



# DEVELOPING NATIONAL ACTION PLANS AGAINST RACIAL DISCRIMINATION



**A PRACTICAL GUIDE**



**UNITED NATIONS  
HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



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UNITED NATIONS



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# FOREWORD

The prohibition of racial discrimination is enshrined in all core international human rights instruments, placing obligations on States and tasking them with eradicating discrimination in the public and private spheres. In 2001, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance produced the most authoritative and comprehensive programme for combating these scourges: the Durban Declaration and Programme of Action. The Durban Review Conference in 2009 and the commemoration of the tenth anniversary of the World Conference against Racism two years later evidenced a renewed commitment to the racial equality agenda.

While the struggle against racism is a priority for the international community and is at the heart of the work of the Office of the United Nations High Commissioner for Human Rights (OHCHR), much remains to be done for the full realization of all human rights and fundamental freedoms for all. Racism and racial discrimination, both direct and indirect, *de facto* and *de jure*, occur daily, hindering progress and causing suffering for millions of people in all countries around the world. Lasting improvements to counter racial discrimination at the national level require political will and a sustained and comprehensive approach, reflected in a broad range of measures which complement and reinforce one another.

In order to eliminate the conditions which cause or perpetuate racial discrimination, the World Conference against Racism, the Durban Review Conference, the Committee on the Elimination of Racial Discrimination and the Human Rights Council, through its universal periodic review, have all recommended that States should adopt national action plans against racial discrimination. Such plans can provide the basis for the development of a comprehensive public policy for the promotion of racial equality.

Several States are already developing or implementing national action plans against racial discrimination. Their positive experiences in bringing about change for victims of racism prove that such national action plans can be an effective mechanism to counter racial discrimination.

During the past years, my Office has received many requests for technical assistance to draw up such plans. OHCHR has developed this publication to

assist States and all relevant stakeholders in giving effect to the International Convention on the Elimination of All Forms of Racial Discrimination, the Durban Declaration and Programme of Action and the Outcome Document of the Durban Review Conference.

I am convinced that the adoption of national action plans against racial discrimination can bring change to the lives of victims of racism, racial discrimination, xenophobia and related intolerance. I call on States to develop and implement such action plans, as a demonstration of their commitment to continue on the path towards equal and just societies.



Navanethem Pillay  
United Nations High Commissioner for Human Rights

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# EXECUTIVE SUMMARY

This publication is a practical guide for the development of national action plans against racial discrimination. A national action plan is the basis for the development of a comprehensive public policy against racial discrimination and can therefore help States give effect to their international human rights obligations related to the elimination of racial discrimination.

Following an introduction on the need for comprehensive strategies and policies in the fight against racial discrimination, the first chapter contains background information on the concept of national human rights action plans. This chapter also turns to international human rights instruments that have addressed the need to develop or elaborate action plans to prevent, combat and eradicate racial discrimination. Although each State requires a different approach, this chapter describes some of the general characteristics, principles, advantages and challenges applicable to all national action plans against racial discrimination.

The second chapter discusses the national action plan as an outcome. While recognizing that no two national action plans will ever be identical and need to address each State's circumstances, the chapter seeks to provide guidance on their contents based on the obligations of all States to respect, protect and fulfil human rights. The suggestions stress the importance of respecting human rights principles throughout the national action plan against racial discrimination. The chapter highlights the importance of maintaining a broad scope and suggests the establishment of a national body or institution against racial discrimination as one of the outcomes of the national action plan. The chapter provides valuable examples of how to set realistic objectives, clear targets and specific goals.

The third chapter refers to the national action plan against racial discrimination as a process. While keeping in mind that the process for producing a national action plan will be different from country to country, it describes in detail the different phases: preparation, development, implementation, monitoring and evaluation. The chapter raises the importance of guaranteeing the participation of individuals and groups affected by racial discrimination during all phases of the process. The role to be played by the different institutional structures, such as focal agencies, national coordinating committees, national human rights institutions and national institutions for racial equality, is also addressed in this chapter.



The fourth chapter provides guidance on the structure of national action plans against racial discrimination in order to facilitate their acceptance and understanding by the general public, their incorporation in the planning of State bodies responsible for their implementation, and their monitoring and evaluation. This last chapter proposes a structure based on the need to set specific goals, objectives and actions, as well as on the importance of determining the responsible State bodies, target dates and performance indicators for each objective.

This publication on the development of national action plans against racial discrimination can be a practical tool for States in their efforts to eradicate racial discrimination and comply with their international human rights obligations.

# INTRODUCTION

Non-discrimination and equality before the law and of the law constitute fundamental principles of international human rights law. The notion of equality is inseparable from that of human dignity essential to each and every person. Respect for human rights and the principles of equality and non-discrimination are interdependent and underpin the Universal Declaration of Human Rights and the main international human rights treaties. Additionally, according to the International Court of Justice, the prohibition of racial discrimination constitutes an *erga omnes*<sup>1</sup> obligation.

Despite the attempts to translate these fundamental human rights into practice, racial discrimination in its many guises persists. In many regions of the world racial violence, hate speech, prejudice and stereotyping are features of everyday life; certain groups remain disproportionately disadvantaged and minorities are silenced or negated. Racial discrimination continues to hinder progress and the enjoyment of rights for millions of people.

No State is free of racial discrimination and all States face challenges to eliminate it. The contrast between the principle of equality enshrined in the legal frameworks and the reality of discrimination based on race,<sup>2</sup> colour, descent, or national or ethnic origin prompts closer scrutiny of the actions needed to combat racism. The fight against racism requires a comprehensive approach, strategies and policies that address the various forms of racial discrimination.

To address these challenges, the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held in Durban, South Africa, in 2001, the Durban Review Conference held in Geneva in 2009, the Committee on the Elimination of Racial Discrimination and the Human Rights Council, through its universal periodic review, have recommended the adoption

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<sup>1</sup> See *Barcelona Traction, Light and Power Company, Limited, Judgment*, I.C.J. Reports 1970, p. 3.

<sup>2</sup> The use of the term “race” in this publication does not imply the acceptance of theories which attempt to determine the existence of separate human races. See the outcome document of the Durban Review Conference (A/CONF.211/8, chap. I), para. 6: “Reaffirms that all peoples and individuals constitute one human family, rich in diversity, and that all human beings are born free and equal in dignity and rights; and strongly rejects any doctrine of racial superiority along with theories which attempt to determine the existence of so-called distinct human races.”

of national action plans against racial discrimination. Several States are already implementing such action plans and others are developing them.<sup>3</sup>

Based on the positive experiences of such States in bringing about change for racially discriminated individuals and groups, the Office of the United Nations High Commissioner for Human Rights (OHCHR) observes that lasting improvements to counter racial discrimination at the national level require a sustained and comprehensive approach, reflected in a broad range of measures which complement and reinforce one another. National action plans against racial discrimination can be an effective mechanism to that end.

A national action plan against racial discrimination can provide the basis for the development of a comprehensive public policy against racial discrimination. By developing such a plan, the State demonstrates that it is taking action to counter the challenges it faces in eradicating racial discrimination. And by doing so, a national action plan against racial discrimination can help States meet their obligations as parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and their commitments arising from the World Conference against Racism and the Durban Review Conference, as well as other regional and national obligations.

Furthermore, by constituting the technical guiding framework for the State's policies, programmes and strategies to combat racial discrimination, a national action plan is, in itself, a step towards complying with the State's obligation to give effect to the rights to equality and non-discrimination.

Given that the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance<sup>4</sup> recognized that combating racial discrimination is a primary responsibility of States, this practical guide is addressed

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<sup>3</sup> As of January 2013 the following States have informed OHCHR about the adoption or development of national action plan against discrimination, including racial discrimination: Argentina, Belgium, Bolivia (Plurinational State of), Brazil, Canada, Colombia, Denmark, Ecuador, France, Germany, Ireland, Italy, Liechtenstein, Mexico, Netherlands, Norway, Slovakia, Spain, Sweden, United Kingdom of Great Britain and Northern Ireland, Uruguay and Venezuela (Bolivarian Republic of).

<sup>4</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, para. 99.

mainly to Governments considering or working on national action plans against racial discrimination. Nonetheless, it can also be a tool for the work of national human rights institutions (NHRIs), non-governmental organizations (NGOs), as well as individuals and groups affected by racial discrimination.

It is not intended as a blueprint for a nationally coordinated effort in the fight against racial discrimination. Rather, it aims at providing concrete suggestions for developing and implementing a comprehensive (in outreach and scope), effective (in terms of strategies) and sustainable (over the long term) national action plan against racial discrimination. It provides background information on the concept of national action plans against racial discrimination, institutional aspects for the development of such plans, as well as suggestions for their contents and structure.

It draws on the *Handbook on National Human Rights Plans of Action* and the "Guidelines for national plans of action for human rights education".<sup>5</sup>

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<sup>5</sup> OHCHR, *Handbook on National Human Rights Plans of Action*, Professional Training Series No. 10 (2002) and A/52/469/Add.1 and Corr.1.



## **SIGNIFICANCE OF NATIONAL ACTION PLANS AGAINST RACIAL DISCRIMINATION**



This chapter contains background information on the concept of national human rights action plans as well as on the need to develop or elaborate action plans to prevent, combat and eradicate racial discrimination. While taking into account that each State requires a different approach, this chapter describes some of the general characteristics, principles, advantages and challenges applicable to all national action plans against racial discrimination.

## A. BACKGROUND

The World Conference on Human Rights held in Vienna in June 1993 undertook a wide-ranging review of progress since the adoption of the Universal Declaration of Human Rights in 1948. It also sought to identify obstacles to further progress and ways in which they might be overcome. The Vienna Conference thus resulted in a close examination of concepts and mechanisms as well as many proposals for new approaches to the promotion and protection of human rights.

The document adopted at the Conference, the Vienna Declaration and Programme of Action,<sup>6</sup> was particularly important because of its comprehensiveness and because it was adopted by consensus. It made many recommendations to States and others in the international community regarding actions that could be taken to advance the promotion and protection of human rights.

*In the Vienna Declaration and Programme of Action, the World Conference on Human Rights recommended that States should consider the desirability of drawing up a national action plan identifying steps whereby States would improve the promotion and protection of human rights (Part II, para. 71).*

Many States have adopted national human rights action plans. The plans, which are seen as a tool to improve the human rights situation of a State and contribute to democracy, vary in scope and focus. They cover civil and political rights, as well as economic, social and cultural rights, and often specifically target individuals

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<sup>6</sup> A/CONF.157/24 (Part I), chap. III.

and groups that are especially vulnerable. Some address particular issues such as human rights and the environment, the rights of consumers or victims of crime.

Also since the Vienna Conference, OHCHR has developed guidelines on national human rights action plans. It has provided assistance to several States on how to develop such plans, follows up on the progress of various national human rights action plans and has taken stock of national experiences in developing them.

Similarly, within the framework of the United Nations Decade for Human Rights Education (1995-2004), both the General Assembly and the Commission on Human Rights called on States to develop comprehensive, effective and sustainable national plans of action for human rights education. To assist in this undertaking, OHCHR developed "Guidelines for national plans of action for human rights education".

In addition, the World Conference against Racism encouraged States to develop or elaborate national action plans to promote diversity, equality, equity, social justice, equality of opportunity and the participation of all.<sup>7</sup> In April 2009, the Durban Review Conference reaffirmed the call on States to formulate national policies and action plans to prevent, combat and eradicate racial discrimination.<sup>8</sup>

Along the same lines, the Committee on the Elimination of Racial Discrimination has recommended that the State parties to the International Convention on the Elimination of All Forms of Racial Discrimination should include in their periodic reports information on action plans or other measures taken to implement the Durban Declaration and Programme of Action, taking into account the outcome document of the Durban Review Conference.<sup>9</sup>

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<sup>7</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, para. 99; see also paras. 30 (a), 66, 100–102, 167 and 191 (a).


<sup>8</sup> See A/CONF.211/8, chap. I, paras. 28 and 114.

<sup>9</sup> Committee on the Elimination of Racial Discrimination, general recommendations Nos. 28 (2002) on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, para. 1 (g), and 33 (2009) on the follow-up to the Durban Review Conference, para. 1 (i).

At the World Conference against Racism, States declared that the fight against racism is an international priority for *all* nations in this third millennium.<sup>10</sup> According to the information available to OHCHR, many States are adopting national action plans against racial discrimination and several are already implementing them.<sup>11</sup> Their experiences are reflected in this publication.

## B. CONCEPT AND CHARACTERISTICS

In proposing the concept of national action plans against racial discrimination, the World Conference against Racism and the Durban Review Conference took the view that a comprehensive, structured approach against racism would facilitate the achievement of positive outcomes. Starting from the recognition of the State's current situation, a national action plan against racial discrimination constitutes a comprehensive programme of activities aimed at progressively bringing about improvements in the promotion of racial equality.

 *A national action plan against racial discrimination is a realistic and pragmatic approach towards the elimination of racial discrimination.*

Since combating racial discrimination forms an integral part of the protection and promotion of fundamental human rights, a national action plan against racial discrimination needs to be coordinated with other national, regional and international efforts to achieve human rights for all. Developing, implementing and evaluating such a national action plan require considerable planning and effort. Great care is needed to ensure linkage with existing overarching national human rights action plans, as well as national development plans and policy planning processes focused on health, education, women, children, minorities, indigenous peoples, etc. It is recommended that States should develop autonomous national action plans against racial discrimination, although in some cases they can also form an integral part of general national human rights action plans.

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<sup>10</sup> See A/CONF.189/12 and Corr.1, chap. I, Declaration, para. 3.

<sup>11</sup> See footnote 3.



In Spain, the Human Rights Plan (2008-2012) established several concrete commitments, among them the execution and evaluation of the Strategic Citizenship and Integration Plan and the approval of a national and integral strategy to fight racism and xenophobia.

While certain general principles apply to all national action plans against racial discrimination, no uniform approach can be applied to all States. A national action plan needs to be adapted to the historical and legal circumstances of the State where it will be developed and implemented. It is up to each State to decide what policies, programmes and activities it will put in place to achieve its general goals in the fight against racial discrimination.

Despite their distinctions, all national action plans against racial discrimination should share the following characteristics:

### *Characteristics of a national action plan against racial discrimination*

- *Based on human rights standards*
- *Comprehensive in scope*
- *National undertaking*
- *Action orientation*
- *Public document*
- *Continuing process*
- *International dimensions.*

## 1. Based on universal human rights standards

A national action plan against racial discrimination should incorporate a commitment to universal human rights standards, particularly the principle of equality and non-discrimination, and set out how these standards will effectively be implemented. The plan is part of a long-term process of enhancing national observance of universal standards that should survive changes of government and be above political dispute.

