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## Human Rights Council

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**Annual report of the United Nations High Commissioner  
for Human Rights and reports of the Office of the  
High Commissioner and the Secretary-General**

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

## **The incompatibility between democracy and racism**

### **Report of the United Nations High Commissioner for Human Rights**

#### *Summary*

The present report, submitted pursuant to the Human Rights Council resolution 18/15 provides information on constitutional and legal measures to prevent racism, racial discrimination, and xenophobia, and on actions and procedures to address violations of human rights stemming from the rise of racism and xenophobia in political circles and society at large, especially with regard to their incompatibility with democracy. It also provides information on efforts to reflect multicultural diversity in political and legal systems within societies through promoting diversity, to improving democratic institutions, making them more participatory and inclusive.

The report contains information from Member States, the United Nations, human rights treaty bodies and special procedures.

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## I. Introduction

1. In its resolution 18/15 on the incompatibility between democracy and racism of 14 October 2011, the Human Rights Council recalled the commitment reached in the Vienna Declaration and Programme of Action concerning the elimination of racism, racial discrimination, xenophobia and related intolerance. The Council further recalled its decision 2/106 of 27 November 2006 and Commission on Human Rights resolutions 2000/40, 2001/43, 2002/39, 2003/41, 2004/38 and 2005/36 on the incompatibility between democracy and racism. The Council acknowledged the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference. It reaffirmed that acts of racial violence do not constitute legitimate expressions of opinion but unlawful acts, and any endorsement by Government or public authorities of racism and discrimination violates human rights and may threaten democracy, endanger friendly relations and cooperation among nations, international peace and security and the harmony of persons living side by side within the same state. In paragraphs 3 and 4, the Council emphasized that democracy, transparent, responsible, accountable and participatory governance and respect to human rights and fundamental freedoms are essential for the prevention and elimination of racism, racial discrimination, xenophobia and related intolerance and, by extension, the elimination of all forms of discrimination would contribute to strengthening and promoting democracy and political participation.

2. In paragraph 16 of its resolution 18/15, the Council invited the High Commissioner for Human Rights to report to the Council at its twenty-first session on the implementation of the resolution. This report is therefore submitted pursuant to resolution 18/15 of the Council. In order to include the broadest number of contributions in her report, the Office of the High Commissioner for Human Rights by a note verbale dated 12 March 2012 transmitted an eight-point questionnaire to Permanent and Observer Missions to the United Nations in Geneva soliciting information on different aspects of resolution 18/15.

3. The current report contains information received from Member States as well as input from the United Nations human rights mechanisms, special procedures and treaty bodies on related activities.

## II. Contributions received

### A. Members States

#### Azerbaijan

[Original: English]

[10 May 2012]

4. Azerbaijan reported that its Constitution guaranteed the rights of national minorities and prohibited discrimination on grounds of ethnicity, language or religion. Dissemination of ideas based on racial hatred or superiority was punishable under the law. Azerbaijan was a member of the Council of Europe, a signatory to the Framework Convention of the Council of Europe for the Protection of National Minorities, and the European Charter for Regional or Minority Languages. Under the auspices of its cooperation programme with the Council of Europe, the Government had implemented several programmes on intercultural and interreligious dialogue aimed at improving multicultural teaching and developing educational curricula. The Government also reported that national minorities were allowed to establish their cultural centres and receive support through public funding. The Ministry of Education, in collaboration with national and international non-governmental

organizations (NGOs), had invested in preventing and combating racism and racial discrimination and undertaken several public awareness initiatives. National minorities were well represented in State agencies and in top management of local authorities in areas where they constituted a substantial part of the population.

## **Brazil**

[Original: English]

[7 May 2012]

5. Brazil reported that equality was enshrined as a fundamental constitutional principle and racism was criminalized under articles 3, 5 and 7 of the 1988 Constitution, which also permits affirmative action under articles 215 and 216. The constitutional provision on racism was complemented by Law No. 7716/1989 and Law No. 9459/1997.

6. Brazil reported that the fight against racism and racial discrimination had been incorporated as a cross-cutting element in the formulation and implementation of domestic policy initiatives and transformed into an underlying component of State strategy. Affirmative action measures required under the law had been established at various levels of governance to ensure multiculturalism in the political and legal spheres.

7. Extremist political parties, movements and platforms were subject to judicial and administrative control through various agencies, namely, the Office of the Public Defender and the Office of the Federal Public Prosecutor. The two administrative control bodies were linked to the Secretariat for Policies on the Promotion of Racial Equality, namely the Office of National Ombudsman for the Promotion of Racial Equality (Ouvidoria Nacional de Promoção da Igualdade Racial) and the National Council for the Promotion of Racial Equality (Conselho Nacional de Promoção da Igualdade Racial).

8. Since 2010, Brazil had undertaken a number of awareness and education campaigns and institutionalized the National Policy on the Promotion of Racial Equality through enactment of the Racial Equality Statute. There was an interministerial multi-year plan to confront racism and promote equality. The National System for the Promotion of Racial Equality (Sistema Nacional de Promoção da Igualdade Racial) was currently under finalization, which once established would facilitate the decentralizing of policies to address ethnic disparities in an articulated manner between the different levels of Government. The Intergovernmental Forum on Promoting Racial Equality (Fórum Intergovernamental de Promoção da Igualdade Racial) was also established to facilitate the mainstreaming of the National Policy for the Promotion of Racial Equality in the programmes of states and municipalities.

