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

Combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance*

Summary

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E. Tendayi Achiume, summarizes State submissions regarding the implementation of General Assembly resolution 74/136 on combating glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance; summarizes recent trends in antisemitic violence, hate crime, hate speech and other incidents; and examines the relationship of antisemitism to and its intersection with other forms of racism and related intolerance. Furthermore, she recalls the obligations of States under international human rights law to combat antisemitism and other forms of racism and intolerance and offers recommendations in light of those obligations.

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



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I. Introduction

1. The present report is submitted to the Human Rights Council pursuant to General Assembly resolution 74/136, in which the Assembly requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to submit a report on the implementation of that resolution to the Council at its forty-fourth session. In section II, the Special Rapporteur summarizes State submissions on the measures those States have taken to combat the glorification of Nazism, neo-Nazism and related intolerance. The Special Rapporteur expresses her thanks to Azerbaijan, El Salvador, Honduras, Israel, Italy, Portugal and the Russian Federation for their submissions. In section III, she documents current trends in antisemitic incidents, including hate crimes, hate speech, harassment and intimidation.

2. Racism, racial discrimination, xenophobia and related intolerance persist in many different manifestations and pose serious threats to equality, justice and human rights. The fight against racism requires an understanding of the complex linkages among different forms of intolerance and discrimination. Although it is important not to conflate the different forms of racism, there are valuable lessons to be learned in analysing overlap and connections among different forms of oppression.

3. When Martin Luther King, Jr. spoke at the annual Convention of the Rabbinical Assembly on 25 March 1968, 10 days before he was assassinated, he reflected on the interconnectedness of the oppression of Jewish people and African Americans and their struggle for social justice.¹ He also reflected on the urgency of unity among different groups in the fight against antisemitism and other forms of racism. In the spirit of critical reflection and anti-racism coalition-building, the Special Rapporteur examines the relationship of antisemitism to, and its intersection with, other forms of racism and related intolerance in section IV below. In section V, she outlines the applicable international and regional human rights legal frameworks, and in section VI provides recommendations for combating racism, racial discrimination, xenophobia and related intolerance.

II. Summary of Member State submissions

4. In the present section, the Special Rapporteur summarizes Member State submissions on law and policy in place to combat Nazism and neo-Nazism, but does not analyse or evaluate these laws or policies. She underscores that providing the summaries of State submissions below does not constitute her endorsement of the content of the submissions. The Special Rapporteur also wishes to make clear that, to the extent that any of the formal policies below violate the applicable international human rights laws and principles outlined in section IV of the present report, Member States must take urgent action to repeal the offending policies.

Azerbaijan

5. The Government of Azerbaijan reported that it did not condone neo-Nazism and other practices that fuelled contemporary forms of racism, racial discrimination, xenophobia and related intolerance. The glorification of Nazism, neo-Nazism, and other related practices were still the hard realities in some regions. Azerbaijan noted its support for international efforts aimed at combating the glorification of Nazism. The Government mentioned the eighteenth Summit Conference of Heads of State or Government of Non-Aligned Countries, held in Baku on 25 and 26 October 2019, at which the Heads of State or Governments of the Member States present had condemned the glorification of the Nazi movement and neo-Nazism.

¹ A transcript of the appearance, entitled "Conversation with Martin Luther King", is available at <https://gendlergrapevine.org/wp-content/uploads/2013/06/Conversation-with-Martin-Luther-King.pdf>.

El Salvador

6. The Government of El Salvador highlighted various constitutional provisions aimed at preventing racial discrimination. Article 3, in particular, entitled all Salvadorans to equal enjoyment of rights, and no restrictions could be established on the basis of nationality, race, sex or religion. The Constitution, as amended in 2014, recognized the rights of indigenous people (art. 63), and the Government affirmed that it planned to adopt policies to enforce the provision accordingly.