It should be based on international human rights standards. In particular, it should be in accordance with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and other relevant international human rights instruments, the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference. A national action plan against racial discrimination should also take into account the recommendations of the Committee on the Elimination of Racial Discrimination, the Committee on Migrant Workers and other human rights treaty bodies that monitor the implementation of the core international human rights treaties, as well as those of Charter-based bodies like the Human Rights Council and its special procedures. For instance, a national action plan against racial discrimination should give due consideration to the observations and recommendations made during the universal periodic review and/or by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on the rights of indigenous peoples, the Special Rapporteur on the human rights of migrants, the independent expert on minority issues as well as by the Durban follow-up mechanisms, including the Working Group of Experts on People of African Descent and the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action.

A comprehensive and effective national action plan against racial discrimination must assist States in meeting their human rights obligations. In giving practical effect to international and regional obligations, a national action plan must review the range of a State's commitments to eliminating racial discrimination and propose steps to ensure that they are effectively observed nationwide.

## 2. Comprehensive in scope

A national action plan against racial discrimination should adopt a comprehensive approach to human rights, reflecting their universality, interdependence and indivisibility. The plan should focus on the right to non-discrimination as an autonomous right, as well as in relation to civil and political rights, and to economic, social and cultural rights.

The plan's comprehensiveness should also be demonstrated by its application to all individuals and groups within a national jurisdiction.

It should trigger activities in many areas of public administration. The involvement of a wide range of State bodies in developing and implementing the plan will reinforce the notion that human rights and the principles of equality and non-discrimination are not just a matter for ministries of justice or foreign affairs, but are the responsibility of the State as a whole.

Furthermore, given that the prohibition of discrimination applies to both the public and the private spheres, a national action plan against racial discrimination should also be applicable to both.

## 3. National undertaking

A national action plan against racial discrimination is a mechanism for the effective pursuit of national goals. Thus, it should be regarded as a truly national undertaking, involving all elements of government and society.

The State plays a key role in the initiation, launching and implementation of the national action plan against racial discrimination. At the same time, to make a real difference, the plan needs to be "owned" by the entire population. In seeking to achieve their objectives, States must establish meaningful partnerships among all relevant stakeholders.

A national action plan against racial discrimination should embrace the broadest range of participants from all sectors of society working on anti-discrimination. Such a broad-based effort may lead to better public awareness and stronger institutions.

Of particular importance are the mechanisms to ensure the adequate consultation and participation of individuals and groups that are victims of racial discrimination.

#### **4. Action orientation**

A national action plan against racial discrimination should be action-oriented so as to facilitate its implementation. Rather than setting forth claims and vague promises, the plan should:

- Clearly describe the current situation of racial discrimination;
- Identify what problems need to be overcome;
- Specify what action will be taken (providing benchmarks for the evaluation of progress);
- Prioritize actions;
- Specify who is to take the actions;
- Establish a time frame for these actions;
- Establish a budget for action;
- Provide for effective monitoring and evaluation of what has been accomplished and what has not.

#### **5. Public document**

A national action plan against racial discrimination should be a public document that must be widely disseminated, accessible and easily obtainable.

Implicit in its concept is the central place of prevention of racial discrimination. A national action plan against racial discrimination should aim to raise awareness about racial discrimination and the various ways and means to counter it. By being a public and widely disseminated document, it can educate citizens as well as public officials about the principle of equality and the obligation of public and private actors to respect everyone's right to non-discrimination.

The plan should be developed, launched and reviewed with high-level political involvement. Making the plan a public document will make institutions, organizations, authorities and individuals responsible for distinct aspects of it more aware of the plan's requirements and goals, while allowing the general public to oversee its implementation.

A national action plan against racial discrimination should receive appropriate media coverage. Alongside the plan itself, there should be a sufficiently funded communication strategy to ensure that the widest possible spectrum of the public is involved in its development and implementation and is aware of its importance and results. Such funding should be made available as an integral part of the plan.

Where indigenous, regional or minority languages are spoken, the plan should be translated into these languages to the extent possible. Similarly, attention should be given to ensuring that individuals with special communication needs are taken into account, for example persons with disabilities or poor literacy skills.

## **6. Continuous process**

Because no State can realistically expect to eliminate racial discrimination within a relatively short time frame, national action plans against racial discrimination should be continuous. This means that a national action plan should be viewed as part of a long-term process. As one plan draws to an end, another should be developed to take its place, just as with economic plans.

The monitoring and review processes should thus feed into the planning of the next national action plan by identifying to what extent problems have been overcome and by focusing attention on areas where further action is needed. Subsequent plans will also take into account emerging forms of racism, racial discrimination, xenophobia and related intolerance and new international standards.

## 7. International dimensions

National human rights activity cannot be separated from international human rights activity. By developing and implementing a national action plan against racial discrimination, a State is making an unambiguous statement not only to its own people but also to the outside world about its human rights agenda. A national action plan should reflect internationally recognized standards and accord with international good practices.

Those working on the plan should take into consideration good practices by other States, so that they can both gain from international experience and enable others to learn from theirs. In addition, expertise and resources available at the international level can be accessed in this way. By having a clear programme that reflects internationally agreed guidelines and accords with international good practice, countries are in a better position to seek technical and other assistance in overcoming the challenges they face in eliminating racial discrimination.

International cooperation is also an important component of the development and implementation of a national action plan against racial discrimination. If requested, OHCHR, along with other international and regional organizations, as well as States that have already established such plans are in a position to provide guidance and technical assistance, to other States that are developing one.

The United States-Brazil Joint Action Plan to Eliminate Racial and Ethnic Discrimination and Promote Equality was signed in March 2008. It is the first bilateral agreement targeting racism.

This initiative leverages the inter-agency policy expertise in both countries, in a unique partnership with civil society and private sector committees, to address racial health disparities, environmental justice, access to education, equal access to economic opportunities and equal access to the justice system.

The Joint Action Plan recognizes that Brazil and the United States are multi-ethnic, multiracial democracies whose ties of friendship are strengthened by shared experiences. Both countries celebrate the rich contributions of people of African descent and indigenous populations to the fabric of their societies.

The Joint Action Plan's structure and the goals of racial and ethnic equality and social inclusion sparked interest in other countries of the Western hemisphere that wished to pursue similar partnerships, and in January 2010 the United States signed a similar action plan with Colombia.

### **C. PURPOSE, BENEFITS AND EXPECTED OUTCOMES**

The proponents of the national action plan concept started from the premise that all States share the challenge of improving human rights observance, including the need to eliminate racial discrimination. The basic idea endorsed by the World Conference against Racism was thus that a State would recognize that it faced a challenge to improve its human rights observance. Each State would start from its current situation, whatever that might be, and articulate a comprehensive and pragmatic programme of activities aimed at progressively bringing about improvements.

The fundamental **purpose** of a national action plan against racial discrimination is therefore to better promote and protect the rights of individuals and groups facing racial discrimination and to promote mutual understanding among different groups in a particular State. It does this by placing the right to equality and non-discrimination based on race, colour, descent, or national or ethnic origin in the context of public policy, that is, setting practical goals, devising programmes and activities to ensure the achievement of these goals, engaging all relevant sectors of government and society, and allocating sufficient resources, all with the aim of eliminating racial discrimination.

By developing comprehensive and effective national action plans against racial discrimination, States demonstrate that they are resolved and committed to countering the challenges and obstacles they face to eliminate racial discrimination. And by doing so, they comply with their international human rights obligations, which require them to take measures to give effect to relevant rights enshrined in human rights instruments.

Adopting and implementing a national action plan against racial discrimination can have the following **advantages**:

- Boost promotion and protection of human rights and respect for human dignity;
- Raise awareness of anti-racism, equality and anti-discrimination issues among public officials, civil society and the general public, mobilizing support from a wide range of people;
- Encourage the collection of updated information regarding racial discrimination and allow for a more comprehensive assessment of the needs to effectively combat it;
- Ensure that the concerns of individuals and groups facing racial discrimination are more effectively addressed;
- Increase the effectiveness and coherence of measures against racial discrimination, including financial and human resources;



- Generate a commitment to eliminating racial discrimination and turn that commitment into realistic activities aimed at reaching achievable targets;
- Strengthen programmes for groups of individuals facing racial discrimination in education, health, employment, housing, nutrition, social services and the administration of justice;
- Facilitate the identification of legislation that needs to be amended and/or adopted with a view to improving the protection of victims of racial discrimination;
- Be a tool of sound public administration and governance, helping States comply with their international human rights obligations;
- Facilitate the mobilization of domestic and international resources, including through United Nations and other programmes of technical cooperation, for States that need resources, training and expertise to combat racial discrimination;
- Generate a more equal society and strengthen the rule of law and democracy.

Some of the **expected outcomes** of a national action plan against racial discrimination are:

- Better promotion and protection of human rights;
- Empowered individuals and groups and better quality of life;
- Compliance with human rights obligations;
- Ratification of human rights instruments, particularly the International Convention on the Elimination of All Forms of Racial Discrimination, withdrawal of reservations and recognition of the competence of the Committee on the Elimination of Racial Discrimination to receive and consider complaints under article 14 of the Convention;
- More effective incorporation and implementation of human rights standards in domestic law and practice, leading to an expansion of human rights protection for victims of racial discrimination;

- Adoption and/or amendment of equality and anti-racial discrimination legislation, administrative measures, policies and programmes that address direct and indirect as well as de jure and de facto racial discrimination;<sup>12</sup>
- Amendment or abolition of any laws, regulations, policy and practice incompatible with international standards related to racial discrimination;
- Adoption of special measures designed to secure the full and equal enjoyment of human rights and fundamental freedoms for disadvantaged groups;<sup>13</sup>
- Improved administration of justice, with a judicial system committed to giving victims of racial discrimination access to justice and to combating impunity for criminal acts motivated by racial discrimination. Also, improved remedies and resources available to victims of racial discrimination;<sup>14</sup>
- Increased number of effective measures taken to help fulfil the civil, cultural, economic, political and social rights of individuals and groups facing racial discrimination;
- Fewer disadvantages associated with racial discrimination, such as marginalization, social exclusion, economic disparities, stereotyping, stigma, xenophobia and violence;
- Full, equal and effective participation of individuals and groups facing racial discrimination in all areas of economic, social, political, cultural or civic life;
- Establishment or reinforcement of specialized national bodies against racial discrimination and independent national human rights institutions working against racism;
- Identification and prevention of contemporary forms and manifestations of racism,<sup>15</sup> racial discrimination, xenophobia and related intolerance;

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<sup>12</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 66–74.

<sup>13</sup> *Ibid.*, paras. 92–94 and 98. Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms Racial Discrimination.

<sup>14</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 160–166.

<sup>15</sup> *Ibid.*, Declaration, para. 17.

- Greater understanding of the principles of equality and non-discrimination and their value to society as a whole, and accommodation of difference and diversity;
- Wider awareness and knowledge of international anti-racial discrimination standards by public officials, including personnel in the administration of justice, particularly in law enforcement, prison and security services, immigration services as well as in the media, politics, health care, schools and other social fields.

## **D. COMMON CHALLENGES**

The practical value of a national action plan against racial discrimination will not necessarily be the same in all situations. In many States, the fight against racial discrimination still faces resistance either from public authorities or from civil society or from both. Such resistance can be a challenge for a national action plan at all stages: during development, before its adoption, during implementation or during its evaluation. Both public and private actors must be engaged in the process for it to be successful.

Experiences with the development of national action plans for human rights and national actions plans for human rights education, as well as experiences from States that have already developed national action plans against racial discrimination, suggest that the following factors can have a bearing on a particular plan's effectiveness:

- Level of political will and support;
- Transparent and participatory planning;
- Comprehensiveness of the baseline study underlying the plan;
- Realistic prioritization and action-oriented planning;
- Strong participatory mechanisms for monitoring and evaluation;
- Adequate commitment of resources;
- Level of international cooperation.

The following are some of the practical problems experienced in States that have already adopted national action plans for human rights, for human rights education or against racial discrimination:

- Possible duplication by a baseline study of existing human rights needs assessments;
- Plan's lack of credibility owing to the lack of public participation, public awareness and/or political will;
- Lack of clear objective prioritization, particularly in view of the limited availability of resources;
- Insufficient budgetary allocations for the plan's development, implementation, monitoring and evaluation;
- Lack of an adequate normative framework;
- Overly ambitious and ultimately unrealistic objectives;
- Failure to take into account existing initiatives, particularly by civil society, including initiatives by groups facing racial discrimination;
- Lack of agreement on implementing and monitoring responsibilities;
- Insufficient coordination and ownership among those who implement the plan;
- Change of governments and lack of continuation of previous plans or programmes;
- Lack of efficient coordination between all levels of government, particularly in federal States.

Many other practical challenges may arise during the development and implementation of a national action plan against racial discrimination. International cooperation is essential to overcome many of these difficulties.



## RECOMMENDED CONTENTS



Determining the contents of a national action plan against racial discrimination is crucial because the commitments described in it will constitute benchmarks by which its success will be measured.

*A national action plan against racial discrimination should be tailored to each State's political, cultural, historical and legal circumstances, and must formulate concrete measures to bring about tangible improvements in that State's fight against racial discrimination.*

Although no two national action plans against racial discrimination will ever be identical, this chapter provides guidance for their contents. The plan should incorporate both international norms and features of the local situation. It should also ensure consistency or be correlated with other plans, such as national human rights action plans or national development plans, in countries that have developed such plans.

## **A. GUIDING CONSIDERATIONS**

Notwithstanding the need for different plans of action in view of the actual and historical situation of racial discrimination in each State, the contents of each plan should, as a minimum, conform to the standards set out in international human rights instruments and their interpretation by the treaty bodies. Also, the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference should be used to design specific actions against racism and discrimination.

The national action plan against racial discrimination should start from the State's clear commitment to preventing and countering racial discrimination. The concept of racial discrimination should therefore be expressed with absolute clarity.