9. In its submission, Brazil stated its belief in the Durban principles recognizing racism, racial discrimination, xenophobia, and related intolerance as global phenomena that affected all nations albeit with different levels of intensity. Recognition of the existence of racism was the first step towards correcting past mistakes and combating modern-day racial prejudice. Social justice for victims of intergenerational racism required a three-pronged approach: rights and historical recognitions, material and symbolic redistribution, and political and legal representation in the public sphere. A key challenge remained addressing structural conditions that permitted racism and racial discrimination against Afro-descendants.

10. Brazil highlighted the following priorities as proposed by the Ibero-American Conference on the International Year of Afro-Descendants (Encuentro Iberoamericano del Año Internacional de los Afrodescendientes – Afro XXI), held in Brazil in November 2011, namely the establishment of the Observatory for Statistical Data on Afro-Descendants in Latin America and the Caribbean, the creation of an Ibero-American Fund for Afro-Descendants based on voluntary contributions, and the establishment of an Afro-

Descendant Forum in the United Nations to serve as a mechanism for consulting, coordinating, tracking and monitoring for Afro-descendants.

## Germany

[Original: English]  
[18 April 2012]

11. In its submission, Germany reported that the Basic Law of the Federal Republic of Germany enshrined the equality of all before the law and prohibited discrimination on account of sex, parentage, race, language, homeland and origin, faith, or religious or political opinions. That was complemented by the General Equal Treatment Act which extended protection against discrimination to a number of private law fields as well as to public employment.

12. Section 86 of the Criminal Code criminalized dissemination of propaganda by unconstitutional organizations. The crime of incitement (section 130), which also covered incitement to racial hatred, was one of the most important provisions in the Criminal Code for combating right-wing extremism and xenophobia. Organizations based on racist ideas or which justified or attempted to foster racial hatred and racial discrimination faced criminal prosecution under sections 129 and 129a of the Criminal Code.

13. Germany reported that its laws prohibited political parties and groups that fall short of constitutional requirements. Under the Basic Law (art. 9) and the Law on Private Associations, societies and associations other than political parties may be banned when the competent authority determines that its aims or activities contravene the criminal law or are directed against the constitutional order or against the concept of international understanding.

14. German authorities had adopted a multidimensional approach in combating racism, xenophobia and right-wing extremism. Measures intended to counter the activities of right-wing extremists were complemented by efforts to address the root causes of extremism. Emphasis was placed, for instance, on financing local initiatives to strengthen democratic civil society and improving the situation of minority groups.

15. Germany reiterated its belief in the free, democratic basic order and a rejection of extremism and racism in all forms. Germany reported that its strategy against extremism, combines preventive and punitive elements. That was based on four pillars of intervention thus: strengthening civil society, encouraging people to have the courage to stand up for their convictions, promoting the integration of foreigners, and implementing measures directed at perpetrators and their environment.

## Greece

[Original: English]  
[20 April 2012]

16. Greece reported that its constitutional law provided for the protection of life, dignity and freedom without discrimination due to nationality, race, language and religious or political beliefs. Incitement to racial hatred and violence, establishment or participation in organizations with racial objectives or that engaged in racial propaganda and official expression of racist ideas were criminalized. Racial motives were considered an aggravating factor when evaluating the penal value of a crime. Certain bodies were established by law to deal with labour-related discrimination, including the Ombudsman, the Labour Inspectorate and the Committee of Equal Treatment. To facilitate integration, foreigners legally resident in Greece were permitted to take part in local elections and the process of naturalization by third and second-generation immigrants had been simplified. A

municipal-level Migrant Integration Council existed to assist migrants. Greece also reported that it had taken measures to protect vulnerable groups against racism including the establishment of the SOS telephone hotline and email to provide information round-the-clock to immigrants in different languages. That work was complemented by several Government-funded projects implemented by departments or NGOs aimed at supporting vulnerable immigrant groups. The Ministry of Justice, Transparency and Human Rights was currently developing a system for collection of data on hate crimes. Beyond the statutory requirement for political parties to affirm under oath that their operations served the free functioning of democracy, the State was not permitted to intervene in their internal affairs.

### **Japan**

[Original: English]

[17 April 2012]

17. According to information provided by Japan, its Constitution guaranteed equality to all and prohibited any form of “discrimination in political, economic or social relations because of race, creed, sex, social status or family origin”. Racist or xenophobic attacks were not specifically outlawed but offences might be punishable as defamation, intimidation or violence occasioning bodily harm. The human rights organs of the Ministry of Justice addressed violations of human rights in accordance with the Investigations and Treatment Regulations of Human Rights Infringement Incidents and the Civil Liberties Commissioners Law. Human Rights Counselling Offices for Foreign Nationals existed in Tokyo, Osaka, Nagoya, Hiroshima, Fukuoka, Takamatsu, Kobe and Matsuyama to provide human rights assistance to foreigners and respond to complaints against discrimination.

18. The right to participate in the political process was guaranteed to all nationals in accordance to law and without discrimination due to race or ethnicity. The human rights organs of the Ministry of Justice undertook a variety of awareness activities based on the Basic Plan for the Promotion of Human Rights Education and Encouragement, including issuance of posters, leaflets and organization of promotional activities, symposia and debates.

### **Madagascar**

[Original: French]

[18 May 2012]

19. Madagascar noted that the preamble of its Constitution recognized the International Bill of Human Rights, the African Charter on Human and Peoples’ Rights, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child, which were considered to be an integral part of Madagascan law. The Constitution also recognized that international treaties and agreements, which have been lawfully ratified or approved, shall, as from their publication, have higher authority than national laws. That entailed that Madagascan law was in conformity with the provisions of article 1 of the Convention on the Elimination of Racial Discrimination.

