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Elimination of racism, racial discrimination, xenophobia and related intolerance: comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action

Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report prepared by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere, pursuant to Assembly resolution 66/144.

* A/67/150.



Combating racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of the follow-up to the Durban Declaration and Programme of Action

Summary

The Durban Declaration and Programme of Action pay particular attention to concerns related to the use of such new information technologies as the Internet for propagating racism, racial hatred, xenophobia, racial discrimination and related intolerance, and provide a comprehensive framework for possible actions to combat this phenomenon. In the present report, the Special Rapporteur focuses on key issues and challenges posed by the increasing use of the Internet to disseminate racist ideas and incite racial hatred and violence and on identifying possible measures that can be taken in line with the provisions of the Durban Declaration and Programme of Action. Following a brief introduction (section I) and the overview of his activities carried out since his appointment by the Human Rights Council (section II), the Special Rapporteur refers in section III to the main issues of concern and challenges related to the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. Section IV provides an overview of legal and policy frameworks and measures taken at the national, regional and international levels, and section V highlights possible measures for combating the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. In section VI, the Special Rapporteur highlights the potential role and positive contribution of the Internet as an effective tool for combating racism, racial discrimination, xenophobia and related intolerance. The conclusions and recommendations put forward by the Special Rapporteur are outlined in section VII.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolution 66/144 of 19 December 2011 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action (A/CONF.189/12 and Corr.1). The Assembly requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, within his mandate, to continue giving particular attention to the negative impact of racism, racial discrimination, xenophobia and related intolerance on the full enjoyment of civil, cultural, economic, political and social rights.

2. The current report builds upon the previous reports of the Special Rapporteur, in which he touched upon the issues related to the use of new information technologies, including the Internet, for disseminating racist ideas, hate messages and inciting racial hatred and violence. It also builds upon the reports of the previous mandate holders, taking into account recent developments and information gathered through consultations with relevant stakeholders and research conducted by the Special Rapporteur.

3. The report should be considered as a preliminary examination of the issue of racism and the Internet, and the Special Rapporteur intends to explore this topic further in a follow-up report. The next study on the topic will involve consultations with States, regional and international organizations and non-State actors, and will seek to identify possible good practices in combating the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, and in promoting the use of such technologies to contribute to the fight against racism, racial discrimination, xenophobia and related intolerance.

4. In the present report, the Special Rapporteur illustrates the key trends and challenges posed by the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance (section III); provides an overview of legal and policy frameworks and measures taken at national, regional and international levels (section IV); presents possible measures for combating the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance (section V); and highlights the potential role and positive contribution of the Internet as an effective tool for combating racism, racial discrimination, xenophobia and related intolerance (section VI). The conclusions and recommendations of the Special Rapporteur are outlined in section VII.

5. In section II, the Special Rapporteur refers to the activities he has undertaken since his appointment by the Human Rights Council as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

II. Activities of the Special Rapporteur

A. Country visits

6. The Special Rapporteur would like to thank the Government of the Plurinational State of Bolivia, the Government of the Sudan and the Government of

Mauritania, which have accepted his requests for visits. He will visit the Plurinational State of Bolivia from 4 to 10 September 2012.

7. Following his appointment, the Special Rapporteur also renewed the request to visit South Africa. He also requested visits to Algeria, Botswana, Morocco, Poland, Spain and Tunisia.

8. The Special Rapporteur would like to acknowledge the invitation extended by the Government of Honduras. While he has not yet been able to honour that invitation, the Special Rapporteur hopes that he will be able to do so in the course of his mandate.

B. Other activities

9. The Special Rapporteur participated in the high-level thematic debate on the achievement of the goals and objectives of the International Year for People of African Descent, held in New York on 6 December 2011, at the closure of the Year. He also attended the first meeting of the Special Procedures of the Human Rights Council and the Special Mechanisms of the African Commission on Human and Peoples' Rights, organized by the Office of the United Nations High Commissioner for Human Rights (OHCHR), in cooperation with the African Commission on Human and Peoples' Rights, in Addis Ababa, Ethiopia, from 18 to 19 January 2012. The meeting aimed at exploring ways to improve cooperation and coordination in promoting and protecting human rights in Africa.

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

11. On 8 April 2012, on the occasion of International Roma Day, together with a group of United Nations human rights experts, the Special Rapporteur issued a joint press statement which called for implementation of effective policies and programmes to protect and promote Roma rights in all countries with Roma populations, and encouraged Governments to build stronger and positive relations with Roma communities and non-governmental organizations, and to consult fully with them when shaping sustainable solutions to the problems faced by Roma communities.

12. On 2 August 2012, on the occasion of the Roma Holocaust Remembrance Day, a joint press release was issued by the Special Rapporteur and the Independent Expert on minority issues calling for increased awareness and action to tackle the issues of hostility and discrimination against Roma and address the persistent prejudices that fuel racism and intolerance against them.

13. On 28 August 2012, the Special Rapporteur will participate in a thematic discussion on racist hate speech organized by the Committee on the Elimination of Racial Discrimination during its eighty-first session, held in Geneva, Switzerland, from 6 to 31 August 2012.

III. Use of the Internet for propagating racism, racial discrimination, xenophobia and related intolerance

A. Key trends

14. According to an estimate by the International Telecommunication Union (ITU), in 2011 the number of Internet users in the world reached 2.4 billion.¹ The Internet has indeed become a global and public online space for exchanging information and ideas. In existence since the 1960s, this new form of communication has evolved into an unprecedented communication tool with rapid and global outreach.

15. Unlike traditional forms of communication and information technologies, the Internet has a tremendous capacity to transmit and disseminate information instantly to different parts of the world; it enables users to access and provide content with relative anonymity; materials and content available on the Internet can be shared across national borders and can be hosted in different countries with different legal regimes. The Internet offers countless benefits for almost all aspects of modern life. Regrettably, owing to its unique characteristics, the Internet can and is also being used to propagate racist and xenophobic content and incite racial hatred and violence.