## RACIAL DISCRIMINATION

*International Convention on the Elimination of All Forms of Racial Discrimination (art. 1 (1))*

*... “racial discrimination” shall mean 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, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.*

The national action plan against racial discrimination should include at least the same list of prohibited grounds as is set out in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, but keep open the possibility of incorporating other forms of discrimination, considering the specific historical and actual circumstances of each State. Moreover, the Committee on the Elimination of Racial Discrimination has noted that article 1 applies also to non-nationals,<sup>16</sup> indigenous peoples,<sup>17</sup> as well as work- and descent-based discrimination<sup>18</sup> (castes).

The national action plan against racial discrimination should have a systematic and consistent approach to the prohibition of racial discrimination, taking into account that international jurisprudence and practice have elevated the principle of non-discrimination on racial grounds to special status within international law. The International Court of Justice held that the prohibition of racial discrimination

<sup>16</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 30 (2004) on discrimination against non-citizens.

<sup>17</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 23 (1997) on indigenous peoples.

<sup>18</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 29 (2002) on descent-based discrimination.

constitutes an *erga omnes* obligation.<sup>19</sup> The International Court also held that to "... enforce, distinctions, exclusions, restrictions and limitations exclusively based on grounds of race, colour, descent or national or ethnic origin which constitute a denial of fundamental human rights is a flagrant violation of the purposes and principles of the Charter [of the United Nations]."<sup>20</sup>

Discrimination can be either direct or indirect. The national action plan against racial discrimination should aim to ultimately eradicate racial discrimination in all its forms and manifestations, taking into consideration the following:

- Any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, whether by public or private sector actors, which has the purpose of impairing the recognition, enjoyment or exercise of human rights (*direct discrimination*);
- Practices or policies which appear neutral, but have a disproportionate impact on a racial or ethnic group and are not a proportionate means of achieving a legitimate aim (*indirect discrimination*);
- Inequality before the law on grounds of race, colour, descent, or national or ethnic origin (*de jure discrimination*);
- Practices, conditions, circumstances and attitudes which can cause or perpetuate discrimination (*de facto discrimination*);<sup>21</sup>

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<sup>19</sup> *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Reports 1970*, p. 3: "... an essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-à-vis another State in the field of diplomatic protection. By their very nature, the former are the concern of all States. In view of the importance of the rights involved, all States can be held to have a legal interest in their protection; they are obligations *erga omnes*. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law ...; others are conferred by international instruments of a universal or quasi-universal character" (paras. 33–34).

<sup>20</sup> *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) Notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

<sup>21</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, para. 8 (b).



- Equal treatment can lead to differential results for groups that have historically experienced disadvantage related to their racial or ethnic origin. Differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the International Convention on the Elimination of All Forms of Racial Discrimination, are legitimate;<sup>22</sup>
- When circumstances warrant, laws, policies and practices adopted and implemented by States should be supplemented with temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights. Special measures are one component in the range of provisions States need to adopt with the objective of eliminating racial discrimination;<sup>23</sup>
- Discrimination can be a result of the institutions, structures and systems of society, rather than of the actions of particular perpetrators. Both State and private actors need to take steps to modify or accommodate structures to reduce inequalities on grounds of national, racial or ethnic origin;

States must eradicate racial discrimination both in law, such as racial discrimination embodied in legislation, and in practice, such as racial discrimination that might occur in the workplace. However, States may still differentiate in favour of certain historically disadvantaged groups, when this is necessary to ensure that they have equal opportunities.

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<sup>22</sup> Committee on the Elimination of Racial Discrimination, general recommendations Nos. 30 (2004), para. 4, and 14 (1993) on the definition of racial discrimination. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 13.

<sup>23</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 11.

- Victims of racial discrimination can suffer multiple or aggravated forms of discrimination based on other related grounds, such as sex, language, religion, age, disabilities, political or other opinion, social origin, property, sexual orientation or gender identity, birth or other status. Such cumulative discrimination has a unique and specific impact on individuals and merits particular consideration in the national action plan against racial discrimination;
- Some groups are victims of persistent hostility and segregation. The national action plan should aim at raising awareness about systemic discrimination and at the adoption of strict measures against incitement to discrimination.

## **B. GENERAL PRINCIPLES**


The national action plan against racial discrimination should be in accordance with the State's obligations and commitments to international, regional and national human rights standards. National action plans against racial discrimination should adopt a comprehensive approach to human rights and be guided, among other things, by the following principles:

### **1. Universality**

The national action plan against racial discrimination should recognize that fundamental human rights norms enjoy universal protection by customary international law across all borders and civilizations. The national action plan should be consistent with the State's duty to promote and protect human rights and fundamental freedoms, regardless of its political, economic or cultural system.

### **2. Interdependence and indivisibility**

The national action plan should give equal attention to all categories of rights, including civil and political rights, as well as economic, social and cultural rights, especially bearing in mind that the denial of one right invariably impedes the enjoyment of the others.



*Indivisibility is a practical rather than a theoretical issue. For example, persons who are racially discriminated against might suffer a violation of their right to housing. The absence of adequate housing is also likely to cause poor health, to interfere with family life and education, to hinder employment opportunities and to undermine civil and political rights. This may lead to social exclusion and to problems with the justice system.*

### **3. Participation and inclusion**

The national action plan against racial discrimination should guarantee full, effective and equal participation. It should empower individuals and groups that have faced or face racial discrimination to identify their human rights needs and to ensure that they are met.

The Durban Programme of Action states that action plans should aim at creating conditions for all to participate effectively in decision-making and realize civil, cultural, economic, political and social rights in all spheres of life on the basis of non-discrimination (para. 99). It also encourages States, in developing and elaborating such action plans, to establish, or reinforce, dialogue with NGOs in order to involve them more closely in designing, implementing and evaluating policies and programmes.

### **4. Progressive realization**

The national action plan against racial discrimination should develop targeted, legally consistent and sufficiently progressive policies to secure the rights of individuals and groups facing racial discrimination. Moreover, the obligation of progressive realization of human rights implies that there should be no regression, by action or omission, to a lower level of enjoyment of rights from that which has already been achieved.

Human rights law recognizes that a lack of resources can impede the realization of human rights. Some human rights obligations are, therefore, of a progressive kind, while others are immediate.<sup>24</sup> For economic, social and cultural rights, States have a core obligation to satisfy the minimum essential level of each right. For socioeconomic rights, the following obligations are of immediate effect:

- The obligation not to discriminate between different groups of people in the realization of the rights in question;
- The obligation to take steps (including devising specific strategies and programmes) targeted deliberately at the full realization of the rights in question; and
- The obligation to monitor progress in the realization of human rights. Accessible mechanisms of redress should be available if rights are violated.

Therefore, the national action plan against racial discrimination should not use “progressive realization” as a pretext to shelve full implementation. “Progressive realization of the right” is not an excuse to postpone implementation, but rather calls for immediate steps, as well as for developing a roadmap to implement it.

## 5. Accountability

To be effective, the national action plan against racial discrimination requires the development of a system of accountability based on specific, ascertainable goals. It should develop mechanisms to hold the institutions in charge of its implementation accountable to those groups and individuals whose rights it is intended to promote and protect.

The evaluation of the plan should be subject to open scrutiny, comment and debate in order to contribute to the implementing institution’s public accountability. Several actors, including civil society, the prosecution services and bar associations, should participate in this evaluation.


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<sup>24</sup> See Committee on Economic, Social and Cultural Rights, general comment No. 3 (1990) on the nature of States parties’ obligations.

## 6. Equality and non-discrimination

The principle of non-discrimination is the cornerstone of human rights law and a principle included in all human rights treaties. The national action plan against racial discrimination should be guided by the principle of the enjoyment of human rights on an equal footing as an integral part of the prohibition of racial discrimination. It must strive to guarantee that human rights are applied on a basis of equality of access, opportunity and results, in fact and in law, for all persons. It should give due priority to those who are most vulnerable to racial discrimination.

Non-discrimination and equality are essential to the exercise and enjoyment of human rights. The right to equality and non-discrimination requires States to guarantee non-discrimination in the exercise of each human right.

 *The right to non-discrimination is a free-standing right, which can be violated even if no other human right is violated.*

## 7. Rule of law

The rule of law is the backbone of the legal protection of human rights. The national action plan against racial discrimination should, consequently, underscore the importance of ensuring that human rights are protected under the rule of law. It should contribute to building and strengthening national structures that have a direct impact on the overall observance of human rights and the maintenance of the rule of law as the cornerstone of democracy and human rights protection.

Genuine improvements in human rights observance require, among other things, a commitment to the rule of law. Therefore, the national action plan against racial discrimination should lead to a more effective rule of law<sup>25</sup> and embrace its four main components: legality, equality, accountability and participation.

## C. SCOPE

Notwithstanding the need for action plans to be detailed in some areas, the national action plan against racial discrimination's scope should be broad.

*The plan's comprehensiveness should be demonstrated through its application to:*

- All persons under the State's jurisdiction
- All public and private spheres
- All human rights
- All of the State's human rights obligations.

### 1. All persons under the State's jurisdiction

The national action plan against racial discrimination should be applicable to all persons within a national jurisdiction.

*All persons present in or subject to the jurisdiction of a State are rights holders of the right to equality and non-discrimination.*

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<sup>25</sup> For further guidance on the various dimensions of the interrelation between democracy and human rights, see Human Rights Committee, general comment No. 25 (1996) on the right to participate in public affairs, voting rights and the right of equal access to public service, and Commission on Human Rights resolutions 2000/47 and 2002/46.

It should target the potential beneficiaries of advances in the observance of the prohibition against racial discrimination. While in a broad sense this will include the whole of society, particular attention should be given to individuals and groups whose right to non-discrimination based on race, colour, descent, or national or ethnic origin is or could be under threat.

At the same time, the national action plan should take into consideration the need to address members of the general public, emphasizing their obligation to comply with the prohibition of racial discrimination and acknowledging that, even if their rights are not immediately under threat, they will draw satisfaction from the awareness that the national action plan will improve the security and well-being of all persons within their jurisdiction.

## 2. All public and private spheres

As has been stressed throughout this publication, the prohibition of discrimination reaches both the public and the private spheres, and the national action plan should therefore be applicable to both. It should identify duty bearers, including different levels of government and non-State actors.

 *Both State and non-State actors are duty bearers of the obligations that arise from the right to equality and non-discrimination.*

The national action plan should involve all branches of government, including the legislative, judicial and executive powers. In federal States, the national action plan should be applicable to both the federal and State/provincial levels.

Brazil has cooperated with the private sector, namely major Brazilian companies and banks, to create job opportunities for people of African descent.

The plan should acknowledge that discrimination is frequently encountered in families, workplaces and other sectors of society. It should seek to ensure that individuals and entities in the private sector do not discriminate on prohibited grounds. Therefore, it should envisage action against discrimination not only by State bodies but also by private individuals and entities in all areas, including in political, social, cultural and economic areas, and in the family. Private actors have a duty to observe human rights and can be held liable for their violations.

In this regard, the Committee on the Elimination of Racial Discrimination found that the reference to public life, included in article 1 (1) of the Convention, does not limit the scope of the non-discrimination principle to acts of the public administration but should be read in the light of the provisions in the Convention mandating measures by State parties to address racial discrimination "by any persons, group or organization."<sup>26</sup>

### 3. All human rights

The national action plan against racial discrimination, in keeping with the universal, indivisible, interrelated, interdependent and mutually reinforcing nature of all human rights and fundamental freedoms, should seek to ensure equal enjoyment of *all* human rights, including civil, cultural, economic, political and social rights.



*The list of human rights to which the principle of non-discrimination applies is not closed.*

At the same time, the plan should take into consideration that the right to non-discrimination is a right in itself and may be violated even without being associated with the denial of another right.

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<sup>26</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 9. See also Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 11.



## 4. All of the State's human rights obligations

Developing a national action plan against racial discrimination can help a State comply with its general obligations to respect, protect and ensure human rights, which are implicit in the International Convention on the Elimination of All Forms of Racial Discrimination.

- Respect human rights



*States must refrain from interfering with the enjoyment of the rights of victims of racial discrimination.*

States have an obligation to abstain from performing, sponsoring or tolerating any practice, policy or legal measure that violates human rights, including the right to non-discrimination.

By strengthening the mechanisms to ensure that public and private actors refrain from racial discrimination, by action or omission, a national action plan will assist States in meeting this obligation. It can also help to ensure that laws, programmes and strategies are effectively implemented in order to address all forms of racial discrimination by public and private actors.

- Protect human rights



*States must prevent violations of the rights of victims of racial discrimination by State and non-State actors.*

States have an obligation to protect human rights, including the right to non-discrimination. This obligation requires the State and all of its bodies to prevent the violation of any individual's or group's rights by any State or non-State actor.

It further requires States to adopt all necessary measures to remove any obstacles that may impinge upon the enjoyment of the right to non-discrimination based on race, colour, descent, or national or ethnic origin. And it also includes the duty to prohibit discrimination in the private sphere.

By constituting the technical framework for the State's policies, programmes and strategies to combat racial discrimination, a national action plan is, in itself, a step towards complying with the State's obligation to protect all individuals and groups from racial discrimination.

Furthermore, by establishing measures to protect individuals and groups from racial discrimination, and by putting in place mechanisms to ensure that, if a right has been violated, State authorities act to preclude further violations and to guarantee access to legal remedies for the victims, a national action plan against racial discrimination can help the State comply with its obligation to protect human rights.

In 2000, the offence of discrimination was written into the Peruvian Criminal Code (art. 323). The firing of a worker on discriminatory grounds is characterized as invalid.

The legislation specifically prohibits discrimination in offers of employment and access to education and training. A supplier who discriminates against consumers, whether in direct consumer relations or otherwise, is committing an administrative infraction.

- Ensure human rights

*States must take appropriate legislative, administrative, budgetary, judicial and other actions towards the full realization of the rights of victims of racial discrimination.*

States have an obligation to ensure the full exercise of human rights. Consequently, they must prevent, investigate and punish any violation of human rights, including the right to non-discrimination, and, if possible, attempt to restore the right violated and provide compensation as warranted for damages resulting from the violation.<sup>27</sup>

This duty requires States to adopt active measures to ensure the full realization of human rights, including the right to non-discrimination based on race, colour, descent, or national or ethnic origin. The term “measures” refers to the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture, and participation in public life for disadvantaged groups, devised and implemented on the basis of such instruments.<sup>28</sup> Thus, the obligation to ensure can entail measures such as public expenditure, governmental regulation of the economy, the provision of basic public services and infrastructure, taxation and other redistributive measures.