20. Madagascar referred to article 8 of its Constitution, which provided that citizens were equal before the law and enjoyed the same fundamental freedoms under the protection of the law without discrimination on the basis of sex, level of education, financial situation, origin, race, religious belief or opinion, and to article 14 which enunciated the freedom to create associations and political parties, except for those which undermined the unity of the nation or advocate totalitarianism or ethnic, tribal or religious segregation.

**Mexico**

[Original: Spanish]

[24 April 2012]

21. Mexico reported that racism and racial discrimination was prohibited under article 1 of the Constitution and article 4 of the Federal Law for prevention and elimination of discrimination. In its submission, Mexico conceded that it faced structural problems in sufficiently developing institutions to fight racial discrimination. While the Penal Code did not cover discrimination, the trend among State-level institutions was towards criminalization. The Government was still working on developing a national penal definition of racial discrimination.

22. The National Council to Prevent Discrimination had been created in 2003 to assist in realization of the protection against discrimination and to promote inclusion. The Council had developed guidelines for public administration and the promotion of the equal treatment and inclusion of the Afro-descendants.

23. The Constitution provided for a multicultural society and the National Institute for Indigenous Languages had been established with the objective of protecting and developing indigenous languages. Mexico reported that it had realized the need to develop a national legal framework to promote and protect Afro-descendants. The adverse effects on immigrant and indigenous peoples of the activities of organized criminal groups remained a challenge. Mexico also reported that it had commenced a legal assistance programme to protect its citizens living across the border from discrimination. Several initiatives had been undertaken to create awareness specifically in three areas, namely research, educational and public activities. Mexico concluded by underlining that a democratic society was impossible without real and effective inclusion of all groups. That could be achieved through deepening cooperation and a strong policy of multiculturalism. The most effective solutions must include recognition of the identity of the constituent ethnic nationalities, social awareness and recognition of the contributions of the ethnic groups, investigation and analyses of the situation of the groups, inclusion of all groups on an equal basis in the process of nation-building, training for public servants and law enforcement personnel on the specific needs of the different ethnic groups, combating racism and racial discrimination in the media and public places and promotion of citizen participation in governance.

**Norway**

[Original: English]

[24 April 2012]

24. Norway reported that its domestic laws complied with the prohibition of discrimination under the International Convention on the Elimination of Racial Discrimination, which was also fully incorporated in the Norwegian Anti-Discrimination Act. The latter prohibited direct and indirect discrimination. Norwegian anti-discrimination laws avoided the use of race, which was seen as anachronistic since human race could not be divided into races. Discrimination based on perception of race was already fully covered within the meaning of ethnicity in the Anti-Discrimination Act. The anti-discrimination legislation was enforced by the Equality and Anti-Discrimination Ombud and the Norwegian Equality Tribunal. Extremely serious forms of discrimination were criminalized and enforceable by prosecuting authorities. Norway also reported that its Action Plan to promote equality and prevent ethnic discrimination during 2009–2012 incorporated 66 different measures with the engagement of 8 Government ministries. The Government of Norway had taken measures to promote the increased participation of persons with immigrant backgrounds in the electoral process. They included public awareness activities and other specific measures, including recruitment of employees with minority

backgrounds and strengthening diversity training of Government personnel. The Directorate of Integration and Diversity had developed a tool box with methods and knowledge to assist public agencies in adapting their services to the multicultural population. Norway also reported that it had taken action to prevent radicalization and violent extremism through its adoption of the Government's Action Plan to promote equality and prevent ethnic discrimination. The Action Plan focused on four priority areas, knowledge and information, strengthening cooperation between the authorities, strengthening dialogue and greater involvement and support to vulnerable and at-risk persons. Norway also reported that its laws did not regulate the internal organization of political parties.

25. Norway had also taken several measures to raise awareness on racism and discrimination, including the Benjamin Award, given annually to a school that had distinguished itself in countering racism and discrimination. Finally, Norway reported that racism posed challenges to democracy and democratic institutions. Legal protection was necessary but not sufficient in itself to ensure equality. All sectors of the society had a role in promoting equality and preventing discrimination.

### **Paraguay**

(Original: Spanish)

[24 April 2012]

26. Paraguay reported that discrimination was prohibited under article 46 of its Constitution requiring measures to be taken under the law to ensure equality for all. The Criminal Code provided for the prosecution of crimes motivated by racial hatred including genocide. Although there was no ministry for human rights, as was the case with most countries in the region, the Government worked with regional mechanisms like the Meeting of High Authorities on Human Rights and Foreign Ministries of the Common Market of the South (MERCOSUR), through working groups that met regularly, to coordinate and promote regional action to combat discrimination, racism and xenophobia. The Government also worked with the human rights network, which brought together various groups and recently launched a national human rights plan to address among other issues racial discrimination. The Constitution also provided special protection for indigenous peoples, safeguarding their culture and access to economic and social life. In its submission, Paraguay noted that it had no knowledge of extremist groups in the political and social spheres. However, it continued to face challenges in implementing the protection granted indigenous peoples under Article 65 of the Constitution to guarantee their full participation in political life and economic and social development.

