



General Assembly

Distr.: General
16 August 2021

Original: English

Human Rights Council

Forty-eighth session

13 September–1 October 2021

Agenda items 3 and 5

**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Human rights bodies and mechanisms

Moving towards racial equality: study of the Advisory Committee on appropriate ways and means of assessing the situation

Report of the Human Rights Council Advisory Committee*

* Agreement was reached to publish the present report after the standard publication date owing to circumstances beyond the submitter's control.



I. Introduction

A. Mandate

1. In its resolution 72/157, the General Assembly reaffirmed that “the global fight against racism, racial discrimination, xenophobia and related intolerance and all their abhorrent and contemporary forms and manifestations” continued to be a matter of priority for the international community. It recognized that despite efforts and initiatives undertaken by States to prohibit racial discrimination and racial segregation and to engender full enjoyment of all rights and freedoms, millions of human beings continued to be victims of this phenomenon.

2. In part VII of the above-mentioned resolution, the General Assembly requested the Human Rights Council “to continue to pay attention to the situation regarding racial equality in the world” and, more concretely, to prepare through its Advisory Committee “a study on appropriate ways and means of assessing the situation, while identifying possible gaps and overlaps”.

3. The Advisory Committee commenced its work on this study at its twenty-first session, in August 2018. A drafting group was established and discussions were held as from the twenty-second session. The current members of the drafting group are: Buham-Suk Baek, Milena Costas Trascasas (Rapporteur), Iurii Alexandrovich Kolesnikov, José Augusto Lindgren Alves, Ajai Malhotra, Itsuko Nakai, Mona Omar, Elizabeth Salmón, Patrycja Sasnal, Dheerujall Seetulsingh (Chair) and Catherine Van de Heyning. A questionnaire was circulated by the secretariat among States and relevant stakeholders, and experts were consulted while the study was being drafted.¹ The Advisory Committee is very grateful for all these valuable inputs.²

B. Preliminary insights

4. At the dawn of the celebrations to mark the twentieth anniversary of the Durban Declaration and Programme of Action, adopted in 2001, the international community must take stock of the progress made in global action against racism, in order to identify the main obstacles and setbacks that such action has encountered over the past two decades. There is no doubt that the scourge of racism continues to be widespread and pervasive, affecting all countries and regions across the globe. Today, however, there is a better understanding of the drivers of this phenomenon, and more knowledge about its root causes and its effects. Moreover, empirical research is allowing identification of the characteristics, the extent and the evolving nature of racial discrimination, and a number of tools and mechanisms are being developed to measure inequality.

5. Governments, societies and individuals are much more aware of the pernicious societal effects resulting from all forms of racism. Experience has taught us that systemic discrimination, disregard or exclusion is often among the root causes of conflict situations, and a breeding ground for violence. On the contrary, equality, tolerance, solidarity and integration are values to cultivate, as they lead to tangible benefits, not only in terms of peaceful coexistence; they also trigger advancement towards societies that are more participatory, democratic, prosperous and developed (in every sense of the term). There is also a cumulative knowledge drawn from various national and regional experiences and

¹ Responses were received from Azerbaijan, Bahrain, Brazil, Honduras, Italy, Mexico, Portugal, Switzerland and the United Arab Emirates, and from Action on Smoking and Health, the International Movement against All Forms of Discrimination and Racism, the International Dalit Solidarity Network and NGO Monitor.

² Inputs were received from the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, from members of the Committee on the Elimination of Racial Discrimination and from the Office of the United Nations High Commissioner for Human Rights (OHCHR).

policies that, if well channelled, may contribute enormously to strengthening collective action against racism.³

6. Notwithstanding these facts, the problem of racism, together with other harmful beliefs and practices related to it, have lately acquired new dimensions that risk engulfing societies in renewed waves of hatred and turmoil, endangering social peace and security. The killing of George Floyd in Minnesota, United States of America, and the Black Lives Matter movement may be seen as the umpteenth wake-up call to the international community, as “people are increasingly impatient to see addressed the deeply rooted structural inequalities and racism”.⁴ Actually, explicit and violent manifestations of racism are only the tip of the iceberg – the expression of more entrenched and profound problems afflicting societies.

7. These particular acts of police brutality and violence provide a good example of the urgency of ensuring racial equality and diversity by tackling systemic discrimination through radical reforms and cultural change. The time has come to embrace more decisive policies and means to bring about racial equality in a sustainable manner at both the national and the international levels. Human Rights Council resolution 43/1 requesting the United Nations High Commissioner for Human Rights to prepare a study on systemic racism in law enforcement points in that direction.

8. Poverty, discrimination and vulnerability often concentrate in racial and ethnic minorities who historically have suffered from structural and socioeconomic marginalization: people of African descent, indigenous peoples and Roma, as well as migrants, displaced persons and refugees. Disparate outcomes in the enjoyment of socioeconomic rights are compounded by unsurmountable obstacles to accessing power structures and meagre capacity to influence policies. The “racialization of poverty” also encompasses a lack of meaningful participation and representation in decision-making processes and public life.

9. The coronavirus disease (COVID-19) pandemic has made evident the negative consequences of lack of racial equality, bringing new concerns to society as a whole. The virus itself has no race or class bias, but its effects on different communities have proved to be disproportionately more devastating to the most vulnerable – to those living at the margins of society and working in the worst conditions.⁵ New challenges not only provide fertile ground for the commission of explicit racist acts and for inflaming racist discourses, but also have a direct impact on the course of the policies and resource allocation that are required in order to promote the advancement of racialized groups.⁶

II. Implementing racial equality

10. Against this backdrop, the concept of “racial equality” must be understood not just as a utopia. On the contrary, achieving a system where human beings are given equal opportunities in spite of perceived differences is the ultimate goal to which norms and policies on racial discrimination should be targeted. In order to move in this direction, measures against racial discrimination need to be complemented by other measures aimed at promoting – actively and concretely – the advancement of disadvantaged groups or individuals. Moreover, the conditions that adversely affect them should be removed in order to make sure that equal opportunities and treatment in access to and enjoyment of rights do genuinely exist.

11. Although human rights instruments do not expressly refer to racial equality as such, this concept draws from the general principle of international law according to which all human beings and all peoples are equal in dignity and rights, irrespective of race, colour and

³ Measures undertaken by Member States, the Durban follow-up mechanisms and OHCHR to counter racial discrimination have been collected by the Secretary-General in successive reports related to the global call for concrete action for the total elimination of racism.

⁴ A/75/561, para. 73.

⁵ See A/HRC/45/44.

⁶ The term “racialized group” is used to explain the process by which perceived patterns of physical difference (e.g. skin colour or eye shape) are used to differentiate groups of people (racialization).

origin.⁷ Indeed, the effective and universal enjoyment of all human rights requires the implementation and operationalization of equality, which is also one of the pillars of the International Convention on the Elimination of All Forms of Racial Discrimination. This principle entails the right of everyone to be treated with dignity, equal consideration and respect, to not receive discriminatory treatment and to have equal access to opportunities.⁸

12. The main international normative and programmatic sources guiding States' actions towards racial equality are the International Convention on the Elimination of All Forms of Racial Discrimination, and the Durban Declaration and Programme of Action and its 2009 follow-up. All applicable standards are implicitly or explicitly enshrined in these instruments, and have been more recently reaffirmed by other regional instruments such as the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance.⁹ In Europe, efforts have mainly been oriented towards the harmonization of anti-discrimination laws and policies,¹⁰ and the implementation of the principle equal treatment in relation to racial or ethnic groups.¹¹

A. Main standards on racial equality

13. Under international human rights law, the prohibition of racism and racial discrimination is absolute.¹² Article 1.1 of the International Convention on the Elimination of All Forms of Racial Discrimination requires States to avoid any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise of human rights and fundamental freedoms "on an equal footing".