With respect to economic, social and cultural rights, the “obligation to ensure” has been interpreted to incorporate both an obligation to facilitate and an obligation to provide. Facilitating involves positive initiatives to enable the full enjoyment of economic, social and cultural rights.<sup>29</sup> Providing involves direct or indirect State services when individuals or groups are unable, for reasons beyond their control, to realize the right themselves by the means at their disposal.<sup>30</sup>

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<sup>27</sup> See Inter-American Court of Human Rights, *Velásquez Rodríguez Case*, Judgement of 29 July 1988, Series C, No. 4, para. 166. The Human Rights Committee, in its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, also stated that States contravene their human rights obligations when they fail “to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities”.

<sup>28</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 13.

<sup>29</sup> See A/CONF.189/12 and Corr.1, chap. I, Declaration, paras. 41, 70 and 107, and Programme of Action, paras. 18 and 207.

<sup>30</sup> Committee on Economic, Social and Cultural Rights, general comment No. 12 (1999) on the right to adequate food. See also its general comment No. 13 (1999) on the right to education.

The degree of effort a State must make to comply with this duty is often referred to as due diligence. Due diligence is reflected in effective measures to provide safeguards against discrimination.

By developing targeted, legally consistent and sufficiently progressive policies to secure the rights of victims of racial discrimination, a national action plan against racial discrimination can further assist the State in complying with the obligation to fulfil human rights. Through the adoption of positive steps to achieve equality and to eliminate discrimination, a national action plan can give effect to the right to non-discrimination based on race, colour, descent, national or ethnic origin.

## **D. ESTABLISHING A NATIONAL BODY OR INSTITUTION**

As mentioned above, in countries that do not have a national institution for racial equality, establishing one is normally a key objective of the national action plan against racial discrimination.

According to the Committee on the Elimination of Racial Discrimination, a national institution for racial equality should also:

- Promote respect for the enjoyment of human rights without any discrimination, as expressly set out in article 5 of the Convention;
- Review government policy on protection against racial discrimination;
- Monitor legislative compliance with the provisions of the Convention;
- Educate the public about the obligations of State parties under the Convention;
- Assist the State in the preparation of reports submitted to the Committee.

The Durban Review Conference also called on States to establish and equip specialized bodies and mechanisms for the implementation of public policies to eradicate racism, racial discrimination, xenophobia and related intolerance, and to promote racial equality with suitable financial resources, capability and capacity to survey, investigate, educate and undertake public awareness-

raising activities.<sup>31</sup> The national institution for racial equality might therefore be responsible for the implementation of several aspects of the national action plan against racial discrimination.

In establishing a national institution for racial equality, the State is to take into account the Principles relating to the status and functioning of national institutions for the protection and promotion of human rights, also known as the Paris Principles.<sup>32</sup>

Whatever form it takes, the national institution must be entitled to:

- Conduct public studies of racial discrimination;
- Promote, through awareness-raising campaigns and public education, the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination;
- Protect the victims of racial discrimination by participating in the litigation of cases that affect them;
- Review legislation and examine the state of domestic implementation of the Convention;
- Ensure local, regional and national/federal coordination of matters and programmes related to combating racial discrimination.

The State should notify OHCHR when the national institution or body for racial equality is convened. The national institution should remain in contact with OHCHR, with the Committee on the Elimination of Racial Discrimination as well as with regional and international bodies working on equality. It should also channel international and regional inputs, information and support to the local and grass-roots levels.

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<sup>31</sup> See A/CONF.211/8, chap. I, para. 116.

<sup>32</sup> Adopted by United Nations General Assembly resolution 48/134.

## E. ADOPTING AND REVISING LEGISLATION

*The obligation to prohibit all discrimination on the basis of race and to guarantee equal and effective protection to victims of racial discrimination requires both that the prohibition be included in national laws and, preferably, also in national constitutions, and that detailed legislative provisions covering racial discrimination in all fields of public and private life be adopted.*

Article 2 (c) of the International Convention on the Elimination of All Forms of Racial Discrimination imposes on State parties the obligation to take effective measures to review governmental, national and local policies, and to amend, rescind or nullify any laws and regulations which have the effect of creating or perpetuating racial discrimination wherever it exists.

The exact form that these provisions take will depend on existing laws and the legal system of each State. However, a national action plan against racial discrimination may include:

- The revision of the State's human rights commitments against racial discrimination and steps to ensure that they are effectively observed;
- Steps to achieve the ratification of or accession to international or regional human rights instruments related to the elimination of racial discrimination, including any optional protocols that establish complaint procedures;<sup>33</sup>
- Steps to guarantee the withdrawal of any reservations the State may have entered to international or regional human rights instruments related to the elimination of racial discrimination;

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<sup>33</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 75–83.

- Guidelines for the incorporation into domestic law of international and regional human rights standards on the prohibition of racial discrimination by State or non-State actors;
- Measures for guaranteeing the effective implementation of international and regional legal instruments on human rights and non-discrimination. Depending on the State's legal system, the ratification of an international or regional human rights instrument may need to be accompanied or followed by legislative action, policy and administrative steps to give it effect in domestic law in order to be truly effective;
- Steps to bring laws into conformity with the applicable international human rights obligations to eliminate racial discrimination;
- Guidelines for a general guarantee of equality before the law and prohibiting racial discrimination;
- Steps to eliminate laws that have a racially discriminatory impact, particularly those which target certain groups indirectly by penalizing acts that can be committed only by persons belonging to such groups, or laws that apply only to non-nationals without legitimate grounds or which do not respect the principle of proportionality;<sup>34</sup>
- Mechanisms to address the potential indirect discriminatory effects of certain domestic legislation, particularly legislation on countering terrorism, immigration, nationality, banning or deporting non-citizens, as well as legislation that has the effect of penalizing without legitimate grounds membership in certain groups;
- Effective measures to combat criminal acts motivated by racial discrimination and to ensure that such motivations are considered an aggravating factor for the purpose of sentencing and prevent impunity for these crimes;<sup>35</sup>

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<sup>34</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

<sup>35</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, para. 84.

In Namibia, the Racial Discrimination Prohibition Act of 1991 renders criminally punishable, pursuant to article 23 of the Constitution, certain acts and practices of racial discrimination and apartheid in relation to public amenities, the provision of goods and services, immovable property, educational and medical institutions, employment, associations, religious services, and involving the incitement of racial disharmony and victimization.

The Equality Act 2010 in the United Kingdom covers nine protected characteristics that cannot be used as a reason to treat people unfairly.

The Equality Act 2010 also created the equality duty. This duty came into force in April 2011 and covers age, disability, gender, gender reassignment, pregnancy and maternity, race, religion or belief, and sexual orientation. It applies in England, Scotland and Wales. The general equality duty is set out in section 149 of the Equality Act. In summary, those subject to the general equality duty must have due regard to the need to: eliminate unlawful discrimination, harassment and victimization; advance equality of opportunity between different groups; and foster good relations between different groups.

Bodies which are subject to the general duty include key public authorities, such as local authorities, health, transport and education bodies, the police, the armed forces and central government departments.

- Measures to effectively prohibit and prevent advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. A national action plan against racial discrimination can provide a course of action by which States can comply with their obligation to prohibit acts of incitement to national, racial or religious hatred while



respecting the right to freedom of expression as protected by international human rights law. To this end, the Human Rights Committee has already stated that the prohibition of any propaganda and any advocacy for racial hatred is fully compatible with the right to freedom of expression.<sup>36</sup>

In Australia, the Parliament of Victoria passed the Racial and Religious Tolerance Act in 2001, recognizing “that freedom of expression is an essential component of a democratic society and that this freedom should be limited only to the extent that can be justified by an open and democratic society. The right of all citizens to participate equally in society is also an important value of a democratic society. [...] However, some Victorians are vilified on the ground of their race or their religious belief or activity. Vilifying conduct is contrary to democratic values because of its effect on people of diverse ethnic, indigenous and religious backgrounds. It diminishes their dignity, sense of self-worth and belonging to the community. It also reduces their ability to contribute to, or fully participate in, all social, political, economic and cultural aspects of society as equals, thus reducing the benefit that diversity brings to the community. [...] It is therefore desirable that the Parliament enact law for the people of Victoria that supports racial and religious tolerance”.

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<sup>36</sup> See Human Rights Committee, general comment No. 11 (1983) on the prohibition of propaganda for war and inciting national, racial or religious hatred, para. 2. See also its general comment No. 34 (2011) on article 19: freedoms of opinion and expression, and Committee on the Elimination of Racial Discrimination, general recommendation No. 15 (1993) on organized violence based on ethnic origin (art. 4), para. 4.

## F. DEVELOPING PUBLIC POLICIES, PLANS AND STRATEGIES

States should not limit themselves to prohibiting racial discrimination. The International Convention on the Elimination of All Forms of Racial Discrimination requires State parties to guarantee that everyone, without distinction as to race, colour, or national or ethnic origin, can effectively enjoy: the right to equal treatment before the tribunals and all other organs administering justice; the right to security of person and protection by the State against violence or bodily harm, whether inflicted by government officials or by any individual group or institution; political rights, in particular the right to participate in elections—to vote and to stand for election—on the basis of universal and equal suffrage, to take part in the Government as well as in the conduct of public affairs at any level and to have equal access to public services; other civil rights as well as economic, social and cultural rights; and the right of access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks (art. 5).

*A national action plan against racial discrimination needs to devise policies, plans and strategies to protect and promote the rights of groups facing racial discrimination.*

A national action plan against racial discrimination should assist the State in taking concrete, deliberate and targeted measures to eliminate discrimination in the exercise of human rights, but it would be practically impossible for this publication to outline all the programmes that States may put in place in all areas where racial discrimination occurs.

Based on the recommendations adopted by the World Conference against Racism and the Durban Review Conference, the International Convention on the Elimination of All Forms of Racial Discrimination and other international instruments, a national action plan against racial discrimination may include the adoption of:

- Public policies to ensure that groups and individuals facing racial discrimination can fully and effectively exercise human rights without any discrimination and in full equality before the law;
- Measures to prevent acts of racial discrimination by State bodies or by third parties. Particular emphasis must be placed on stopping systemic, institutional and structural discrimination;
- Public policies to end enslavement and contemporary slavery-like practices;<sup>37</sup>
- Measures to eliminate violence, stigmatization, marginalization and other negative consequences of racism;
- Measures to eliminate discrimination in the enjoyment of economic, social and cultural rights;
- Benchmarks for the realization of economic, social and cultural rights in line with the country's human rights obligations and specific programmes to achieve associated targets in areas such as:
  - The right to an adequate standard of living, including nutrition and housing;
  - The right to health;
  - The right to education;
  - The right to social security;
  - The right to take part in cultural life;
  - The right to work;
  - The right to just and favourable conditions of work and to form and join trade unions;

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<sup>37</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, para. 2.

- Policies to ensure equal access to education for all in law and in practice, refraining from any legal or any other measures leading to imposed racial segregation in access to schooling;
- Programmes to ensure access to quality education, including access to free primary education for all children, both girls and boys, and access for adults to lifelong learning and education, based on respect for human rights, diversity and tolerance, without discrimination of any kind;
- Programmes to promote access to new technologies that would offer groups facing racial discrimination adequate resources for education and technological development;<sup>38</sup>
- Measures to eliminate racial discrimination in the workplace and steps to eliminate barriers to ensure that groups and individuals facing racial discrimination may participate in vocational training, collective bargaining, employment, contracts and trade union activity; access judicial and administrative tribunals dealing with grievances; seek employment in different parts of their country of residence; and work in safe and healthy conditions;<sup>39</sup>
- Measures to fulfil the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, with a view to eliminating disparities in health status, as indicated in standard health indexes, which might result from racial discrimination;<sup>40</sup>
- Programmes to promote the access without discrimination of groups facing racial discrimination to health care, and to promote strong efforts to eliminate disparities, inter alia in the infant and maternal mortality rates, childhood immunizations, HIV/AIDS, heart diseases, cancer and contagious diseases;<sup>41</sup>
- Policies to eradicate discriminatory practices and barriers in public and private sector housing;<sup>42</sup>

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<sup>38</sup> Ibid., para. 10.

<sup>39</sup> Ibid., para. 29.

<sup>40</sup> Ibid., para. 109.

<sup>41</sup> Ibid., para. 101.

<sup>42</sup> Ibid., paras. 81, 92 (c) and 100.

- Measures to promote residential integration of all members of the society at the planning stage of urban development schemes and other human settlements, as well as while renewing neglected areas of public housing, so as to counter social exclusion and marginalization which affect victims of racial discrimination;<sup>43</sup>
- Measures to ensure that individuals and groups facing discrimination have access to any place or service intended for use by the general public, such as transport, hotels, restaurants, cafes, theatres and parks.

In Norway, the measures set out in the plan of action are mainly focused on eight target areas:

1. Working life
2. Public services
3. Schools/education
4. The judicial system
5. Documentation/monitoring
6. The Internet
7. The local community
8. Strengthening legal protection against ethnic discrimination and racist harassment.

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<sup>43</sup> Ibid., para. 102.

## G. ADOPTING SPECIAL MEASURES

Achieving racial equality might also require the State and private actors to take positive measures. These proactive steps undertaken by the State to reduce or eliminate the conditions that cause or contribute to perpetuating racial discrimination, or to accelerate the achievement of equality, may include special measures.

*Special measures of a temporary nature might need to be incorporated to accelerate or achieve de facto equality.*

The Constitution of South Africa provides for the adoption of legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination.

This provision is in line with article 1 (4) of the Convention, which provides for special measures for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection, as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights.

Special measures may be described as “affirmative measures”, “affirmative action” or “positive action”. A national action plan against racial discrimination should use terminology that clearly demonstrates that the measures conform to the concept of “special measures” as set out in the International Convention on the Elimination of All Forms of Racial Discrimination.

According to the Committee on the Elimination of Racial Discrimination, the concept of special measures “is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. Special measures are one component in the ensemble of provisions in the Convention dedicated to the objective of eliminating racial discrimination, the successful achievement of which will require the faithful implementation of all Convention provisions.”<sup>44</sup>

The Convention stipulates that special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different groups based on their national or ethnic origin, and that they shall not be continued after the objectives for which they were taken have been achieved (art. 1, para. 4). Discrimination under the Convention is constituted not simply by an unjustifiable *distinction, exclusion or restriction* but also by an unjustifiable *preference*, making it especially important for State parties to distinguish special measures from unjustifiable preferences.