### **Peru**

[Original: Spanish]

[26 April 2012]

27. Peru reported that its Constitution prohibited discrimination on the grounds of origin, race, sex, language, religion, opinion, economic condition or any other reason. The Penal Code covered discriminatory acts on the basis of race, religion, sex, affiliation, age, disability, language, ethnic and cultural identity, political opinion or economic condition, and all the acts having the effect of denying the recognition, enjoyment or exercise of the individual rights. Recently, there has been an inclination to extend the understanding of discrimination to also cover acts to exclude or accord inferior treatment to a person or a group of persons because of their social group, limiting opportunities to realize their rights. Applicable laws provided penal, administrative and moral sanctions for discriminatory acts. In its effort to address racism in political circles and in the sphere of public opinion, Peru had declared 2012 as a "Year of National Integration and Recognition of our Diversity",



aiming to affirm the values of integration and multiculturalism. In its submission, Peru also reported that its constitution specifically protected ethnic and cultural plurality and the political system provided for quotas for women, young and indigenous peoples to ensure their participation in the political process. Political parties were required by law to preserve peace, freedom and to protect human rights. The ministries of Justice, and Culture and the Ombudsman had organized several workshops, events and campaigns to raise awareness about discrimination and racism.

## Portugal

[Original: English]  
[3 May 2012]

28. Portugal reported that racial discrimination was prohibited by law and criminalized. There was a legal framework for ensuring equal treatment and combating discrimination on the basis of race and ethnicity. Anyone convicted of founding an organization aimed at or engaged in organized propaganda or incitement to racism or racial hatred was liable to imprisonment and could be deprived of participation in the electoral process. In cases of homicide where racial hatred was involved it was considered an aggravating factor implying a more severe penalty. Administrative bodies that dealt with cases of racial discrimination against public authorities were the Commission for Equality and Against Racial Discrimination and the Ombudsman.

29. Portugal had been ranked second for two consecutive years among 31 developed countries for its policies in the area of integration of migrants by the Migrant Integration Policy Index, sponsored by the European Commission. The Alto Comissariado para a Imigracao e Dialogo Intercultural or National Immigrant Support Services (ACIDI) was responsible for, among other competences, combating racism, promoting the integration of immigrants and Roma communities and promoting intercultural dialogue.

30. Portugal reported that extremist political parties had not made any significant inroads in the political arena demonstrating a lack of support by the electorate. However, the Criminal Police, National Republican Guard and Public Security Police undertook preventive and public order measures to deter manifestations of extremism.

31. All political parties with parliamentary representation and their members were required to comply with the law at the risk of prosecution. Portuguese law recognized citizens' participation in political activities and prohibited the denial of membership in a political organization on grounds of place of origin.

32. Portugal reported that it had undertaken several public awareness initiatives and established bodies to promote diversity and intercultural dialogue and combat racial stereotypes and prejudices. One of those bodies, the Entreculturas Board, had been created to facilitate integration in the education sector. Programmes had also been developed on diversity for personnel in different sectors and trainers teams established to undertake public awareness campaigns and promotion activities on integration nationwide. Radio and television programmes had also been developed to facilitate the integration of immigrant communities.

33. Portugal reported that it had adopted policies to promote awareness of human rights and intercultural dialogue among journalists. Through those initiatives, ACIDI in collaboration with the Journalists Training Centre promoted specific workshops on migration issues for media professionals. Additionally, the Annual Journalism for Cultural Diversity had been established to reward any journalist who provided the most positive image of immigrants and/or intercultural dialogue.

34. Portugal observed that economic crisis had a potential to stoke racial tension and harmful nationalistic tendencies. A strong investment in education and intercultural dialogue complemented by a policy to create and sustain national awareness of the absolute value of human dignity and commitment to foster these values within national social consensus would greatly contribute to addressing prejudice.

### **Republic of Korea**

[Original: English]

[20 April 2012]

35. The Republic of Korea noted that although its Constitution did not specifically exclude discrimination on the basis of race, the jurisprudence of its Constitutional Court and practice had clarified that the constitutional provision against discrimination was open-ended and covered racial discrimination. The laws also recognized affirmative action as evidenced in article 2, paragraph 4, of the National Human Rights Commission Act. The Act also recognized certain remedies in cases of discrimination, including suspension or termination of the discriminatory act, restitution, compensation for damages and preventive measures to avoid a recurrence. The Republic of Korea did not have any specific laws for the criminal prosecution of racism and racial discrimination. As a result, such crimes were covered under related provisions of the Criminal Act, for instance, incitement to racial hatred or propagation of racial superiority is punishable under articles 307 and 311 of the Criminal Act as an act of defamation or as an act of insult respectively. Violent acts motivated by racial discrimination were punishable under chapter 25 of the Criminal Act as crimes of inflicting bodily harm and violence. Since the Criminal Act stipulated that the motive for the commission of the crime should be taken into consideration in determining the penalty for a crime, judges might consider racial discrimination as an aggravating factor when evaluating the penal consequences of a crime.

36. The Republic of Korea had taken measures to provide opportunities for foreigners in the public service through the establishment of a special recruitment process. Under article 26, paragraph 3, of the State Public Officials Act, foreigners could be appointed to political or privileged positions. In accordance with article 5 of the Local Referendum Act, foreigners aged 19 or above could also vote in local elections from the third year of acquisition of permanent residence status. The Government had established a monitoring system to respond to discriminatory practices on the grounds of race or nationality in accordance with the Basic Plan for Policies on Foreigners.

37. As recommended by the Committee on the Elimination of Racial Discrimination during the consideration of its thirteenth and fourteenth periodic reports of the Republic of Korea (CERD/C/KOR/CO/14), the Government had taken measures to strengthen human rights education, stressing the importance of respecting human integrity regardless of race, colour, sex, or religion. As part of those efforts, the Government had designated human rights education and multicultural education as curricular subjects for primary and secondary education. The Government had also published and distributed teaching materials to supplement primary and secondary textbooks, helping students get a better understanding of human rights and the history and culture of diverse ethnic groups. The Republic of Korea had also expanded teacher training programmes to improve teachers' understanding of children from multicultural backgrounds and to raise their awareness of multicultural education, including through inviting parents of multicultural backgrounds to lecture on multicultural understanding. The Legal Research and Training Institute and the Human Rights Bureau of the Ministry of Justice provide human rights training for law enforcement officers with specific focus on understanding multiculturalism and elimination of racial discrimination.

