OHCHR REGIONAL SEMINAR FOR THE AMERICAS
Data Collection and the Use of indicators to promote and monitor racial equality and non-discrimination

“Statistical data as a method to promote and monitor racial equality and non-discrimination: benefits and risks”

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In the framework of the seminar on data collection and the use of indicators to promote and monitor racial equality and non-discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance would like to reiterate some of the concerns briefly raised in his annual report to the Human Rights Council’s 11th Session (A/HRC/11/36). This conference paper is divided in five parts:

1. The legal framework for the collection of ethnically disaggregated data and indicators; 
2. The risks involved by the collection of ethnically disaggregated data and indicators with regard to human rights; 
3. The use and benefits of ethnically disaggregated data and indicators as a tool to promote equality and eliminate racism, racial discrimination, xenophobia and related intolerance; 
4. The need for guarantees and safeguards in the collection of ethnically disaggregated data and indicators; and 
5. Recommendations.

1. The legal framework for the collection of ethnically disaggregated data and indicators: an obligation of States and a right of individuals

In accordance with their international obligations enshrined in international human rights instruments, States have the obligation to eliminate all forms of racial discrimination. This obligation is enshrined inter alia in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

In practice however, much remains to be done in order to eliminate racial discrimination. Indeed, many people are still prevented from fully enjoying their civil, cultural, economic, political and social rights due to racism, racial discrimination, xenophobia and related intolerance. States need therefore to take all necessary measures in this regard. To this effect, the collection of ethnically disaggregated data and indicators, which should be understood both as a component of the right of individuals to be free from racial discrimination and as an obligation of States to ensure effective equality irrespective of ethnicity\(^1\), represents a useful tool to promote equality and eliminate racism, racial discrimination, xenophobia and related intolerance, as stated in the Durban Declaration and Programme of Action,\(^2\) the outcome document of the Durban Review Conference\(^3\) as well as General recommendation No. 32\(^4\) and No. 24\(^5\), and Concluding observations of the Committee on the Elimination of Racial Discrimination.


\(^2\) See 2001 Durban Programme of Action, para. 92.

\(^3\) See 2009 Outcome document of the Durban Review Conference, paras. 103-104.

\(^4\) General Recommendation No. 32, The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination (August 2009), para. 17: “Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a
Nonetheless, the collection of ethnically disaggregated data and indicators remains a controversy, in particular in relation to the potential risks and dangers it may entail.

2. The risks involved by the collection of ethnically disaggregated data and indicators with regard to human rights and fundamental freedoms

Many States are reluctant to collect ethnically disaggregated data and regard it with suspicion;\(^6\) sometimes it is even prohibited by law.\(^7\) Some of the reasons invoked to oppose the collection of such data are grounded on legitimate concerns\(^8\) and should be seriously taken into consideration, when proceeding with the collection of such data. Some States indeed consider that the collection of ethnically disaggregated data and indicators is an obstacle to the building of national unity.\(^9\) Moreover, some are of the view that it aggravates tensions between individuals of different origins by exacerbating differences. Others States consider that the collection of ethnically disaggregated data and indicators would lead to further prejudice and stereotypes concerning certain groups of individuals of the population.\(^10\)

Another important problem with regard to the collection of ethnically disaggregated data and indicators is the possibility of misuse of such data for racist and exclusionary policies.\(^11\) The pernicious use of such data in the past, for instance during the Holocaust\(^12\), attests of the seriousness of this risk and should act as a reminder that the collection of ethnically disaggregated data and indicators might lead to gross violations of human rights\(^13\) if not surrounded by strong guarantees and safeguards.

