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КОНФЕРЕНЦИЯ ПО ОБЗОРУ ДУРБАНСКОГО ПРОЦЕССА

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ОРГАНИЗАЦИЯ РАБОТЫ

Письмо Генерального секретаря Совета Европы от 19 декабря 2008 года на имя Верховного комиссара по правам человека, препровождающее доклад Совета Европы, подготовленный для Конференции по обзору Дурбанского процесса

Настоящим препровождаю доклад* Совета Европы, подготовленный для Конференции по обзору Дурбанского процесса, которая состоится с 20 по 24 апреля 2009 года в Женеве. В этом документе содержится всеобъемлющее резюме деятельности Совета Европы за период с 2001 года по осуществлению Дурбанской декларации и Программы действий.

Буду признателен Вам за препровождение настоящего документа Председателю Подготовительного комитета к Конференции по обзору Дурбанского процесса для его рассмотрения в ходе подготовительного процесса.

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Генеральный секретарь Совета Европы

* Воспроизводится в приложении в полученном виде только на том языке, на котором он был представлен.

Annex

**Contribution of the Council of Europe
to the Implementation of the Durban Declaration
and Programme of Action**

**Council of Europe Action to Combat Racism and Intolerance
(2001-2008)**

**Contribution submitted
by the Secretary General of the Council of Europe
to the Durban Review Conference (20-24 April 2009)**

I. Introduction

1. Since the Declaration and Programme of Action of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (WCAR) adopted on 8 September 2001 in Durban, the Council of Europe (CoE) has continued to strengthen its action to combat all forms of racism and intolerance. The purpose of this contribution to the Durban Review Conference, to be held in Geneva on 20-24 April 2009, is to provide a comprehensive picture of action undertaken by the CoE to implement the Durban Programme of Action (DPA).

2. The CoE's contribution to the implementation of the DPA is built upon legal instruments, the action of its different independent monitoring mechanisms in the field of human rights, as well as other activities of the organisation. This action is spearheaded by the European Commission against Racism and Intolerance (ECRI), the CoE's independent human rights monitoring body specialised in the task of combating racism, racial discrimination, xenophobia, anti-Semitism and intolerance within the CoE's member states.

3. The CoE brings to this fight considerable experience and expertise. The fight against racism and intolerance has been at the core of its work since its creation, after the Second World War, with the aim of building a new Europe based on the principles of pluralist democracy, the rule of law and respect for human rights - a Europe free of racism and racial discrimination. It acknowledges that equality and non-discrimination are fundamentally about recognizing each person's equal worth and dignity, as human beings, and as such, at the very heart of the human rights framework.

4. The European Court of Human Rights has recognized that discrimination – in itself a human rights violation - constitutes so great an affront to human dignity in certain instances as to amount, in addition, to degrading treatment prohibited under Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The Court considers that discriminatory treatment can constitute a violation of Article 3 where it indicates "contempt or lack of respect for the personality of individuals."[i].

5. CoE action in this area adopts as its starting point a broad and evolving concept of racism. This encompasses overt forms of racism, such as segregation, Nazism or racially motivated violence, as well as other forms of racism which can occur in more subtle, but nonetheless

harmful forms, such as verbal expressions of intolerance or indirect forms of discrimination. CoE actions also encompass manifestations of racism aimed at individuals or groups based upon a broad catalogue of grounds including not only race, colour and national or ethnic origin, but also language, religion and nationality.[ii] Furthermore, the CoE is keenly aware that racism constantly mutates, taking on new forms in different contexts at different times, and therefore seeks to ensure that its actions cover all of the contemporary forms.

6. ECRI has noted many positive developments in European states in recent years, especially as concerns strengthening legislation aimed at providing protection against discrimination and establishing specialised bodies to combat racism and racial discrimination, which facilitate implementation of this legislation and carry out important work building awareness and providing advice on regulations and policies in this area. Many European states have also developed other measures to combat racism, including national action plans to improve the situation of Roma. However, ECRI has also noted that widespread problems persist, as will be highlighted in this contribution.

7. A salient feature of CoE actions to combat the problems of racism and racial discrimination is that it consistently approaches them from the perspective of protecting and promoting human rights and therefore ensuring that states meet their obligations in this area. These obligations involve on the one hand avoiding racism and discrimination. And, on the other hand, ensuring that individuals are adequately protected against racism and discrimination by non-state actors, and that all the necessary actions - legislative, political, administrative and judicial are taken to ensure that in practice individuals may fully realise equality and be free from discrimination and racism. The CoE uses all means available to it in the legal, political, social, cultural and educational fields to promote full respect and implementation of these obligations by its member states.

8. A clear illustration of CoE's human rights-based approach to combating racism and related intolerance is given by the work of the Council of Europe Commissioner for Human Rights (CHR). The Commissioner regularly assesses measures states have taken to implement the DPA, such as the national legal framework (e.g. legislation against all forms of discrimination and penal provisions against incitement to hatred and other hate crimes); the availability of data on manifestations of racism and discrimination; access to and effectiveness of remedies as well as national action plans and other measures in this field. The Commissioner insists that the fight against discrimination and hate crimes must be comprehensive and include all relevant grounds of discrimination including race or ethnic origin, gender, religion or belief, age, disability, sexual orientation, gender identity or other such ground as well as multiple forms of discrimination.

II. Victims of racism, racial discrimination, xenophobia and related intolerance

9. Part II of the DPA focuses on actions to combat manifestations of racism, xenophobia and racial discrimination which are directed at specific groups of victims.

10. In cases where the specific situation and problems of particular groups require tailored actions, the Council of Europe carries out activities which target the needs of these groups. However, it simultaneously seeks to maintain a holistic approach to the fight against

racism and discrimination, whereby the various efforts to combat specific manifestations of racism and discrimination are mutually reinforcing. The CoE is careful to avoid fragmenting the fight against racism with parallel actions whose paths never cross or presenting one form of racism and discrimination as more worthy of concern than another. It therefore ensures that there is coherence and linkage between actions oriented towards specific victims and the overall fight against racism and racial discrimination and that all of its actions are in accordance with the general principle of the equal dignity of all human beings.

Africans and people of African descent

11. Anti-black racism remains an important problem in many European countries and does not receive sufficient attention. It manifests itself as discrimination in different fields of life, such as employment, law enforcement, housing and sport. In its 2007 Annual report ECRI notes that black people are not only victims of racism because of the colour of their skin, but also because they are immigrants, asylum seekers or refugees, or sometimes for reasons of religious intolerance towards them. ECRI regularly investigates such racism and discrimination in its country monitoring. It especially recommends recognition of this specific problem and measures to ensure full application of anti-racist and anti-discrimination legislation in all fields.

Roma, Travellers and Anti-Gypsyism

12. Racism and discrimination targeting Roma and Travellers is one of the most widespread, persistent, complex and deep-rooted problems in Europe. It is also one of the most difficult problems to address. Since the WCAR, the Council of Europe has continued to document these problems; called attention to the urgent need to combat them; set clear legal standards and policy guidelines focused specifically on Roma and Travellers; developed pedagogical material and tools[iii]; carried out education and awareness raising activities aimed at fighting against anti-Gypsyism; and supported Roma empowerment measures.