38. As the Republic of Korea evolved into a multicultural society, the Government had pursued various cultural programmes and projects to heighten the awareness and understanding of multiculturalism. Those have focused on global, national and local audiences.

### Romania

[Original: English]

[27 April 2012]

39. Romania reported that the constitutional prohibition of racial discrimination was complemented by Government Ordinance No. 137/2000 on preventing and punishing all forms of discrimination. Additionally, incitement to discrimination was criminalized and the law allowed judicial authorities to consider racial motivation for a crime as an aggravating factor in sentencing. Emergency Ordinance No. 31, adopted in 2002, prohibited organizations and symbols with fascist, racist or xenophobic character or policies. By the same token, the Audiovisual Law No. 504/2002 prohibited broadcasting programmes, which contained any form of incitement to hatred on grounds of race, religion, nationality, gender or sexual orientation. The Government of Romania annually allocated funds in support of inter-ethnic projects aimed at combating intolerance and had supported awareness-raising initiatives through the Department for Inter-ethnic Relations.

40. Building on the experience of a decade-long initiative to improve the status of the Roma, the Government had adopted in 2011 a national strategy for improving the situation of Roma for the period 2011–2015. The strategy was implemented by the National Agency for Roma. Specific efforts to integrate the Roma had included reserved places at the Police Academy, schools and universities.

41. A critical component of the effort to develop an inclusive society is the National Strategy for Implementing Measures on Preventing and Combating Discrimination (2007–2013) designed by the National Council for Combating Discrimination (NCCD). The Romanian political system was unique in providing a mechanism that allowed the representation of all 20 national minority groups in parliament. Law No. 14/2003 on political parties prohibited groups that propagated ideologies based on discrimination. The Code of Conduct for Civil Servants, approved by Law No. 7/2004 as modified by Law No. 50/2007, codified the principle of equal treatment for all citizens by public institutions and authorities. Additionally, the educational system was organized on the basis of respect for human rights and equal access to all without discrimination of any kind.

42. Romania also reported that its Law No. 116/2001 on the processing of personal data prohibited processing of personal data related to ethnicity except under explicit situations allowed by law. The main political parties functioned on the basis of statutes and internal regulations developed in full respect of democratic principles. Incidents of racial incitements by political parties or their officials had been criticized both internally and by civil society groups or NCCD.

43. NCCD had undertaken several public awareness initiatives, while targeted sanctions against public officials in high profile cases had added to increasing awareness of its role. Informational booklets and folders had been developed in collaboration with Romanian Football Association, Professional Football League, Press Monitoring Agency and European Roma Grassroots Organization within the framework of the annual campaigns against racism in football.

44. Romania concluded that combating racism and intolerance was the backbone of any genuine democratic society. Preventing discrimination was only possible with a comprehensive anti-discrimination legislation, efficient institutional framework and administrative and judicial mechanisms to sanction misconduct. That should be

complemented with education and public policies and measures to support an inclusive society. The role of civil society was very critical as was continuing vigilance of Government, since no society was immune to racism and intolerance.

### **Serbia**

[Original: English]

[15 May 2012]

45. Serbia reported that its Constitution prohibited discrimination and its Criminal Code criminalized offences motivated by racist and xenophobic tendencies. The constitutional and penal provisions on discrimination were complemented by the Law on the Prohibition of Discrimination. Offences against individuals or groups on the basis of race or cultural affiliation among others were criminalized and racism was considered an aggravating factor when evaluating the penal consequences of a crime. The Government of Serbia had established multiple mechanisms to address racism in political circles, including the Ministry of Human and Minority Rights, the Council for National Minorities, the Council for the Improvement of the Position of the Roma, the Office for Roma Inclusion in Vojvodina and the Equality Commission. Consistent with constitutional provisions on equality, efforts had been made by the Government to ensure that institutions reflected the cultural diversity of the country. Since 2010, 19 minority self-governing units had been established in exercise of constitutional autonomy for minority groups. As a result of the efforts by the Government, 31 (12.4 per cent) of 250 national deputies were members of minority groups, in a country with a 14.5 per cent minority population. Extremist political organizations were prohibited under the Constitution and, in 2009, the Public Prosecutor had submitted a list of such groups to be outlawed to the Constitutional Court. The Law on Protection of Rights and Freedoms of National Minorities provided that the educational curriculum should include aspects of minority cultures and languages.

46. The Government had undertaken several initiatives to raise awareness including an anti-discrimination campaign during May to August 2010, and a television series “Come Closer” broadcast on the national network from February to May 2010. The Government helped police officers deployed in minority or multilingual environments to study the languages spoken in their areas of assignment. According to Serbia, a major challenge to democracy by racism was the increased activities of nationalist organizations using the Internet and other social media. Efficient and timely response of national authorities was critical and the provision of specialized training on cybercrime. International collaboration was crucial in overcoming structural poverty, which was at the root of discrimination against the Roma.

### **Slovenia**

[Original: English]

[20 April 2012]

47. Slovenia reported that its Constitution guaranteed equality irrespective of personal circumstances and its laws prohibited incitement to discrimination and intolerance. Additionally, the laws also criminalized public incitement of racial hatred and allowed courts to consider hate-related motives as aggravation in evaluating penal value of crimes.