16. In paragraph 14 of General Assembly resolution 66/144 on global efforts for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action, the Assembly, on the basis of the conclusions and recommendations of the previous Special Rapporteur (see A/66/312 and A/66/313), called upon all States, in accordance with the commitments undertaken in paragraph 147 of the Programme of Action, to take all measures necessary to combat incitement to violence motivated by racial hatred, including through the misuse of print, audiovisual and electronic media and new communications technologies, and, in collaboration with service providers, to promote the use of such technologies, including the Internet, to contribute to the fight against racism, in conformity with international standards of freedom of expression and taking all measures necessary to guarantee that right. Furthermore, in the Durban Declaration, States expressed their deep concern about the use of new information technologies, such as the Internet, for purposes contrary to respect for human values, equality, non-discrimination, respect for others and tolerance, including to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, and that, in particular, children and youth having access to this material could be negatively influenced by it.²

17. The increasing use of electronic telecommunication technologies, such as electronic mail and the Internet by right-wing extremist groups and racist organizations in their transborder communications and exchange of racist materials was first observed in the mid-1990s (see E/CN.4/1995/78 and A/51/301). The then Special Rapporteur on contemporary forms of racism, racial discrimination,

¹ International Telecommunication Union, Internet users, Key global telecom indicators for the world telecommunication service sector, updated 16 November 2011. Available from http://www.itu.int/ITU-D/ict/statistics/at_glance/KeyTelecom.html.

² A/CONF.189/12 and Corr.1, chap. I, para. 91.

xenophobia and related intolerance, in his 1997 report, stated that the Internet had become the new battleground in the fight to influence public opinion. While it was still far behind newspapers, magazines, radio and television in the size of its audience, the Internet had already captured the imagination of people with a message, including purveyors of hate, racists and anti-Semites (E/CN.4/1997/71).

18. As Internet technology has developed, extremist hate sites have grown in both number and technological sophistication. In 2008, it was estimated that since 1995, when the first extremist hate website was identified, the number of such websites and other Internet postings had grown to 8,000; of those, the largest proportion was constituted by online content related to racism and racial hatred.³ As stated in the reports of his predecessor (A/66/312, para. 101, and A/66/313 and Corr.1), the Special Rapporteur is alarmed by the use of the Internet and social media by extremist groups and individuals to disseminate racist ideas and propagate racism, racial discrimination, xenophobia and related intolerance. Many States raised concerns regarding the increased use of the Internet to proliferate, promote and disseminate racist ideas by extremist political parties, movements and groups (see A/66/312). Concerns were also raised by non-governmental organizations and relevant United Nations organizations about the use of media, including the Internet, to proliferate and promote racist content; the increased number of incidents of racist violence and crimes against, in particular, ethnic and religious minorities and migrants; and the existing lack of adequate data on such violence and crimes (ibid.).

19. Furthermore, extremist groups and movements, particularly far right movements, use the Internet not only as a means to disseminate hate speech and incite racial violence and abuse against specific groups of individuals, but also as a recruitment platform for potential new members. The Internet is exploited in expanding their networks of individuals, movements and groups, as it allows the dissemination of information about their aims and facilitates the sending of invitations to various events and meetings. It is used also by extremist movements and groups to disseminate newsletters, video clips and other materials. It is also of great concern that open calls for violence against individual anti-racism activists are placed on neo-Nazi websites to intimidate, exert pressure or stop social or political actions or activities directed against extremist groups. Cases were reported in which personal details of active opponents of hate or extremist groups were included in such calls for violence and as a consequence they were attacked physically.⁴

20. The Special Rapporteur would like to underline the importance of further examining the correlation between various manifestations of racism on the Internet and the actual hate crimes committed. Given the lack of adequate data on this link, it is important that the relevant authorities enhance their efforts to identify, investigate and register hate crimes. Those efforts are critical, especially in combating the negative psychological influence of such racist online materials on youth.

³ See Simon Wiesenthal Centre, "iReport, online terror + hate: the first decade (2008)". Available from <http://www.wiesenthal.com>.

⁴ See A/HRC/20/38, para. 11; and Office for Democratic Institutions and Human Rights (ODIHR), "Report of OSCE-ODIHR activities on hate on the internet", ODIHR.GAL/77/10 (Warsaw, 27 October 2010).

B. Main challenges

21. There are a number of legal, regulatory, technical and other practical challenges to the fight against racism and incitement to racial hatred and violence on the Internet (E/CN.4/2006/18, para. 29). Enforcement of laws and regulations related to any inappropriate or illegal Internet content, including racist content, is challenging owing to the complexity occasioned by the lack of clarity of legal terms. In addition, due to their transborder nature, cases related to racism, incitement to racial hatred and violence through the Internet most often fall under different jurisdictions depending on where the inappropriate or illegal content was hosted and created, and where hate crimes prompted by such racist or xenophobic content took place. Furthermore, the effectiveness of national legislation becomes limited since States adopt differing laws, policies or approaches with regard to hate or racist content on the Internet and apply differing criteria for defining the threshold between freedom of expression and criminal acts or behaviour in such cases. In addition, there is a significant lack of necessary expertise and capacity to regulate or deal with Internet-related hate crime cases.

22. Technical measures developed for the fight against racism and incitement to racial hatred and violence on the Internet also have to contend with such pitfalls as unintended consequences and the potential for being misused, often with serious human rights implications, including limitation of freedom of expression and opinion. However, owing to the sheer amount of data that flows through and is placed on the Internet, it would be impossible to monitor online content.