14. References to equality are scattered throughout the text of the International Convention on the Elimination of All Forms of Racial Discrimination. Article 5 includes "equality before the law", and more specifically "the right to equal treatment before the tribunals and all other organs administering justice".¹³ This basic and general principle on human rights protection ensures that victims of racism, racial discrimination and related forms of intolerance receive equal and effective protection against discrimination on any ground and in any sphere of life, public or private.¹⁴ The need to adopt measures other than legal to protect the security of the person from any kind of violence or bodily harm is also implicit.¹⁵

15. Other specific measures related to the enjoyment of economic, social and cultural rights may be necessary in order to achieve racial equality. Article 5 particularly highlights the right to work, the right to form and join trade unions, the right to housing, the right to

⁷ The legal foundations of this principle are found in Article 1 (3) of the Charter of the United Nations, art. 7 of the Universal Declaration of Human Rights, art. 2 of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Convention against Discrimination in Education.

⁸ Inter-American Commission on Human Rights, *Compendium on Equality and Non-Discrimination: Inter-American Standards*, p. 20.

⁹ As of June 2021, six members of the Organization of American States had ratified this treaty. Article 3 recognizes "the right to the equal recognition, enjoyment, exercise, and protection, at both the individual and collective levels, of all human rights and fundamental freedoms enshrined in their domestic law and in international law applicable to the States parties". See also arts. 5 and 6 of the treaty.

¹⁰ The European Commission against Racism and Intolerance provides support to members of the Council of Europe in this field.

¹¹ European Union directive 2000/43/EC sets out the basis for the formal recognition of minimum requirements for the implementation of the principle of equal treatment irrespective of racial or ethnic origin.

¹² Furthermore, no derogation from the prohibition of racial discrimination, genocide, the crime of apartheid or slavery is permitted, not even in times of public emergencies.

¹³ Art. 10 of the Inter-American Convention specifies that States have to ensure that victims receive equitable and non-discriminatory treatment, equal access to the justice system, expeditious and effective proceedings, and fair compensation in the civil or criminal sphere, as applicable.

¹⁴ Human Rights Committee, general comment No. 18 (1989), para. 1.

¹⁵ Art. 2 of the Inter-American Convention.

public health, medical care, social security and social services, the right to education and the right to equal participation in cultural activities. Guaranteeing equal enjoyment of certain civil and political rights, as well as access to any public place and services, is also essential.

16. Finally, article 1 (4) of the same Convention refers to the need to undertake special measures to ensure the “equal enjoyment or exercise of human rights and fundamental freedoms” of certain racial or ethnic groups or individuals.¹⁶ In this regard, article 2 (2) specifies that the adoption of such measures in the social, economic, cultural and other fields “shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

B. Conceptual understanding and scope

17. Equality and non-discrimination are two interdependent and complementary concepts, often presented as two sides of the same coin.¹⁷ Actually, the creation of adequate conditions under which rights and freedoms can be exercised and enjoyed on an equal footing relies on the way in which these two principles are articulated and operationalized in public policies. Discrimination leads to inequality, and thus equality can only be meaningfully pursued through the implementation of a number of integrated actions aimed at eliminating all forms of discrimination. At the same time, addressing direct and indirect forms of discrimination¹⁸ does not suffice to achieve the purposes of the International Convention on the Elimination of All Forms of Racial Discrimination, which also requires tackling structural discrimination and de facto inequality.

18. Structural racism is defined as “the set of norms, rules, routines, patterns, attitudes, and standards of behaviour, both de jure and de facto, that give rise to a situation of inferiority and exclusion against a group of persons in a generalized sense, with these traits perpetuated over time and even generations”.¹⁹ Substantive equality requires moving beyond a mere formal and legal acknowledgement that discrimination is prohibited, and adopting actions to: (a) actively identify and dismantle manifestations of institutional and structural discrimination; (b) palliate the effects of inequality deriving from structural discrimination; and (c) prevent the occurrence of acts of direct and indirect discrimination by forging an environment where people have, in practice, access to equal opportunities.

19. Implementing racial equality in practice requires the operationalization of these normative standards by translating this general legal framework into specific actions. The obligation to respect and protect the right of every person not to be discriminated against on racial grounds would then imply: (a) not undertaking any discriminatory action or adopting any discriminatory legislation or practice; (b) amending or repealing any discriminatory legislation and bringing discriminatory practices or measures to an end; (c) preventing third parties from engaging in discriminatory action; and (d) ensuring that victims of racial discrimination have access to effective protection and remedies as well as adequate reparation or satisfaction.²⁰

20. Positive actions to reduce inequality among groups and individuals must be undertaken to fulfil the obligation of guaranteeing the enjoyment of and access to rights and freedoms on an equal footing. Measures must aim at reversing or changing discriminatory situations by removing the existing obstacles and creating conditions where equal treatment

¹⁶ Other terms used to refer to these measures are “favourable”, “affirmative” and “positive” action.

¹⁷ See the “Guidance note of the Secretary-General on racial discrimination and protection of minorities”, March 2013.

¹⁸ Indirect discrimination derives from the application of policies and actions that are prima facie non-discriminatory but have discriminatory effects in practice as the apparently race-neutral measures impact particular groups disproportionately.

¹⁹ Inter-American Commission on Human Rights, “Report on the situation of human rights in the Dominican Republic”, OEA/Ser.L/V/II. Doc. 45/15.

²⁰ Wouter Vandenhoe, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, p. 187; and Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), paras. 8 and 22.

and opportunities may genuinely take place.²¹ This implies: (a) taking special measures to assist individuals to enjoy their right to equality when circumstances so warrant; (b) providing equality through affirmative action when individuals or groups are unable, for reasons beyond their control, to realize the right to equality by themselves through the means at their disposal; and (c) taking steps to ensure that there is appropriate education and awareness-raising concerning non-discrimination and equality.²²

21. Equality and non-discrimination are obligations to be realized immediately, independently of available resources. Whereas abstention from discrimination is not subject either to progressive realization or to the availability of resources,²³ the elimination of de facto discrimination may require more time and resources, hence the need for a progressive realization. This is particularly true for the implementation of special measures, which in practice may require allocating resources over time, in order to ensure the sustainability of the programmes as well as the adequate achievement of the goals pursued.

C. The role of special measures

22. The adoption of special measures to correct or prevent racial discrimination and inequality is instrumental in fulfilling the obligations undertaken under the International Convention on the Elimination of All Forms of Racial Discrimination.²⁴ Under articles 1 (4) and 2 (2), such measures are to be taken for the sole purpose of securing adequate advancement of certain racial groups and individuals “when the circumstances so warrant”.²⁵ States are thus obliged to adopt active policies of protection aimed at addressing the specific needs of the disadvantaged groups when the context so requires, for example in case of persistent disparities.²⁶ Measures are temporal but can be maintained until the equality goals (achieving equitable conditions for equal opportunity, inclusion and progress) are reached in a sustainable manner.²⁷ They cannot, however, lead to “unjustifiable preferences” or to the maintenance of separate rights for different racial groups, as the non-discrimination principle remains applicable.²⁸ Adequate follow-up systems to assess the outcomes must be put in place.

