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

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance on the implementation of General Assembly resolutions 63/162 and 64/147

Summary

The present report is submitted pursuant to General Assembly resolutions 63/162 and 64/147, in which the Assembly requested the Special Rapporteur to prepare for the Human Rights Council a report on the implementation of those resolutions. The present report provides an update to a previous report submitted by the Special Rapporteur to the General Assembly (A/64/295), containing information on activities undertaken by States pursuant to resolution 63/162. The Special Rapporteur will submit a more detailed report, including contributions by States and other stakeholders, to the General Assembly at its sixty-fifth session, in accordance with General Assembly resolution 64/147.

The present report addresses the human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis and skinhead groups, as well as similar extremist ideological movements. The Special Rapporteur, following a brief introduction, examines how these parties, movements and groups may pose challenges to the human rights principles of non-discrimination, the rights to life and to security of person, the rights to freedom of expression, assembly and association, as well as to democracy.

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I. Introduction

1. The present report is submitted pursuant to General Assembly resolutions 63/162 and 64/147, in which the Assembly requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to prepare for the Human Rights Council a report on the implementation of the above-mentioned resolutions. In the present report, the Special Rapporteur provides an update to a previous report submitted to the Assembly (A/64/295) containing information on activities undertaken by States pertaining to resolution 63/162. The Special Rapporteur would like to inform the Council that a more detailed report, which will include contributions by States and other stakeholders, will be submitted to the Assembly at its sixty-fifth session.

2. In the present report, the Special Rapporteur addresses the human rights and democratic challenges posed by extremist political parties, movements and groups, including neo-Nazis and skinhead groups, as well as similar extremist ideological movements. He examines how these parties, movements and groups may pose challenges to the human rights principles of non-discrimination; the rights to life and to security of person; the rights to freedom of expression, assembly and association; and to democracy.

II. Challenges posed by extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements

3. The ideology and activities of extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and of similar extremist ideological movements, most often rely on, either in an overt or covert manner, intolerance, discrimination, exclusion and xenophobia. As such, their persistent existence poses major challenges to a number of fundamental human rights and freedoms, but also, more generally, to democracy itself.

4. Since the establishment in 1993 of the mandate on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, mandate holders and the current Special Rapporteur have had the opportunity, through their country visits, to examine the question of extremist political parties, movements and groups. In this context, they have addressed the challenges posed by these groups to human rights, including acts of violence or discrimination based on racism and xenophobia, or incitement thereto, and have made concrete recommendations in this regard. These issues were for instance raised during country missions to the United States of America (E/CN.4/1995/78/Add.1), Brazil (E/CN.4/1996/72/Add.1), Germany (E/CN.4/1996/72/Add.2 and A/HRC/14/43/Add.2), France (E/CN.4/1996/72/Add.3), the United Kingdom of Great Britain and Northern Ireland (E/CN.4/1996/72/Add.4), the Czech Republic (E/CN.4/2000/16/Add.1), the Russian Federation (A/HRC/4/19/Add.3), Italy (A/HRC/4/19/Add.4), Estonia (A/HRC/7/19/Add.2), Latvia (A/HRC/7/19/Add.3) and Lithuania (A/HRC/7/19/Add.4).

5. For the purpose of the present report, the Special Rapporteur would like to highlight some of the challenges posed by extremist political parties, movements and groups. These include challenges to (a) the human rights principle of non-discrimination; (b) the rights to life and to security of person; (c) the rights to freedom of expression, assembly and association; and (d) democracy. The Special Rapporteur would like to emphasize that the list of issues addressed in the report should not be regarded as exhaustive.

A. The human rights principle of non-discrimination

6. Extremist political parties, movements and groups often defend and propagate an ideology that fosters racism, racial discrimination, xenophobia and related intolerance, and bring into question the overarching human rights principle of non-discrimination. Indeed, these parties, movements and groups frequently incite, either implicitly or explicitly, discrimination against certain groups of individuals in relation to, inter alia, their access to employment, education or housing, or to their rights to vote or to obtain nationality.

7. The rise of extremist political parties, movements and groups within a given society is often linked to the difficulty, or sometimes failure, of the traditional political parties to deal adequately with certain social and economic issues, such as immigration, unemployment and insecurity. Indeed, these parties, movements and groups frequently rely on general discontent within the population to blame specific groups of the population for the existing insecurity and socio-economic difficulties endured, and put forward often simplistic and populist solutions. In this context, through their ideology and activities, extremist political parties, movements and groups often exacerbate racist and xenophobic attitudes by designating certain vulnerable groups, such as migrants, refugees, asylum-seekers or members of minorities, as the main source of the problems causing anxiety and uncertainty among the population. For instance, the Special Rapporteur notes that there are unfortunately deeply marked tendencies to characterize migration as a tangible threat to social cohesion, national identity or security. Indeed, in times of economic turmoil, the Special Rapporteur has, for instance, received reports indicating that migrants were being accused of “stealing” employment from nationals.