In addition to the above, the collection of ethnically disaggregated data may also conflict with individuals’ human rights and fundamental freedoms, in particular the right to privacy and the protection of personal data. Indeed in some instances personal information related to a person is registered and disclosed without the person’s informed consent, which is contrary to human dignity and violates the right to privacy.\(^14\)
While acknowledging the potential risks and dangers that the collection of such data may entail, the Special Rapporteur however would like to reaffirm that the collection of ethnically disaggregated data and indicators constitutes an important tool to promote equality and eliminate racial discrimination. Without such data it would not be possible to develop adequate responses to racial discrimination,\(^{15}\) including anti-discrimination policies and programmes (3). In addition, the Special Rapporteur recalls that the potential problems raised by the collection of ethnically disaggregated data and indicators can be overcome by the introduction of key safeguards (4).\(^{16}\)

3. The use and benefits of ethnically disaggregated data and indicators as a tool to promote equality and eliminate racism, racial discrimination, xenophobia and related intolerance

As stated in his report to the Human Rights Council’s 11\(^{th}\) Session, the Special Rapporteur believes that the collection of ethnically disaggregated data and indicators is “a key prerequisite of any action aimed at tackling the socio-economic vulnerability of persons belonging to ethnic or racial minorities”.\(^{17}\) It is an essential tool to identify the persons and groups affected by racial discrimination and better understand the nature and extent of the inequalities they face and design appropriate and effective anti-discrimination legislation, policies and programmes thereon\(^{18}\). Such data are then important to develop policies and programmes that take into consideration the situation of vulnerability of such persons and groups, and address their specific needs with respect to the reality of their everyday life.\(^{19}\) In some situations, ethnically disaggregated data and indicators are a precondition for the recognition of the existence of certain groups within a country.\(^{20}\) Moreover, such data and indicators also allow States to assess and monitor the effectiveness of the measures taken and to review them in case of disproportionate effect on certain ethnic groups. It is therefore an important instrument for measuring progress in combating racial discrimination and improving the situation of victims\(^{21}\).

4. The need for guarantees and safeguards in the collection of ethnically disaggregated data and indicators

As stated above, the potential dangers and risks entailed by the collection of ethnically disaggregated data may be overcome if States abide by some key principles. In this regard, the Special Rapporteur would like to highlight the principles referred to in the outcome document of the Durban Review Conference, the Durban Programme of action, as well as in

\(^{15}\) Ibid., para. 71.
\(^{16}\) See A/HRC/11/36, para. 25.
\(^{17}\) See A/HRC/11/36, para. 52.
\(^{18}\) See A/HRC/11/36, paras. 21-22.
\(^{19}\) See A/HRC/11/36, paras. 22 and 52.
\(^{20}\) A/HRC/11/36, para. 20.
\(^{21}\) See 2001 Durban Programme of Action, para. 92 (b). See also A/HRC/11/36, para. 51 and E/CN.4/2006/14, para. 5.
General recommendation No. 8 of the Committee on the Elimination of Racial Discrimination, namely the principles of self-identification, privacy and involvement.

The principle of self identification

Self-identification should constitute a pillar of the collection of ethnically disaggregated data. This principle stems directly from General Recommendation No. 8 of the Committee on the Elimination of Racial Discrimination, which states that the identification of individuals as “members of a particular racial or ethnic group” should, if no justification exists to the contrary, be based upon self-identification by the individual concerned. This principle is related to the respect of the rights of individuals to assert their own identity. While self-identification may lead to under-reporting and inaccurate data - for example individuals belonging to minorities may refrain from self-identification for fear of persecution or prejudices - it is based on the important notion that the State should not impose an identity on the individual.

Privacy and protection of personal data

As stated in his report to the Human Rights Council’s 11th Session, the Special Rapporteur would like to reaffirm that the principle of privacy should be respected at all times. In this regard the Special Rapporteur refers to the provisions of the Durban Programme of Action (para. 92) according to which ethnically disaggregated data should be collected with the explicit consent of the victims and in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantees.