13. The Committee of Ministers of the CoE has adopted numerous Recommendations for improving the situation of Roma and addressing specific problems (access to health care, housing conditions, movement and encampment, economic and employment situation, education).[iv] The most recent Recommendation is of a general nature and stresses "that discrimination and social exclusion can be overcome most effectively by comprehensive, coherent and proactive policies targeting both the Roma and the majority, which ensure integration and participation of Roma and Travellers in the societies in which they live and respect for their identity."[v]

14. ECRI regularly examines the specific situation of Roma in its country-by-country monitoring work and makes recommendations to authorities for combating the racism, discrimination, hostility and intolerance faced by members of these groups. These recommendations reflect the specific situation which ECRI documents in each country as well as its expertise as to the kind of measures which are necessary to effectively combat these problems. In its third cycle of country monitoring, undertaken from January 2003 until December 2007, covering all 47 member states, aspects of the situation of Roma are

covered in reports on 36 member states and constitute "an issue of particular concern" in 19 reports. The main subjects on which ECRI made Roma-specific recommendations in these reports are national action strategies; problems encountered by Roma communities in various fields of life; participation in public life; the situation of Roma at the local level; the situation of Roma in the education sector; the situation of Roma in the housing sector; access to personal documents; access to health care; access to employment; access to social welfare; conduct of law enforcement officials; cultural identity; awareness-raising; and data collection.

15. In 2006, the Council of Europe Commissioner for Human Rights (CHR) published a thematic report on the human rights situation of the Roma, Sinti and Travellers in Europe. This report addressed major human rights concerns regarding the Roma in Europe while underlining their seriousness and the necessity to take urgent action to improve the situation. Under each section – discrimination in housing, education, employment and health care, racially-motivated violence and relations with law enforcement authorities, issues related to asylum, displacement and trafficking in human beings – the Commissioner made recommendations to member states as to the type of action required. While most country reports of the CHR include an assessment of the situation of Roma, the CHR has also carried out special visits to member states to address emergencies faced by Roma followed by recommendations to the government concerned for remedying the situation. The Commissioner has highlighted the fact that the discrimination experienced by Roma, Sinti and Travellers is aggravated by multiple forms of discrimination such as gender discrimination.

16. In 2007, the European Court of Human Rights gave a landmark decision in the case of DH and Others v Czech Republic finding that the disproportionate number of children of Roma origin in special schools for children with learning disabilities amounted to indirect discrimination in violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 2 of Protocol No.1 (right to education).[vi] The problem of channelling Roma children into schools for children with mental disabilities or other forms of segregated schooling exists in several European countries. With this decision, the Court has made clear that this is illegal and that European states have an obligation to put an end to such discrimination against Roma in education.

17. In 2002, following the WCAR, the CoE's existing Group of Specialists on Roma/Gypsies (MG-S-ROM) expanded its areas of responsibility to include Travellers and was renamed Committee of Experts on Roma and Travellers. MG-S-ROM provides recommendations and advice which have assisted governments and public bodies to develop legislation, policies and strategies to improve the situation of Roma and Travellers. The CoE Division on Roma and Travellers, which co-ordinates MG-S-ROM, also provides member states with expertise in adopting and implementing national strategies for Roma. These strategies or programmes now exist in more than 20 European countries, many of them adopted at the instigation and with the assistance of the CoE. The Division has also been very active in capacity-building of national Roma NGOs in several member states.

18. In December 2004 a special Partnership Agreement was signed between the CoE and the newly created European Roma and Travellers Forum - an organisation representing Roma

and Travellers across Europe. The Agreement provides for a CoE contribution in terms of funds and human resources and enables the Forum to have a privileged relationship with these sectors of the organisation dealing with issues relevant to Roma and Travellers.

19. During 2006 and 2007 the Council of Europe, together with the European Commission, carried out the Dosta! awareness-raising Campaign in five South Eastern European countries to address anti-Gypsyism and build bridges between Roma and the majority society. In 2008 the Campaign was extended to other countries.

Muslims and Islamophobia

20. In its 2007 Annual report ECRI noted that it was "concerned by the continuing climate of hostility towards persons who are Muslim or are perceived to be Muslim, and deplores the fact that Islamophobia continues to manifest itself in different guises within European societies. Muslim communities and their members continue to face prejudice, negative attitudes and discrimination. The discourse of certain political figures or some of the media contributes to this negative climate, which can sometimes lead to acts of violence against Muslim communities."[vii] The climate of opinion with respect to Muslims in Europe has been particularly affected by the "fight against terrorism". ECRI's third cycle country monitoring reports frequently discuss racism and discrimination directed against Muslims and recommend that authorities take action to address these problems. ECRI's General Policy Recommendation No.5 concentrates on "Combating Intolerance against Muslims" and provides detailed guidelines on this subject.

Jews and anti-Semitism

21. During recent years ECRI has continued to document an increase in violent acts of anti-Semitism and the spread of new manifestations. Its country reports consistently examine anti-Semitism. ECRI's General Policy Recommendation No.9 (GPR 9) on the fight against anti-Semitism is the first European legal instrument on this specific subject. GPR 9 notes that new manifestations "have often closely followed contemporary world developments such as the situation in the Middle East". It also underlines that "these manifestations are not exclusively the actions of marginal or radical groups, but are often mainstream phenomena, including in schools, that are becoming increasingly perceived as commonplace occurrences." In GPR 9, ECRI notes that it is: "Profoundly convinced that combating anti-Semitism, while requiring actions taking into account its specificities, is an integral and intrinsic component of the fight against racism."[viii] A considerable part of GPR 9's guidelines sets out the anti-Semitic acts which ECRI believes should be addressed through criminal law.

Migrants and refugees

22. Under the European Social Charter (ESC), Article 19 protects the rights of migrant workers. One of the obligations under Article 19(1) is that states must take measures to prevent misleading propaganda relating to immigration and emigration. According to the case law of the European Committee of Social Rights (ECSR), which monitors compliance by states with their obligations under the ESC, for action against misleading propaganda to be effective, it should include legal and practical measures to tackle racism and xenophobia

as well as trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States must also take measures to raise awareness amongst law enforcement officials, including officials who are in first contact with migrants.

23. The Parliamentary Assembly has paid particular attention to the issue of rights of irregular migrants and in 2006 adopted Resolution 1509 on Human Rights of Irregular Migrants, emphasising the need to strengthen, in particular, the economic and social rights of this vulnerable group of persons. The Assembly followed up this issue in 2007 by adopting Resolution 1568 on Regularisation Programmes for Irregular Migrants, highlighting that the many millions of irregular migrants in Europe should not be left in the shadows of society, facing an uncertain future and exploitation, when there were no reasonable expectations of their return to their countries of origin. The Assembly is currently examining the difficult situation of "Europe's boat-people", the reception conditions offered to them and the conditions in which they are detained. A Resolution is scheduled to be adopted by the Assembly on this issue in November 2008.

24. In 2007, the Commissioner for Human Rights released an Issue Paper on the Human Rights of Irregular Migrants in Europe, in which he describes the various risks faced by such migrants and suggests how host states might reinforce the protection of this vulnerable group. The Commissioner had already adopted a Recommendation on the rights of foreigners wishing to enter the territory of member states of the CoE and the carrying out of expulsion procedures in 2001. The Commissioner has also published a series of Viewpoints regarding the protection of human rights of migrants, refugees, internally displaced and stateless persons in Europe. Among other issues, he has highlighted human rights concerns in EU law and policy on migration including the manner of returning undocumented migrants to their countries of origin.

25. In its country reports, ECRI regularly examines the situation of migrants, asylum seekers and refugees. In recent years, ECRI has repeatedly drawn attention to a climate of political debate about immigration which has not only hardened considerably, but also tends to stigmatise entire communities, notably foreigners. The latter are frequently presented as the persons responsible for the deterioration of security, unemployment and increased public expenditure. ECRI warns that this process of stigmatisation provides a breeding ground for racial discrimination towards this part of Europe's population.

26. In 2006, the Congress of Local and Regional Authorities launched the "Cities for Local Integration Policy" Network. The network seeks, through a structured exchange of experiences among cities, to support the effective and sustainable social, economic and societal integration of migrants and to combat social inequality and discrimination. The network currently numbers around 30 members with cities from different parts of Europe including medium-sized and larger cities.