8. In addition to the above, extremist parties, movements and groups also frequently incite discrimination by emphasizing that they are the only legitimate holders of the national identity of a given country. History abounds with examples of extremist political parties, movements and groups claiming that they were the only legitimate holders of the national identity of a given country and which adopted a very divisive approach in this regard. Indeed, these parties, movements and groups often used the concept of national identity in a simplistic manner to determine which individuals could be considered part of the group and which ones were the outsiders. In doing so, the concept of “otherness” was strongly emphasized as a tool to differentiate or create artificial differences between certain groups of the population. In extreme cases, this unfortunately led to a strict, and sometimes irreversible, categorization of individuals and consequently to the social exclusion and discriminatory treatment vis-à-vis certain individuals and groups of individuals.

9. The principle of non-discrimination is generally perceived as one of the most important in the field of human rights, and is therefore enshrined in all core international human rights conventions. In this context, the Special Rapporteur would like to reiterate that acts of discrimination, or incitement thereto, are clearly prohibited in international human rights law. As such, States have the duty to refrain from discriminating against individuals or groups of individuals based on, inter alia, colour, descent, national or ethnic origin; to prevent such discrimination, including from non-State actors; and to take steps to ensure that, in practice, every person on their territory enjoys all human rights without discrimination of any kind.

10. With regard to incitement to discrimination in particular, the Special Rapporteur would like to recall that article 20 of the International Covenant on Civil and Political Rights states that “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”.

B. The rights to life and to security of person

11. In some cases, the rhetoric of extremist political parties, movements and groups may advocate more than discrimination against specific groups; it may publicly and directly incite people to commit acts of violence on behalf of extremist ideology, or may justify the use of violence against certain groups of the population or against buildings, monuments, historical or religious sites. Even when extremist political parties, movements and groups do not directly and publicly incite violence, their ideology and activities may contribute to a climate conducive to the escalation of violence.

12. In this context, the perpetration of racist and xenophobic crimes by individuals and groups of individuals closely linked to extremist movements constitutes a major challenge to societies, which are becoming increasingly diverse. The Special Rapporteur is indeed extremely concerned by reports of individuals being harassed, assaulted, attacked, beaten, stoned, stabbed or even murdered just because of their perceived national or ethnic origin, their skin colour or other physical attributes. Migrants, refugees, asylum-seekers and members of minorities appear to be among the vulnerable groups targeted by these acts, which constitute a blatant violation of the rights to life and to security of person, guaranteed by articles 6 and 9, respectively, of the International Covenant on Civil and Political Rights.

13. The perpetration of racist and xenophobic crimes may ruin the lives of the targeted individuals, but it may also have a significant impact on society as a whole by instigating a climate of fear, in particular if the perpetrators go unpunished. The Special Rapporteur would therefore like to emphasize that these crimes ought to be recognized and addressed with resolve by States through legislative and other measures. For instance, it is essential that domestic laws criminalize acts motivated by racist hatred and xenophobia, or recognize racism or xenophobia as an aggravating factor warranting greater penalties. States should also ensure that those responsible are held accountable before the law. In addition, specific instructions and training should be provided to law enforcement officers and the judiciary to help them deal with racist and xenophobic crimes in an effective and appropriate manner. Accurate and up-to-date ethnically disaggregated data collection on racist and xenophobic crimes is also important, since it may help inform policy decisions to combat such crimes. Furthermore, States should ensure that victims are made aware of their rights and therefore have access to justice, including reparation. This is all the more important since victims of racial hatred and xenophobia are often part of marginalized groups in society, and may not know where to submit a complaint or be reluctant to report a crime to the police, owing to lack of trust or fear of reprisal, especially if they happen to be illegal immigrants.

C. The rights to freedom of expression, assembly and association

14. States are faced with a complex dilemma when countering the intolerant, discriminatory or xenophobic rhetoric and activities by extremist political parties, movements and groups. While measures should be taken to counter this kind of rhetoric and activities, States must also ensure that, in accordance with international human rights law, all individuals and groups of individuals enjoy fully their right to freedom of expression, and they must also allow all political parties, movements and groups to exist and enjoy their right to freedom of assembly and association. As stated in the Durban Review Conference outcome document, “the right to freedom of opinion and expression constitutes one of the essential foundations of a democratic, pluralistic society and stresses further the role these rights can play in the fight against racism, racial discrimination, xenophobia and related intolerance worldwide” (para. 58). The difficulty therefore consists in assessing when restrictions on the rights to freedom of expression, assembly and association may be warranted.

