending, rescinding or nullifying any laws and regulations which create or perpetuate racism, racial discrimination, xenophobia and related intolerance.	Data collection on hate crimes; Appropriate hate crimes legislation. Training of law enforcement for investigation and prosecution of such crimes. Existence of and access to effective and adequate remedies.
65	Impunity for crimes of genocide	To combat impunity for crimes of genocide in accordance with international law [...] and cooperate with international criminal tribunals.	Ratification of Genocide Convention. Ratification of Rome Treaty; Cooperation with the International Criminal Court and ad hoc tribunals. Existence of and access to effective and adequate remedies.
100	Access to justice	To ensure that everyone within a State's jurisdiction, including victims of racism, racial discrimination, xenophobia and related intolerance, enjoys access to justice, as well as to appropriate State institutions and mechanisms in order to seek recognition of wrong-doing and just, fair and adequate reparation or satisfaction for any damage suffered.	Access to justice guaranteed by law and in practice; Existence of and access to effective and adequate remedies.
101	Prosecution of racism and racial discrimination	To ensure that investigations of all acts of racism and racial discrimination, in particular those committed by law enforcement officials, are carried out in an impartial, timely and exhaustive manner, that those responsible are brought to justice in accordance with the law, and that victims receive prompt, just and adequate reparation or satisfaction for any damage.	Racism and racial discrimination prohibited by law. Cases of racism and racial discrimination, particularly by law enforcement officials, investigated and prosecuted promptly; Data collection on complaints of racism.
102	Racial profiling	Not to resort to profiling founded on grounds of discrimination prohibited by international law, including on racial, ethnic or religious grounds and prohibit it by law.	Discrimination prohibited by law and in practice. Data collection on police activities.

**Table 4**  
**Vulnerable groups**

Paragraph	Issue	Commitments by Member States	Concrete measures
75	Racism at border entry areas	To prevent manifestations of racism, racial discrimination, xenophobia and related intolerance at country border entry areas, in particular vis-à-vis immigrants, refugees and asylum-seekers.	Training programmes for law enforcement, immigration and border officials, prosecutors and service providers.
76	Non-citizens	To take measures to combat the persistence of xenophobic attitudes towards and negative stereotyping of non-citizens, including by politicians, law enforcement and immigration officials and in the media.	Training programmes for law enforcement and immigration officials. Self-organized training programmes in the media.
77 78	Migration	To adopt a comprehensive and balanced approach to migration, including by strengthening international dialogue on migration, by developing real partnerships between countries of origin, transit and destination, and by exploring all possible synergies between the management of migration and the promotion of development, while taking into account fully the human rights of migrants. To review and, if necessary, to revise immigration policies inconsistent with international human rights obligations, with a view to eliminating all discriminatory policies and practices.	Assessment of legislation carried out. Discriminatory policies and practices eliminated.
79	Migrant domestic workers	To adopt and enforce legislation to protect migrant domestic workers, regardless of their immigration status, in particular women, and to grant migrant workers in domestic service access to transparent mechanisms for bringing complaints against employers, while stressing that such instruments should not punish migrant workers, and to call on States to promptly investigate and punish all abuses, including ill-treatment.	Legislation protecting migrant domestic work in place. Institutions to support migrant domestic workers, including on discrimination complaints, in place.
81	Internally displaced persons	To step up efforts to combat racism, racial discrimination, xenophobia and related intolerance and to protect the human rights of internally displaced persons and to seek lasting solutions for them.	Programmes to address the situation of internally displaced persons are in place.
83	Arbitrary deprivation of nationality	To refrain from taking discriminatory measures and from enacting or maintaining legislation that would arbitrarily deprive persons of their nationality, especially if such measures and legislation render a person stateless.	Legislation arbitrarily depriving persons of nationality eliminated.