The principle of involvement

A key principle in the establishment of data collection programmes should also be the involvement of affected groups in all stages of the exercise, including design and implementation. Some groups, such as minorities, often do not have confidence in the Government authorities and the use that will be made of ethnically disaggregated data. Involving them in the design and implementation of the data-gathering exercises will not

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22 See A/HRC/11/36, para. 25.
23 See A/HRC/11/36, para. 52. See also Durban Programme of Action, para. 92 (b).
24 “Having considered reports from States parties concerning information about the ways in which individuals are identified as being members of a particular racial or ethnic groups or groups, Is of the opinion that such identification shall, if no justification exists to the contrary, be based upon self-identification by the individual concerned”.
27 See Kathryn Ramsay, pp. 2-3: “There is often under reporting of minorities in the statistics due to minority fear of discrimination if they self-identify. This causes inaccurate data to be used in developing policies and programmes, which could undermine their effectiveness. [...]. The individual’s subjective choice is inseparably linked to objective criteria relevant to the person’s identity. [...]. The State may not impose an identity on individuals”. See also De Schutter Olivier, p. 136: “in some contexts the criterion of self-identification leads to a significant under-reporting. [...]. Self-identification may therefore lead in certain cases both to under-estimating the level of existing discrimination and to making an objective evaluation of equitable representation of different groups impossible”.
29 See A/HRC/11/36, para. 52.
30 See 2001 Durban Programme of Action, para. 92 (a). See also De Schutter Olivier, pp. 53-79.
only build mutual confidence, but will also lead to a better design of surveys that take into account the concerns of vulnerable groups from the onset. This principle should also be understood as providing the right for members of those groups to be informed of the results of the data collection and whether the anti-discrimination legislation, policies and programmes are adequate, appropriate and effective in practice.

5. Recommendations

In line with the provisions of the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference, the Special Rapporteur would like to make the following recommendations relating to the collection of disaggregated data by ethnicity and indicators:

- that States collect ethnically disaggregated data and indicators to design legislation, policies, programmes and other measures aiming at promoting equality and eliminating racial discrimination and that States use such data to assess and monitor the effectiveness of the measures taken and to review them in case of disproportionate effect on certain ethnic groups;

- that States respect the principles of privacy, self-identification and involvement of all communities in such data-gathering activities and ensure that ethnically disaggregated data and indicators collected are impersonalized and that the principles of confidentiality and security be respected in case of personal data collection;

- that ethnically disaggregated data should be used in legal proceedings as an evidence for proving discrimination;

- that the collection of ethnically disaggregated data is processed in the light of the respective national realities of each country. It should be a country-specific tool to monitor progress undertaken at the national level and not a basis for comparison of the situations in different States;

- that the classification of individuals by categories be done in respect of the International Convention on the Elimination of All Forms of Racial Discrimination (Preamble and Article 1), which provides a general framework for capturing the different dimensions of

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31 See A/HRC/11/36, para. 27. See also De Schutter Olivier, p. 157: “It is of primary importance that categories and classification criteria pay due regard to the perspective and sensitivities of those who are the victims of discrimination. Minorities should therefore be given the means to participate in and express their views on this process”.

32 See E/CN.4/2006/14, para. 60.

33 See A/HRC/11/36, para. 24 (b).

34 See E/CN.4/2006/14, para. 9.

35 See A/HRC/11/36, para. 24 (a). See also De SCHUTTER Olivier, pp. 25-36.

36 See E/CN.4/2006/14, para. 9 and 27.

37 See E/CN.4/2006/14, para. 9 (b) and (c).

38 ICERD Preamble: “Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous and that there is no justification for racial discrimination, in theory or in practice, anywhere”.
identity and the various aspects of racial discrimination. In this regard it is important to recall the provisions of paragraph 6 of the Outcome Document of the Durban Review Conference which “reaffirms that all peoples and individuals constitute one human family, rich in diversity, and that all human beings are born free and equal in dignity and rights; and strongly rejects any doctrine of racial superiority along with theories which attempt to determine the existence of so-called distinct human races;”

• that States provide sufficient and adequate human, technical, and financial resources to establish or strengthen national institutions or mechanisms to collect, compile, analyze, disseminate and publish reliable ethnically disaggregated data and indicators; and
• that States fully cooperate with and involve the civil society in the collection of ethnically disaggregated data and indicators.