Consequently, a national action plan against racial discrimination may foresee temporary programmes targeted at the needs of specific groups, including those in a vulnerable situation and/or those who have historically been discriminated, who would otherwise not achieve formal equality.

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<sup>44</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009), para. 11.

The temporary nature of special measures refers to the requirement to limit the period during which they apply. This “implies the need, as in the design and initiation of the measures, for a continuing, system of monitoring their application and results using, as appropriate, quantitative and qualitative methods of appraisal.” Special measures require constant monitoring and are most effective when combined with the collection of disaggregated data and indicators. “States parties should also carefully determine whether negative human rights consequences would arise for beneficiary communities consequent upon an abrupt withdrawal of special measures, especially if such measures have been established/in place for a lengthy period of time.”<sup>45</sup>

Special measures should be accompanied by mechanisms that sustain the change they have achieved.

The need for special measures differs from State to State, and they should be based on accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socioeconomic and cultural status and conditions of the various groups in the population and their participation in the social and economic development of the State.<sup>46</sup>

Special measures are important to address the sources, causes and forms of contemporary manifestations of racial discrimination. They should be implemented particularly in areas where discrimination has historically been felt most intensely, such as access to education, health, employment, justice and political participation.

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<sup>45</sup> Ibid., para. 35.

<sup>46</sup> Ibid., para. 17.



Brazil adopted its National Affirmative Action Plan by presidential decree on 13 May 2002. It determines the establishment of quotas for Afro-descendants and for women at the upper levels of the administration. Affirmative action has also increased access to further education by Afro-descendants.

In April 2012 the Supreme Court declared that affirmative action did not violate the principle of equality and that racial quotas were constitutional. In August 2012, Law 12.711, also known as the Law on Quotas, was approved. It imposes racial/ethnic quotas on all higher education institutions linked to the Ministry of Education.

Additional measures in Brazil have included the creation of the National Council for Combating Discrimination and the Special Secretariat for the Promotion of Racial Equality. Furthermore, the Constitution characterizes racism as a crime.


Through decisions 82/2010/QĐ-TTg, 134/2004/QĐ-TTg and 167/2008/QĐ-TTg, Viet Nam is implementing special measures in housing, education and language learning for the poorest ethnic minorities. Viet Nam provides incentives for ethnic minority students to enrol in professional schools, colleges and universities. In recent years students from 53 ethnic minorities have benefited from such policies.

With this in mind, a national action plan against racial discrimination should help the State design special measures to secure disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. By putting in place special measures, a national action plan may facilitate the creation of conditions for all to participate fully and effectively in decision-making and to realize civil, cultural, economic, political and social rights in all spheres of life on an equal basis.

According to the Committee on the Elimination of Racial Discrimination:<sup>47</sup>

- Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. They should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned;
- Appraisals of the need for special measures should be carried out on the basis of accurate disaggregated data;
- States should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and their active participation.

“It is not necessary to prove ‘historic’ discrimination” in order to validate a national action plan against racial discrimination with special measures; the emphasis should be on “correcting present disparities and on preventing further imbalances from arising.”<sup>48</sup>

 *Affirmative action or special measures, such as employment quotas, seek to promote equal opportunity and are aimed at overcoming structural disadvantages that target certain groups. Such measures are temporary and are intended to last only until the structural disadvantages have been overcome.*

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<sup>47</sup> Ibid., paras. 16–18.

<sup>48</sup> Ibid., para. 22.

On the basis of statistical information, and with the aim of correcting the conditions that impair the enjoyment of rights, a national action plan may include special measures, for example:

- To achieve appropriate representation of groups facing racial discrimination in educational institutions, housing, political parties, parliaments, employment, especially in the judiciary, police, army and other civil services. Employment in public administration should reflect the diversity in the State's society;
- To help individuals and groups facing racial discrimination enter the labour market;<sup>49</sup>
- To allow for additional investments in health-care systems, education, public health, electricity, drinking water and environmental protection, as well as other initiatives, in communities where groups facing racial discrimination live;<sup>50</sup>
- To stimulate access to economic activities by groups facing racial discrimination and increase their level of employment, where appropriate, through the establishment, acquisition or expansion of their enterprises, and the implementation of measures such as training, technical assistance and credit facilities;
- To promote the access of individuals and groups who are victims of racial discrimination to basic social services, including primary education, basic health care and adequate housing.<sup>51</sup>

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<sup>49</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 103–108.

<sup>50</sup> *Ibid.*, para. 5.

<sup>51</sup> *Ibid.*, para. 100.

In Colombia, document CONPES 3660 of May 2010 contains the policies, programmes and projects that the national Government is implementing in favour of Afro-descendent Colombians, in order to create sustainable human development opportunities for them and to reduce the gap between their living conditions and those of the rest of Colombian society. The associated programme of action is based on six strategic pillars.

At the local level, after a consultation process with the Afro-Colombians in Bogota, the city adopted the Integral Plan of Affirmative Action for the Recognition of Cultural Diversity and the Guarantee of the Rights of Afro-descendants.

The Plan lists the population's affirmative action demands and categorizes them as follows:

1. Health, well-being and social security
2. Food
3. Education
4. Environment
5. Productivity.

## H. ACCESS TO JUSTICE, REMEDIES AND ACCOUNTABILITY

As part of their duty to protect human rights, States have undertaken to ensure effective remedies when these rights have been violated. The International Convention on the Elimination of All Forms of Racial Discrimination requires its State parties to guarantee the right of everyone, without distinction as to race, descent, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to equal treatment before the tribunals and all other organs administering justice (art. 5 (a)). It also requires them to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts

of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination (art. 6).

- Individuals and groups have a right to:*
- *Raise allegations of discrimination on the ground of race*
  - *Have those claims investigated and*
  - *Have access to appropriate remedies.*

Victims of racial discrimination have a right to seek legal remedies. The State needs to ensure that they have access to justice, which might require legal aid. The State also needs to provide for effective, proportionate and dissuasive sanctions for cases of racial discrimination.

Nevertheless, the administration of justice itself is often a source of discrimination. In some States racial discrimination persists in the functioning of the penal system and in the application of the law, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement. This has contributed to certain groups being overrepresented among persons under detention or imprisoned.<sup>52</sup>

In the light of the Convention's articles 5 and 6, the Committee on the Elimination of Racial Discrimination's general recommendation No. 31 (2005), as well as the commitments contained in the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference, a national action plan against racial discrimination may entail:

- Mechanisms to ensure that acts of racial discrimination are investigated;<sup>53</sup>
- Immediate steps to ensure the availability of and access to justice and effective legal remedies for cases of racial discrimination.<sup>54</sup> Remedies shall

<sup>52</sup> Ibid., Declaration, para. 25.

<sup>53</sup> Ibid., Programme of Action, paras. 84–89.

<sup>54</sup> Ibid., paras. 160–166.

be easily accessible, prompt and impartial; they must also be affordable, not unnecessarily bureaucratic and geographically accessible;

- Measures to ensure that those who have committed acts of racial discrimination are punished. The obligation to prosecute and punish should cover all the actual perpetrators and the masterminds behind the violations;
- Programmes to provide reparations for the victims of racial discrimination.<sup>55</sup> Such reparation requires, whenever possible, full restitution to the previous situation, compensation for damages, rehabilitation, satisfaction and guarantees of non-repetition;
- Steps to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system, and to establish anti-discrimination monitoring services within the administration of justice;<sup>56</sup>
- Measures to ensure that persons coming into contact with the police, the courts and the prison system do not face racial discrimination by judicial and law enforcement authorities;
- Training programmes to ensure the elimination of racial or xenophobic prejudice on the part of judges, other judicial personnel and jury members, and to ensure a fair and impartial application of the law;
- Guidelines for the prevention, recording, investigation and prosecution of racist or xenophobic incidents, assessment of the level of satisfaction among all communities concerning their relations with the police and the administration of justice system, and recruitment and promotion in the judicial system of persons belonging to various racial or ethnic groups;<sup>57</sup>

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<sup>55</sup> Ibid., Declaration, para. 104, and Programme of Action, paras. 160 and 165–166. See also Committee on the Elimination of Racial Discrimination, general recommendation No. 26 (2000) on article 6 of the Convention.

<sup>56</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 84–89.

<sup>57</sup> Ibid., para. 74.

- Programmes to improve access to law and justice to every person within the State's jurisdiction, particularly in areas populated by persons belonging to the most vulnerable social groups, who are often unaware of their rights;
- Measures for judicial and non-judicial remedies to be made widely known, easily accessible, expeditious and not unduly complicated;
- Programmes to ensure that adequate legal assistance is available to victims of discrimination seeking legal remedies;

The Netherlands has strengthened the mechanisms whereby individuals can challenge discrimination. Also, the police and public prosecution service have stepped up the investigation and prosecution of racial hatred, and of violence and other crimes resulting from racial hatred, taking a far more active and proactive approach on both the street and the Internet.


These efforts were complemented by a public information campaign to alert victims of discrimination to the possibility of filing reports. Improvements have also been noted in the system for recording complaints at both national and local levels.

- Measures to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour, features, membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.

## I. EDUCATION AND AWARENESS-RAISING

Under article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination, State parties undertake to adopt immediate and effective measures, particularly in teaching, education, culture and information, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups, as well as to propagating the purposes and principles of the Charter

of the United Nations, the Universal Declaration of Human Rights, the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, and the International Convention itself.

 *States have a duty to raise public awareness about racial discrimination and to ensure that public and private educational establishments provide education aimed at combating it.*

Consistent with such obligations, a national action plan against racial discrimination may entail:

- Programmes for promoting greater awareness and understanding of the prohibition of racial discrimination; Campaigns to ensure that the general public is made aware of the legislation combating racial discrimination;
- Campaigns aimed at eliminating prejudices, stereotypes, social or cultural patterns and other attitudes that jeopardize the right of persons to live as equals and that perpetuate racial discrimination;
- Campaigns to raise awareness in schools so as to change the mindsets of pupils, and to promote tolerance and respect for diversity in education;
- Educational programmes to ensure that the teaching of the principles of equality and non-discrimination is integrated in formal and non-formal education, in an effort to dismantle notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance between different groups in society;<sup>58</sup>
- Communication policies that raise awareness of the richness that racial diversity brings to society and of the legal consequences of discrimination;<sup>59</sup>

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<sup>58</sup> Ibid., paras. 125–132.

<sup>59</sup> Ibid., para. 144.



- Programmes to promote a greater knowledge of and respect for the heritage and culture of groups facing racial discrimination;
- Organizational training courses addressed at those responsible for recruitment and promotion procedures to ensure compliance with standards of non-discrimination and equal opportunity;
- Training programmes for public officials to eliminate discriminatory behaviour on the part of public servants and racial profiling by law enforcement officers.<sup>60</sup> These measures should be supplemented by requiring that these education and training processes be constant and sustained, as well as institutionalized, to guarantee continuity.

In Guatemala, the 2002 Law of Education Promotion against Discrimination (Ley de Promoción Educativa contra la Discriminación) stipulates that the Ministry of Education must ensure that the educational reforms also focus on eliminating racial discrimination in all of its forms, including in the new curriculum, in educational materials and in teaching-learning actions (art. 2).

## J. MEASURES AGAINST POVERTY

In a report to the General Assembly, the United Nations independent expert on the question of extreme poverty and human rights has noted that:

Patterns of discrimination keep people in poverty which in turn serves to perpetuate discriminatory attitudes and practices against them. In other words, discrimination causes poverty but poverty also causes discrimination. As a result, promoting equality and non-discrimination is central to tackling extreme poverty and promoting inclusion. Measures to eliminate poverty and efforts to eliminate all forms of discrimination must be understood as mutually reinforcing and complementary.<sup>61</sup>

<sup>60</sup> Ibid., para. 72.

<sup>61</sup> A/63/274, paras. 29–30.

Since poverty may be both a cause and a consequence of racial discrimination, the national action plan against racial discrimination should include measures to address it, such as:

- Programmes combining national efforts and cooperation with other States, regional and international organizations and financial institutions, to promote the use of public and private investment in consultation with the affected communities in order to eradicate poverty, particularly in those areas in which victims of racial discrimination predominantly live;<sup>62</sup>
- Programmes to promote national integration, the elimination of inequalities and poverty alleviation among individuals and groups facing racial discrimination.

## K. INFORMATION, COMMUNICATION AND THE MEDIA

By promoting false images and negative stereotypes of individuals or groups facing discrimination, the media may contribute to the spread of xenophobic and racist sentiments among the public. In some cases, this has encouraged violence by racist individuals and groups.

Similarly, new information technologies, such as the Internet, have been used to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. A national action plan against racial discrimination should address this issue, while guaranteeing freedom of expression, in accordance with international law.<sup>63</sup> It may therefore include:

- Programmes designed to prevent and eradicate advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence by the media;<sup>64</sup>

<sup>62</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, para. 1.

<sup>63</sup> In this regard, the International Covenant on Civil and Political Rights states that any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law (art. 20). In the opinion of the Human Rights Committee, such prohibitions are fully compatible with the right to freedom of expression, the exercise of which carries with it special duties and responsibilities. See its general comment No. 11 (1983).

<sup>64</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 140–147.

- Mechanisms to ensure that information and communications technologies assist in the promotion of tolerance, mutual respect and understanding and multiculturalism, and contribute to the fight against racial discrimination.

In Germany, the National Action Plan to fight racism, xenophobia, anti-Semitism and related intolerance recognizes that “the Internet has become one of the most important media, also for right-wing extremist propaganda: It is fast, cheap and seemingly anonymous. Combating racism, xenophobia and anti-Semitism on the Internet cannot be left to individual countries alone; the global nature of the Internet urgently demands international cooperation. Nor can this task be left to Governments alone; civil society is especially called on to help. It is also a shared goal to ensure that the Internet remains a democratic and freely accessible medium of communication and information exchange for civil society”.

The Plan consequently focuses on:

1. Rigorous investigation and punishment of criminal right-wing extremist, racist, xenophobic and anti-Semitic Internet content;
2. Initiating and supporting international strategies to combat criminal right-wing extremist Internet content;
3. Promoting voluntary self-regulation by Internet service providers and users.