7. The Government noted that its Penal Code stipulated the punishment of offences relating to freedom of religion. Article 296 of the Penal Code criminalized acts causing interruption or disruption to the exercise of freedom of religion, or destruction of or damage to objects for worship. The Act on Culture of 2016 (art. 30) guaranteed indigenous people the right to freedom, equality, dignity and life free from discrimination based on the grounds of ethnicity, sex, religion, customs, language or any other conditions. At the local level, six municipalities had adopted ordinances to promote the principle of equality and non-discrimination. One example was the municipal ordinance of Panchimalco that referred to protection against racial discrimination.

Honduras

8. The Government of Honduras stated that it had taken measures to fight racism, racial discrimination, xenophobia and all other related intolerance. The Constitution prohibited all forms of discrimination (art. 60) and guaranteed the exercise of all religions without prejudice (art. 77, para. 1). The Penal Code stipulated that discriminatory acts based on sex, race, age, class, religion, partisan or political association, or disability constituted criminal offences, punishable by prison time and administrative penalties. Amendments to the Penal Code that would come into effect in May 2020 had been made to strengthen protections against discrimination with respect to employment and the public sector. Discriminatory denial of public service or disqualification from employment was punishable by law and disqualified the convicted person from holding public office.

9. The Government reported that in 2017, it had created the Secretariat for Human Rights as the lead agency to implement public policies related to human rights.² It highlighted the Public Policy against Racism and Racial Discrimination for the Comprehensive Development of Indigenous and Afro-Honduran Peoples (2016–2022), approved in 2016, which enabled indigenous and Afro-Honduran peoples to exercise their rights and maintain their identity and diversity. The National Institute of Migration had created a unit on human rights and migrant care management to safeguard migrants. The purpose of the Institute was to promote the human rights of migrants by providing them with immediate and adequate assistance.

10. The Government also reported that its Congress had begun discussions on a draft national law on cybersecurity and protection against acts of hatred and discrimination on the Internet and social networks, in which it intended to include protections against online antisemitism and other racism and intolerance.

Israel

11. The Government of Israel stated that victims of all forms of racism suffer from hostility, dehumanization, prejudice and stereotypes, which lead to discrimination and violence. To combat racism, the deconstruction of racial, cultural and religious prejudices should be at the centre of combating all forms of hatred. In respect of the commonalities of antisemitism and other forms of racism, the Government highlighted that both were often associated with white supremacy, white nationalism, neo-Nazi ideology and related violence. Perpetrators of recent antisemitic terrorist attacks³ all shared a white supremacist

² Executive Decree No. PCM-055-2017.

³ The Government referred to the shootings at a synagogue in Pittsburgh, United States of America; at a mosque in Christchurch, New Zealand; at a synagogue in Poway, California, United States; in El Paso, United States; at a synagogue in Halle Germany; and in Hanau, Germany.

ideology of seeking to fight a so-called white genocide driven by the idea that white people were being systematically replaced by non-white immigration, and that, in part, Jews were behind the plot against white people. The Government pointed out that Europe had seen a drastic increase in antisemitic incidents since 2010, while the violent crime rate in the region had also risen, evidencing a strong correlation between the two.

12. The Government noted that there were distinctive characteristics of antisemitism, despite the aforementioned commonality between antisemitism and other forms of racism. Contrary to other forms of racism, antisemitism could be found across the ideological spectrum, uniting radicals from different political groups – mainly from radical Islam, the far right and the extreme left. The alliance of diverse groups propagating antisemitism – groups that were otherwise fundamentally opposed to one another – intersected and converged against Jews and/or Israel. Such convergence was exemplified in the trends of racism in France and Germany. According to the Government, antisemitism and anti-Muslim incidents had a weak correlation in a country such as in France, where the main source of terrorism was radical Islamism. On the contrary, all forms of racism had a strong correlation in Germany, where the radicalized far-right group targeted all minorities.

13. The Government highlighted that it was vital to assess the common but differentiated phenomena in the manifestation of various forms of racism. It urged States Members of the United Nations to take stock of the similarities and differences to address the manifestations of intolerance and hatred of all kinds.

14. The Government had taken measures to monitor online antisemitism. It referred to the Antisemitism Cyber Monitoring System developed by the Ministry of Diaspora Affairs. The System was used to monitor antisemitic posts on Twitter, Facebook and YouTube in Arabic, English, French and German. It served as the basis for various antisemitism-related projects by quantifying, classifying and analysing online antisemitic discourse.