48. Slovenia had established several institutional mechanisms to promote and advance equality. Those included the Equal Opportunities and European Coordination Service of the Ministry of Labour, Family and Social Affairs and the Advocate for the Principle of Equality, a specialized national body with a mandate to assist victims of discrimination. There was also the Council for the Implementation of the Principle of Equal Treatment, which operated as an expert and consultative body for ensuring equal treatment.

49. Slovenia had supported several initiatives to create awareness on racial discrimination. Those had included the “equal in diversity” project, which had encompassed an analysis of anti-discrimination measures, a study on labour market discrimination, the training for judges, policymakers, representatives of employees and employers and NGOs, a media campaign and the launching of the Advocate’s website. The website provides information in 10 languages, including minority languages.

50. The two national minorities in Slovenia, Italian and Hungarian national communities, and a special Roma ethnic community enjoyed constitutional protection in accordance with articles 64 and 65 of the Constitution. The residence of the Roma in Slovenia was regulated by the Roma Community Act, which was an organic law providing for national and local authorities to implement the special rights granted to the Roma community, and regulated the financing and the organization of the Roma at national and local levels.

### **Spain**

[Original: Spanish]

[27 April 2012]

51. In its submission, Spain reported that its Constitution protected equality as a right and supreme value under the legal system and required all public institutions to eliminate all obstacles to the full enjoyment of equality and freedom. The constitutional protection was further strengthened by the human rights plan adopted in December 2008, which established measures to prevent any form of discrimination on the grounds of religion, disability, age, sex, sexual orientation, racial origin or other reasons. The Penal Code regulated crimes committed on the grounds of discrimination and required that discriminatory motives for a crime should be considered an aggravating factor in considering the penal value of any crime. The Government had established specialized prosecutorial offices in Barcelona, Madrid, Malaga and Valencia to deal with hate crimes. Spain also reported that it endorsed the recommendations of the Council of Europe and European Union Agency for Fundamental Rights regarding raising the awareness of the populace as a cornerstone of the strategy to address racism and discrimination in political and social circles.

52. In order to ensure real equality and diversity, the Government had adopted a quadrennial strategic plan aiming at addressing racism, racial discrimination and xenophobia especially considering the changes in Spanish society due to the influx of migrants. The first two plans covering the periods 2007–2010 and 2011–2014, respectively, included a management plan for diversity encouraging organizations to adopt a diversity charter to demonstrate their commitment to promoting diversity and to establish “etiquettes and labels of diversity” and prizes to recognize and honour those promoting those values. Several programmes had been developed by the Government to create awareness and promote intercultural education, including, “Schools without racism, schools for peace and development”, in which over 263 Spanish schools had participated. Spain noted that the most effective measures in preventing or combating racism included encouraging public authorities to provide real protection to victims, undertake special activities and promote public awareness.

### **Sweden**

[Original: English]

[20 April 2012]

53. Sweden reported that its Anti-Discrimination Act provided legal protection against discrimination on the grounds of sex, ethnic origin, religion or other belief, disability,

sexual orientation, age and transgender identity or expression. The Swedish Penal Code criminalized discrimination and required that discriminatory motives should be considered an aggravating factor in assessing the penal value of a crime.

54. Combating hate crime had been ascribed a high priority by judicial, prosecutorial and police authorities. The police and prosecutorial authorities had developed guidelines, databases and training manuals to facilitate uniformity of practice in responding to racism and racial discrimination. The State provided funding to NGOs working against discrimination, racism, xenophobia and related forms of intolerance.

55. The languages of five national minorities, Jews, the Roma, the Sámi, the Swedish Finns and the Tornedalers, were recognized as national languages. Additionally, the Sámi were recognized by the Riksdag as only indigenous people of Sweden and as a people by the Constitution. A Sámi Parliament had been in existence since 1993.

56. There are no “ethnic quotas” or equivalent measures in place as regarded representation in the State’s democratically elected assemblies or its legal system. A number of provisions in Swedish law, notably the provisions prohibiting “incitement against a national or ethnic group” and “unlawful military activity” and provisions on conspiracy, preparation, attempt and complicity in crimes, meant that organizations engaged in racist activities could not pursue such activities without breaking the law.

57. A national action plan for safeguarding democracy and fighting violent extremism had recently been adopted for the period 2012–2014 and contained a range of measures to enhance knowledge and awareness of violent extremism, discourage recruitment to violent, extremist groups and help members of such groups to disengage from them. The national action plan also contained measures, which aimed at increasing coherence and cooperation among various Government agencies involved in the fight against violent extremism.

58. The Discrimination Ombudsman and the Forum for Living History undertook a range of measures to fight intolerance and raise awareness of human rights. The Government has recently launched a website aimed at dispelling prejudice and false information, including so-called “Internet myths”, relating to immigration, immigrants and persons belonging to minorities.

59. Sweden noted that freedom of expression, and in particular free and independent media, was a necessary precondition for combating racism and xenophobia. Abuse, wrongdoing and intolerance typically festered in areas less exposed to scrutiny and free debate. A strong legal framework enforced by an independent and efficient legal system was necessary to protect individuals from discrimination, hate speech and other racist crimes. All sections of society had a shared responsibility to combat racism and intolerance, and promote awareness and respect for democracy, human rights and the rule of law.