23. The need for special measures differs from State to State, but they have to be grounded in a realistic appraisal of the situation of the affected groups and individuals. National legislation must provide the framework for their development and implementation on the basis of prior consultation with the targeted or affected communities and the active participation of such communities. Goal-related programmes must be adopted²⁹ in order: (a) to correct the conditions that impair the enjoyment of rights, and to ensure the adequate development of the targeted groups; (b) to encourage the equal participation of those groups

²¹ Inter-American Commission on Human Rights, *Compendium*, p. 11.

²² Wouter Vandenhoe, *Non-Discrimination and Equality in the View of the UN Human Rights Treaty Bodies*, pp. 187–188.

²³ *Ibid.*, p. 189; and CERD/C/65/CO/4, para. 16.

²⁴ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 20.

²⁵ The Committee on the Elimination of Racial Discrimination has pointed out the compulsory nature of the provisions of art. 2. Furthermore, such measures should be appropriate to the situation to be remedied, be legitimate, be necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. See the Committee’s general recommendation No. 32 (2009), paras. 16 and 30.

²⁶ CERD/C/USA/CO/7-9, para. 7. According to the Committee, the application of such measures is justified by vulnerability, marginalization, inequality or structural inequality, entrenched racism, disadvantage, and indirect and historic discrimination; the precise nature of the disadvantage varies and determines the type of remedies suggested. See Patrick Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, pp. 227, 229 and 234.

²⁷ Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 9; and art. 5 of the Inter-American Convention.

²⁸ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 20. Special measures cannot be seen as an exception to the principle of non-discrimination but as an integral part of it.

²⁹ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 27.

in all sectors of society and to bring all onto an equal footing; and (c) to protect them from discrimination, including from activities of private persons, in order to ensure their equal enjoyment of rights and freedoms.³⁰

24. In practice, these measures have been used to overcome situations of structural discrimination affecting people of African descent, but they may be directed to correct other existing disparities or to prevent further imbalances from arising.³¹ Preferential regimes may be introduced in education institutions, housing, political parties and parliaments, and in public employment, especially in the judiciary, the police and the army, and branches of the civil service. Targeted measures may address, for example, unemployment, occupational segregation, and discriminatory practices with regard to recruitment, salaries, promotions and other conditions of employment. Quota systems also aim at promoting diversity by ensuring the representation of marginalized groups in public life while neutralizing prejudices.³²

25. In the practice of the Committee on the Elimination of Racial Discrimination, special measures have been recommended, inter alia for representation in the military and the police, in political systems, in the public service and in the media; for education, including for reduction of achievement gaps, employment, and housing; to preserve heritage; for the alleviation of poverty; and to enhance freedom of movement and rights to participation.³³ Programmes with special measures may be maintained until structural disadvantages are overcome and the groups facing racial discrimination have achieved an appropriate representation.

III. Policy and institutional framework

26. The General Assembly has adopted numerous resolutions of a programmatic nature aimed at mainstreaming the comprehensive implementation of the Durban Declaration and Programme of Action. New mechanisms have been established at the international level, along with specialized bodies at the national level.

A. Programmatic framework and commitments

27. The Durban Declaration and Programme of Action and its follow-up constitute the most relevant programmatic framework to guide States towards racial equality in application of the International Convention on the Elimination of All Forms of Racial Discrimination. This document contains a great repository of concrete measures and initiatives, including of a transformative nature, that States may adopt in order to fully and effectively achieve this goal.³⁴ Recommendations are drawn from the principles and obligations contained in the Convention and therefore must be seriously considered by States as they may be instrumental to States' compliance with their obligation to address racial discrimination "by all appropriate means".

28. The Durban Declaration and Programme of Action recognizes that the persistence of colonial structures and racial practices determines lasting socioeconomic inequalities, particularly in access to education, health care and housing (see paras. 14 and 33). The main victims of structural racism are Africans, people of African descent, people of Asian descent

³⁰ Some States have developed legislation to establish the conditions in which private sector employers may take positive actions (special measures) in respect of at-risk groups; see CERD/C/BEL/CO/20-22, para. 4.

³¹ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), paras. 22–23, and general recommendation No. 34 (2011), para. 7.

³² Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 13; and Durban Declaration and Programme of Action, para. 108.

³³ Thornberry, *The International Convention on the Elimination of All Forms of Racial Discrimination: A Commentary*, p. 231.

³⁴ The Durban Declaration and Programme of Action states that poverty, underdevelopment, marginalization, social exclusion and economic disparities are linked with racism. Genuine equality for all, and in all spheres, including that of development, is thus fundamental for the eradication of racial discrimination practices (see para. 76).

and indigenous peoples; while contemporary forms of racial discrimination feed on xenophobic attitudes and negative stereotyping of non-citizens, particularly migrants, refugees and asylum seekers.³⁵

29. Under the programme of activities for the implementation of the International Decade for People of African Descent (2015–2024), national, regional and international actions and cooperation are being strengthened to foster full enjoyment of the rights of people of African descent and the equal participation of this group in all aspects of society.³⁶ In this connection, the General Assembly has entrusted the recently set up Permanent Forum of People of African Descent with the mandate of contributing to the full political, economic and social inclusion of people of African descent in the societies in which they live as equal citizens without discrimination of any kind and contributing to ensuring equal enjoyment of all human rights.³⁷

30. The proposal for resetting the global anti-xenophobic discrimination agenda, made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, highlights the situation of migrants and the need to address the intersection between racism and xenophobia. Existing policies ignore pervasive structural xenophobic discrimination (i.e. violations that result from the disproportionate effect of racially neutral measures on refugees due to their status as foreigners) and keeps a narrow focus on harm to refugees resulting from explicit anti-foreigner prejudice.³⁸

B. Institutional network

31. Bodies and mechanisms of different kinds, with various mandates and applying various monitoring methods, have been progressively established to provide States with technical support and expertise for their anti-discrimination policies. These are the Committee on the Elimination of Racial Discrimination (a treaty body),³⁹ the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (a special procedure of the Human Rights Council),⁴⁰ and the four Durban follow-up mechanisms, namely the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action,⁴¹ the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination,⁴² the Working Group of Experts on People of African Descent⁴³ and the Group of Independent Eminent Experts on the Implementation of the Durban Declaration and Programme of

³⁵ The expression “victims of racism” refers to victims of racism, racial discrimination, xenophobia and related intolerance.

³⁶ General Assembly resolution 69/16, annex, para. 9 (a).

³⁷ General Assembly resolution 75/314, para. 1 (a).

³⁸ E. Tendayi Achiume, “Beyond prejudice: structural xenophobic discrimination against refugees”, *Georgetown Journal of International Law*, vol. 45, No. 3 (2014).

³⁹ The Committee addresses to States recommendations aimed at furthering racial equality through the enactment of new laws, the development of national specialized bodies and the implementation of special measures. Also, the Committee on Economic, Social and Cultural Rights includes in its recommendations aspects related to discrimination and disparities in the enjoyment of rights which are relevant to measuring and advancing racial equality.

⁴⁰ This mechanism addresses targeted recommendations to States after country visits, including a focus on racial equality and more broadly on issues impacting racial equality in the context of the thematic reports.

⁴¹ This mechanism is mandated to make recommendations with a view to achieving effective implementation of the Durban Declaration and Programme of Action.

⁴² This mechanism includes within its thematic areas the study of special measures, including affirmative or positive measures.

⁴³ It produces thematic reports and carries out country visits, and has also addressed relevant recommendations to States regarding the implementation of racial equality.