## L. DATA COLLECTION AND DISSEMINATION

The Durban Review Conference recommended that States should establish mechanisms to collect, compile, analyse, disseminate and publish reliable and disaggregated statistical data, and undertake all other related measures necessary to regularly assess the situation of all victims of racism, racial discrimination, xenophobia and related intolerance, in accordance with the Durban Declaration and Programme of Action.<sup>65</sup>

If States are to improve the situation in their jurisdictions, they need to collect and publicize appropriately disaggregated data in order to assess and reveal the racial discrimination, identify discriminatory practices and patterns, and analyse the effectiveness of the programmes adopted to counter racial discrimination.

Data collection should therefore go beyond the baseline study and permanently monitor the situation of marginalized groups as well as the development of legislation, policies, practices and other measures to prevent and combat discrimination in order to determine whether they are having any impact.

The national action plan against racial discrimination may include:

- Research strategies to investigate the nature, causes and manifestations of racial discrimination, in both public and private spheres;<sup>66</sup>
- Mechanisms to ensure that accurate data and statistics are collected and published on the number of racist and xenophobic offences that are reported to the police, on the number of cases that are prosecuted, on the reasons for not prosecuting and on the outcome of prosecuted cases;
- Mechanisms for regularly collecting, compiling, analysing, disseminating and publishing reliable disaggregated statistical data to assess the situation of individuals and groups that are victims of racial discrimination;<sup>67</sup>

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<sup>65</sup> See A/CONF.211/8, chap. I., para. 103.

<sup>66</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 92–98.

<sup>67</sup> *Ibid.*, para. 92.

- Mechanisms to regularly monitor the observance or non-observance of the rights of victims of racial discrimination;
- Promotion of research and debate on the right to equality and non-discrimination, as well as on systemic racial discrimination;
- Measures to assess the impact of previous and new legislation, policies and programmes, as well as public and private practices, to ensure that they do not have a negative impact or cause or perpetuate racial discrimination (impact assessment).

National censuses are vital to collect data on the situation and needs of the population of all countries. Without accurate data it is very difficult for Governments to tailor policies and implement programmes to address particular needs. Overlooking certain groups can have a negative impact on their enjoyment of fundamental human rights, such as access to housing, health care and education.

Data disaggregated on the basis of ethnicity are increasingly considered relevant to the development of States' efforts to promote the rights of all individuals in their jurisdiction. Furthermore, disaggregated data provide baseline information on the situation of marginalized groups.

In the United States and the United Kingdom data on racial and ethnic origins have been collected for many years. More recently, many Latin American and Caribbean countries (Argentina, Belize, Bolivia (Plurinational State of), Brazil, Chile, Costa Rica, Ecuador, Honduras, Jamaica, Mexico, Paraguay and Venezuela (Bolivarian Republic of)) have included a question on ethnic origins in their censuses.

This information can form the basis for social policies, such as the adoption of affirmative action, as was the case in Brazil and Ecuador.

Collecting these data may also help evaluate whether anti-discrimination policies are effective and if they need adjusting.





# ● PUTTING IN PLACE A NATIONAL ACTION PLAN AGAINST RACIAL DISCRIMINATION



A national action plan against racial discrimination is both an outcome and a process, with each aspect being equally important. The outcome is the plan itself and the activities that flow from it. The process through which a national action plan is developed will influence its chances of success, and the involvement of groups that are or could be affected by racial discrimination in each stage of the plan is key to its realization.

Although the process for developing a national action plan against racial discrimination will differ from country to country, this chapter describes its different phases: preparation, development, implementation, monitoring and evaluation. Some of these phases are necessarily consecutive, while others can take place simultaneously.



*Process and outcome are equally important to a national action plan against racial discrimination.*

## **A. PREPARATION**

During this phase, key agencies and organizations assess the conditions for the adoption of a national action plan against racial discrimination, engage in initial consultations and address the institutional structures for developing, implementing and monitoring the plan. The role to be played by the different institutional structures, such as the focal agency, the national coordinating committee, the national human rights institution and the national institution for racial equality, is set out in this chapter.

### **1. Assessing the conditions**

In order to develop a national action plan against racial discrimination it is important to assess whether the conditions that facilitate the effective adoption of such a plan are met.




For example, political will is crucial. A preliminary decision by the Government to proceed with the plan must be secured. Reaching a political agreement at the highest level will ensure that the plan has the endorsement of key political authorities. Reaching out for international cooperation from the start can also be useful. Responsibility for implementing the plan should be at the highest level of government.

The intention to develop the plan must be publicly and effectively communicated to relevant government agencies as well as major interested groups, such as the judiciary, NGOs, and academic and educational institutions.

Furthermore, there ought to be a general awareness among public and private actors with regard to the need to eradicate racial discrimination. Developing a media strategy at this preliminary stage in order to get all stakeholders committed might generate national ownership of the plan and guarantee a participatory approach to its development, implementation and monitoring.

It is also essential to secure sufficient funding for all stages of the plan's development. It shows the political determination to carry it out. The success of the plan will depend to a considerable extent on the availability of resources to support its activities, such as the baseline study, as well as its institutional framework, such as the coordinating committee. Therefore, a financial strategy for the national action plan should be developed from the beginning. Funding could be raised at the local, regional, national and international levels. A national fund could be set up. Additional resources could be sought from the private sector and donor agencies.




*Adequate funding needs to be allocated in the national budget for the various sectors as well as the programmes and actions relevant to the realization of the rights of victims of racial discrimination.*

## 2. Engaging in initial consultations

As part of the preparations, initial consultations within the Government and between the Government and civil society need to take place. An initial national consultative meeting or a series of such meetings to obtain input from the various interested groups will encourage broader understanding and acceptance of the plan. Consultations are crucial for the credibility and, ultimately, the effectiveness of the plan. The broader the consultations, the more effective and long-lasting the plan's outcomes.

The meeting or meetings will discuss the concept of the national action plan against racial discrimination and flesh out its development. An important issue at this stage is the structure and membership of the national coordinating committee (see below). Other issues for discussion at the initial national consultative meeting might be the scope of the plan, the time frames, the resources, the media and education, and international cooperation.

 *Effective consultations should be held throughout the process of putting a national action plan against racial discrimination in place.*

Depending on the scope of the projected plan and the available resources, the planning process may involve:

- Representative members of groups that are or could be affected by racial discrimination;
- The head of Government;
- Parliamentarians, particularly where there are parliamentary human rights committees;
- The focal agency and other relevant government agencies, which might include ministries responsible for police and the justice system, the interior, labour, education, health, women, social welfare, defence and the armed forces, finance, planning and development;

- Security institutions, such as the armed forces and police;
- Quasi-governmental agencies, such as statutory authorities;
- National human rights institutions;
- Human rights NGOs, including those focusing on racial equality, migrants, women or children;
- Community organizations, particularly those dealing with health, housing, education, development assistance, minorities, religious issues, asylum seekers, indigenous peoples and so on;
- Members of the judiciary and lawyers;
- Trade unions and professional groups, including associations of teachers, lawyers, journalists;
- Human rights experts;
- Academics and educators;
- Representatives of research institutes;
- The media;
- Corporate representatives, including business and industry associations;
- Private foundations;
- In addition, it may be useful in some situations to have representatives of international organizations participate, particularly if the plan's development and implementation draw significantly on international technical cooperation.

### **3. Addressing the institutional structures**

It is particularly important at this stage to determine the institutional framework that the plan will require and the role each institution will have with regard to the plan. When creating institutions and procedures in accordance with this publication, the participation of racially discriminated individuals and groups in the development of both substance and process should be ensured.

## (a) The focal agency

Since the State is responsible for developing national action plans against racial discrimination, a government body needs to be identified early on to act as the focal agency for the plan's development. It may be the ministry of justice, the ministry of foreign affairs, the office of the President or some other appropriate department.

The creation of an interministerial working group can also be helpful, since a national action plan against racial discrimination will touch upon many policy areas and different ministries and government agencies need to be involved in its development.

The selected agency should be officially appointed to lead the drafting of the plan and given sufficient authority and resources to this end.

 *A focal agency within the Government should lead the development of the national action plan against racial discrimination.*

The focal agency will hold the initial meetings to set the process in motion and be in charge of the initial stages of developing the plan, in close consultation with civil society and other agencies.

The focal agency should be directly responsible for the development of the national action plan against racial discrimination, including:

- Commissioning/conducting the baseline study;
- Collecting relevant human rights information, such as government studies and reports, and reports by national human rights institutions, international organizations and civil society;
- Considering and coordinating with existing action plans, including national human rights plans, development plans and plans on women's rights, children's rights and education;

- Conceptualizing the draft national action plan as a combination of international standards, domestic law and local circumstances;
- Organizing consultative public meetings to assess responses and then revising and finalizing the plan taking into account the input received;
- Submitting the draft for approval at the highest levels of government;
- Disseminating the adopted plan to all concerned so that they may implement it and integrate it into their own policies and plans of action;
- Developing and implementing a media strategy, including the public dissemination of materials, to bring all stakeholders into the process and raise public awareness of the national action plan against racial discrimination; and
- Facilitating the implementation, monitoring and evaluation of the plan.


During the development phase the focal agency will be very active, while during implementation the focus of activity will shift to others. This should be taken into consideration when planning and allocating resources.

### **(b) The national coordinating committee**

The effective participation of victims of racial discrimination in the development of a national action plan requires channels of consultation.<sup>68</sup> Therefore, a key development in the preparatory phase will be the establishment of a national coordinating committee to serve as a channel for dialogue among governmental authorities, civil society and racially discriminated individuals and groups. This advisory and consultative body might also be called something else, such as task force or steering committee, but in this publication it is referred to as a “national coordinating committee”.

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<sup>68</sup> The Report of the Conference on Security and Co-operation in Europe’s Meeting of Experts on National Minorities (Geneva, 1991) underlined that “when issues relating to the situation of national minorities are discussed within their countries, they themselves should have the effective opportunity to be involved [...] [and] that [such] democratic participation of persons belonging to national minorities or their representatives in decision-making or consultative bodies constitutes an important element of effective participation in public affairs” (Part III, first paragraph).

 *A national coordinating committee should be established to ensure that those affected by racial discrimination have maximum opportunities for contributing to the national action plan.*

The national coordinating committee should be able to raise issues with decision makers, prepare recommendations, formulate legislative and other proposals, and provide views on the national action plan's process and contents. An open and inclusive approach by the authorities towards the national coordinating committee and its members will contribute to better decisions and greater confidence in the plan on the part of society.<sup>69</sup>

To function, the national coordinating committee will require adequate resources and should be given serious attention by decision makers from the focal agency.

The committee's composition should reflect its purpose and contribute to more effective communication between the focal agency and civil society. In order to be effective, civil society should be represented particularly by victims of racial discrimination and their representative organizations, as well as by others who can offer special expertise. The national coordinating committee should also include representatives of appropriate government bodies and NGOs with experience in human rights and the promotion of racial equality or with the potential to develop such programmes. The dominant position of governmental representatives in the decision-making process should be avoided.

With this in mind, **potential members** of the national coordinating committee might be:

#### **Representatives of national/local bodies, such as:**

- Representatives of persons belonging to national or ethnic, religious and linguistic minorities, and other groups and individuals facing racial discrimination (if present in the State developing the national action plan against racial discrimination);

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<sup>69</sup> Organization for Security and Co-operation in Europe, *The Lund Recommendations on the Effective Participation of National Minorities in Public Life and Explanatory Note* (The Hague, 1999).

- National, regional and local government representatives with particular responsibility for the plan's implementation;
- National human rights institutions;
- National chapters of international human rights NGOs, including national United Nations associations;
- Parliamentarians (in particular, from the human rights and development committees);
- Civil society;
- Representatives from the judiciary;
- The business community and the private sector;
- Educators and university scholars;
- Trade unions and professional associations;
- The media.

**National representatives and offices of international agencies present in the State may be invited as observers, such as:**

- The United Nations resident coordinator (who often is the United Nations Development Programme's representative);
- The United Nations information centre or service;
- The United Nations Educational, Scientific and Cultural Organization, the International Labour Organization, the United Nations Development Programme, the United Nations Children's Fund, the Office of the United Nations High Commissioner for Refugees;
- The OHCHR field presence;
- The regional intergovernmental organizations (African Union, human rights mechanisms of the Association of Southeast Asian Nations, Council of Europe, Commonwealth, European Union, International Organisation of la Francophonie, Organization of American States, etc.);
- Multilateral financial and development institutions (World Bank, regional development banks, etc.).

The national coordinating committee should be on a scale that permits satisfactory representation of government bodies, stakeholders and other interest groups, while at the same time be manageable, efficient and cost-effective. As mentioned above, gender balance and equitable representation of national or ethnic, linguistic, religious, regional or other minorities should be an important consideration.

It should determine its own working procedures. However, it should meet regularly and ensure frequent consultations and permanent dialogue on the issues related to the development, implementation, monitoring and evaluation of the national action plan against racial discrimination. It could elect a coordinator to manage its activities in between its meetings.

### **(c) The national human rights institution and the national institution or body for racial equality**

National human rights institutions, such as human rights commissions and ombudspersons, have been established in many countries. During this preparatory phase, determining their role and that of the national institution for racial equality, if there is one, is vital. The term NHRI refers to an independent body whose specific functions are to protect and promote human rights, while a national institution for racial equality is a specific mechanism exclusively to combat racial discrimination. Taking into consideration the national institutional framework and the available resources, States should consider the establishment of a national institution for racial equality.<sup>70</sup>

*In countries that do not have a national institution for racial equality, its establishment is normally a key objective of the national action plan against racial discrimination.*

<sup>70</sup> The establishment and equipment of a specialized body for the implementation of public policies to eradicate racism, racial discrimination, xenophobia and related intolerance, and to promote racial equality, was recommended by the Durban Review Conference. See A/CONF.211/8, chap. I, para. 116.



### NHRIs and the fight against racism

The Danish Institute for Human Rights has a special mandate to promote the equal treatment of all persons irrespective of racial or ethnic origin. To this end it:

- Assists victims of differential treatment with their complaints
- Investigates differential treatment
- Publishes reports on differential treatment
- Makes recommendations on the fight against differential treatment.

In the Durban Programme of Action, States are urged, as appropriate, “to establish, strengthen, review and reinforce the effectiveness of independent national human rights institutions, particularly on issues of racial discrimination, xenophobia and related intolerance, in conformity with the Principles relating to the status of national institutions for the promotion and protection of human rights, annexed to General Assembly resolution 48/134 of 20 December 1993, and to provide them with adequate financial resources, competence and capacity for investigation, research, education and public awareness activities to combat these phenomena” (para. 90).