27. Of specific concern is the situation of immigration detainees. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) monitors their treatment, including their material conditions of detention and treatment by custodial staff, and the safeguards relating to deprivation of liberty and possible expulsion.

It also continuously develops standards for the detention of foreigners under aliens legislation. The CPT has also developed a series of standards designed to ensure the personal safety and dignity of detainees during the execution of deportation orders, including the outlawing of certain practices and means of coercion. The Steering Committee for Human Rights is currently drawing up Council of Europe Guidelines on the protection of human rights in the context of accelerated asylum procedures.

28. The European Committee on Legal Co-operation (CDCJ) is addressing the question of access to justice for migrants and asylum seekers, including children. A feasibility study is being prepared to evaluate the need to draft a legal instrument addressing the subject.

Victims of Trafficking

29. Victims of trafficking are particularly targeted by racism and intolerance. The CoE Convention on Action against Trafficking in Human Beings, the first European treaty in this field, entered into force on 1 February 2008. It sets out measures to prevent trafficking in human beings, to prosecute the traffickers and to provide protection to victims and safeguard their human rights. It applies to all victims of trafficking and all forms of exploitation, including sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs. It also covers all forms of trafficking, national and transnational, related or not to organised crime. The Group of Experts on Action against Trafficking in Human Beings (GRETA), an independent expert body, monitors the implementation of the Convention by the Parties. A Committee of the Parties may make recommendations to a Party concerning the measures to be taken to follow up GRETA's reports and conclusions. The Parliamentary Assembly of the CoE has produced a handbook setting out ways for Parliamentarians to press for the ratification and the application of this Convention by introducing legislation, allocating funds and lobbying their governments.

Multiple discrimination

30. The Council of Europe considers that any form of discrimination, on any ground, constitutes a violation of human rights. This is borne out by its human rights instruments, including the ECHR (article 14) and Protocol 12 to the ECHR, which prohibit not only racial discrimination and discrimination on related grounds, but also discrimination on grounds of gender, sexual orientation, disability and age.

31. CoE is aware of the combined impact of multiple grounds of discrimination and takes these into account in its activities.

32. The Committee of Ministers has considered the impact of multiple discrimination in a series of recommendations to member states. Recommendation (2002)5 "on the protection of women against violence" addresses the particularly vulnerable situation of immigrant women.[ix] Recommendation Rec(2003)3 of the Committee of Ministers "on balanced participation of women and men in political and public decision making" recommends that member states "encourage greater involvement of ethnic and cultural minorities, and especially women from these minorities, in decision making at all levels."[x] 'Recommendation CM/Rec (2007) 17 of the Committee of Ministers "on gender equality

standards and mechanisms", which is a sort of checklist to assess the way and the extent in which gender equality is pursued in the country, contains a chapter devoted to the specific situation of vulnerable groups exposed to multiple discrimination.

33. The Council of Europe Disability Action Plan 2006-2015, adopted by the Committee of Ministers in April 2006, highlights that some people with disabilities experience discrimination on a combination of grounds. It notes, for example, that people with disabilities from minorities and migrant communities have a higher risk of exclusion and generally have lower levels of participation in society than other disabled people. It recommends a cross-cutting response to such situations, whereby policy makers acknowledge and address the barriers and challenges faced by each of these groups.

III. Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels

34. Part III of the DPA focuses on the range of measures needed to eradicate racism, racial discrimination, xenophobia and related intolerance in the long term as well as to address current forms through legislative and policy measures.

35. The CoE's work in this field monitors the action taken by member states and provides them with detailed guidelines on improvements. The CoE also undertakes continent-wide activities and co-ordinates cross-fertilisation of experiences between European countries. These problems have long plagued Europe, and effectively combating them requires broad-ranging changes in societal institutions and longstanding practices as well as individual and group attitudes and behaviours. This can only be achieved through recognising problems; enacting effectively implemented legislation; creating specialised institutions to promote change, strengthen measures and provide expert advice in this area; adopting policies aimed at combating all forms of direct and indirect discrimination; positive action to achieve full and effective equality and facilitate full participation; long-term educational and awareness raising work to combat racist stereotypes and promote appreciation of diversity; and changing the nature of the information and ideas about minorities and immigrants disseminated by public opinion leaders, such as the media and politicians.

Legal protection against racism, racial discrimination, xenophobia and related intolerance

36. Since the WCAR, Council of Europe bodies have significantly advanced European legal protection against racism, racial discrimination, xenophobia and related intolerance.

37. The European Court of Human Rights (ECtHR), which safeguards the respect of obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by issuing judgments which are legally binding on State Parties, has made a number of decisions which significantly reinforce protection against racial discrimination and certain forms of racially motivated crimes. Based on the premise that "racial violence is a particular affront to human dignity" and "racial discrimination a particularly invidious kind of discrimination", the ECtHR requires "special vigilance and a vigorous reaction" from the authorities. It also insists that "the authorities must use all

available means to combat racism, thereby reinforcing democracy's vision of a society in which diversity is not perceived as a threat but as a source of enrichment.[xi]

38. In a decision in July 2005, the ECtHR recognised the obligation of authorities to investigate the possible racist motives of violent acts committed by law enforcement officials.[xii] In a decision of May 2007, the Court extended this obligation to the investigation of violent acts committed by individuals. The Court stressed that "treating racially induced violence and brutality on an equal footing with cases that have no racist overtones would be turning a blind eye to the specific nature of acts that are particularly destructive of fundamental rights."[xiii]

39. In a decision in November 2007, a case involving the segregated schooling of Roma children, the ECtHR clarified that 'intent' is not part of the test of discrimination and that the ECHR's prohibition against discrimination covers indirect discrimination.[xiv] It also made clear that statistical evidence may constitute prima facie evidence.[xv] These rulings significantly expand the Court's role in respect of measures to eliminate the widespread practices of indirect discrimination which affect minority groups across Europe.

40. In addition, Protocol 12 to the ECHR entered into force on 1 April 2005. So far, 37 of the Council of Europe's 47 member states have signed the Protocol, and 17 have ratified it. Protocol 12 adds a free-standing non-discrimination provision to the ECHR, extending the ECHR's protection against discrimination to "any right secured by law". Protection under Article 14 only applies to the enjoyment of those rights guaranteed by the ECHR. Protocol 12 therefore opens the way for the ECtHR to rule on states' obligations regarding the many cases of discrimination previously outside the ECHR's scope that occur across Europe.

41. The European Committee for Social Rights (ECSR), which monitors compliance by states with their obligations under the European Social Charter (ESC), has made clear that Article E, the non-discrimination provision of the ESC, applies to both direct and indirect forms of discrimination. It has further specified that indirect discrimination may arise by failing to take due and positive account of all relevant differences or by failing to take adequate steps to ensure that the rights and collective advantages which are open to all are genuinely accessible by and to all.[xvi] This decision imposes an obligation upon all State Parties to the ESC to take positive steps to ensure that all the rights set out in the ESC are effectively guaranteed for everyone without discrimination.

42. Furthermore, a Group of Specialists on Nationality is currently working on the basis for a new legal instrument on rights of children to nationality. One of the topics which the Group is dealing with and which could be covered by a future legal instrument is registration of birth with a view to avoiding statelessness.

43. In December 2002, ECRI adopted General Policy Recommendation No.7 on "National legislation to combat racism and racial discrimination" (GPR 7). This is the most comprehensive and detailed international legal text in this field. It sets out clear and detailed guidelines concerning the components which states should include in such legislation. The Recommendation covers constitutional, criminal, civil and administrative law and also includes a section on "common provisions" describing mechanisms which are important for effective implementation.