23. Notwithstanding the adverse effects of the Internet, such as its increasing use by some individuals or groups to disseminate racist ideas and hate messages and incite racial hatred and violence, the Special Rapporteur would like to reiterate the fact that the Internet can also be a useful tool for preventing and combating racist and xenophobic ideologies and attitudes. In his previous reports, the Special Rapporteur underlined that in the context of the fight against racism, racial discrimination, xenophobia and related intolerance the Internet should not be seen solely as a new arena for spreading racist ideas and views, but also as a potential preventive tool for fighting against racism, racial discrimination, xenophobia and related intolerance (A/HRC/20/33, para. 63). He also addressed the use of the Internet and social media by extremist political parties, movements and groups, and the adverse effects of such phenomena on youth (see A/HRC/20/38).

C. Freedom of opinion and expression in the context of the fight against racism and incitement to racial hatred and violence on the Internet

24. The Durban Declaration and Programme of Action recognize the positive contribution that the exercise of the right to freedom of expression, particularly by media and new technologies, including the Internet, and full respect for the freedom to seek, receive and impart information can make to the fight against racism, racial discrimination, xenophobia and related intolerance. The Durban Declaration and Programme of Action reiterate the need to respect the editorial independence and autonomy of the media in this regard.⁵

⁵ Durban Declaration (A/CONF.189/12 and Corr.1, chap. I), para. 90.

25. In that respect, the Special Rapporteur would like to underscore the importance of ensuring the enjoyment of the right to freedom of expression and opinion in the context of the fight against racism and incitement to racial hatred and violence. With regard to the relationship between freedom of expression and its limits when combating the dissemination of hate speech and racist materials on the Internet, the former Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression noted in his 1998 report that great care must be taken to achieve an appropriate balance between the rights to freedom of opinion and expression and to receive and impart information and the prohibition on speech and/or activities promoting racist views and inciting violence (E/CN.4/1998/40, para. 37).

26. As set out in article 19, paragraph 3, of the International Covenant on Civil and Political Rights, the right to freedom of opinion and expression may be restricted legitimately under international human rights law, essentially to safeguard the rights of others. As stated by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, any limitation to the right to freedom of expression (a) must be provided by law, which is clear and accessible to everyone (principles of predictability and transparency); (b) must protect, inter alia, the rights or reputations of others; and (c) must be proven as necessary and the least restrictive means required to achieve the purported aim (principles of necessity and proportionality) (A/HRC/17/27, para. 24). Furthermore, legitimate types of information which may be restricted include child pornography (to protect the rights of children), hate speech (to protect the rights of affected communities), defamation (to protect the rights and reputation of others against unwarranted attacks), direct and public incitement to commit genocide (to protect the rights of others), and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life) (ibid, para. 25).

27. The Committee on the Elimination of Racial Discrimination, in its general recommendation XV (see A/48/18, chap VIII.B), has underlined the obligations of States with regard to the dissemination of racist ideas and incitement to racial discrimination and hatred under article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which provides, inter alia, that States parties shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination and shall declare illegal and prohibit organized and all other propaganda activities, which promote and incite racial discrimination. In the opinion of the Committee, the obligation to restrict and prohibit such forms of speech is compatible with the obligation to protect and respect freedom of expression and opinion.⁶

28. The Special Rapporteur would like to underline that any measures taken by States to counter racism and incitement to racial hatred and violence on the Internet should not unduly limit the right to freedom of expression. He considers that any restrictions, control and censorship of the content disseminated via the Internet should be done on a clearly defined legal basis and in a manner that is necessary, proportionate and compatible with States' obligations under international human rights law. He would like to reiterate the view of his predecessor that determining which acts or expressions may meet the thresholds determined in articles 19 to 22 of

⁶ See, for example, CERD/C/65/CO/2, para. 8.

the International Covenant on Civil and Political Rights and in article 4 of the International Convention on the Elimination of All Forms of Discrimination, is ultimately a decision that is best made after a thorough assessment of the individual circumstances of each case. The decision should always be guided by well-defined criteria, in accordance with international standards, and should be made by an independent and impartial court or tribunal, taking into account the local conditions, history, culture and political context (see A/HRC/18/44, para. 30).

IV. Legal and policy frameworks and measures taken at the national, regional and international levels

29. The unprecedented rapid development of new communication and information technologies, including the Internet, has enabled wider dissemination of racist and xenophobic content that incites racial hatred and violence. In response to that problem, States and international and regional organizations have undertaken a variety of legal and policy initiatives. Civil society and the private sector have also contributed to addressing this phenomenon through various measures and initiatives. The Special Rapporteur is of the view that to make actions fully effective, a comprehensive and cohesive approach should be developed through dialogue and consultation among relevant actors and stakeholders, with a view to enhancing synergies of strategies and actions.

A. International frameworks and initiatives

30. With regard to international efforts to combat the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance, the Durban Declaration and Programme of Action highlight several important areas of action identified by the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.⁷ Furthermore, article 4 (a) of the International Convention on the Elimination of All Forms of Racial Discrimination provides that States parties shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, as well as incitement to racial discrimination; and article 4 (b) provides that States parties shall declare illegal and prohibit organized and all other propaganda activities which promote and incite racial discrimination.

31. A number of United Nations human rights mechanisms have addressed the issue of the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. The Committee on the Elimination of Racial Discrimination, in its general recommendation XXIX, adopted in 2002, on descent-based discrimination, recommended that States take strict measures against any incitement to discrimination or violence against descent-based communities, including through the Internet. Further, in its general recommendation XXX on discrimination against non-citizens, the Committee recommended taking resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, especially by politicians, officials, educators and

⁷ Programme of Action (A/CONF.189/12 and Corr.1, chap. I), paras. 140-147.

the media, on the Internet and other electronic communications networks and in society at large. It has also expressed concern at the dissemination of racist propaganda on the Internet in a number of recent concluding observations issued after consideration of regular reports submitted by States parties, in which it states that such dissemination falls within the scope of prohibitions under article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.⁸ At its eighty-first session, held in Geneva from 6 to 31 August 2012, the Committee on the Elimination of Racial Discrimination organized a thematic discussion on racist hate speech which also touched upon the issue of the Internet.