Action.⁴⁴ The mandate entrusted to them allows racial equality to be addressed in a more focused fashion.

32. This network can contribute enormously to directing national policies towards this goal by providing technical support and expertise. The greater focus and impact on national policies of each of these bodies depends on the scope of its mandate and its methods of work. Besides, the coordination and interaction between them could be strengthened, and their work rationalized, by coordinating agendas and programmes of work. A focus on methodology for fostering racial equality could also lead to broader reflection on developing means and tools aimed at addressing structural or systemic discrimination. Other issues, such as promoting affirmative action and the right to effective participation of the racialized groups, could be also operationalized.⁴⁵

33. The Office of the United Nations High Commissioner for Human Rights (OHCHR) provides substantive and technical support for the implementation of the Durban Declaration and Programme of Action particularly by assisting countries and providing technical advice for the development of anti-racial discrimination laws and of national plans. Furthermore, OHCHR coordinates the United Nations network on racial discrimination and protection of minorities, which brings together more than 20 United Nations departments, agencies, programmes and funds. This network, chaired jointly with UNESCO, provides a valuable framework for increasing inter-agency collaboration on combating racism.⁴⁶

IV. Deconstructing racism to build racial equality

34. Achieving racial equality requires deconstructing the concept of racism and dismantling the spurious pillars on which this phenomenon was built and has been perpetuated throughout history. The comprehensive definition provided in article 2 (2) of the UNESCO Declaration on Race and Racial Prejudice, remains valid today: “racist ideologies, prejudiced attitudes, discriminatory behaviour, structural arrangements and institutionalized practices resulting in racial inequality as well as the fallacious notion that discriminatory relations between groups are morally and scientifically justifiable”. Racism is “reflected in discriminatory provisions in legislation or regulations and discriminatory practices as well as in antisocial beliefs and acts”.⁴⁷

35. In order to guarantee the sustainability of racial equality, the implementation of inclusive and integration policies must be accompanied by the construction of an anti-racism culture. This may require reversing long-established beliefs, as well as avoiding official denials of the existence of racism being made use of to perpetuate deep-rooted unconscious forms of racial segregation. This process also requires the introduction of effective measures, including legislation and mechanisms to ensure that the targeted groups can fully and effectively participate in public affairs, in decision-making positions and in representative institutions, as well as in the political sphere and in other fields (public administration, the media, cultural settings, the scientific community and academia).

A. Dismantling structural or systemic racism

36. Dismantling structures and mechanisms that contribute to political, social and economic inequalities requires the manifestations, root causes and drivers of systemic racism

⁴⁴ Its mandate allows the Group to focus on parts of the Durban Declaration and Programme of Action that are devoted to racial equality.

⁴⁵ This process should build on national experiences and be based upon and enhance the interaction and synergies between this institutional network and national specialized bodies, and also have a view to following up on the implementation of recommendations.

⁴⁶ This platform addresses issues related to racial discrimination and the protection of national or ethnic, linguistic and religious minorities, including multiple and intersecting forms of discrimination.

⁴⁷ The negative consequences of racism are also highlighted: “It hinders the development of its victims, perverts those who practise it, divides nations internally, impedes international cooperation and gives rise to political tensions between peoples; it is contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security.”

to be comprehensively addressed; this may entail the adoption of large-scale national strategies or plans with specific objectives and actions, and of indicators against which progress can be measured. The inclusion of targeted special measures, positive actions and follow-up mechanisms is instrumental in fostering the equal enjoyment of rights, particularly in the socioeconomic field.⁴⁸

37. Countries have developed comprehensive policies to ensure a systematic and coherent approach to the challenges faced by members of certain racial and ethnic minority communities in health care, education, housing and employment. More focused anti-racism strategies are often developed in relation to Roma, people of African descent, or indigenous peoples.⁴⁹ Assessments of the existing equality regime are also commonly carried out in the employment sphere ahead of introducing reforms to enhance the presence of certain groups in the workforce.⁵⁰ Broader processes, such as national surveys on discrimination, have also been conducted.⁵¹

38. The development of “racial equality audits” in public institutions is proposed⁵² as an adequate means to identify specific manifestations of racism and determine qualitative contributors to systemic bias and discrimination in regular and routine operations.⁵³ However, this exercise requires ensuring the quality, consistency and comparability of the data being collected by a country’s national, regional and local administrations, uniform definitions of ethnic groups to be used by all such administrations,⁵⁴ and the data collection to properly capture historical and systematic discrimination. Finally, this process should be based on a unified comprehensive government strategy aimed at eliminating the disparities that can be identified through it.⁵⁵

39. “Equality impact assessments” have been recommended in the context of austerity measures.⁵⁶ These provide a means of foreseeing the disproportionate impacts of policies on vulnerable groups, through an independent analysis and review. They are normally conducted prior to the adoption of the measures and be reviewed periodically in order to ensure their continued effectiveness. Methods for applying an anti-racism perspective to decision-making at the early stages to prevent systemic racism from taking root are also being devised by some countries to help anticipate and remove unconscious bias in proposed policies, programmes and decisions and to improve the policy before it is implemented.⁵⁷

40. A component of responsibility and accountability needs also to be envisaged to address cases where racial discrimination is de jure or de facto condoned by political institutions, by endorsing racist hate speech or by tolerating or supporting a climate of racial hatred and discrimination.⁵⁸ Systematic and generalized practices of discrimination may evolve into racial segregation or other forms of institutionalized racism prohibited under

⁴⁸ The Committee on the Elimination of Racial Discrimination has considered that the lack of recognition of the usefulness of special measures may perpetuate the effects of structural discrimination on all vulnerable groups and impede the full implementation of the rights in the International Convention on the Elimination of All Forms of Racial Discrimination; see CERD/C/SWE/CO/22-23, para. 14.

⁴⁹ See, for example, the 2017–2025 policy on access to justice for indigenous persons (Guatemala).

⁵⁰ CERD/C/CAN/CO/21-23, para. 32 (b).

⁵¹ For example, in Mexico, in 2017, the National Institute of Statistics conducted a national survey to assess the extent of racial discrimination and its various manifestations and to identify who carries out discrimination and in which areas of life this problem occurs the most frequently, as well as the sociocultural factors that are related to it.

⁵² See A/HRC/42/59/Add.1.

⁵³ Ibid., para. 75 (cc).

⁵⁴ In the United Kingdom, for example, the Government Statistical Service is developing guidance tools which recommend a harmonized approach for collecting data on people’s ethnic group, national identity and religion, to allow consistency and comparability of statistical outputs.

⁵⁵ A/HRC/41/54/Add.2, paras. 16–19.

⁵⁶ See, for example, E/C.12/ECU/CO/4, para. 5.

⁵⁷ See https://files.ontario.ca/ar-2001_ard_report_tagged_final-s.pdf.