44. One of the most important and progressive aspects of GPR 7 is that it provides guidelines for a legislative framework which not only provides a remedy to individual victims of particular racist and discriminatory acts, but also serves as an anchor for preventing and eliminating widespread racial discrimination in society's public and private institutions. It recommends, for instance, that legislation should place public authorities under a duty to promote equality and to prevent discrimination in carrying out their functions; provide that relevant non-governmental organisations may bring complaints even without a specific victim; provide for the possibility of imposing a programme of positive measures on the discriminator and impose an obligation to review legislation and regulations for conformity with the principle of non-discrimination.

45. Another noteworthy aspect of GPR 7 is the list of acts which it recommends that states should penalise. These cover genocide; leadership or support for a group which promotes racism or participation in its activities; and racial discrimination in the exercise of one's public office or occupation. GPR 7 makes very clear ECRI's position, consistent with the jurisprudence of the ECtHR[xvii], that the right to freedom of expression does not extend to protecting racist expression. Thus it sets out specific acts of racist expression which should be penalised when committed intentionally, including:

public incitement to violence, hatred or discrimination;

public insults and defamation;

threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

the public expression, with a racist aim, of an ideology which claims the superiority of, or which depreciates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

the public denial, trivialisation, justification or condoning, with a racist aim, of crimes of genocide, crimes against humanity or war crimes;

the public dissemination or public distribution, or the production or storage aimed at public dissemination or public distribution, with a racist aim, of written, pictorial or other material containing manifestations covered by paragraphs a), b), c), d) and e);[xviii]

46. In addition, GPR 7 stipulates that for all other criminal offences the law should provide that racist motivation constitutes an aggravating circumstance.

47. Recently, the Council of Europe's European Commission for Democracy through Law ("the Venice Commission") examined European legislation on blasphemy, incitement to hatred (including religious hatred) and religious insult. Having studied the relevant international standards, including the case-law of the European Court of Human Rights, as well as the recommendations adopted by the Committee of Ministers, the Parliamentary Assembly and ECRI, the Venice Commission report concludes that incitement to hatred, including religious hatred, should be subject to criminal sanctions. This is already the case in almost all European states. The report finds that it is neither necessary nor desirable to

create an offence of religious insult (i.e.: insult to religious feelings) as such, without the element of incitement to hatred as an essential component of the offence. The report also recommends that the offence of blasphemy should be abolished. While recognising the important task of independent courts in deciding whether a statement amounts to incitement to hatred or in ruling on civil-law claims for damages, the Commission stresses the need for a new ethic of responsible intercultural relations in Europe and in the rest of the world going well beyond the realm of the law and into the areas of education and awareness-raising. On the one hand, ethical behaviour can prompt a responsible exercise of the freedom of expression. On the other hand, the level of tolerance of individuals who would feel offended by the legitimate exercise of freedom of expression should be raised. Open debate and persuasion, as opposed to a ban or oppression, are the most democratic means to protect fundamental values and counter shocking or anti-democratic ideas.[xix]

Establishment and reinforcement of independent specialised national institutions

48. ECRI is the Council of Europe's independent specialised body responsible for combating racism, racial discrimination, xenophobia, anti-Semitism and related intolerance. ECRI's action covers all necessary measures to combat violence, discrimination and prejudice against persons or groups of persons on grounds of race, colour, language, religion, nationality or national or ethnic origin. The entirety of its work furthers implementation of the DPA. ECRI's task is to provide CoE member states with concrete and practical advice on how to tackle problems of racism, racial discrimination, xenophobia, anti-Semitism and related intolerance in their country. To this end, it examines the legal framework in each country for combating racism and racial discrimination, its practical implementation, the existence of independent bodies to assist victims of racism, the situation of vulnerable groups in specific policy areas (such as education, employment and housing.) and the tone of political and public debate around issues relevant for these groups.

49. ECRI has made clear that the obligations of states in this area, as in other areas of human rights, include both negative obligations (refraining from discriminating) and positive obligations (actively guaranteeing equality). This means that on the one hand states must not discriminate - through laws, policies, practices of state actors or any other act. And on the other hand it means that states must ensure that individuals are adequately protected against discrimination by non-state actors, and that states must take the necessary actions - legislative, administrative, budgetary, judicial and promotional - to ensure that individuals may fully realise their right to be free from discrimination and enjoy full equality in practice.

50. The Political Declaration adopted by Ministers of the CoE member states at the concluding session of the 2000 European Conference against Racism (European Contribution to the World Conference) contained a commitment "To consider how best to reinforce European bodies active in combating racism, discrimination and related intolerance, in particular the European Commission against Racism and Intolerance." On 13 June 2002, the Committee of Ministers of the Council of Europe adopted an autonomous Statute for ECRI, thereby providing it with a firm legal basis and consolidating its role as an independent human rights monitoring body. ECRI's statutory activities include country-by-country monitoring of phenomena of racism and discrimination with specific recommendations addressed to each country separately; the drafting of standards on important issues in the fight against

racism in Europe in the form of General Policy Recommendations; and communication and co-operation activities with civil society actors in order to ensure that ECRI's anti-racist message and work filter down to the grassroots level.

51. The Council of Europe's body with a more general mandate to promote the effective observance of human rights, the Commissioner for Human Rights (CHR), also focuses extensively on issues of racism, discrimination, xenophobia and related intolerance, and covers them consistently during his country monitoring visits. The CHR also carries out special visits to member states to investigate emergencies faced by a particularly vulnerable group followed by recommendations to the government concerned for remedying the situation.

52. In addition to its own European-level work as a specialised body in this field, ECRI has since early in its work stressed the important role of independent specialised bodies at national level in combating racism and racial discrimination. Its second General Policy Recommendation, adopted on 13 June 1997, focused on "Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level." In GPR 7, ECRI sets out the different powers which should be included in the competence of such bodies in the context of legislation aimed at combating racism and racial discrimination.[xx] In line with the DPA, ECRI has stepped up its co-operation with national specialised bodies in this field. In particular, it has held a number of meetings with representatives of these bodies focused on complex issues of mutual interest which are important to the fight against racism and discrimination. These meetings have to date focused on anti-discrimination legislation and the role of specialised bodies (November 2003); mediation and other forms of dispute resolution in cases of racism and racial discrimination (February 2006); positive action (February 2007) and the relationship between integration and the fight against racism and racial discrimination (February 2008).

Data collection

53. Council of Europe monitoring bodies, and especially ECRI and the Advisory Committee to the Framework Convention for the Protection of National Minorities (FCNM), work on an ongoing basis to implement the DPA in the area of data collection.

54. In its country monitoring, ECRI systematically inquires into the availability of data about different minority groups and about measures to combat racism and racial discrimination and recommends that such data be gathered. ECRI regularly recommends to the governments of member states of the Council of Europe to collect relevant information broken down according to categories such as nationality, national or ethnic origin, and language and religion and to ensure that this is done in all cases with due respect for the principles of confidentiality, informed consent and the voluntary self-identification of persons as belonging to a particular group. ECRI stresses that these efforts should take into consideration the gender dimension, particularly from the point of view of possible double or multiple discrimination.

55. ECRI also asks governments to collect data on the perception of discrimination by potential victims of discrimination.[xxi] Lastly, ECRI encourages member states to monitor

the effectiveness of criminal and civil law provisions by developing and maintaining systems for recording incidents of racism, intolerance and discrimination.