32. The Office of the United Nations High Commissioner for Human Rights has played a key role in the international debate on racism and the Internet. In 1997, OHCHR organized a seminar on the role of the Internet to find ways and means to ensure its responsible use in the light of the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination (see E/CN.4/1998/77/Add.2). Pursuant to resolution 1999/78 of the Commission on Human Rights, the United Nations High Commissioner for Human Rights undertook research and consultations to explore the use of the Internet for purposes of incitement to racial hatred, racist propaganda and xenophobia, and to study ways of promoting international cooperation in this area. The resulting study described how individuals and groups with racist beliefs and agendas had availed themselves of this rich communication resource to establish and strengthen ties among themselves and make their racist materials, in increasing volume and with increasing sophistication, available online to Internet users (see A/CONF.189/PC.2/12). In 2011, OHCHR organized a series of expert workshops for Africa, the Asia-Pacific region, Europe and the Latin America and Caribbean region on the prohibition of incitement to national, racial or religious hatred, as reflected in international human rights law. The objectives of these workshops were to gain a better understanding of legislative patterns, judicial practices and different types of policies in countries of the various regions of the world, with regard to the prohibition of incitement to national, racial, or religious hatred while ensuring full respect for freedom of expression, as outlined in articles 19 and 20 of the International Covenant on Civil and Political Rights; to arrive at a comprehensive assessment of the state of implementation of this prohibition of incitement in conformity with international human rights law; and to identify possible actions at all levels. At the regional consultations the participants discussed strategic responses to hate speech, which in addition to legal measures should include, inter alia, systematic monitoring and data gathering to facilitate early warning; self-regulation by the media; awareness-raising campaigns by Governments; the training of law enforcement officers and judges; and the promotion of tolerance through education. OHCHR will convene a final expert meeting, to be hosted by the Kingdom of Morocco, on 4 and 5 October 2012, to develop a comparative analysis of the findings of the four workshops, to identify possible actions at all levels and to reflect on the best ways and means of sharing experiences.

33. The Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action held a high-level seminar on racism and the Internet in 2006. During the discussion, it was underlined that a combination

⁸ CERD/C/64/CO/2, para. 19; CERD/C/ITA/CO/16-18, para. 17; CERD/C/63/CO/5, para. 14; and CERD/C/LUX/CO/13, para. 14.

of measures in the form of self-regulatory initiatives combined with education about racist content on the Internet and the fostering of tolerance could be the most effective way to alleviate the problem (see E/CN.4/2006/18). Moreover, a number of important recommendations were made, which included promoting the use of the Internet to create educational and awareness-raising networks against racism; using the Internet to promote universal respect for human rights and human development; increasing awareness about the possibilities offered by new information technologies; and continually developing tools to promote among civil society, in particular parents, teachers and children, the use of information networks. Several practical measures were proposed, such as the creation of a model anti-racism network for schools, the inclusion of anti-racism messages on websites accessed by young people, training courses for teachers on how to use the Internet, the sharing of good practices, the promotion of digital inclusion, the ethical use of the Internet and the development of critical thinking skills for children (*ibid.*, paras. 37-39).

34. In October 2003, the United Nations Educational, Scientific and Cultural Organization (UNESCO) adopted a new integrated strategy to combat racism, discrimination, xenophobia and intolerance,⁹ which was developed after a series of studies and consultations on different aspects and forms of racism, xenophobia and discrimination, including the issue of combating racist propaganda in the media, especially in cyberspace. The strategy contains a set of measures to be taken by the organization in response to the potential use of new information and communications technologies, in particular the Internet, to spread racist, intolerant or discriminatory ideas. Specifically, the measures include combating racism and discrimination in cyberspace by enhancing UNESCO awareness-raising efforts to ensure greater respect for ethical rules by media professionals; ensuring more effective application of regulations in this area by relevant authorities; launching campaigns for raising the awareness of political and professional decision makers and mobilizing them against racist propaganda spread via the new information technologies, and creating Internet dialogue and discussion forums on racism in the schools, in view of the increasingly widespread use of the Internet by young people.

35. Besides its work in the area of transnational crime and organized crime, the United Nations Office on Drugs and Crime (UNODC) addresses cybercrime, including specific computer-related acts involving racism and xenophobia, by various means such as providing technical assistance and training to States to improve national legislation and building the capacity of national authorities to prevent, detect, investigate and prosecute such crimes in all their forms. UNODC has carried out an extensive analysis of the interface between crime and the use of the Internet, and is currently undertaking a comprehensive study of the problem of cybercrime and responses to it.

36. The International Telecommunication Union is playing an increasing role in relation to cybersecurity and efforts to combat cybercrime. The fundamental role of ITU, following the World Summit on the Information Society and the ITU Plenipotentiary Conference held in Guadalajara, Mexico, in 2010, is to build confidence and security in the use of information and communications technologies. In response to the task entrusted to it to take the lead in coordinating international efforts in the field of cybersecurity, ITU launched the Global Cybersecurity Agenda, which is a framework for international cooperation aimed at enhancing global public

⁹ Available from <http://unesdoc.unesco.org/images/0013/001312/131202e.pdf>.

confidence and security in the information society. In the context of the Agenda, ITU provides support to its member States through specific initiatives and activities related to legal, technical and procedural measures, organizational structures, capacity-building and international cooperation on cybersecurity. The organization has also provided training courses, training materials and publications on specific cybercrimes for law enforcement and judicial organs as well as civil society. Moreover, it has developed a number of tools, including a report entitled “Understanding cybercrime: a guide for developing countries”, aimed at helping them to better understand the national and international implications of growing cyberthreats and assist in the assessment of the existing legal framework and in the establishment of a sound legal foundation.