⁵⁸ Committee on the Elimination of Racial Discrimination, general recommendation No. 35 (2013), paras. 3 and 5.

article 3 of the International Convention on the Elimination of All Forms of Racial Discrimination, such as apartheid.⁵⁹

41. The Committee on the Elimination of Racial Discrimination has identified a set of patterns of systematic and massive racial discrimination, which may be used to detect and prevent, at an early stage, situations that may evolve into violent conflict or trigger situations of apartheid or genocide; these include: (a) the lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination; (b) the systematic exclusion – in law or in fact – of groups from positions of power, employment in State institutions, and key professions, such as teaching, the judiciary and the police; and (c) significant disparities in socioeconomic indicators, evidencing a pattern of serious racial discrimination.⁶⁰

B. Addressing intersecting and multiple forms of discrimination

42. The review of the existing legal framework and of the outcomes of policies, practices and programmes devoted to promoting equality should include an intersectional analysis.⁶¹ This analytical tool may help to deepen understanding of structural racism, making responses more effective as it seeks to capture and address the structural and dynamic consequences of the interaction of racism with other forms of discrimination.⁶² In practice, however, the focus of this approach is often reduced to analysing interactions with the gender dimension.⁶³

43. The Committee on the Elimination of Racial Discrimination has acknowledged that racial discrimination may have a specific and unique impact on women who often face multiple forms of discrimination arising from their racial or ethnic origin and their sex, combined with gender-based discrimination and harmful stereotyping.⁶⁴ The Committee has thus requested States to describe as far as possible in quantitative and qualitative terms factors affecting and difficulties experienced in ensuring the equal enjoyment by women of rights, also by providing disaggregated data.

C. A “Transformative Agenda” for racial equality

44. Actions and policies, as well as the interpretation of the scope of States’ obligations, have evolved from a formal to a substantive conception of racial equality, meaning that the faithful implementation of its obligations must lead to real and tangible progress of the targeted groups. Building on this basis, current approaches tend to request of States the adoption of more determined, concrete and measurable policies and actions. In certain cases, the effective achievement of equality may call for a process of profound transformation aimed at restabilizing and reshaping the dynamics of power in the relations among individuals and groups.⁶⁵ Such a process may require the adoption of programmes targeting the redistribution of resources, allowing genuine participation in public affairs by the targeted

⁵⁹ The crime of apartheid encompasses both State and individual responsibility. It entails the commission of acts of an inhumane character in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime. See art. 7 (1) (h) of the Rome Statute and art. 2 of the 2019 International Law Commission draft articles on prevention and punishment of crimes against humanity.

⁶⁰ See CERD/C/67/1, of 14 October 2005.

⁶¹ States are required to include an intersectional perspective in their national action plans or other policies, programmes or actions.

⁶² A/CONF.189/PC.2/20, p. 10; and art. 11 of the Inter-American Convention.

⁶³ In her submission to the Advisory Committee, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance underlined the need to take advantage of the great potential that this tool offers.

⁶⁴ See the Committee’s general recommendation No. 25 (2000), paras. 3 and 6.

⁶⁵ D. McGill, “Tackling structural violence through transformative justice”, in Matthew Evans (ed.), *Transitional and Transformative Justice: Critical and International Perspectives* (Routledge, 2019).

groups or individuals, enhancing their representation, or strengthening other promotional actions focused on education and the elimination of stereotypes.⁶⁶

45. A useful tool to develop this new analytical framework is provided by the “Four-Point Agenda towards Transformative Change for Racial Justice and Equality”, recently presented by the High Commissioner.⁶⁷ The agenda seeks to achieve concrete results through a “profound, joined up approach” through four specific objectives, namely to:⁶⁸ (a) reverse cultures of denial, dismantle systemic racism and accelerate the pace of action; (b) end impunity for human rights violations by law enforcement officials, and close trust deficits; (c) ensure that the voices of people of African descent and those who stand up against racism are heard and that their concerns are acted upon; and (d) acknowledge and confront legacies, including through accountability and redress. A new time-bound mechanism with the mandate of mainstreaming and advancing racial justice and equality in the context of law enforcement and of examining patterns, incidents, policies and processes across the world is envisaged.

46. This new framework allows the different issues and obligations to be unpacked, in order to address them in a more targeted fashion through a range of different responses. Such an approach may, furthermore, help to reach a common understanding on the most conflicting elements of the Durban Declaration and Programme of Action.⁶⁹ Despite its limited focus, it is to be expected that this agenda will lead the way to a more structured and articulated programmatic framework, which can become an important tool for promoting racial equality at national level.

V. Means and tools to assess the progress

47. National, regional and international efforts have increasingly focused on designing strategies and developing means and tools that help States to implement their obligations effectively and to advance in a concrete manner towards the achievement of racial equality. The adoption of international programmatic and normative frameworks has stimulated national initiatives for the development of comprehensive public policies and the establishment of specialized bodies, the so-called equality bodies.

A. National action plans

48. National action plans against racial discrimination have proved to be a very useful tool to make progress towards racial equality and to assess such progress.⁷⁰ Such specific plans provide national authorities with a comprehensive and structured framework against racism, and with the basis for developing coherent public policy that allows for the implementation of measures in a joint and coordinated manner. The singularity of these plans allows programmes and activities to be tailored to the current and historical situation of racial discrimination in each country. Some recent examples seek to address systemic racism by introducing an “anti-racism approach” which pervades the way that government develops policies, makes decisions, evaluates programmes, and monitors outcomes. Such an approach also calls for a proactive, collaborative effort from all government ministries and community partners to work towards racial equity.⁷¹

⁶⁶ In South Africa, for example, the Broad-based Black Economic Empowerment Act 53 (2003) addresses systemic racism by establishing a legislative framework for the promotion of Black economic empowerment, giving the Government the power to issue codes of good practice and to publish transformation charters, and establishing an advisory council.

⁶⁷ A/HRC/47/53, annex.

⁶⁸ See www.ohchr.org/Documents/Issues/Racism/A_HRC_47_CRP_1.pdf.

⁶⁹ A/74/321, paras. 42–54.

⁷⁰ The Durban Declaration and Programme of Action and its 2009 follow-up call on countries to develop or elaborate national action plans to promote diversity, equality, equity, social justice, equality of opportunity and the participation of all.

⁷¹ See http://files.ontario.ca/ar-2001_ard_report_tagged_final-s.pdf.

49. These plans have to be conceived as a sustainable process over time – which means setting realistic goals, devising activities and programmes, allocating sufficient resources, and developing effective monitoring and evaluation mechanisms.⁷² Plans should be elaborated with the participation and the support of all relevant actors and stakeholders; mobilizing social support and partnership may also ensure that the plan survives governmental changes and political disputes. During all phases of the process, consultation with and meaningful participation by the individuals and groups particularly affected by racial discrimination is essential, for the plan's effective implementation.⁷³

50. While an increasing number of States are adopting anti-racial discrimination national plans, failures and shortcomings at the implementation level – particularly lack of funding, and of proper means and resources – indicate that the potential of this mechanism is not being fully exploited.⁷⁴ Specific plans against racism may complement human rights plans or other national development plans, including those specifically aimed at implementing the Sustainable Development Goals.⁷⁵ Post-COVID-19 recovery plans could also prioritize measures to guarantee equal access to rights and to address the inequalities exposed and exacerbated by the pandemic, while facing up to intersecting forms of discrimination.⁷⁶ New forms of discrimination that may emerge in this connection should also be adequately tackled.

B. Equality bodies

51. National institutions for racial equality are other key instruments for promoting racial equality throughout public policies. Having a focused and specific mandate, equality bodies are separate and independent from national human rights institutions. States may entrust them with different mandates and activities such as: (a) conducting public studies and independent surveys of racial discrimination and performing monitoring functions, including by collecting quantitative and qualitative information; (b) developing awareness-raising and public education campaigns; and (c) reviewing the legislation and examining the state of domestic implementation.⁷⁷

52. Established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), equality bodies are designed to promote policy change by assisting in the implementation of public policies, programmes or plans specifically aimed at eliminating racial discrimination.⁷⁸ They may become instrumental in mainstreaming the equality dimension while addressing structural discrimination.⁷⁹ Besides providing uniformity and coherence to policies relating to non-discrimination and racial equality, they may serve to coordinate the actions of a country's national, regional and local administrations, and can perform other promotional

⁷² To help States to elaborate such plans, OHCHR produced, in 2014, *Developing National Action Plans against Racial Discrimination: A Practical Guide*.