56. In addition, from March 2004 to March 2005, ECRI undertook a consultation and deliberation process on the issue of ethnic data collection. It organised a consultation meeting with international NGOs on this topic as well as a seminar with national specialised bodies. In November 2007, ECRI also commissioned a study report, entitled "Ethnic statistics and data protection in the Council of Europe countries", which provides an overview of the existing legal and practical framework for ethnic data collection in Council of Europe member states.[xxii]

57. The Advisory Committee also consistently examines in its country monitoring work the availability of statistical data on the situation of persons belonging to national minorities and on the implementation of laws pertaining to racism and discrimination. It has frequently noted that discrepancies in estimates as to the numbers of persons belonging to national minorities can "seriously hamper the ability of the state to target, implement and monitor measures to ensure the full and effective equality of persons belonging to national minorities." Noting sensitivities which frequently exist among national minorities as concerns data collection, the Advisory Committee has highlighted that alternative methods of data collection may be used, such as *ad hoc* studies, special surveys, polls or other scientifically sound methods.

Actions, including positive measures, to eliminate racism and racial discrimination across key fields of life

58. The DPA urged states to take a wide range of action-oriented policies, including positive measures to ensure non-discrimination in key fields of life.

59. Furthering such measures is a fundamental aspect of ECRI's work. Through its country-by-country approach, ECRI examines the measures which the authorities in each CoE member state are taking to combat problems of racism and racial discrimination in key fields such as housing, social services, education, employment, health, law enforcement and participation in public life. It then makes recommendations for additional measures and improvements in the implementation of existing measures, where necessary. Taken together the recommendations in ECRI's third monitoring cycle, which took place from January 2003 until the end of 2007, present a comprehensive and detailed roadmap for addressing problems of racism and discrimination in most key fields of life. In its fourth monitoring cycle, begun in January 2008, ECRI is focusing on how its main recommendations from previous reports have been followed up and implemented by states.

60. ECRI has also issued General Policy Recommendations which focus on certain fields of life. In December 2006 it adopted General Policy Recommendation No.10 specifically focused on "Combating racism and racial discrimination in and through school education". Its most recent General Policy Recommendation No.11 focuses on "Combating racism and racial discrimination in policing" (adopted on 29 June 2007). The Recommendation focuses on racial profiling; racial discrimination and racially motivated misconduct by the police; the role of the police in combating racist offences and monitoring racist incidents;

and relations between the police and members of minority groups."[xxiii] In each of these areas it recommends that member states take a range of measures.

61. In both its country work and its General Policy Recommendations, ECRI regularly encourages states to take positive measures designed either to prevent or compensate for disadvantages suffered by persons belonging to minority groups or to facilitate their full participation in all fields of life. These include measures such as information and outreach programmes; assistance and support services; training and capacity building initiatives; financial and material support; conditions to provide access to property and resources; and targets to promote employment and public participation.

62. Article 4(2) of the FCNM provides that: "The Parties undertake to adopt, where necessary, adequate measures in order to promote, in all areas of economic, social, political and cultural life, full and effective equality between persons belonging to a national minority and those belonging to the majority. In this respect, they shall take due account of the specific conditions of the persons belonging to national minorities". This provision requires measures which take into account the specific conditions of the persons concerned, where this is important in bringing about full and effective equality.[xxiv] The Advisory Committee monitors the application of the provisions of the FCNM in each of the 39 member states which have ratified this Convention. Under Article 4, it systematically evaluates the strategies and measures, including positive measures, which states have taken to combat discrimination against persons belonging to national minorities in key fields of life.

63. In May 2008, the Congress of Local and Regional Authorities adopted a Resolution and recommendation on the "social approach to the fight against racism at local and regional level".[xxv] In these documents the Congress calls on local and regional authorities to use their substantial powers to take a wide range of active measures to combat all forms of racism.

Politicians and political parties

64. In September 2003, the President of the CoE's Parliamentary Assembly (PACE), along with the President of the European Parliament, signed the Charter of European Political Parties for a Non-Racist Society. The Charter calls on political parties to act responsibly when dealing with issues related to race, ethnic and national origin and religion. It encourages political parties to work towards fair representation of racial, ethnic, national and religious minorities within and at all levels of their party system. PACE also adopted its own resolution on "racist, xenophobic and intolerant discourse in politics."[xxvi] In this Resolution, it strongly encourages the application of this Charter throughout Europe. It also expresses support for the establishment of a permanent body representative of political parties from all Europe to monitor implementation of the Charter. In addition it recommends that political parties in all member states of the Council of Europe sign the Charter, fully and effectively implement its provisions and co-operate in the establishment and thereafter in the activities of a supervisory body.

65. In March 2005, ECRI adopted a Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse. The Declaration suggests the following

practical and self-regulatory measures which can be taken by political parties or national parliaments; the signature and implementation by European political parties of the Charter of European Political Parties for a Non-Racist Society; effective implementation of criminal law provisions against racist offences; the adoption and implementation of provisions penalising the leadership of any group which promotes racism, as well as support for such groups and participation in their activities; and the establishment of an obligation to suppress public financing of organisations which promote racism, including public financing of political parties. ECRI also calls on political parties to formulate a clear political message in favour of diversity in European societies and for courageous and effective political leadership which respects and promotes human rights. ECRI also regularly addresses this problem in its country monitoring work and has developed extensive standards on the subject.

Education and awareness-raising measures

66. Furthering the DPA in the area of education and awareness-raising, the CoE has carried out a wide range of activities to eliminate racism and racial discrimination in the education sector, promote appreciation of diversity and tolerance, develop intercultural dialogue and more generally further democratic culture and human rights values. These activities include elaborating European legal standards, providing legal and policy guidance to states, forums, seminars, training programmes, curriculum development and Europe-wide campaigns.

67. In March 2006, the Advisory Committee adopted a "Commentary on Education".[xxvii] It provides detailed guidance to states which can be used in the design and implementation of educational policies concerning minorities and intercultural education.[xxviii] The Commentary points out that: "the Framework Convention requires not only the protection of minority cultures and languages, but also the dissemination and development of intercultural contacts and dialogue, the encouragement of a spirit of tolerance in all educational efforts and even an ethos of bilingualism and plurilingualism with regard to languages. Different situations and different groups may need to be treated differently in order to ensure effective equality and access to good quality education for all persons."[xxix]

68. ECRI's GPR 10 on "Combating racism and racial discrimination in and through school education" recalls that "education is an important tool for combating racism and intolerance", but that "it is also an area in which racism and racial discrimination can exist, with harmful consequences for children and society as a whole." ECRI recommends that the governments of member states take a number of measures to ensure compulsory, free and quality education for everyone; combat racism and racial discrimination at school; and train the entire teaching staff to work in a multicultural environment.

69. Through its programme on Education for Democratic Citizenship and Human Rights the Council of Europe strives to promote education which contributes to the eradication of racism, racial discrimination, xenophobia and related intolerance. Current priorities are policy development (e.g. legislation, curriculum, evaluation and assessment), teacher training (both initial and in-service, for teachers of all subjects) and democratic governance of educational institutions (including decision making/participation mechanisms, teaching/learning methodology and school ethos). Within higher education, the Council of

Europe has focused specific efforts on promoting intercultural dialogue and "democratic culture".

70. From June 2006 to September 2007, the Council of Europe ran a Europe-wide youth Campaign for Diversity, Human Rights and Participation entitled "All Different-All Equal". Seminars, forums, training workshops, sports and cultural events and a wide range of other activities were undertaken at local, national and international levels. The youth sector of the Council of Europe also organises training programmes, intercultural language courses, seminars and conferences on human rights education in the broadest sense on a more permanent basis for youth leaders, youth organisations and their members.

71. A new Anti-Discrimination Campaign with the slogan "Speak out against discrimination" is being run in co-operation with journalism training institutes and media partners in 2008-2009. The Campaign supports and develops ongoing work to prepare young journalists to deal adequately with discrimination and issues of cultural diversity in society. In co-operation with journalism training institutes, the Council of Europe will help to develop a "training kit" and the curriculum of a "summer university".