15. Israel reported on the legislative framework that it had established to combat discrimination. The framework included amendment No. 137 to the Penal Law, 5737-1977, which set out racial motivation or hostility towards the public as an aggravating circumstance in the offence of murder, thereby justifying mandatory life imprisonment. Racist remarks or expressions were prohibited during sports events.⁴ It was unlawful to provide a public service or product, or operate a public establishment, in a manner that delayed the provision of such public service or product on the grounds of race, religion or religious affiliation, nationality or country of origin, among others, while providing it without delay to persons not related to that group.⁵

Italy

16. The Government of Italy stated that it was committed to raising public awareness about racism and related intolerance through educational programmes and cultural initiatives. Through Law No. 211 of 20 July 2000, it had established the Holocaust Memorial Day, which provided for the commemoration of the Jewish citizens and other Italians who had been persecuted, deported, imprisoned or executed, as well as those who had protected the persecuted. Students and young people were the critical targets of the educational programmes the Government implemented in promoting the remembrance. The Government referred to public events targeting young people that it had convened to educate them about the Holocaust.

17. The Government reported on its efforts to strengthen the capacity of its law enforcement officials to prevent and combat all forms of discrimination. The Observatory for Security against Acts of Discrimination had developed for law enforcement an online

⁴ Prohibition of Violence in Sports Law, 5768-2008.

⁵ Prohibition of Discrimination in Products, Services and Entry into Places of Entertainment and Public Places Law, 5761-2000.

course and guidelines on hate crimes.⁶ The course included a module to introduce bias indicators for various forms of discrimination, including discrimination against persons with disabilities, antisemitism, and discrimination against Roma, lesbian, gay, bisexual and transgender people, Muslims and migrants, in order to identify hate crimes.

18. The Government reported that its National Office against Racial Discrimination had engaged in monitoring hate speech not only in traditional media but also in social media, through the establishment of an observatory for that purpose,⁷ which would lead to the compilation of an annual report on combating religious hatred online. The Office was dedicated to conducting research on hate speech with a particular focus on hate speech motivated by religious or cultural affiliation. The Government affirmed its deepened efforts to combat hate speech.

Portugal

19. The Government of Portugal reported on the legislative framework that it had enacted to combat racial and religious discrimination. Under the Constitution and the Law on Political Parties (Organic Law No. 2/2003), racist and fascist political parties were illegal. In accordance with the law, an organization that qualified as a racist party or as profiling fascist ideology could be closed by a decision of the Constitutional Court at the request of the prosecution office. Article 240 of the Penal Code stipulated that discrimination and incitement to hatred and violence on the ground of race, colour, ethnic or national origin, descent, religion, sex, sexual orientation, gender identity or disability were punishable offences. With the amended anti-discrimination law (Law No. 93/2017), which entered into force on 1 September 2017, the Government had established the legal framework for the prevention of discriminatory practices and expanded the definition of discrimination and its application. The amendment to the anti-discrimination law was aimed at improving the coverage of protection and the effectiveness of responses.

20. The Government highlighted that it had reinforced the mandate of the Commission for Equality and against Racial Discrimination to monitor the enforcement of the anti-discrimination law. The Commission received complaints related to discriminatory acts and recommended administrative measures to prevent racial discrimination in all its forms. The Commission had increased the number of its advisors to 31, including representatives of migrant and Roma communities and communities of people of African descent, and of representatives of the parliament.

21. The Government stated that it had taken up measures necessary to promote equality and non-discrimination and to strengthen tolerance among cultures and religions. It noted that the High Commission for Migration, the primary institution responsible for the integration of immigrants and ethnic groups, under the direct supervision of the Presidency of the Council of Ministers, was committed to implementing initiatives to counter discrimination and promote intercultural dialogue. The Commission had an intercultural dialogue unit that had conducted joint projects with other government bodies to promote intercultural education and interreligious dialogue.

Russian Federation

22. The Government of the Russian Federation stated that it did not tolerate any form of discrimination on the grounds of racial, national, linguistic or religious affiliation. It condemned incitement to racial, national or religious hatred or extremist activities and affirmed its commitment to combat attempts to spread those hateful ideologies.