B. Regional frameworks and initiatives

37. At the regional level, the Council of Europe Convention on Cybercrime and its Additional Protocol constitute a legally binding framework with the widest reach. The Council of Europe Convention on Cybercrime,¹⁰ which entered into force on 1 July 2004, is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. The Convention has been supplemented by an Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems, which entered into force on 1 March 2006.¹¹ The Additional Protocol made any publication of racist and xenophobic propaganda via computer networks a criminal offence. Although many member States of the Council of Europe had already criminalized certain acts related to racist or xenophobic content, a coordinated approach, based on the common elements included in the Additional Protocol, was taken owing to considerable challenges faced by law enforcement agencies in addressing the dissemination of such material through the Internet.

38. The Organization for Security and Cooperation in Europe (OSCE) has been enhancing its work in combating racism, racial discrimination, xenophobia and related intolerance on the Internet. The commitment to combat hate crimes, which can be fuelled by racist, xenophobic and anti-Semitic propaganda on the Internet, was made by the Ministerial Council of the OSCE, meeting in Maastricht in December 2003, in its Decision No. 4/03 on tolerance and non-discrimination. In November 2004, the Permanent Council of OSCE, in its Decision No. 633 on promoting tolerance and media freedom on the Internet, decided that participating States should investigate and, where applicable, fully prosecute violence and criminal threats of violence, motivated by racist, xenophobic, anti-Semitic or other related bias on the Internet (para. 2). In the same decision, the Permanent Council also stated that participating States should study the effectiveness of laws and other measures regulating Internet content, specifically with regard to their effect on the rate of racist, xenophobic and anti-Semitic crimes (para. 5), and encourage and support analytically rigorous studies on the possible relationship between racist, xenophobic and anti-Semitic speech on the Internet and the commission of crimes motivated by such speech (para. 6). The Ministerial Council, in paragraph 12 of its

¹⁰ Available from <http://conventions.coe.int/Treaty/en/Treaties/Html/185.htm>.

¹¹ Available from <http://conventions.coe.int/Treaty/en/Treaties/html/189.htm>.

Decision No. 9/09 on combating hate crimes, adopted in Athens on 2 December 2009, assigned its Office for Democratic Institutions and Human Rights the task of exploring, in consultations with the participating States and in cooperation with relevant international organizations and civil society partners, the potential link between the use of the Internet and bias-motivated violence and the harm it causes, as well as eventual practical steps to be taken.¹²

39. To ensure safer use of the Internet, in 1998 the European Union adopted an action plan which encouraged self-regulatory initiatives to deal with illegal and harmful Internet content, including the creation of a European network of hotlines for Internet users to report illegal content such as child pornography; the development of self-regulatory and content-monitoring schemes by access and content providers; and the development of internationally compatible and interoperable rating and filtering schemes to protect users. In May 2005, the European Union extended the Action Plan, entitled the “‘Safer Internet plus’ programme”, for the period 2005-2008. The aims of the programme were to continue to promote safer use of the Internet and new online technologies, and particularly to fight against illegal content such as child pornography and racist material and content which is potentially harmful to children or unwanted by the end-user.¹³

40. There are other relevant regional initiatives aimed at reaching a common understanding and coordination on principles and standards for the fight against cybercrime and enhancing cybersecurity. In 2002, the Commonwealth of Nations presented a model law on cybercrime that provides a legal framework to harmonize legislation within the Commonwealth and enable international cooperation. In 2002, the Organization for Economic Cooperation and Development (OECD) completed guidelines for the security of information systems and networks: towards a culture of security. In 2009, the Economic Community of West African States (ECOWAS) adopted a directive on fighting cybercrime in the ECOWAS region that provides a legal framework for its member States. The East African Community framework for cyberlaw was adopted in May 2010, and provides an overview of the key legal issues related to intellectual property, competition, taxation and information security. Asia-Pacific Economic Cooperation (APEC) issued, in 2002, a cybersecurity strategy which outlined five areas for cooperation, including legal developments, information sharing and cooperation, security and technical guidelines, public awareness, and training and education. In 2007, the Arab League and the Gulf Cooperation Council (GCC) made a recommendation to seek a joint approach on cybercrime-related issues by taking into consideration international standards. Since the preceding regional approaches to the fight against cybercrime, including specific computer-related crimes involving incitement to racial hatred and violence, are applicable only to member States of the respective organizations, their impact may be limited. Furthermore, the majority of them do not specifically address content-related offences such as the dissemination of racist ideas or incitement to racial hatred and violence on the Internet; rather, they mainly focus on other forms of cybercrime and cybersecurity concerns.

¹² Available from <http://www.osce.org/cio/40695>.

¹³ See Decision No. 854/2005/EC of 11 May 2005 of the European Parliament and of the Council establishing a multiannual Community Programme on promoting safer use of the Internet and new online technologies, in *Official Journal of the European Union*, vol. 48 (11 June 2005).

C. Frameworks and initiatives at the national level

41. To date, the issue of racism and incitement to racial hatred and violence on the Internet has largely been addressed through national and regional frameworks. According to information provided by States,¹⁴ a number of measures have been undertaken, including prohibiting Internet content that incites extremism and xenophobia; ensuring collaboration among relevant law enforcement agencies; creating designated units or services for combating cybercrime, including the incitement to racial hatred and violence; creating Internet resources on the prevention of extremism and the promotion of respect for multiculturalism and ethnic diversity; criminalizing acts of incitement to racial hatred and violence committed through the Internet; prohibiting dissemination of racist and Nazi materials; monitoring Internet content; and setting up online complaint filing mechanisms.¹⁵ In some countries, national human rights institutions are also handling an increasing number of complaints related to allegations of hate speech and incitement to racial hatred and violence disseminated on the Internet. In addition, private and quasi-private organizations, including service providers, have developed codes of conduct, end-user rules and guidelines for business practices to prevent inappropriate or illegal racist content (see A/64/294, paras. 27-31 and 73).