## **Switzerland**

[Original: French]

[19 April 2012]

60. Switzerland reported that the constitutional provision prohibiting discrimination on grounds of origin, race, language or religious belief was reflected in article 261 bis of the Criminal Code and article 171 (c) of the Military Criminal Code. The law punished anyone who publicly incited hatred or discrimination against people because of their race, ethnicity or religion, violated human dignity, refused to provide a public service or propagated a racist ideology. That provision implied that freedom of expression was not absolute and could be subject to constraints, especially in relation to protecting the dignity and honour of others. The Confederation also takes preventive measures, such as information and

education campaigns. Switzerland was a secular, pluralistic and multicultural society with foreigners constituting over 20 per cent of its resident population.

61. The fight against racism was an ongoing task for the Government and two institutions had been created for this purpose, namely, the Service for Combating Racism and the Federal Commission against Racism. The Service for Combating Racism was the Federal Government's focal point for all matters relating to the fight against racism, anti-Semitism and xenophobia. It played an important role in specialized support, including training and publication and networking. It awarded grants to specifically anti-racist projects. The Federal Commission against Racism is involved in awareness-raising and public relations activities through campaigns, public events, publications and newspaper articles.

### **Trinidad and Tobago**

[Original: English]

[7 June 2012]

62. Trinidad and Tobago reported that, although it had no piece of legislation that expressly defined racial discrimination, its Constitution, provided for the enjoyment of rights without discrimination on grounds of race, origin, colour, religion or sex. Additionally, the Equal Opportunities Act 2000 prohibited discrimination on the basis of race, ethnicity, origin, sex, religion, marital status or disability in the context of employment, education, and the provision of goods and services. The Equal Opportunity Commission and the Equal Opportunity Tribunal respectively investigated or adjudicated cases of discrimination. While penal law did not specifically mention racially motivated crimes, the Offences against the Person Act created penalties for offences some of which may be motivated by racial considerations.

63. Three pieces of legislation were in place to address extremist groups namely, Genocide Act, Anti-Terrorism Act and the Sedition Act. The Prime Minister and the Peoples Partnership Government had emphasized tolerance and cultural and religious awareness within her office and in the wider society. Trinidad and Tobago reported that racist attitudes were learned through acculturation and the family and schools had an important role to play in encouraging acceptance and tolerance.

### **Turkey**

[Original: French]

[3 May 2012]

64. Turkey emphasized its commitment to the fight against all kinds of discrimination, in particular through the incorporation of sound and effective measures into its legislation concerning non-discrimination. Article 10 of the Constitution of Turkey guaranteed equality before the law and acts of discrimination were prohibited and penalized by law.

65. Equality was enshrined in various other laws regulating specific areas of political, social and economic life. Article 8 of the Civil Code enshrined equality in capacity of persons as subject to rights, while article 4 of the Law on Social Services and Child Protection underscored non-discrimination in eligibility to receive social benefits. The Political Parties Law (No. 2820) prohibited political parties founded on regional, racial, communitarian, religious or sectarian grounds and articles 4 and 8 of the Basic Law on National Education stipulated the principle of equality in education, and gender equality and affirmative action, respectively. These provisions were complemented by article 5 of the Labour Law which provided for non-discrimination and equal treatment, as well as article 4 of the Law on Disabled People which stipulated non-discrimination against people with disabilities.

66. Turkey also noted that article 122 of its Penal Code criminalized economic discrimination on the basis of language, race, colour, sex and other reasons, while article 216 provided penal sanctions against inciting the population to breed enmity or hatred or denigration.

67. In addition to judicial remedies, there were also governmental, administrative and parliamentary remedies for individual victims of discrimination, in particular through the Human Rights Presidency at the Office of the Prime Minister, numerous Human Rights Boards at provincial and subprovincial levels and the Human Rights Inquiry Commission of the Parliament. Those bodies investigated complaints and allegations of human rights abuses and, when substantiated, submitted their findings to relevant authorities for action.

## **B. United Nations entities**

### **The Human Rights Council**

68. Since the adoption of its resolution 18/15, the Human Rights Council has continued to pay particular attention to violations of human rights relating to the incompatibility between democracy and racism. Through its Working Group on the Universal Periodic Review, the Human Rights Council had made recommendations to countries under review to eradicate all forms of racism and xenophobia within political circles and society at large in order to strengthen democratic institutions and uphold democratic principles. More specifically, recommendations have been made to reinforce democracy and social dialogue, promote understanding and tolerance between ethnic and racial groups within the political context, take action against racist political parties, political leaders and organizations and advance cooperation between all layers of society.

## **C. Human rights treaty bodies**

### **Committee on the Elimination of Racial Discrimination**

69. The question of the incompatibility of the principles of democracy, especially the freedom of expression and assembly, with racism has been frequently considered by the Committee on the Elimination of Racial Discrimination. Article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination prohibits all propaganda and all organizations which are based on ideas or theories of racial superiority or incite racial hatred and discrimination. In its general recommendation No. 15 (1993) on organized violence based on ethnic origin, the Committee specifically requires States parties to penalize dissemination of ideas based upon racial superiority or hatred, incitement to racial hatred, acts of violence against any race or group of persons of another colour or ethnic origin, and incitement to, or financing of, such acts.

70. The Committee consistently applies article 4 in its consideration of the States party reports. On numerous occasions, the Committee emphasized the special duties and responsibilities of the freedom of expression and iterated the compatibility of the principles of the freedom of expression and assembly with the State obligations under article 4 of the Convention. For instance, during its fifty-seventh session in August 2001, the Committee, while emphasizing the mandatory nature of article 4 of the Convention, expressed that the obligation of the State to prohibit the dissemination of “racist ideas” was compatible with freedom of expression (CERD/C/304/Add.102, para 11).