⁷³ The implementation of indigenous peoples' right to consultation and to free, prior and informed consent provides good guidance on how to develop these consultation processes. See A/HRC/45/34.

⁷⁴ In the Americas, numerous countries have adopted such plans, whereas only 15 European Union member States had done so by June 2020, according to the European Union Agency for Fundamental Rights. It must be noted, however, that the European Commission has adopted an action plan entitled "A Union of equality: EU anti-racism action plan 2020–2025" and has appointed an anti-racism coordinator for its implementation.

⁷⁵ For example, the 2018–2022 national development plan "Pact for Colombia, pact for equity" consists of public policy objectives known as "pacts", including the pact for equality of opportunity among indigenous, Black, Afrodescendent, Raizal, Palenquero and Roma groups.

⁷⁶ A/HRC/47/59, para. 65 (q).

⁷⁷ Durban Declaration and Programme of Action, para. 118; and OHCHR, *Developing National Action Plans against Racial Discrimination: A Practical Guide*, p. 36.

⁷⁸ The Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has elaborated recommendations to ensure the independence and effectiveness of such bodies. See A/71/301.

⁷⁹ European Commission against Racism and Intolerance, "General policy recommendation No. 2 (revised) on equality bodies to combat racism and intolerance at national level".

activities, including research and education. They can also play a role vis-à-vis the private sector.

53. Equality bodies can also be entrusted with supporting and protecting victims of racial discrimination.⁸⁰ They may take part in litigation, participate in the investigation of individual cases, provide victims with legal advice and assistance, or help victims to assert their rights and support them in documenting racial discrimination.⁸¹ The number and types of prosecution for acts of racism may contribute to determining the levels of racial discrimination and structural inequality, however the low level of reported individual cases suggests that this number can only provide a partial picture of the prevailing racism in a given country.⁸²

54. Equality bodies have proliferated in the Americas and Europe, while their development in other regions (e.g. Africa and Asia) is scarce.⁸³ The Durban Declaration and Programme of Action refers to the need to establish and strengthen these bodies and encourages States to equip them adequately, particularly with suitable financial resources, capabilities and capacities to survey, investigate and educate and to undertake public awareness-raising activities. Such bodies need also be entrusted with an adequate mandate and competences, and be provided with the means necessary to analyse, assess and follow up on levels of racial discrimination and equality in the country.⁸⁴ They should be also provided with appropriate tools for collecting disaggregated statistics together with national statistical agencies.⁸⁵

C. Collection of data disaggregated by race and ethnicity

55. The collection and analysis of disaggregated data is another useful tool for assessing the state of racial equality. Data broken down by racial and ethnic groups contributes to revealing inequalities in the realization of rights among different groups, also by giving visibility to the most disadvantaged. Such information may be particularly useful for the development of policies addressing structural inequality on the basis of fact-based evidence.⁸⁶ It may, more specifically, help in making more accurate assessments of the needs of the affected groups, and thus help in the design of special measures while also facilitating their monitoring.

56. Human rights monitoring bodies urge States to systematically collect and publish data with a view to producing reliable, up-to-date, disaggregated and comprehensive information on their populations.⁸⁷ Information on economic and social indicators for ethnic minority groups, indigenous peoples and non-citizens, to evaluate their socioeconomic situation, particularly with regard to access to employment, education, health services and justice, is also systematically requested. According to the Committee on the Elimination of Racial Discrimination, the gathering of statistical information allows States to identify and to obtain a better understanding of the ethnic groups in their territory and of the kind of discrimination they are or may be subject to, to find appropriate responses and solutions to the forms of discrimination identified, and to measure progress made. The aim is to improve monitoring

⁸⁰ A/71/301, paras. 25–29.

⁸¹ See art. 14 (2) of the International Convention on the Elimination of All Forms of Racial Discrimination.

⁸² The absence of complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, lack of confidence in judicial and non-judicial redress, or an unwillingness on the part of the authorities or institutions to initiate proceedings. See CERD/C/MUS/CO/20-23, para. 18.

⁸³ They are coordinated by the Ibero-American Network of Agencies and Organizations against Discrimination and the European Network of Equality Bodies.

⁸⁴ See the Durban Declaration and Programme of Action, para. 116, and its 2009 follow-up, para. 115.

⁸⁵ See A/71/301.

⁸⁶ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), paras. 16–17; and A/70/335, para. 1.

⁸⁷ See the Durban Declaration and Programme of Action, para. 92, and its 2009 follow-up, para. 102.

and evaluation of the implementation and impact of policies to eliminate racial discrimination and inequality.⁸⁸

57. States are also called upon to adopt a definitive method to collect reliable information, and to develop tools that make it possible to have an overall view of the composition of the population. Disaggregated data on race or ethnic origin is commonly collected through national censuses, administrative registries, questionnaires and surveys. This process is complex and challenging, as a number of shortcomings still need to be addressed in order to provide reliable and comparable data.⁸⁹ Experience from countries that have been using this data for the development of targeted policies and programmes is, however, useful, and good practices can be drawn from the methodology used to collect data and measure inequality.⁹⁰

58. It must be noted that some States are still reluctant to collect and publish disaggregated data on racial and ethnic grounds, for several reasons. Some fear that evidence of inequalities may encourage differences between groups competing for resources and thus threaten national unity and nation-building, or may trigger violent reactions in highly diversified societies where individuals are mobilized along ethnic lines. Concerns are also raised about the vulnerability to abuse of groups that have already faced discrimination; or about the possibility that data may be misused for political purposes, to keep ruling minority groups in positions of domination or for electoral purposes. Ethnic statistics may deepen inequalities in some instances, encouraging the stigmatization of certain social groups and threatening social cohesion.

59. Measures or regulations related to the collection, use (analysis and processing) and storage of this data must respect the applicable human rights framework (principles of self-identification, transparency, privacy, participation and accountability) that is specifically aimed at protecting the individuals and groups targeted.⁹¹ In this era of new and emerging technologies, the legal framework needs to protect against the new risks of discrimination that artificial intelligence poses, particularly in relation to the protection of the right to privacy.

D. Development of indicators

60. Equal opportunity and non-discrimination indicators are another useful tool that may help States assess progress towards racial equality and guide them in their formulation of more targeted policies.⁹² Indicators are included in equality measurement frameworks.⁹³ They are used to collect and analyse the relevant evidence, and monitor progress in a consistent way, allowing the measurement of changes over time. Their use is particularly encouraged for assessing progress and differences of outcomes in economic terms, education, health,

⁸⁸ The United Nations Population Fund supports national institutions in strengthening their capacity for population data collection, disaggregation and analysis, including by providing technical assistance for the preparation of national census processes aimed at ensuring inclusion of the ethnicity variable; see A/75/561, para. 69.

⁸⁹ Collecting reliable and comparable data among States is difficult, as the definitions of racial categories are complex and vary across countries and time. See Lilla Farkas, *Data Collection in the Field of Ethnicity* (European Commission, 2017).