42. The Special Rapporteur believes that in combating racism and incitement to racial hatred and violence on the Internet, a comprehensive approach is needed. Laws, regulations and prosecutions adopted at the national level may have limited impact owing to the transborder and decentralized nature of the Internet as well as to differing national approaches, laws and policies, particularly with regard to the legality of acts of dissemination of racist ideas, incitement to racial hatred and violence on the Internet.¹⁶ Therefore, additional measures in the form of self- and co-regulatory initiatives such as codes of conduct, end-user rules and others developed by private and quasi-private organizations, including those that create online content and provide web-hosting services, can be useful in making the efforts more effective. Furthermore, as stated in paragraph 141 of the Programme of Action, education about racist content on the Internet and about ways to foster tolerance is another important tool for combating this phenomenon. In that regard, the Special Rapporteur concurs with the views expressed by the previous mandate holders on the importance of education and awareness-raising in combating ideas and concepts that may incite or legitimize racism, racial discrimination or xenophobia, in particular via the Internet (A/HRC/4/19, para. 61).

V. Combating the use of the Internet for propagating racism, racial discrimination, xenophobia and related intolerance

A. Legislative, policy and other measures

43. There are a number of legal, policy, and programmatic measures that may be taken to combat racism and incitement to racial hatred and violence on the Internet.

¹⁴ See A/64/295, A/65/323 and A/66/312.

¹⁵ See, for example, A/65/323, para. 69.

¹⁶ E/CN.4/2006/WG.21/BP.1. Available from http://www2.ohchr.org/english/issues/racism/groups/docs/e_cn4_2006_wg21_bp1.doc.

The Programme of Action (para. 145) urges States to implement legal sanctions, in accordance with the relevant international human rights law, in respect of incitement to racial hatred through new information and communications technologies, including the Internet, and further urges them to apply all relevant human rights instruments to which they are parties, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, to racism on the Internet. Taking fully into account existing international and regional standards on freedom of expression, the Programme of Action also calls upon States to consider the following (para. 147):

(a) Encouraging Internet service providers to establish and disseminate specific voluntary codes of conduct and self-regulatory measures against the dissemination of racist messages and those that result in racial discrimination, xenophobia or any form of intolerance and discrimination; to that end, Internet providers are encouraged to set up mediating bodies at national and international levels, involving relevant civil society institutions;

(b) Adopting and applying, to the extent possible, appropriate legislation for prosecuting those responsible for incitement to racial hatred or violence through the new information and communications technologies, including the Internet;

(c) Addressing the problem of dissemination of racist material through the new information and communications technologies, including the Internet, inter alia, by imparting training to law enforcement authorities;

(d) Denouncing and actively discouraging the transmission of racist and xenophobic messages through all communications media, including new information and communications technologies, such as the Internet;

(e) Considering a prompt and coordinated international response to the rapidly evolving phenomenon of the dissemination of hate speech and racist material through the new information and communications technologies, including the Internet; and in this context strengthening international cooperation;

(f) Encouraging access and use by all people of the Internet as an international and equal forum, aware that there are disparities in use of and access to the Internet;

(g) Examining ways in which the positive contribution made by the new information and communications technologies, such as the Internet, can be enhanced through replication of good practices in combating racism, racial discrimination, xenophobia and related intolerance;

(h) Encouraging the reflection of the diversity of societies among the personnel of media organizations and the new information and communications technologies, such as the Internet, by promoting adequate representation of different segments within societies at all levels of their organizational structure.

44. A variety of possible players that may be involved in combating racism and incitement to racial hatred and violence on the Internet include Governments and private sector and civil society organizations at the national, regional and international levels. In that regard, the Special Rapporteur would like to emphasize the importance of establishing clear roles and responsibilities of the different actors involved: Internet service providers, Internet companies, law enforcement agencies, non-governmental organizations and independent monitoring and complaint

mechanisms. It is also crucial to strengthen and institutionalize dialogue and collaboration among the various actors involved in addressing the issues of racism and incitement to racial hatred and violence on the Internet.

45. The Special Rapporteur is of the view that national, regional and international efforts, including legislative and policy initiatives, are of major political significance and may facilitate identification of common strategies and solutions. In particular, he reiterates the opinion of the Committee on the Elimination of Racial Discrimination on the mandatory character of State obligations to enact appropriate legislation in line with the provisions of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination. In that regard, he welcomes efforts by the Committee on the Elimination of Racial Discrimination to provide further clarification regarding the obligations of parties to the Convention, particularly in respect of the exploitation of the Internet to propagate racial, ethnic and xenophobic hatred and incitement to violence. The Special Rapporteur is also persuaded by and supports the opinions of the Committee, and those of his predecessors, that legal measures taken to combat the propagation of racial, ethnic and xenophobic hatred and incitement to violence through the Internet are compatible with international human rights norms on the freedom of expression and opinion. The Special Rapporteur notes and appreciates that there are genuine differences in the views of States on the need for and the possible political dangers presented by legislative measures to restrict certain forms of speech. However, the Council of Europe has demonstrated the possibilities of a collective legal approach to combating racial, ethnic and xenophobic hatred and incitement through the Internet. There are other important efforts in other regions. The Special Rapporteur also notes that a number of States have enacted legislation to combat racism on the Internet.