71. On several occasions, the Committee has expressed its concerns over hate speech or racist remarks by politicians. For instance, during its sixty-ninth session, the Committee specifically raised the concern with a State party on the racist speeches made by politicians



and pointed out that freedom of expression carried specific duties and responsibilities, “in particular the obligation not to disseminate racist ideas, and recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile people on the basis of race, colour, descent, and national or ethnic origin, especially by politicians” (CERD/C/DEN/CO/7, para. 11). More recently, during its seventy-eighth session in 2011, the Committee raised its concern over racist remarks made by a number of representatives of political parties and urged the State party to find the balance between freedom of expression and the need to effectively implement state obligations under article 4 (CERD/C/NOR/CO/19-20, para. 21).<sup>1</sup>

72. In interpreting article 19 of the International Covenant on Civil and Political Rights, the Human Rights Committee has consistently emphasised the “special duties and responsibilities” of the freedom of expression (art. 19, para. 3) in its general comments and concluding observations. Precisely owing to the special duties and responsibilities, certain restrictions on freedom of expression to protect “the interest of other persons or those of the community as a whole” are permitted as long as such restrictions do not jeopardise the right itself.<sup>2</sup> In its general comment No 34 (2011) on article 19, which replaces general comment No. 10, the Human Rights Committee has reiterated the indispensability of the right to freedom of opinion and expression in a free and democratic society and echoed its position on the possible restrictions on the exercise of the right to freedom of expression.

73. The Committee specifically raised the compatible and complementary nature of articles 19 and 20 in the general comment No. 34 and rearticulated the obligation of the States parties to penalize acts listed in article 20, namely war propaganda, and any advocacy of national, racial, or religious hatred that constitutes incitement to discrimination, hostility or violence. Through its concluding observations, the Committee has consistently asked State parties to prohibit hate speech and other acts motivated by racism or xenophobia. For instance, in 2009, the Committee urged a State party to prosecute incitement to national, racial and religious hatred (CCPR/C/CHE/CO/3, para. 10).<sup>3</sup>

74. On several occasions, the Committee has also raised its concerns over hate speeches or racist comments made by political figures and public officers. In 2007, the Committee raised its concern over the persistence of racist and xenophobic speech against Muslims, Jews and ethnic minorities in political and media discourse and urged the State party concerned to “rigorously combat any advocacy of racial or religious hatred, including political hate speech” (CCPR/C/AUT/CO/4, para. 20).<sup>4</sup>

## **D. Human rights special procedures**

### **Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

75. The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance submitted reports both to the Human Rights Council

<sup>1</sup> The Committee also raised the similar concerns in CERD/C/ISR/CO/13, CERD/C/BEL/CO/15, CERD/C/NAM/CO/12, CERD/C/JPN/CO/3-6 and CERD/C/CHE/CO/6.

<sup>2</sup> Human Rights Committee, general comment No. 10 (1983) on freedom of expression, para. 4

<sup>3</sup> See also CCPR/C/HUN/CO/5, CCPR/C/SWE/CO/6, CCPR/C/BGR/CO/3, CCPR/C/CHE/CO/3, CCPR/CO/78/SVK, CCPR/C/TGO/CO/4, CCPR/CO/78/ISR, CCPR/C/RUS/CO/6 and CCPR/C/ESP/CO/5.

<sup>4</sup> Similar concerns were raised in CCPR/C/ITA/CO/5 and CCPR/CO/84/SVN.

(A/HRC/18/44) and General Assembly (A/66/312) on the implementation of Assembly resolution 65/199.

76. He also submitted a report to the Human Rights Council at its twentieth session on the implementation of General Assembly resolution 66/143 on the inadmissibility of certain practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/20/38). In his report, the Special Rapporteur emphasized that preserving and consolidating democracy was essential in order to prevent and combat racism, racial discrimination, xenophobia and related intolerance. He recommended that respect for human rights, democracy and the rule of law should be the cornerstone of any programme or activity developed by political parties, and urged political leaders and political parties to promote multiculturalism, tolerance, mutual understanding and respect within their societies. In that context, the Special Rapporteur emphasized that the Durban Declaration and Programme of Action, the Outcome Document of the Durban Review Conference and the International Convention on the Elimination of All Forms of Racial Discrimination were major comprehensive frameworks to be implemented. The Special Rapporteur also addressed racism and democracy in his annual thematic report to the Human Rights Council (A/HRC/20/33).

77. Furthermore, the Special Rapporteur raised the issue of the human rights and democratic challenges posed by extremist political parties, movements and groups during a country visit where he noted with concern the resurgence of extremist ideas propagated by politicians, public figures and certain groups of individuals who encouraged racial discrimination and incited racial violence, particularly against Roma minorities (A/HRC/20/33/Add.1).

### III. Conclusions

78. **Information from the contributions indicates that, while some countries have specific legislation on racial discrimination, others favour general statutory regulations prohibiting discrimination on grounds of race. By the same token, some States have penal regulations specifically covering racism and racial discrimination, but others generally cover those as incidental to general provisions of the Criminal Code. In some States, racial motivation for a crime is considered as an aggravating factor in evaluating the penal consequences of a crime.**

79. **Some States are by statute required to intervene when political groups overstep bounds, others understand independence of political competition to mean absence of State intervention in the affairs of political parties. Some States have also constitutionally prohibited political groups based on ideas of racial superiority.**

80. **While some States have taken affirmative action measures to secure participation of minorities and groups susceptible to discrimination in the political process, other States rely on general legal provisions that provide for equality for all. Generally, respondent States recognized the need for preventive measures and collaborative action in responding to the threats posed to democracy by racism.**