72. The Campaign will encourage the media to adopt or strengthen a voluntary policy promoting the access of individuals (belonging to minorities) to their internal organisation in all its branches. The Council of Europe will support these voluntary policies through the exchange of good practice and contribute to the debate with the social partners on an industry-wide "code of ethics" and other forms of commitment. The Campaign will encourage media professionals to provide the public with information on existing legal protection, the role of ombudspersons and mediators, the work of monitoring bodies and similar mechanisms to act against and prevent discrimination. The Campaign will also engage local authorities, particularly those involved in projects such as "Intercultural Cities", as well as sport organisations and media professionals.

73. Sport can be an important vehicle for promoting tolerance and raising awareness about the need to reject all forms of racism. In September 2004, the Council of Europe organised a Conference in Istanbul on the contribution of sport to intercultural dialogue. The Conference issued a Declaration which stressed that: "the fundamental values of sport, such as fair play, mutual respect, peaceful co-existence, tolerance and the fight against racism, xenophobia and anti-Semitism, need to be upheld and furthered." The Congress of Local and Regional Authorities has also issued a Recommendation on integration through sport. This Recommendation invites local authorities to use sporting activities as a means of promoting the integration of people from immigrant backgrounds[xxx]. On the occasion of the 2008 UEFA European Football Championship, ECRI issued a declaration on the topic of combating racism in football. ECRI is also currently preparing a General Policy Recommendation specifically focused on combating racism in sport.

Intercultural dialogue

74. The CoE has in recent years undertaken numerous initiatives to promote intercultural dialogue and mutual understanding. The Third Summit of Heads of States and Governments (2005) made intercultural dialogue a priority of the Organisation. It launched strategies to manage and promote cultural diversity while ensuring the cohesion

of societies and encouraged intercultural dialogue including its religious dimension. This was fleshed out in the "Faro Declaration on the Council of Europe's Strategy for Developing Intercultural Dialogue", adopted by the Ministers of Culture later in 2005. Promoting and protecting diversity in a spirit of tolerance was also the theme of various instruments which the Council of Europe has adopted since 2001 - conventions and agreements engaging all or some of the member states as well as recommendations, declarations and opinions.[xxxi] Furthermore, between 2001 and 2007, the Commissioner for Human Rights organised a series of seminars on inter-faith dialogue which included issues concerning education and the relationship of the state with religious communities. The inclusion of factual information about major religions in educational curricula was stressed as a means to prevent racism and xenophobia.

75. In May 2008, the Committee of Ministers of the Council of Europe published a "White Paper on Intercultural Dialogue" under the title "Living Together as Equals in Dignity". The White Paper provides a conceptual framework and a guide for policy-makers and practitioners. It argues that our common future depends on the ability to safeguard and develop human rights, as enshrined in the European Convention on Human Rights, democracy and the rule of law and to promote mutual understanding. Intercultural dialogue can only thrive, the White Paper maintains, if certain preconditions are met. To advance intercultural dialogue, the democratic governance of cultural diversity should be adapted in many aspects; democratic citizenship and participation should be strengthened; intercultural competences should also be taught and learned; spaces for intercultural dialogue should be created and widened; and intercultural dialogue should be taken to the international level.

Information, communication and the media, including new technologies

76. Numerous Council of Europe bodies have taken measures to further the DPA in the area of information, communication and media. These measures include several standard-setting instruments aimed at dealing with the problem of racist and xenophobic material disseminated via the internet.

77. The PACE adopted a Recommendation on "The Image of Asylum-seekers, Migrants and Refugees in the Media".[xxxii] In its country monitoring work, ECRI regularly examines the role the media in each country is playing as a vehicle for either promoting or combating racist ideas. Both the PACE and ECRI recommend that this issue should be addressed through a variety of measures including hate speech legislation and its effective implementation against the media where provisions are violated; self-regulation by the media profession; guidelines; complaints procedures; training; incentive programmes and the inclusion of diversity within the media.

78. On 28 January 2003, an Additional Protocol to the Convention on Cybercrime was opened for signature. This instrument requires State Parties to adopt such legislative and other measures as may be necessary to establish the following conduct as criminal offences under their domestic laws:

- dissemination of racist and xenophobic material through computer systems;

- racist and xenophobic motivated threats performed through a computer system;

- racist and xenophobic motivated public insults through a computer system;

- disseminating through a computer system any material which denies, grossly minimises, approves or justifies acts constituting genocide or crimes against humanity;

- aiding and abetting the commission of any of the above offences.

79. The Protocol aims at harmonising criminal law in the fight against racism on the Internet and improving international co-operation in this area. By October 2008, the Protocol had been ratified by 13 countries and signed by another 20 countries.

80. The CoE Committee of Ministers also addressed this issue in a 2005 Declaration on Human Rights and the Rule of Law in the Information Society.[xxxiii] For its part, ECRI adopted a specific Recommendation (GPR 6) providing detailed guidelines on Combating the Dissemination of Racist, Xenophobic and Antisemitic Material Via the Internet. The Recommendation covers legal measures as well as training, consultation, self-regulation, awareness-raising and co-operation measures. In addition, the CoE has also developed, in partnership with the privates sector, a set of human rights guidelines for online games providers. Providers are encouraged to pay particular attention to "content which conveys messages of aggressive nationalism, ethnocentrism, xenophobia, racism and intolerance in general including when such messages are concealed...".[xxxiv]

IV. Effective remedies/redress, compensation

81. The CoE, through the legal complaints mechanisms provided by the ECHR and the ESC, directly implements the DPA's recommendations concerning the provision of recourses and remedies to victims of acts of racism, racial discrimination, xenophobia and related intolerance. It also provides considerable guidance to states about what to do at national level to ensure that recourses in this area in fact provide effective means of redress and remedy for such victims.

Council of Europe recourses for victims of discrimination

82. Under the ECHR, the victims of discrimination have access to an international remedy for acts of racial discrimination once domestic judicial remedies have been exhausted. Article 14 provides protection for discrimination with respect to all the rights contained in the ECHR. For those states which have ratified Protocol 12 (currently 17), this protection extends to "any right secured by law". As explained above (see § 40), this protection covers all discrimination by a public authority on any ground. This includes grounds such as nationality and religion.

83. The ECtHR decides on violations of the ECHR alleged by any affected individual or by a State Party. The Court's judgments (finding violations) are legally binding on the respondent states, and the execution of the judgments is supervised by the Committee of Ministers which is the political body of the Council of Europe. In essence, this means that the Committee of Ministers ensures that the respondent states adopt all measures required

by the judgment. These include the payment of pecuniary compensation, but often other measures as well - measures to grant the applicant, so far as possible, *restitutio in integrum* (i.e. redress the violations found) and/or general measures to prevent new similar violations, for example through changes in law and practice.

84. The European Social Charter (ESC) also provides for an optional collective complaints mechanism (so far accepted by 14 European states) which permits certain non-governmental organisations, employers' organisations and trade unions to lodge complaints alleging violations of the ESC with the European Committee of Social Rights (ECSR). The mechanism is accessible and speedy. There is no need to exhaust domestic remedies and no need to be a victim. The collective complaints mechanism ensures that some of the most vulnerable groups such as Roma who may have difficulties accessing more formal types of remedies may in fact have their complaint heard. In four cases already heard, the ECSR found a violation of the right of Roma to housing [xxxv]. Five other cases alleging discrimination against Roma are pending [xxxvi].

Council of Europe recommendations to member states concerning remedies, recourse and redress for victims of discrimination

85. As discussed above (see under legal protection), ECRI provides detailed guidelines to states as to the provisions which they should include in their legal framework to address acts of racism and racial discrimination in a comprehensive way. ECRI also recommends that the law should provide for effective, proportionate and dissuasive sanctions for such offences and for ancillary or alternative sanctions.