B. Role of the private sector, including intermediaries

46. The multi-stakeholder approach to addressing the problem of propagation of racial, ethnic and xenophobic hatred and incitement to violence on the Internet has been stressed in the Durban Declaration and Programme of Action and at various meetings convened under the auspices of the United Nations. In particular, such business enterprises as Internet service providers and content developers have certain responsibilities through self-regulation and co-regulation with State agencies. Certain measures by Internet service providers, such as establishing clear and comprehensive terms of service as a basis for taking appropriate action against websites that disseminate racist ideas, hate messages and incitement to racial hatred and violence on the Internet, have been cited as some of the ways in which the private sector can contribute to combating racism and the incitement of hatred on the Internet. Business entities can also promote the use of industry codes of conduct, ethical guidelines and principles as tools for addressing online racist content; develop and implement accessible and transparent online complaint mechanisms; and enhance mechanisms available to end-users to flag inappropriate content placed on Internet sites.

47. The Special Rapporteur is, however, aware that the Internet industry faces technical challenges owing to the huge amount of data and content uploaded by users and that it may not be technically feasible to monitor, filter or address the inappropriate or illegal content. Moreover, there are genuine risks that such

technical measures as surveillance or filtering mechanisms may create unintended consequences that interfere with cross-border data flows and services and undermine the Internet as a single, unified and global communications network, and may be easily misused to limit or suppress other human rights such as the right to freedom of expression.

48. Given the lack of easy consensus on what content may be considered as “inappropriate”, “illegal”, “racist” or “inciting hatred”, the industry on its own should not make decisions regarding user-generated content and take such actions as removing or filtering the content. In that regard, the view of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression is instructive: that the development of criteria for censorship measures should never be delegated to private entities; and that intermediaries should not be held liable for refusing to take action that infringes individuals’ human rights. Requests to intermediaries to prevent access to certain content, or disclose private information for strictly limited purposes such as the administration of criminal justice, should be done through an order issued by a court or a competent body which is independent of any political, commercial or other unwarranted influences (A/HRC/17/27, para. 75). Moreover, the different cultural and political contexts of various States means that different countries will have differing positions, approaches and regulations with regard to Internet content. In spite of those challenges, the Special Rapporteur notes that there are many private sector measures that are already in place in a number of States that continue to make positive contributions to combating the promotion of racial, ethnic and xenophobic hatred and incitement to violence through the Internet.

C. Role of civil society

49. Civil society actors are also central to anti-racism efforts and their inputs and contributions have to be an integral part of strategies at the international, regional and national levels. Most of the monitoring of the Internet for racial, ethnic and xenophobic hatred and incitement to violence is currently undertaken by civil society groups operating as non-governmental organizations or research institutes. The work of these groups — collecting relevant data and identifying trends, publicizing and therefore shaming promoters of such hatred, promoting consumer awareness to allow consumers to make informed decisions and shaping policy and legislation in different countries — has contributed immensely to efforts to combat the challenge. Furthermore, civil society actors are working closely with victims of racism, racial discrimination and xenophobia to encourage and assist them in defending their rights and expressing their views on the Internet.

VI. Promoting the use of new information and communications technologies, including the Internet, to contribute to the fight against racism, racial discrimination, xenophobia and related intolerance

50. The Durban Declaration (para. 92) and Programme of Action (para. 140) recognize the need to promote the use of new information and communications technologies, including the Internet, to contribute to the fight against racism, racial

discrimination, xenophobia and related intolerance, and that new technologies can assist the promotion of tolerance and respect for human dignity, and the principles of equality and non-discrimination. The Programme of Action also highlights the potential to increase the use of the new information and communications technologies, including the Internet, to create educational and awareness-raising networks against racism, racial discrimination, xenophobia and related intolerance, both in and out of school, as well as the ability of the Internet to promote universal respect for human rights and also respect for the value of cultural diversity (para. 141).

51. Like his predecessor, the Special Rapporteur encourages States to fully exploit the opportunities provided by new technologies, including the Internet, to counter the dissemination of ideas based on racial superiority or hatred (A/HRC/20/38, para. 12). He would also like to reiterate that promoting the expression of diverse views and opinions through the Internet remains an effective approach to combating and preventing racism, consistent with the implementation of articles 19 to 22 of the International Covenant on Civil and Political Rights, and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination (A/HRC/20/33, para. 63).

52. As the Special Rapporteur noted in his previous report, the Internet and social media can also be a useful tool for preventing the spread of racist ideologies by extremist political parties, groups and movements. In that connection, he welcomes information received about projects set up at the national level by civil society groups with the support of public authorities, including the creation of a social network-based platform targeting young people and specifically aimed at countering right-wing extremism and fostering a democratic culture (see A/HRC/20/38, para. 12).

53. The Special Rapporteur believes that one of the possible ways of countering and preventing racism on the Internet would be to diversify content, particularly by promoting local content. The Internet as a global network provides a common platform for communicating and sharing ideas, views and values among different cultures and communities around the world. Feeding local content into the global network can contribute to greater understanding, tolerance and respect for diversity. In particular, the Internet holds a great potential to reduce information asymmetry and misperceptions that feed racist and xenophobic expressions. In that regard, as the previous mandate holder noted, such initiatives as information campaigns broadcast on the Internet could be useful in promoting harmony and tolerance among different ethnic groups (A/HRC/18/44, para. 12). Promoting affordable access to the Internet and the creation of culturally and linguistically diverse content, as proposed by some civil society initiatives, may also contribute to better appreciation of diversity.¹⁷

54. It should be borne in mind that most often victims of racial discrimination are more likely to lag behind in digital connectivity and access to the Internet. The absence of their voices in digital conversations leaves racist ideas unchallenged. In that regard, the Special Rapporteur would like to reiterate his recommendation that States should adopt effective and concrete policies and strategies to make the Internet widely available, accessible and affordable to all, on the basis of the

¹⁷ See, for example, the Association for Progressive Communications (www.apc.org).