The establishment of an NHRI does not obviate the need for a specialized mechanism or institution to combat racial discrimination. The establishment of national institutions or other appropriate bodies to facilitate the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination<sup>71</sup> as well as by the World Conference against Racism and the Durban Review Conference.<sup>72</sup>

<sup>71</sup> Committee on the Elimination of Racial Discrimination, general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention.

<sup>72</sup> See A/CONF.189/12 and Corr.1, chap. I, Programme of Action, paras. 90–91, and A/CONF.211/8, chap. I, para. 116.

While their structure and functions vary from one country to another, NHRIs and institutions against racism play an extremely important role in the struggle against racial discrimination, as well as in the promotion of democratic values and the rule of law.<sup>73</sup> They are a repository of human rights knowledge and expertise and usually perform functions such as monitoring human rights violations and problems, advising Governments on legislative and other matters, and carrying out programmes of human rights education. They are therefore in a good position to make a significant contribution to the preparation and implementation of a national action plan against racial discrimination and should participate in both the national coordinating committee and wider consultations. In fact, the Durban Declaration and Programme of Action called upon States “to elaborate action plans in consultation with national human rights institutions, other institutions created by law to combat racism, and civil society...”<sup>74</sup>

In 2003, Mexico established a national council for the prevention of discrimination to fight all forms of discrimination and promote best practices.

## B. DEVELOPMENT

The next step is the substantive development of the plan itself. During this phase, key agencies and organizations develop the concept of a national action plan against racial discrimination applicable to the country, intensify the consultations and, with the participation of groups affected by racial discrimination, the plan is drafted, adopted and launched.

### 1. Conducting a baseline study

#### (a) Grounds

A comprehensive and accurate study or collection of baseline information is a key element in any systematic approach to the development of a national action plan against racial discrimination.

<sup>73</sup> See A/CONF.189/12 and Corr.1, chap. I, Declaration, paras. 112–113.

<sup>74</sup> Ibid., Programme of Action, para. 191.



*For a State to press ahead its fight against racial discrimination, it is important to know where it stands at present.*

A baseline study or needs assessment will help to determine the more pressing local and national needs with regard to the elimination of racial discrimination. The baseline study is key to demonstrating that racial discrimination is not only a matter of perception and that it can be measured.

The baseline study should identify and make recommendations on high-priority groups in need of protection gaps in programme coverage that need to be addressed.

### **(b) Scope**

Accordingly, once the focal agency is designated, one of its first tasks should be to conduct or commission a systematic study about the state of racial discrimination in the country, including the greatest human rights challenges and the basic elements of a national strategy already in place.

There is no single model for such a baseline study, but it might deal with present laws, policies, programmes, activities, needs and human and institutional resources for the elimination of racial discrimination, assessing:

- The overall extent of racial discrimination, including discriminatory laws, policies, practices, beliefs and outcomes, and consequently emerging priority groups in need of special protection. Special attention should be paid to groups facing multiple forms of discrimination;
- The applicable international framework, including the extent to which the International Convention on the Elimination of All Forms of Racial Discrimination and other human rights instruments are observed, as well as the status of the State's ratification of all major international human rights treaties;
- The incorporation into domestic law of international norms, standards and recommendations related to the elimination of racial discrimination;

- The effectiveness of the legal framework and the independence and capacity of the judicial system to address cases of racial discrimination;
- The effectiveness of NHRIs in combating racial discrimination;
- The national development plans and other relevant national plans of action already defined (general human rights plans or those for women, children, minorities or indigenous peoples) which may have an impact on the human rights situation of groups or individuals facing racial discrimination;
- The social, political and economic conditions relevant to individuals and groups facing racial discrimination;
- Human rights indicators on the observance of equality and non-discrimination, particularly in relation to economic, social and cultural rights. It is important to have disaggregated statistical data;<sup>75</sup>
- Patterns of racism;
- The obstacles to the elimination of racial discrimination that should be overcome, paying special attention to contemporary and emerging forms of racial discrimination;
- Access to justice for victims of racial discrimination;
- The punishment of perpetrators;
- The programmes to combat racial discrimination;
- The knowledge about the prohibition of racial discrimination among the general population and among potential victims;
- The perpetuation of racial discrimination by the mass media (including television, radio, Internet, newspapers and magazines);
- How the curricula reinforce the principles of equality and non-discrimination at all levels of education;
- The availability and accessibility of key human rights documents and other materials safeguarding equality and non-discrimination in national and local languages as well as in simplified form;

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<sup>75</sup> See A/CONF.211/8, chap. I, paras. 103–104.

- The overall level of organizational and financial support for the promotion of racial equality.

### **(c) Participants**

It is important to ensure adequate consultation before the study is finalized. A participatory approach at the grass-roots level should be encouraged for the assessment of needs.

There are several options for the drafting of the baseline study. For example, the focal agency may request its secretariat to draft it, or it may commission a suitable individual, group or organization to undertake this task or constitute a task force of several organizations to do so. Alternatively, the baseline study could be the outcome of a consultative process managed cooperatively by the Government and civil society, with the active participation of groups that are or could be affected by racial discrimination.

### **(d) Methods**

Constitutions, legislation and regulations are the primary sources of information for the baseline study. In addition, information can be drawn from questionnaires, interviews and the collection or review of materials, documents and statistics. Information can also be obtained by canvassing groups facing racial discrimination, many of whom may already be on the coordinating committee.<sup>76</sup>

The baseline study should also consider other sources such as parliamentary inquiries or reports; State policies and programmes relating to the implementation of legislation as well as budgets; decisions of judicial and quasi-judicial bodies,

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<sup>76</sup> Statistical data should be collected with the explicit consent of the victims, based on self-identification and in accordance with provisions on human rights and fundamental freedoms, such as data protection regulations and privacy guarantees. Individuals and groups facing racial discrimination may not always feel comfortable expressing their views in public. If this is the case, those involved in consultations with the public should provide facilities for more private exchanges and may even wish to ensure confidentiality in some situations. It may also be necessary to invite their advocates or legal representatives.

such as courts and NHRIs; media reports, studies and research from academia or other research centres and civil society organizations.

The baseline study should also review State reports to the Committee on the Elimination of Racial Discrimination, other relevant human rights treaty monitoring bodies, such as the International Labour Organization, special procedures of the Human Rights Council, the Human Rights Council's universal periodic review, as well as their observations and recommendations to the State in question. National reports under other international or regional monitoring procedures for the elimination of racial discrimination should also be reviewed.

The study must be made public and widely disseminated.

### **(e) Difficulties**

A baseline study that seeks to reach detailed conclusions on discriminatory practices, attitudes and outcomes requires investigation into all areas of human rights. At the same time, the study should not be overly ambitious so as to become impracticable. The study's need for comprehensiveness cannot become a pretext for delaying the development of the plan.


Furthermore, a comprehensive baseline study may be perceived as politically sensitive and States may be reluctant to embark upon it. A baseline study will, by its very nature, identify shortcomings.

However, the willingness of the authorities to assess the extent to which racial discrimination exists is itself an indication of the political will necessary for an effective process towards a national action plan against racial discrimination. Moreover, an accurate and frank assessment of pressing problems in the fight against racism is essential to identifying solutions.

## 2. Intensifying consultation

The plan requires broad and intensive consultation.

The focal agency should seek to develop an outline for the plan. This outline can then be used as the basis for consideration by the Government and for consultations with the community. Individuals and groups that are or could be affected by racial discrimination must have a central role in the development of the plan. The national coordinating committee should facilitate this.




*Whenever consideration is being given to legislative or administrative measures that may affect victims of racial discrimination directly, they should be consulted through appropriate procedures and in particular through their representative organizations.*

Particular attention should be paid to the need to ensure separate representation of those subject to multiple or aggravated forms of discrimination. Discrimination on any of the grounds listed in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination can coexist with discrimination on the grounds of sex, gender, language, age, religion or other status, making victims of racism subject to multiple or aggravated forms of discrimination. Women and girls affected by racial discrimination, for example, need to be adequately represented during the consultations.

## 3. Formulating the national plan

In response to the needs identified in the baseline study and the consultations, a national action plan against racial discrimination should be formulated. One of the first and most important tasks of the focal agency is to develop the national action plan's concept, drawing on international work on such plans and ensuring it is adapted to the country's own situation.

 *The central content of a national action plan against racial discrimination should embody the State's commitment to taking action against racial discrimination and provide the basis for implementation.*

The circumstances, needs and commitments of each State differ, and there is therefore no prescribed outline for the plan. While not exhaustive, chapter II contains suggestions for the content of a national action plan against racial discrimination.

Given the limited resources available compared to the amount of work to be undertaken, it will be necessary to prioritize. Priorities in the fight against racial discrimination will need to be established for the short, medium and long term on the basis of the baseline study's findings.

Priorities might be based on the most pressing needs (for example, among groups or individuals that are most affected by racial discrimination and among groups or individuals most likely to commit acts of racial discrimination) and on opportunity (for example, if certain groups or institutions have requested assistance in setting up programmes to protect victims of racial discrimination).

However, all victims of racial discrimination should receive the same attention and protection and, hence, appropriate treatment.<sup>77</sup> Also, when setting priorities, it should not be assumed that one category of rights needs to be implemented before others can be realized. Recognizing the need to provide "all human rights for all", to move forward in all areas, is essential to any comprehensive approach.

An important issue in the consideration of priorities is the human rights situation of individuals and groups that are vulnerable, given the need to incorporate fundamental norms of equality and non-discrimination in the plan. Depending on the State's population, groups in need of protection against racial discrimination may be, as identified by the Durban Declaration and Programme of Action:

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<sup>77</sup> See A/CONF.211/8, chap. I, para. 17.



- Indigenous peoples;
- Africans and people of African descent;
- Asians and people of Asian descent;
- Migrants;
- Refugees and asylum seekers;
- Victims of trafficking in persons;
- Internally displaced persons;
- Roma/Gypsy/Sinti/Traveller communities;
- Jewish communities;
- Muslim and Arab communities;
- National or ethnic, religious and linguistic minorities.

The plan might also want to prioritize groups of individuals who, besides being victims of racial discrimination, face multiple forms of discrimination, such as:

- Rural and urban poor;
- Persons in extreme poverty;
- Women and girls;
- Children and youth;
- Stateless persons;
- Domestic workers;
- People living with HIV/AIDS;
- Persons with disabilities;
- Older persons;
- Persons deprived of their liberty;
- Lesbian, gay, bisexual, transvestite and transgender groups;
- Persons affected by armed conflict or natural disasters.

Groups whose actions and omissions can have a particularly high discriminatory impact should also be considered a priority:

- Administration of justice officials, including judges and prosecutors;
- Law enforcement officers, including prison and security services (the police, prison officials, military, other security forces).
- Migration authorities;
- Immigration and border officials;
- Members of the legislature;
- Public officials involved in drafting legislation, developing and implementing policy;
- Key professional groups: (i) teachers; (ii) social workers; (iii) health-care professionals; (iv) the media and journalists; and (v) the legal profession;
- Business community;
- Community and religious leaders;
- Political party leaders.

Argentina's National Plan against Discrimination recognizes that victims of human rights violations are "many times subjected to multiple forms of discrimination, based on race, gender, age, nationality, sexual orientation or gender identity, social or economic status, disabilities or/and religious beliefs".

Among the victims of racism the Plan lists indigenous peoples, people of African descent, migrants and refugees. It also includes as target groups: women, children, persons affected by HIV/AIDS, persons living in poverty, victims of human trafficking, Roma, Gypsy and Traveller communities, landless persons, victims of religious intolerance, persons with disabilities, victims of discrimination based on their sexual orientation and gender identity. It establishes specific prevention policies for each group affected by discrimination.

## 4. Adopting the national plan


High-level political endorsement of the national action plan against racial discrimination is essential. Moreover, to promote broader political support for the plan and strengthen the commitment of officials to the task, the plan should have some form of legal status.

The options will depend on the country's legal traditions and policies. A law passed by parliament would be ideal to guarantee continuity regardless of changes in government. However, in some countries enacting legislation can be a lengthy and complex process. If legislation is still the preferred option, the focal agency should manage the processes.

It may be easier to incorporate the plan in a government or presidential decree, although it will probably not have the same legal force as legislation. It will nevertheless go beyond mere endorsement by the head of State or Government, which is in any case essential to the process of developing and implementing the plan. While incorporation into an executive decree might represent an easier option, a national action plan against racial discrimination should enjoy legal status, wherever possible.


A third option is to seek parliamentary endorsement of the plan rather than specific legislation. Once again this goes beyond mere endorsement by political leaders in public statements, since it involves a specific parliamentary debate and an act of endorsement. Such a step is easier in legal terms than enacting legislation to give effect to the plan. It is desirable for the focal agency to propose such a step, as it would boost the effective implementation of the plan.

In any case, the plan's language should be consistent with its binding force.

 *Ideally, the national action plan against racial discrimination should enjoy legal status and be binding.*

## 5. Launching the national plan

Both the sectors charged with its implementation and the general public will be more aware of the plan if there is a high-profile launch. The national action plan against racial discrimination should also be issued in a user-friendly format.

 *The national action plan against racial discrimination should be launched at a high-profile media event with the participation of high-level authorities.*

While the specific features of the launch will depend on the country's traditions, every effort should be made to give it the maximum impact. Therefore, the launch should be a high-profile media event involving high-level governmental officials, as well as representatives of various target groups. Furthermore, the relevance of international human rights mechanisms may be emphasized through the participation of representatives of the United Nations or of other international or regional organizations.

It may also be advantageous to hold the launch on a date that is significant, for example a date that is symbolic for the fight against racial discrimination in the country or the International Day for the Elimination of Racial Discrimination, observed annually on 21 March. On that day, in 1960, police opened fire and killed 69 people at a peaceful demonstration against apartheid "pass laws" in Sharpeville, South Africa.


Finally, besides including effective mechanisms for communication and information dissemination within the core structures set up to develop and implement the national action plan against racial discrimination, there should be media and public dissemination strategies to reinforce its message, to target specific audiences and to raise awareness among the general public.

An effective media programme can promote awareness of the national action plan against racial discrimination by disseminating information widely and cost-effectively. In addition, the plan's details should be disseminated to the general

public. Brochures, leaflets and posters might be produced and distributed through State bodies and NGOs, or sent directly to schools, community organizations and members of the public on request. Furthermore, the best possible use should be made of modern information technology to disseminate the plan.

## C. IMPLEMENTATION

Every effort should be made to avoid a situation in which the plan is launched with great fanfare but is then left to wither because of lack of follow-through.