⁹⁰ The examples of the United Kingdom of Great Britain and Northern Ireland, Brazil and the United States of America are often quoted. See the Equality and Human Rights Commission's equality measurement framework; and National Research Council, *Measuring Racial Discrimination* (Washington, DC, 2004).

⁹¹ See www.ohchr.org/Documents/Issues/HRIndicators/GuidanceNoteonApproachtoData.pdf and www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

⁹² States are recommended to develop a system of data collection, including equal opportunity and non-discrimination indicators which uphold the right to privacy and the principle of self-identification, and to seek the assistance of OHCHR (Durban follow-up, para. 104).

⁹³ See www.ons.gov.uk/methodology/classificationsandstandards/measuringequality/ethnicgroupnationalidentityandreligion.

housing, justice and other services; they also allow the tracking of patterns of discrimination.⁹⁴

61. Given the cross-cutting nature of the principle of racial equality, different human rights indicators may be necessary to capture all aspects of its implementation. While structural indicators refer to the prohibitions related to racial discrimination, process and outcome indicators focus instead on social transfers and income distribution, and other key aspects related to the fulfilment of racial equality, such as access to remedy, or participation. The use of event-based indicators, such as numbers of court convictions for discrimination, has proved to be inadequate for assessing the prevalence of discriminatory practices in a country. These need to be complemented by other tools, such as socioeconomic statistic or econometric models to adequately measure disparities and differential outcomes and estimate the portion that is attributable to discrimination. Population, discrimination or situation-testing surveys allow the measurement of experiences, attitudes and perceptions regarding discrimination as well as of direct discrimination in access to work, housing, health care or private educational institutions, or other public services.⁹⁵

62. Indicators are commonly used in the area of economic, social and cultural rights, where they serve to identify patterns of violations and to map existing gaps and needs.⁹⁶ A recent publication by the Economic Commission for Latin America and the Caribbean and the OHCHR Regional Office for South America includes a set of indicators designed to measure inequalities between Afrodescendants and non-Afrodescendants.⁹⁷ Also, in December 2020, the Working Group of Experts on People of African Descent adopted its “Operational guidelines on the inclusion of people of African descent in the 2030 Agenda”.⁹⁸

E. Identification of parameters to assess levels of structural or systemic racism

63. The development of an analytical and methodological framework to assess, measure and monitor the progress towards racial equality by States would be extremely helpful, particularly to foster policies addressing structural or systematic racism.⁹⁹ This would be a new instrument to better shape and target actions, allowing States to better implement the principle of racial equality and make the best of the reporting process before the Committee on the Elimination of Racial Discrimination.¹⁰⁰

64. To that end, a set of parameters and indicators could be elaborated on the basis of existing experience from the Committee on the Elimination of Racial Discrimination and other bodies. These parameters would facilitate monitoring the compliance with obligations related to racial equality, and could be used to develop and complement the information that States have to provide according to the harmonized guidelines for reporting.¹⁰¹ This would be the basis for elaborating a list containing the concrete measures that each State may undertake.

⁹⁴ See the Durban Declaration and Programme of Action, paras. 92 (c) and 93, and its 2009 follow-up.

⁹⁵ See www.ohchr.org/Documents/Publications/Human_rights_indicators_en.pdf.

⁹⁶ Inter-American Commission on Human Rights, Guidelines for preparation of progress indicators in the area of economic, social and cultural rights: general observations on the reporting system under article 19 of the Protocol of San Salvador, paras. 48–65.

⁹⁷ *People of African Descent in Latin America and the Caribbean: Developing Indicators to Measure and Counter Inequalities*.

⁹⁸ See www.ohchr.org/Documents/Issues/Racism/WGEAPD/Guidelines_inclusion_2030_Agenda.pdf.

⁹⁹ Both terms are often used interchangeably; the generalized (structural) nature refers to its quantitative aspect, i.e. the large-scale nature of the problem, whereas its systemic nature refers to the way in which decisions, practices, policies and the culture of a society are adopted. See Inter-American Commission on Human Rights, *Compendium*, para. 368. For a definition of “systemic racism”, see A/HRC/47/53, para. 9.

¹⁰⁰ At the request of the Commission on Human Rights, OHCHR analysed the idea of measuring racial equality through the elaboration of a “racial equality index” with a system of indicators; see E/CN.4/2006/14.

¹⁰¹ HRI/GEN/2/Rev.6, paras. 50–59.

The results of this assessment would allow a kind of road map to be developed, which may set the basis for the development of comprehensive national action plans.

VI. Gaps, overlaps and challenges

65. Although there is a robust international programmatic framework for reducing inequality, stronger political will and more resolute action are needed to effectively tackle entrenched structural and systemic racism and racial discrimination.¹⁰² Different approaches regarding the implementation of certain parts of the Durban Declaration and Programme of Action continue to hinder the completion of this agenda and the definition of its follow-up. Also at national level, there is a lack of adequate implementation of the existing national frameworks on equality.

66. Monitoring and reporting on progress in addressing the challenges of racism, racial discrimination and xenophobia is important for meaningful prevention and enforcement.¹⁰³ Important steps have been given for the development of adequate national legal frameworks, however shortcomings remain at the implementation level. The reporting process under the International Convention on the Elimination of All Forms of Racial Discrimination provides States with the opportunity to assess advancement and the outcomes of national policies towards the full implementation of racial equality obligations under the Convention by engaging in a constructive dialogue with the Committee and with national human rights institutions and civil society. However, there are elements, such as the significant delays in complying with reporting obligations, that suggest that States are not exploiting the full potential of this body.¹⁰⁴

67. The promotion of racial equality and non-discrimination should be an integral part of security-oriented policies, particularly those related to migration and counter-terrorism. Such policies should not contradict human rights obligations, nor pose any impediment to the development of policies oriented towards racial equality. Issues linked to repressive policies and showing structural racism in law enforcement (e.g. racial profiling, entrenched impunity for police violence, racial violence in prisons) need to be addressed comprehensively as human rights abuses. Lessons drawn from the implementation policies related to national security or public order confirm that investment in socioeconomic progress and integration are essential in order to tackle the underlying causes of these phenomena in accordance with human rights obligations.

68. New challenges to implementing racial equality are also emerging in connection with new technologies. The lack of adequate regulation on their use may exacerbate existing inequalities and raise new concerns about whether the collection of biometrical data in a disaggregated manner or the use of algorithms for data-supported decision-making may contribute to perpetuating or even stimulate racial bias. Clear guidance to address discrimination, including gender bias and stereotyping, in the design, development and use of artificial intelligence technologies is needed in order to ensure the consistency of these developments with international human rights law, standards and principles.¹⁰⁵

69. In the context of COVID-19, all these challenges and shortcomings may exacerbate the situation of racialized groups and refugees and make them more vulnerable to the pandemic's broad detrimental social and economic effects. While the Black Lives Matter global movement has shone a spotlight on the long-standing structural inequalities affecting people of African descent, the COVID-19 pandemic has exposed the socioeconomic

¹⁰² A/75/561, para. 74; and Working Group of Experts on People of African Descent, "Operational guidelines on the inclusion of people of African Descent in the 2030 Agenda", p. 53.

¹⁰³ A/HRC/20/33, para. 26.

¹⁰⁴ In 2020, 43 Member States had a report overdue by at least ten years and 17 by at least five years. The Committee registered only 70 individual communications from 1984 to 2020, concerning 17 States out of the 59 States that have recognized the competence of the Committee under art. 14 of the Convention.