principles of non-discrimination of any kind, including on the grounds of race, colour, descent and ethnic or national origin. Relevant private sector actors, in particular Internet intermediaries, can also support such efforts by providing access to networks and enabling online participation by diverse racial and ethnic groups and individuals. According to the studies released jointly in 2012 by the Internet Society, the Organization for Economic Cooperation and Development and the United Nations Educational, Scientific and Cultural Organization, there is a strong correlation between the development of a network infrastructure and the growth of local content: the more developed the local Internet markets, the lower the reported prices for international bandwidth.¹⁸

VII. Conclusions and recommendations

55. **The Special Rapporteur notes that addressing the promotion of racial, ethnic and xenophobic hatred through the Internet now presents a fairly new and complex challenge to anti-racism efforts. He stresses, however, that the Durban Declaration and Programme of Action and other international human rights instruments, in particular, the International Convention on the Elimination of All Forms of Racial Discrimination, provide a comprehensive and fairly robust framework for possible actions in combating this phenomenon. To that end, he welcomes the interest of and attention paid by the Committee on the Elimination of Racial Discrimination in elaborating interpretations of provisions of the Convention with regard to racial and ethnic hatred, and appreciates the contribution of the recent studies by the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression on this matter. The Special Rapporteur is keen to promote dialogue on the issue and welcomes the support expressed by States and other United Nations mechanisms to proposals for further consultations on the issue of racism and the Internet.**

56. **The Special Rapporteur also notes that important legal and policy efforts have been undertaken at the regional and national levels to address the challenge of the propagation of racial, ethnic and xenophobic hatred and incitement through the Internet. Legislative measures are central to any strategy to combat racism, ethnic hatred and xenophobia, and the Special Rapporteur encourages those States that have not enacted legislation to combat and prevent racial, ethnic and xenophobic hatred through the Internet to consider the enactment of such legislation. Legislative measures must, however, take into account States' obligations to protect other fundamental rights, such as the freedom of expression and opinion, as spelled out in both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights.**

57. **Combating the use of the Internet to propagate racial, ethnic and xenophobic content and incitement to violence requires a multi-stakeholder approach. In that regard, the role of the private sector, in particular Internet service providers and other relevant industry players, is crucial. The Special**

¹⁸ Internet Society, OECD and UNESCO, "The relationship between local content, Internet development and access prices" (2012). Available from <http://www.internetsociety.org/localcontent>.

Rapporteur has highlighted some of the measures already being undertaken by the private sector to address the challenge of racism and incitement to racial hatred and violence on the Internet. The Special Rapporteur would like to note the positive contribution of such measures as the promotion of end-user empowerment and education; the involvement of Internet service providers in the policy discourse and in consultations on the issues of combating racism and incitement to racial hatred and violence on the Internet; the development of intelligent software in the areas of monitoring and filtering; and improvement in co-regulation and self-regulation mechanisms. He notes, however, the limitations in technical measures and is alert to the risks that such technical measures could lead to unintended consequences that restrict human rights. Moreover, the Special Rapporteur shares the view expressed by the Human Rights Council in its resolution on the promotion, protection and enjoyment of human rights on the Internet, adopted on 5 July 2012, in which it recognized the “global and open nature of the Internet as a driving force in accelerating progress towards development in its various forms” which should be maintained.

58. Given the variety of possible players that may be involved in combating racism and incitement to racial hatred and violence on the Internet, including Governments, and private sector and civil society organizations at the national, regional, and international levels, the Special Rapporteur would like to emphasize the importance of establishing clearly the responsibility and roles of the different actors involved, and strengthening and institutionalizing dialogue and collaboration among a variety of actors.

59. In accordance with the provisions of the Durban Declaration and Programme of Action, the Special Rapporteur would like to encourage States to use the opportunities provided by the Internet and social media to counter the dissemination of ideas based on racial superiority or hatred and to promote equality, non-discrimination and respect for diversity. He believes that one of the possible ways of countering racism on the Internet is through content diversification, in particular by promoting local content. Feeding more local content to the global network would contribute to greater understanding, tolerance and respect for diversity, and offers great potential for reducing information asymmetry and misperceptions that feed racist and xenophobic expressions.

60. In the global digital network, the voices of victims of racial discrimination most often remain absent owing to lack of access to the Internet, which often leaves racist ideas unchallenged. In that regard, the Special Rapporteur would like to reiterate that States should adopt effective and concrete policies and strategies to make the Internet widely available, accessible and affordable to all, on the basis of the principles of non-discrimination of any kind, including on the grounds of race, colour, descent, and ethnic or national origin.

61. The Special Rapporteur would like to note the significance of educational and research activities, such as studies on the possible consequences of dissemination of racist ideas, hate messages and incitement to racial hatred and violence on the Internet; research and analysis on the effectiveness of existing legal, policy and technical measures; the development of educational programmes and training materials for young people; the promotion of media

literacy programmes, including technical and textual Internet literacy; and the development and implementation of educational concepts that counter the spread of racist ideas, hate messages and incitement to racial hatred and violence on the Internet.

62. The Special Rapporteur notes the importance of further examining the link between various manifestations of racism on the Internet and hate crimes committed and, given the lack of adequate data on this issue, recommends that States enhance their efforts to identify, investigate and register such hate crimes.

63. The Special Rapporteur would like to underscore the need for a more comprehensive study of the different dimensions to the problem of racism and the Internet. There are many important developments at the regional and national levels, within the private sector and in civil society that can be highlighted as good practices in combating racial and ethnic hatred and incitement to violence on the Internet. Those practices as well as the linkages between online racial hatred and incitement and racial crimes need further investigation. The Special Rapporteur has prepared the present report as a preliminary examination of the problem of racism and the Internet and proposes to submit in one of his future reports a follow-up study that will provide more depth, wider scope, data and analysis.