 *Effective implementation is essential for the credibility of the national action plan against racial discrimination.*

Implementation implies a number of measures such as responsive policies, law, mechanisms and resources (human, financial, information and technological), and may vary from State to State.

State bodies, including the national institution for racial equality, ministries or departments of justice, foreign affairs, defence, education, health and so on, are responsible for implementing the plan. Discussions about which bodies are responsible for what should be part of the plan's development. It is important for the plan to spell out the various institutional responsibilities so that it is clear to the State bodies themselves as well as to stakeholders and the general public.

Responsibility for implementing the plan is likely to be spread over several levels of government. Local and regional authorities should be involved from the start, particularly in federal States. In some cases, provincial or local governments will have substantial responsibilities, for example in the areas of administration of justice, policing, health, education, housing and so on. Special attention will have to be given to ensuring that these subordinate levels of government are part of the coordination process. Central government bodies responsible for specific areas of the plan should assume responsibility for briefing and consulting provincial or local government bodies.

Also, as previously mentioned, the establishment of a national institution for racial equality could be a key objective of the plan, and could play an important role during its implementation.


If the plan has been developed on the basis of realistic objectives, clear targets, a broad scope and inclusive participation, it will be much easier to ensure effective implementation. Nevertheless, implementation should not be left to look after itself. Good work done in the development phase must be systematically carried through to the implementation phase.

The national coordinating committee set up to act as a consultative body for the development of the plan should not necessarily be disbanded once the plan is launched. Rather, it may be maintained as a consultative body during implementation. The national coordinating committee could also consider arranging seminars, briefing sessions or some other form of direct communication with other implementing partners where applicable, to ensure that those with grass-roots responsibilities are fully engaged.

Civil society should be encouraged to be actively involved in ensuring implementation, for example through rules on standing allowing it to bring judicial review proceedings for failure to implement.

## **D. MONITORING**

This phase, which overlaps with the implementation phase, involves adjusting the plan's objectives and activities to the evolving circumstances.

 *A national action plan against racial discrimination should incorporate mechanisms for the periodic monitoring of its progress.*

Monitoring refers to the ongoing process of assessing the plan's effectiveness, while evaluation refers to its overall assessment and achievements. It should be possible for the plan's objectives or activities to be revised or modified in the light of the monitoring process. If the objectives have not been achieved, it may be necessary to allocate more resources, change working methods, revise the time frame or perhaps even amend the objectives.


There are a variety of monitoring mechanisms but whatever mechanism is chosen, it should be independent from the agencies or bodies in charge of the plan's implementation. The monitoring mechanism needs high-level political and financial support from the Government so that public officials respond to its recommendations and proposals. The national human rights institution could organize the monitoring activities.

The monitoring mechanism should meet at reasonable intervals during the life of the national action plan. The first evaluation should take place one year after the initiation of the plan and periodically thereafter. The evaluations help to understand the strengths and weaknesses in the design and implementation of existing programming, and make revisions as necessary with effective follow-up.

These periodic reviews should identify shortcomings and obstacles honestly and propose remedies to ensure that objectives are met. As part of the monitoring process, new targets and indicators should be set on a continuous basis during the life of the plan. The plan should also be revised as necessary to ensure effective responses to the needs identified by the baseline study.

## E. EVALUATION

During this phase, achievement of the stated goals is systematically assessed with a view to laying the foundation for a successor plan.

 *A national action plan against racial discrimination should incorporate a mechanism for evaluating its achievements as it draws to a close.*

The evaluation should be participatory. Civil society, in particular individuals and groups facing racial discrimination and their representative organizations, should participate fully in the evaluation to encourage greater transparency and objectivity. The evaluation results should be available to the public.

While each national action plan will need to devise its own mechanisms for evaluation, it is suggested that, at a minimum, three areas are examined: the national plan of action itself; its implementation; and the functioning of the national institution for racial equality.

Some of the following issues and questions might be helpful:

(a) Evaluating the national plan of action

- Do the plan's coverage and effectiveness meet its objectives?
- Have there been any developments in the fight against racial discrimination, locally, nationally or internationally, that could affect the plan's objectives, including the need to focus on certain groups or certain regions of the country?

(b) Evaluating the implementation of the national plan of action

- How is the plan meeting the criteria of comprehensiveness (including special or affirmative action measures)?
- Are the programmes effectively reaching out to target audiences and/or core groups, which in turn, have the leadership, visibility and motivation to influence others?
- Are the programmes encouraging the knowledge/understanding, attitudes/values and skills/behaviour necessary to eliminate racial discrimination?
- Are the programmes having an impact on the actions by private actors?
- Have the different agencies implemented the national action plan effectively and in time?
- Have the stakeholders participated in the implementation?
- Are the programmes sustainable?



(c) Evaluating the institutional structures

- How successful have the focal agency and the national coordinating committee been in generating political and financial support for carrying out the plan?
- How successful has the national coordinating committee been in ensuring the participation of victims of racial discrimination and their representative organizations during the development, implementation and monitoring of the plan?
- How successful has the national coordinating committee been in facilitating cooperative behaviour among government bodies, intergovernmental organizations, NGOs, professional associations, individuals and other civil society groups?
- How successful has the national institution for racial equality been in implementing the tasks that the plan assigned to it?
- How successful has the monitoring of the implementation of the plan been?

There can be a variety of data sources for the evaluation process, including:

- Comparison between time frame set and time frame met;
- Comparison between the plan's objectives and the current situation of racial discrimination, using recent human rights reports, new national legislation or court decisions;
- Interviews with key members of the coordinating committee, and leadership of cooperating agencies and of other agencies;
- Individual and focus group interviews with participants or beneficiaries of the national action plan;
- Surveys of programme participants.

The evaluation should also take into consideration all court decisions related to the plan's implementation. This is especially important for those countries where the plan is legally binding and the courts may have taken decisions related to its implementation.

In Ecuador, the National Action Plan against Racial Discrimination (Plan Plurinacional para eliminar la discriminación racial y la exclusión étnica y cultural) started with a theoretical and methodological proposal by consultants and a participation strategy made up of the following phases:

- (a) The drawing-up of four documents:
    - (i) Analysis and formulation of racial discrimination indicators based on existing census and statistics;
    - (ii) Compilation of initiatives against racial discrimination by international cooperation, NGOs and the State;
    - (iii) Compilation of relevant international law and analysis of its applicability to Ecuador;
    - (iv) Identification of priority regions and intervention areas for the plan.
- These documents were important inputs for the drafting of a preliminary version of the national plan.
- (b) The review of similar experiences in other countries in Latin America.
  - (c) The drawing-up of a preliminary draft plan, which was presented and discussed in regional workshops with the participation of 136 persons, including representative organizations of racial discrimination victims, national and local government officials, and academics. The preliminary version of the plan was also presented to staff of the United Nations system.
  - (d) The validation of the plan during a national workshop with 60 participants.
  - (e) The incorporation by the consultants of the recommendations received during the national workshop into the final version of the plan.
  - (f) The closing meeting between the consultants and the Ministry Coordinator of Natural and Cultural Heritage (Ministerio Coordinador de Patrimonio Natural y Cultural) to develop a strategy for the following phases of the plan:
    - (i) Agreement and implementation of the plan;
    - (ii) Follow-up and evaluation of the plan.

*A Canada for All: Canada's Action Plan against Racism* recognizes that monitoring progress and reporting back to Canadians is key to the Plan's success. It acknowledges that building racial equality and social equity is not an undertaking with well-defined starting and finishing points. Rather, it is an ongoing activity and part of the evolution of the country.


The evaluation needs to take into account not only the plan's goals but also its real impact. Even if all the activities set forth in the plan are carried out, it is still possible that it did not achieve its desired impact.

Once the time frame for the plan has elapsed and a substantial and independent evaluation of the plan as a whole has been carried out to measure its achievements against its objectives, the outcome should be summarized and published and recommendations for a successor plan issued.

## **F. TIME FRAME**

As the aim of the national action plan against racial discrimination is to promote a more systematic approach to anti-discrimination policy and to boost action, it is desirable that, along with specific target dates for the achievement of each of its activities, a time frame is set for the plan as a whole. This will allow the Government, NHRLs and civil society to have a global frame of reference for assessing the plan's achievements and shortcomings.

The time frame of the national action plan should allow enough time for the necessary administrative, resource, educational and infrastructure measures to be put in place for some of the objectives to be achieved. The time frame should not therefore be too short. Equally, it should not be so long that a sense of continuity or overall perspective is difficult to maintain. The time frame will depend on each State's political, legislative and other circumstances.



*A period of five years is often chosen for economic plans and has been considered desirable for national human rights plans of action.*

*This time frame also seems reasonable for national action plans against racial discrimination.*

# IV. RECOMMENDED STRUCTURE



It is imperative for a national action plan against racial discrimination to have a clear, systematic and logical structure. This will make it easier for the general public to understand and accept it, and for the State bodies responsible for its implementation to incorporate it in their planning. Moreover, a clear, systematic and logical plan will be easier to monitor and evaluate.

The following section proposes a structure based on the need to set specific goals, objectives and actions, as well as the importance of determining the responsible State bodies, target dates and performance indicators for each objective.

In addition to the narrative text, it could be practical to incorporate tables and graphs with the links among the various elements. For example, a table might incorporate goals, objectives, activities, the State bodies responsible for carrying out each activity, the time frame for each activity, a description of the performance indicators, and the monitoring and evaluation mechanism for each.

GOAL	Insert goal # 1		Insert goal #2	
OBJECTIVE	Insert objectives related to the goal	Insert objectives related to the goal	Insert objectives related to the goal	Insert objectives related to the goal
ACTION / ACTIVITY	List all activities related to the goal		List all activities related to the goal	
RESPONSIBLE AGENCY	Insert names of relevant agencies for each activity		Insert names of relevant agencies for each activity	
TARGET DATE	Insert target dates for completion of each activity		Insert target dates for completion of each activity	
PERFORMANCE INDICATORS	Insert performance indicators related to the goal		Insert performance indicators related to the goal	
MONITORING/ EVALUATION MECHANISMS	Insert monitoring and evaluation mechanism		Insert monitoring and evaluation mechanism	

## A. GOALS, OBJECTIVES AND ACTIONS

To be the basis for a comprehensive public policy against racial discrimination, the national action plan against racial discrimination needs to be composed of specific goals, objectives and actions or activities. As with any other planning process, those goals, objectives and actions need to be clear and include performance indicators to allow for effective monitoring and evaluation. The goals, objectives and actions will vary according to the plan's starting point, which ultimately depends on each country's situation.

### 1. Main goals

The broadest objectives of the plan might be described as goals. They give a clear indication of the State's intentions in its struggle against racial discrimination. The goals are really about the final impact that the national action plan against racial discrimination should bring about. The goals stated in the plan constitute a useful orientation for those working on the plan and provide guidance to the general public.

Because of the general terms in which they are expressed, the goals should be few in number. For example:

- To promote broad public awareness of racial equality and non-discrimination;
- To extend the effective implementation of relevant international and regional standards on human rights and non-discrimination.

### 2. Specific objectives

The plan should outline more specific targets as objectives. The objectives represent a step towards accomplishing a goal. Several objectives might be set for each goal.

Including specific objectives will make monitoring and evaluation more effective. In fact, objectives must be measurable and verifiable through performance indicators.



Objectives should not simply reword the goals, but set out conditions providing evidence that the goals are being achieved. Setting achievable objectives will make it possible to demonstrate progress. To be realistic, objectives should be precise, tangible, concrete and achievable within reasonable time frames.

It is advisable not to include an objective in the plan unless there is a genuine willingness to achieve it and some reasonable prospect of success. Including objectives for rhetorical reasons is likely to undermine the whole planning process and, by diminishing the plan's credibility, to render the achievement of other, more realistic objectives less likely.

For example, pursuing the public awareness goal, an objective might be:

- To raise public awareness of international human rights instruments protecting the right to non-discrimination based on national or ethnic origin.

### **3. Actions or activities**

The national action plan against racial discrimination should include specific actions that the State commits to undertaking in order to achieve each objective. Completing the various actions or activities would imply achieving the objectives set out in the plan.

For example, in keeping with the objective of raising public awareness of international human rights instruments, the activities might include:

- Distributing information kits on instruments to educational institutions, NGOs, public offices;
- Conducting seminars for relevant public officials, including the police and the judiciary;
- Publicizing reports to and comments of the Committee on the Elimination of Racial Discrimination and relevant human rights instruments.

## **B. RESPONSIBLE STATE BODIES**

For each of the activities, the plan should specify which State body will be responsible for carrying it out. It should also extend, where appropriate, to federal, provincial or local government bodies that have ultimate responsibility in certain areas.

## **C. TARGET DATES**

The plan's activities should be accompanied by specific time frames. If there is a target date, those involved in the plan's implementation will have a deadline around which to structure their activities. Also, target dates are a basis for monitoring the plan's achievements. Target dates should be realistic.

## **D. PERFORMANCE INDICATORS**

Each objective provided for in the plan also needs to have a specific performance indicator. This will make implementation and monitoring more effective. In fact, performance indicators represent the standard that will be used to assess whether or not the agreed objectives have been achieved. Performance indicators should be simple and precise so that all those who need to work with them understand them.

For example, in keeping with the objective of raising public awareness of international human rights instruments, performance indicators might be:

- Completion of proposed activities as well as surveys indicating raised public awareness.

## **E. MONITORING AND EVALUATION MECHANISMS**

The plan should outline how it will be monitored and evaluated.

Conditions vary greatly within States regarding data, human and financial resources available for monitoring and evaluation. Additionally, the methods chosen must be appropriate to local cultures. Because it is not always possible to foresee at the outset the best methods for monitoring or evaluation, it will probably not be necessary for the plan to go into much detail.

However, the plan should contain an explicit commitment to monitoring and evaluation. Moreover, it is always possible to build an evaluation component into the plan's activities, especially at the time they are taking place.

Monitoring and evaluation mechanisms should be established for the ongoing activities as well as for the plan as a whole. They should be based on the objectives and targets that make up the plan and the assignment of responsibilities to various State bodies for achieving them.

Monitoring and evaluation mechanisms should aim to be economical in their need for resources and time, so that they remain manageable. The development of standardized reporting formats for monitoring and evaluation is highly recommended. Effective monitoring and evaluation will require the allocation of some resources for personnel and for the publication and dissemination of the results.



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