¹⁰⁵ UNESCO is developing such a recommendation on the ethics of artificial intelligence; see <https://unesdoc.unesco.org/ark:/48223/pf0000374266> at paras. 65–67.

marginalization of racialized groups, including refugees, asylum seekers and migrants, and has made clear the barriers they face in gaining access to basic rights, such as health care.

70. Post-COVID-19 responses and recovery plans could be a good way to address the vicious cycle formed by racism, discrimination and poverty and to redress de facto racial discrimination and disparities that have re-emerged, particularly in relation to access to and enjoyment of rights such as education, housing, employment and health. This indicates a need to continue developing and implementing policies on social inclusion and poverty reduction, also with a view to eliminating racial inequality and addressing long-standing structural and historical forms of discrimination.

VII. Conclusion and recommendations

71. Given the increasing political polarization around issues related to racial discrimination, the need to find common understandings to tackle this phenomenon has come to the fore. There is an urgent need to achieve racial equality and justice in a sustainable manner, as unequal outcomes and disparities among different groups is increasingly becoming a source of social instability and democratic regression. Against this backdrop, the pace of action to implement long-overdue policies and actions on racial equality has to be accelerated.

72. Assessing levels of racial inequality and progress is a complex task. Analytical approaches and methodological frameworks and tools to measure structural inequality are being developed and improved. Disaggregated data broken down by race and ethnicity serves to unveil disparities, and may be a useful tool in designing and tailoring appropriate and effective public policies on the basis of real needs. It also allows comparison of the situation of groups most at risk of discrimination, which often remain invisible.

73. However, such data can only be reliable if gathered through an adequate methodology and in accordance with human rights standards; this also requires robust institutional and legal frameworks and adequate knowledge and resources. Moreover, the sensitivity of data disaggregated by race or ethnicity calls for specific rules and procedures in its collection, analysis and treatment. Concerns about governance and accountability and protections against the misuse of this data therefore need to be addressed.

74. The International Convention on the Elimination of All Forms of Racial Discrimination together with the programmatic framework and commitments undertaken under the Durban Declaration and Programme of Action constitute the best basis on which to push the international agenda on racial equality to a new level allowing the identification and adoption of concrete actions and more suitable measures for the achievement of racial equality. The High Commissioner's Four-Point Agenda towards Transformative Change for Racial Justice and Equality responds to the need to match good intentions with concrete actions in order to dismantle systematic racism. It calls for new perspectives to better direct anti-discrimination policies and programmes towards racial justice and equality.

75. The prioritization of transformative policies provides a new dimension to racial equality which is clearly oriented to triggering radical changes at the structural and behavioural levels. Adopting a collaborative and constructive approach to shaping the debate on racism is essential for attaining a common understanding and overcoming the divergent views, particularly on the most conflicting aspects of the Durban Declaration and Programme of Action. States need to seek new and creative ways to approach the Durban Declaration and Programme of Action, with a view to mobilizing political will towards its full and effective implementation.

76. **Recommendations for action at the international level:**

(a) **Enhance efforts to mainstream the anti-racism agenda within the United Nations system by adopting better targeted actions, strengthening efforts towards racial equality and developing collective strategies, including through international cooperation;**

(b) Identify ways of mainstreaming racial equality in the work of all relevant monitoring bodies, particularly the Committee on the Elimination of Racial Discrimination, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Durban follow-up mechanisms and the Committee on Economic, Social and Cultural Rights; and establish or reinforce mechanisms of coordination and collaboration among them in order to make the most of the synergies and avoid duplications in their activities;

(c) Support the implementation and development of the OHCHR “transformative agenda on racial equality and justice”; and open a process of reflection to identify new issues to be integrated in the future;

(d) Enhance the capacity of OHCHR to:

(i) Develop an analytical and methodological framework to assess, measure and monitor progress towards racial equality at the national and international levels, and to identify global trends, patterns and challenges;

(ii) Identify parameters and sets of indicators useful for analysing the drivers and impact of structural or systematic racism, and monitoring progress towards racial equality;

(iii) Compile, on the basis of national experiences, examples of concrete actions and good practices to support States in measuring their progress towards racial equality;

(iv) Compile and widely disseminate examples of positive action, and draw principles and common standards from their application;

(e) Take more concerted action to effectively address systemic discrimination as well as the underlying structural causes of racism and of related forms of discrimination, also by putting the focus on education and raising awareness;

(f) Take concrete measures to foster political will to fully implement the obligations related to racial equality; and ensure increased support for the programmatic commitments under the Durban Declaration and Programme of Action, while seeking agreement on the controversial points;

(g) Ensure greater cooperation and synergies towards carrying out the programme of activities for the implementation of the International Decade for People of African Descent, and take all steps necessary to enable the Permanent Forum of People of African Descent to become operational and fulfil its mandate;

(h) Streamline recommendations, programmes and strategies, and focus efforts on supporting implementation while enhancing synergies and partnership among the relevant bodies and stakeholders, also by taking a country-sensitive approach.

77. Recommendations for action at the national level:

(a) Improve and strengthen national frameworks (legislation, policies, practices, monitoring, and equality bodies) in order to facilitate the implementation of the principle of racial equality; and redouble efforts to implement existing legislation and policies, as well as the recommendations of monitoring bodies;

(b) Undertake, where necessary, a comprehensive review of the existing laws, policies and programmes (racial equality audit), or in particular sectors as necessary; and set up effective monitoring and conduct regular impact assessments on potential negative effects of measures on racialized groups with a view to correcting them;

(c) Adopt, where necessary, detailed action plans with concrete targets, monitoring mechanisms and sufficient resources, including temporary special measures, in order to secure the adequate advancement of racialized groups and ensure that persons belonging to them are able to enjoy their rights on an equal footing;

- (d) Address structural racial and ethnicity-based discrimination through COVID-19 pandemic recovery plans; and strengthen financial and economic cooperation aimed at improving the social and health conditions of racialized groups;
 - (e) Identify and support policies and actions, including affirmative action when appropriate, to implement the principle of racial equality;
 - (f) Develop methodological and analytical frameworks to effectively address structural discrimination and inequality; and harmonize the methods used for collecting disaggregated data within the State;
 - (g) Collect disaggregated data and develop indicators drawing on the OHCHR framework to allow measurement of the progress of policies and strategies and evaluation of the impact of measures on racial discrimination and equality in the long run; ensure a human rights-based approach; reinforce means of monitoring to ensure that data collected is not used for anything other than its intended purpose; and provide guarantees that such information does not become a source of discrimination;
 - (h) Engage in a constructive dialogue with monitoring bodies, particularly the Committee on the Elimination of Racial Discrimination, with the aim of better shaping national policies for racial equality; and develop a methodology to ensure that adequate and reliable information is collected, also in order to guarantee the effective implementation of its recommendations;
 - (i) Reinforce the role of specialized “equality bodies” and exploit their potential for raising awareness and creating support to counter discrimination and promote equality in both the public and the private sectors;
 - (j) Address, where appropriate, through special and concrete measures, the worsened disparities regarding access to and enjoyment of rights affecting disadvantaged groups as a consequence of the COVID-19 pandemic; and take urgent action to adopt action plans and specific programmes and adapt them to this situation;
 - (k) Identify and systematize national positive measures and affirmative actions;
 - (l) Promote the empowerment of women belonging to racialized groups and ensure their equal access to rights in practice, by addressing intersectional forms of discrimination;
 - (m) Strengthen the role of civil society organizations, particularly in the follow-up to and implementation of strategies and policies to promote racial equality.
-