**Table 4 (continued)**

Paragraph	Issue	Commitments by Member States	Concrete measures
88	Gender perspective	To review, as a matter of priority, the extent to which policies, programmes and specific measures have been adopted to incorporate a gender perspective in all programmes and plans of action to combat racism.	Policies and programmes assessed with respect to gender mainstreaming.
91 92 93	Trafficking in persons	<p>To integrate a human rights perspective, in particular accounting for gender and age, to combat and eliminate all forms of trafficking in persons, particularly of women and children and other vulnerable groups, taking into account practices that endanger human lives or lead to various forms of slavery and exploitation, such as debt bondage, child pornography and sexual exploitation and forced labour.</p> <p>To strengthen bilateral, subregional, regional and international cooperation on trafficking in persons, especially women and children.</p> <p>To ensure protection of and assistance to the victims of trafficking, with full respect for their human rights, and to actively promote the rehabilitation of victims of trafficking.</p>	<p>Legislation enacted and implemented.</p> <p>National, regional and global action plans devised, enforced and strengthened.</p> <p>Initiatives implemented at the bilateral and regional levels.</p> <p>Protection, assistance and rehabilitation programmes for victims of trafficking in place.</p>

**Table 5**

**Special measures in favour of groups in vulnerable situations**

Paragraph	Issue	Commitments by Member States	Concrete measures
70 71 72 113	Special measures in favour of groups in vulnerable situations	<p>To bolster measures to eliminate barriers and to broaden access to opportunities for greater and more meaningful participation by people of African and Asian descent, indigenous peoples and persons belonging to national or ethnic, religious and linguistic minorities in the political, economic, social and cultural spheres of society, and to pay special attention to the situation of women, in particular their practical incorporation into the labour market and in income and employment-generation programmes.</p> <p>To direct special measures, including affirmative or positive measures, and strategies or actions to communities of African descent and indigenous peoples.</p> <p>To encourage States to adopt strategies, programmes and policies, inter alia, special measures, including affirmative or positive measures, strategies or actions, to enable the victims of racism, racial discrimination, xenophobia and related intolerance to fully realize their civil, cultural, economic, political and social rights.</p>	<p>Special measures provided by law or public policies.</p> <p>Data collection on vulnerable groups and their access to or enjoyment of economic, social and cultural rights</p> <p>Fair representation of minorities in political parties and political and legal systems.</p>

**Table 6**  
**Data collection**

Paragraph	Issue	Commitments by Member States	Concrete measures
103 104	Ethnically disaggregated data collection and indicators	To establish mechanisms to collect, compile, analyse, disseminate and publish reliable and disaggregated statistical data, and to take all other related measures necessary to regularly assess the situation of all victims of racism, racial discrimination, xenophobia and related intolerance. To develop a system of data collection, including equal opportunity and non-discrimination indicators that, upholding the right to privacy and the principle of self-identification, make it possible to assess and guide the formulation of policies and actions to eradicate racism, racial discrimination, xenophobia and related intolerance, and to consider, where appropriate, seeking the assistance of OHCHR.	Data-gathering mechanisms available. Ethnically disaggregated data available. Equal opportunity and non-discrimination indicators available.

**Table 7**  
**Political participation**

Paragraph	Issue	Commitments by Member States	Concrete measures
110 111	Democracy and political participation	To encourage political parties to 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, and to develop more participatory democratic institutions in order to avoid the discrimination, marginalization and exclusion of specific sectors of society. To improve democratic institutions, increase participation, and avoid marginalization, exclusion of and discrimination against specific sectors of society.	Fair representation of minorities in political parties and political and legal systems. Participation of all groups in the political process guaranteed by law.

**Table 8**  
**Other commitments**

Paragraph	Issue	Commitments by Member States	Concrete measures
55	Media campaigns	To undertake effective media campaigns to enhance the struggle against all manifestations of racism, racial discrimination, xenophobia and related intolerance.	Communication campaigns against racism at the national level. Durban Declaration and Programme of Action and outcome document disseminated throughout civil society.
64	Transatlantic slave trade	To implement General Assembly resolutions 61/19, 62/122 and 63/5 on the transatlantic slave trade.	Education programmes and other activities to preserve the memory of the transatlantic slave trade.
109	Cultural rights	To implement cultural rights through the promotion of intercultural and inter-religious dialogue and cooperation at all levels, especially the local and grass-roots levels.	Programmes of intercultural and inter-religious dialogue established.
117	Human rights defenders	To protect human rights defenders, in particular those working on racism, racial discrimination, xenophobia and related intolerance, to lift any impediments to their effective functioning inconsistent with international human rights standards and norms, and to allow them to work freely for the promotion and protection of human rights.	Appropriate programmes for protection of human rights defenders in place. Right to freedom of association fully guaranteed. Implementation of the Declaration on Human Rights Defenders.