15. In this regard, international human rights law defines when restrictions are permitted. For instance, with regard to the right to freedom of expression, article 19 of the International Covenant on Civil and Political Rights states that the exercise of the right to freedom of expression

carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) for respect of the rights or reputations of others; (b) for the protection of national security or of public order (*ordre public*), or of public health or morals.

Article 20 of the Covenant also imposes restrictions on the right to freedom of expression. As such, “any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. With regard to the rights to freedom of assembly and association, articles 21 and 22 of the Covenant emphasize that no restrictions may be placed on the exercise of these rights other than those prescribed by law and which are, in a democratic society, in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others. In addition to the above, article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination also determines when restrictions on the rights to freedom of expression, assembly and association are to be warranted by States, when they are faced with the dissemination of ideas based on racial superiority or incitement to racial discrimination.

16. The Special Rapporteur notes that determining which acts or expressions may meet the thresholds determined in articles 19 to 22 of 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. This decision should always be guided by well-defined criteria, in accordance with international standards, and be made by an independent and impartial court or tribunal, taking into account the local conditions, history, culture and political context.

D. Democracy

17. Democracy is notably characterized by the possibility of holding open debates and the free flow of ideas, which may contrast or even compete with one another. In this context, international human rights law ensures the right of all citizens to take part in the conduct of public affairs, directly or through chosen representatives, and to vote or to be elected at genuine elections guaranteeing the free expression of the will of the electors.¹ The Special Rapporteur takes the view that a democratic society must provide the opportunity to all people to participate in public affairs, discuss and even criticize the system in place, and to put forward ideas for change and progress, including those deemed as radical. Nonetheless it is also essential to introduce safeguards against activities of extremist political parties, movements and groups that flout democratic principles and human rights, including the principles of non-discrimination and equality.

18. The space left for public debate and participation in a democratic society undoubtedly allows for the constructive exchange of views and for its continued reinforcement. Extremist political parties, movements and groups have also, however, effectively learned to use this open space to disseminate their racist, xenophobic or intolerant ideologies, thereby posing a serious challenge to democratic polity. Indeed, these

¹ See the International Covenant on Civil and Political Rights, article 25.

parties, movements and groups have proven their ability to influence or restrict the political debate around issues relating to their agenda often based on a racist or xenophobic ideology. By presenting simplistic and populist ideas to solve complex problems affecting a significant part of the population (relating for instance to unemployment, insecurity or immigration), these parties, movements and groups manage to gain electoral support. In doing so, they compel traditional political parties to react and focus on these sensitive issues, which may in turn foster racist, xenophobic or intolerant attitudes within society if dealt with inadequately, and thus have a negative impact on progressive policies designed to protect the rights of the vulnerable groups.

19. Democratic societies have developed various strategies to counter extremist political parties, movements and groups. Indeed, the Special Rapporteur would like to express his appreciation to the political parties that have decided not to associate themselves with extremist political parties. He notes that, in some cases, however, traditional political parties have accepted to build coalitions with extremist political parties, thereby providing them with political legitimacy and access to the conduct of public affairs, where they may then implement their discriminatory agenda.

20. The Special Rapporteur also welcomes cases where an independent and impartial judiciary has decided that, owing to their illegal activities, extremist political parties, movements and groups have had their financing blocked, or, as a last resort, has been dissolved. The Special Rapporteur would nonetheless like to draw attention to the capacity of dissolved extremist political parties, movements and groups to return under other names and status, and therefore continue to propagate their agenda based on hatred.

21. The Special Rapporteur therefore would like to emphasize that it is essential for political parties to base their programmes and activities on respect for fundamental human rights and freedoms, democracy and the rule of law. In this regard, he would like to emphasize the role that, political leaders could and should play in the fight against racism, racial discrimination, xenophobia and related intolerance. In particular, he highlights the fact that, because of the audience that they reach and the moral authority that they carry, it is all the more important for political leaders to condemn and counter all political messages fuelling racism and xenophobia.

III. Conclusions and recommendations

22. **Extremist political parties, movements and groups, including neo-Nazis and skinhead groups, and similar extremist ideological movements, pose a major challenge to a number of fundamental human rights and freedoms, but also, more generally, to democracy itself. The Special Rapporteur takes the view, that even if these parties, movements and groups take different shapes, no region of the world is immune to the phenomenon. While the best responses should be country-specific and therefore take into account the political, historic, economic and sociocultural context of each State, the Special Rapporteur would like to make the general recommendations outlined below.**

23. **The Special Rapporteur calls upon all States to be more vigilant vis-à-vis extremist political parties, movements and groups which promote, either explicitly or implicitly, the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination and xenophobia, as well as acts of violence or incitement to such acts against specific groups of individuals. He emphasizes that a higher degree of vigilance might involve the adoption or more robust enforcement of legislative measures, as well as a wide-range of other complementary measures.**

24. With regard to legislative measures, the Special Rapporteur calls upon States parties to the International Convention on the Elimination of All Forms of Racial Discrimination to comply fully with their international obligations. According to article 4 of the Convention, States parties:

(a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof;

(b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law;

(c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination.