86. In its GPR 7 ECRI sets out guidelines relating to tools that states should put in place so that available recourses will be both accessible and useable. These include possibilities for relevant organisations to bring civil cases, intervene in administrative cases and make criminal complaints even if a specific victim is not referred to; possibilities for free legal aid, a court-appointed lawyer and interpretation free of charge; and protection of alleged victims of racist or discriminatory acts, those who report such acts or those who provide evidence against retaliatory measures. GPR 7 also highlights the specific and important role which specialised bodies to combat racism and racial discrimination play in the effective implementation of legislation in this area. The recommendation suggests that national legislation attribute powers to these bodies allowing them to: provide assistance to victims; investigate specific cases; and initiate and participate in court proceedings. The standards from ECRI's third cycle of country-by-country reports also provide detailed guidelines for improving the implementation of legislation aimed at combating racism and racial discrimination – civil, administrative and criminal.[xxxvii]

87. The CHR also assesses the effectiveness of remedies following complaints of racism and all forms of discrimination during his country visits. He has placed particular emphasis on the need for easily accessible complaints mechanisms, such as independent ombudsman institutions or specialised bodies, and on the availability of legal advice to complainants. The CHR stresses that sanctions and compensation should be effective and dissuasive towards potential perpetrators. In May 2008, the Commissioner organised a workshop on the efficiency and independence of police complaints mechanisms. Among other issues,

the workshop highlighted the difficulties complainants face when challenging racist and homophobic police misconduct.

88. The Council of Europe Group of Specialists on remedies for crime victims has prepared, under the authority of the European Committee on Legal Co-operation (CDCJ), a report on non-criminal remedies for crime victims. Throughout the report there are references to vulnerable groups of victims, including victims of harassment linked to discrimination on the basis of race, colour, religion, ethnicity, national origin, disability, gender, age, sexual orientation or homelessness. The report also addresses the issue of legal assistance. The CDCJ has endorsed the report and submitted it to the Committee of Ministers which, during its 1037th meeting on 8 October 2008, decided to bring it to the attention of the Council of Europe member states. Following the conclusions in the report, it is foreseen to ensure its wide dissemination, including the organisation of awareness-raising events about the needs of victims and examples of best practices.

89. Human rights defenders can give important assistance to victims of discrimination in using existing remedies. The Council of Europe has in recent years taken steps to ensure a secure environment for human rights defenders, including NGOs, so that they can carry out their work without impediment.[xxxviii] In particular, the Commissioner for Human Rights has strengthened his role in protecting and supporting defenders.

V. Conclusion

90. As this contribution indicates, the CoE has undertaken considerable action to combat racism, racial discrimination, xenophobia and related intolerance across Europe. At the level of the Europe of 47 member states, important international legal instruments and mechanisms necessary to ensure the effective protection against racism, racial discrimination, xenophobia and related intolerance are in place. They have also been adapted to take account of new challenges, such as the use of computer systems. Landmark judgments of the ECtHR have significantly strengthened ECHR protection against racial discrimination.

91. However, further efforts need to be made as regards further ratifications of Protocol No.12 to the ECHR and the implementation in practice by all member states of the detailed guidelines and recommendations from ECRI, the HCR and the Advisory Committee of the FCNM.

92. Advances have undoubtedly been made at national level. Most noteworthy are the significant developments in the area of legislation against racist acts and racial discrimination along with the creation of specialised bodies for combating racism and racial discrimination. Many states have taken a wide array of measures to combat problems of racism and discrimination in specific fields of life, such as employment and education. They have also adopted action plans against racism and more specifically to improve the situation of Roma.

93. However, despite these efforts, racism, racial discrimination, xenophobia and intolerance remain pervasive in Europe and are even increasing in some areas. Examples of these worrying trends can be found in ECRI's third cycle country reports, which document the

situation in Europe over the last six years: anti-Semitism has taken on new forms, anti-Gypsyism continued to spread, and Islamophobia intensified.

94. Particular challenges for anti-racism efforts are posed by two issues at the centre of the European political agenda: the fight against terrorism and integration.

- Anti-terrorism: Discourse around the terrorist threat often involves sweeping generalisations relating certain groups of the population, such as Muslims and immigrants, to terrorism, insecurity, and fundamentalism. This is a very dangerous trend which has not yet been adequately recognised or addressed. Furthermore, anti-terrorist legislation, policies and practices have in some cases resulted in direct and indirect discrimination (racial profiling by law enforcement officials is one example). Such racism and discrimination do nothing to combat terrorism, but significantly undermine the many other efforts which states are taking to combat racism, racial discrimination, xenophobia and intolerance. In this regard, ECRI's General Policy Recommendation No.8 on combating racism while fighting terrorism has particularly useful guidelines as does its General Policy Recommendation No.11 on combating racism and racial discrimination in policing, which addresses the issue of racial profiling.

- Integration: Often debates around integration in many European countries degenerate into dissemination of racist stereotypes and xenophobia concerning minority groups and migrants. These debates continue to be centred on actual or perceived "deficiencies" among the minority and migrant population and point the finger to them as exclusively responsible for a "lack of integration". It will be essential to highlight in this context that the success of any integration strategy hinges on the importance it attaches to equality and combating racial discrimination. It will be important to emphasise that integration is a two-way process involving mutual recognition of the majority and minority groups. The 2008 Council of Europe White Paper on Intercultural Dialogue provides useful guidance in this regard.

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[i] In the 1973 case of East African Asians v. the United Kingdom the European Commission for Human Rights first recognised that discrimination could constitute degrading treatment. It stated that "a special importance should be attached to discrimination based on race, and that publicly to single out a group of persons for differential treatment on the basis of race might, in certain circumstances, constitute a special form of affront to human dignity… differential treatment of a group of persons on the basis of race might be capable of constituting degrading treatment in circumstances where differential treatment on some other ground, such as language, would raise no such question." Later cases of the European Court of Human Rights also indicate that discrimination on other grounds can reach the level of degrading treatment where it indicates contempt or a lack of respect for the personality of individuals.

[ii] In its General Policy Recommendation No.7 on "National legislation to combat racism and racial discrimination" adopted on 13 December 2002, ECRI defined racism broadly as meaning: "the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or a group of persons, or the notion of superiority of a person or a group of persons."

[iii] These include: Romani language framework curriculum, Roma history factsheets, guidebook for Roma School mediators/assistants, preschool teaching kit, toolkit to combat prejudices and stereotypes, etc.

[iv] Rec(2000)4 on the education of Roma/Gypsy children in Europe, Rec(2001)17 on improving the economic and employment situation of Roma/Gypsies and Travellers in Europe, Recommendation Rec(2004)14 on the movement and encampment of Travellers in Europe, Recommendation Rec(2005)4 on improving the housing conditions of Roma and Travellers in Europe, Recommendation Rec(2006)10 on better access to health care for Roma and Travellers in Europe.

[v] Rec (2008)5 on policies for Roma and/or Travellers in Europe.

[vi] D.H. and others v. Czech Republic, (Application no. 57325/00), 13 November 2007, Grand Chamber.

[vii] ECRI, CRI(2008)26.

[viii] Preamble, GPR 9.

[ix] It notes with concern that women are often subjected to multiple discrimination on grounds of their gender as well as their origin. It also contains specific provisions aimed at protecting immigrant women, who are in a particularly vulnerable situation. It recommends that member States should "ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request" (paragraph 24). It also recommends that States should "consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country." (paragraph 59)

[x] Paragraph 26.

[xi] See the case of Nachova and others v. Bulgaria, Applications nos. 43577/98 and 43579/98, 6 July 2005, Grand Chamber judgment at paragraph 145 and the case of Timishev v. Russia, 13 December 2005, Applications nos. 55762/00 and 55974/00 at paragraph 56.