25. The Special Rapporteur also calls on States to implement fully articles 19 to 22 of the International Covenant on Civil and Political Rights, which guarantee the rights to freedom of expression, assembly and association and determine the limitations thereto.

26. The Special Rapporteur notes that public figures, and in particular politicians, have a greater capacity to influence the public debate owing to the large audience that they reach. He therefore stresses that public figures should be held politically accountable for bigoted words that encourage discrimination and violence and create a climate of fear for vulnerable groups.

27. With regard to the perpetration of racist or xenophobic crimes by individuals and groups of individuals closely linked to extremist political parties, movements and groups, the Special Rapporteur calls upon States to guarantee the right to life and to security of person, as well as to protection against violence or bodily harm. In this regard, he urges States to take action against racially-motivated violence and ensure the access of victims to effective legal remedies, including the right to seek just and adequate reparation for any damage suffered as a result of such violence. He also urges States to introduce into their domestic criminal law a provision according to which committing an offence with racist or xenophobic motivation or aim constitutes an aggravating circumstance allowing for heavier penalties.

28. Law enforcement bodies and members of the judiciary are major actors in the implementation of measures taken by States to prohibit and sanction racist or xenophobic crimes. As such, the Special Rapporteur recommends that States design mandatory human rights training, with a focus on violent acts based on racism, racial discrimination, xenophobia and related intolerance. In particular, specific training aimed at providing law enforcement bodies with necessary instructions, procedures and resources to identify, investigate and register racist or xenophobic crimes should be provided.

29. The Special Rapporteur also encourages States to increase their efforts to reach out to community groups, in particular vulnerable groups who are at particular risk of racist or xenophobic crimes. He therefore calls upon States to engage with concerned communities to reduce fears, instil a sense of trust between the police and the communities, encourage the reporting of such crimes to the police, and improve the quality of data collection in relation to racist and xenophobic crimes by law enforcement bodies. The Special Rapporteur indeed believes that such data help

develop effective policies and programmes to tackle racially-motivated crimes and incidents, assess and monitor the effectiveness of the measures taken, and review the legislation when necessary.

30. As reaffirmed during the 2001 World Conference against Racism, political platforms and organizations based on racism, xenophobia or doctrines of racial superiority and related discrimination are incompatible with democracy and transparent and accountable governance. The Special Rapporteur similarly reiterates that the preservation of democracy is essential to prevent, combat and eradicate racism, racial discrimination, xenophobia and related intolerance effectively. He therefore emphasizes the key role that political leaders and political parties have to play, and calls upon them to provide answers to the populist and oversimplified statements of extremist political parties, movements and groups by re-establishing the facts associated with the issues posed by, inter alia, immigration, insecurity and unemployment, and by refuting illogical claims through reasoned argument.

31. In addition, the Special Rapporteur recommends that political parties work towards fair representation of national or ethnic, religious and linguistic minorities within and at all levels of their party system, to ensure that their political and legal systems reflect the multicultural diversity of their societies. He also recommends that they base their programmes and activities on respect for fundamental human rights and freedoms, democracy and the rule of law. Political parties should, in this context, refuse to enter into any alliance with extremist parties of a racist or xenophobic character to form majorities wielding political power in a given State.

32. Responding to extremist political parties, movements and groups from a legal perspective only is far from sufficient. Indeed, restrictions on the rights to freedom of expression, assembly and association, or the strict regulation of activities of political parties will not bring about by themselves the changes needed in mindsets, perceptions and discourse to prevent the emergence of or challenge the existence of extremist political parties, movements and groups. It is indeed necessary to tackle the root causes of this phenomenon with a much broader set of policy measures aimed at curbing racism and xenophobia. In this regard, the Special Rapporteur recommends that States take concrete steps to raise the population's awareness about the adverse effects of the ideology and activities of extremist political parties, movements and groups. Education is a key tool in promoting democratic values and human rights and instilling a sense of tolerance, understanding and respect at an early age. Other creative measures may also help to contribute to the construction of pluralistic and inclusive societies. Such measures might include initiatives in the field of intercultural dialogue, art exhibitions, performances or conferences. They might help open a space for various groups of the population to merge and debate specific issues of their choice.

33. Lastly, the Special Rapporteur strongly emphasizes the role played by civil society in fostering tolerance, understanding, democratic principles and human rights. As such, he recommends that States cooperate closely with all relevant civil society actors in developing and implementing measures aimed at countering extremist political parties, movements and groups and at fighting racism, racial discrimination, xenophobia and related intolerance more generally.