[xii] Nachova, ibid. at paragraph 160.

[xiii] Secic v. Croatia, (Application no. 40116/02) 31 May 2007, at paragraph 67.

[xiv] D.H. and others v. Czech Republic, (Application no. 57325/00), 13 November 2007, Grand Chamber at paragraph 175.

[xv] D.H. and others, ibid. at paragraph 188. With respect to proof of indirect discrimination, the Court stated: "In these circumstances, the Court considers that when it comes to assessing the impact of a measure or practice on an individual or group, statistics which appear on critical examination to be reliable and significant will be sufficient to constitute the prima facie evidence the applicant is required to produce. This does not, however, mean that indirect discrimination cannot be proved without statistical evidence." paragraph 188.

[xvi] Collective Complaint No. 13/2002, Autisme-Europe v. France, § 52.

[xvii] Article 10 of the European Convention on Human Rights, which safeguards the right to freedom of expression, also fixes the limits within which this right may be exercised, as does Article 17, since it stipulates that nothing in the Convention, including Article 10 on freedom of expression, may be interpreted as implying for any person the right to destroy any of the rights and freedoms set forth therein. In its many judgments on this question, the European Court of Human Rights has clearly held that States' actions to restrict the right to freedom of expression are justified under paragraph 2 of Article 10 or Article 17 of the Convention, in particular when such ideas or expressions violate the rights of others or are contrary to the spirit of the Convention.

[xviii] GPR 7, Paragraph 18.

[xix] Report on the relationship between freedom of expression and freedom of religion: the issue of regulation and prosecution of blasphemy, religious insult and incitement to religious hatred, adopted by the Venice Commission at its 76th Plenary Session (Venice, 17-18 October 2008). The report (document CDL-AD(2008)026 is available on the website of the Venice Commission: http://www.venice.coe.int/docs/2008/CDL-AD(2008)026-E.asp?MenuL=E

[xx] These include: assistance to victims; investigation powers; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment. GPR 7, Paragraph 24.

[xxi] ECRI's position in this respect is based on its General Policy Recommendation No.4 on national surveys on the experience
and perception of discrimination and racism from the point of view of potential victims.

[xxii] The study was written by Patrick Simon, commissioned by ECRI as an independent consultant.

[xxiii] Introduction, Compilation of ECRI's General Policy Recommendations, at pp. 3-4, Strasbourg, October 2007. Available on the Internet at:
http://www.CoE.int/t/e/human_rights/ecri/1%2Decri/3%2Dgeneral_themes/1%2Dpolicy_recommendations/eng-Compilation%20Rec%201-11.pdf

[xxiv] See Paragraph 39 Explanatory Report to the FCNM.

[xxv] Resolution 264(2008) and Recommendation 246(2008).

[xxvi] Resolution 1345(2003).

[xxvii] Adopted at the Advisory Committee's 25th plenary session, held in Strasbourg from 27 February to 3 March 2006. This is the Advisory Committee's first thematic paper related to the implementation and monitoring of the Framework Convention for the Protection of National Minorities.

[xxviii] The Commentary analyses the accumulated jurisprudence of the Advisory Committee with regard to guaranteeing the right of persons belonging to minorities to good quality, free primary education as well as general and equal access to secondary education (right to education). This jurisprudence also sets standards on how such education should be shaped in terms of content as well as form (rights in education) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.

[xxix] Part III.

[xxx] Recommendation 233(2008), Integration through sport, 14th session, spring session, (Malaga 13 - 14 March, 2008)

[xxxi] The Framework Convention on the Value of Cultural Heritage for Society (2005) identified how knowledge of this heritage could encourage trust and understanding. Intercultural dialogue became a theme for Ministers responsible for culture in the Opatija Declaration (2003). The Parliamentary Assembly of the Council of Europe has contributed an array of recommendations, resolutions, hearings and debates on various aspects of intercultural and inter-religious dialogue. In Recommendations 245 (2008) on intercultural and interreligious dialogue: an opportunity for local democracy the Congress of Local and Regional Authorities draws attention to the role of local and regional authorities in facilitating intercultural and interreligious dialogue, building on the 12 principles for interfaith dialogue elaborated at its conference in Montchanin and further developed in its 2008 publication "Gods in the city".

[xxxii] Doc 11011, 10 July 2006. The recommendation highlights that: "The media plays an essential role in ensuring that issues linked to migration, refugees and asylum are portrayed in a fair and balanced way. It is therefore the media's responsibility to also reflect the positive contribution to society made by these persons, and to protect them from negative stereotyping. It is also important that media professionals among the migrants and asylum seekers represent their communities in the media, and that their views, and issues of interest to them and concerning them, be reflected in the media." (paragraph 5)

[xxxiii] The Declaration provides that "...member states should ensure that national legislation to combat illegal content, for example racism, racial discrimination and child pornography, applies equally to offences committed via ICTs." Paragraph I(1) Moreover, private sector actors are encouraged to take self- and co-regulatory measures addressing in a decisive manner "...hate speech, racism and xenophobia and incitation to violence in a digital environment such as the Internet..." Paragraph II(3) The Declaration also stresses that "any regulatory measure on the media and new communication services should respect and, wherever possible, promote the fundamental values of pluralism, cultural and linguistic diversity, and non-discriminatory access to different means of communication." Paragraph I(3)

[xxxiv] Guidelines to assist online games providers in their practical understanding of, and compliance with, human rights and fundamental freedoms in the Information Society, in particular with regard to Article 10 of the European Convention on Human Rights, Paragraph 16. These guidelines were prepared by the CoE Group of Specialists on Human Rights in the Information Society in close cooperation with Interactive Software Federation of Europe (ISFE).

[xxxv] European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004; European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005; European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006 and International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007.

[xxxvi] European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 46/2007; European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 48/2008; INTERIGHTS v. Greece, Complaint No. 49/2008; European Roma Rights Center (ERRC) v. France Complaint No. 51/2008.

[xxxvii] As concerns civil and administrative legislation ECRI's recommendations include: awareness-raising campaigns and training sessions aimed at judges, magistrates, lawyers and law enforcement officials on the content of relevant provisions and manifestations of racial discrimination in society; awareness raising measures aimed at the general public, groups vulnerable to racial discrimination, the legal community and other strategic partners about the civil and administrative legal framework in force against discrimination and the mechanisms for invoking it; close monitoring of the implementation of anti-discrimination legislation and measures to improve implementation; collecting data on the implementation of such legislation, notably on the number of complaints filed and the outcome of these complaints, including redress or compensation awarded.
As concerns the application of criminal legislation, ECRI's recommendations concern the role of political authorities, prosecution authorities and law enforcement agencies. They emphasise: the importance of a firm political commitment to prosecution; the need to improve recording, classification, investigation and prosecution of offences; the need for training and awareness raising measures aimed at all those working in the criminal justice system on existing legal provisions aimed at combating racist crimes and the need to take all acts of racism and racial discrimination seriously; the importance of recruiting members of minority groups into the police; steps to encourage victims of racist acts to come forward; and the need to keep criminal law provisions in this area under review and fine-tune them as necessary.

[xxxviii] In February 2008, the Committee of Ministers adopted a declaration which aims to ensure an enabling environment for all human rights defenders, including NGOs, to carry out their work without impediment. Further follow-up to the Declaration will take the form of an evaluation of the implementation of the Declaration in member states, to be carried out by the Steering Committee for Human Rights in co-operation with the Commissioner for

Human Rights. In addition, in October 2007, the Committee of Ministers adopted Recommendation CM/Rec(2007)14 to member states on the legal status of non-governmental organisations in Europe. It aims to recommend standards to shape legislation and practice vis-à-vis NGOs, as well as the conduct and activities of the NGOs themselves in a democratic society based on the rule of law.