23. The Government reported on the legislative framework aimed at countering extremism. It stated that Federal Act No. 114-FZ of 25 July 2002, on combating extremist

⁶ The Observatory is an agency operated by the Italian national police and the national gendarmerie, within the Department of Public Security under the Ministry of the Interior. Its mandate is to tackle hate crime and protect the victims of such crime.

⁷ Promoted by the Catholic University of the Sacred Heart and the Centre for Contemporary Jewish Documentation, in collaboration with the Associazione Giovani Musulmani d'Italia.

activities was a basic regulatory instrument to monitor extremist activities. Furthermore, the Government had adopted the Strategy to Combat Extremism in the Russian Federation by 2025, in November 2014. The Strategy defined the goals, objectives and main initiatives of State policy in the area of countering extremism. The Interdepartmental Commission on Countering Extremism in the Russian Federation, which was comprised of the heads of 19 ministries and departments, was responsible for implementing a set of measures to prevent the spread of extremism, radicalization movements and ethnic or religious conflicts.

24. The Government noted that it had stepped up its efforts to monitor the digital space as it had become a haven for the dissemination of extremist information. It referred to article 15.1 of Federal Act No. 149-FZ of 27 June 2006 on information, information technologies and protection of information. The article provided for the monitoring of mass media and telecommunication networks in order to detect the spread of extremist ideology and to take appropriate action, including by restricting access to unlawful information disseminated within the Russian Federation. To ensure compliance with Russian Federation legislation, the Federal Service for Supervision of Communications, Information Technology and Mass Media oversaw the daily monitoring of the media, including electronic media, mass media communications, information technology and telecommunications. The Government reported that, since 2019, the Federal Service had entered into the single register 58,901 Internet pages containing extremist materials. Extremist information had been removed from 54,208 of those Internet resources, and access to 7,428 Internet pages containing extremist information had been blocked in the Russian Federation.

25. The Government reported on measures that it had taken to raise awareness of extremist ideology among adolescents and prevent the radicalization of young people. It had introduced a programme that targeted minors and other young people, in collaboration with civil society organizations, religious representatives and local authorities.

26. The Government noted that article 243 of the Penal Code and additional draft amendments set out criminal liability for the damage or destruction of military cemeteries, cultural heritage sites and other memorial structures that commemorated the fight against Nazism and fascism during the Second World War. The Investigative Committee of the Russian Federation had also implemented measures to identify and protect heritage sites and hold memorial events with a view to preserving historical lessons related to war crimes committed during the Great Patriotic War.

III. Antisemitic violence and related acts of racism and intolerance

27. The latest data on antisemitic violence, hate crimes hate speech and other incidents are discussed below and are collated from different global sources, including government data, desk research and submissions received by the Special Rapporteur in response to her call for input for the present report.

28. The most recent European Union Agency for Fundamental Rights overview of country-specific data furnished by Member States indicates that antisemitism is on the rise in Austria, Croatia, France, Germany, Greece, Italy, Poland, Slovakia and Spain.⁸ In confidential submissions to the Special Rapporteur, some civil society members in Spain called attention to the fact that the far-right party Vox had gained seats in the November

⁸ See European Union Agency for Fundamental Rights, “Antisemitism: overview of data available in the European Union 2008–2018” (Luxembourg, Publications Office of the European Union, 2019). The report provides an overview of antisemitic incidents in 28 European Union Member States. Available at https://fra.europa.eu/sites/default/files/fra_uploads/fra-antisemitism-overview-2008-2018_en.pdf.

2019 election by running a racist, sexist and homophobic campaign.⁹ Vox won 52 seats in Congress, a sharp increase from the previous year, when it held no parliamentary seats.

29. In a European Union Agency for Fundamental Rights 2018 survey of almost 16,500 individuals who identified as Jewish in 12 European Union member States, revealed that 39 per cent of respondents had experienced physical violence, harassment and/or vandalism of property in the preceding five years.¹⁰ More than 28 per cent of the respondents reported that they had been victims of hate crimes in the 12 months before the survey. In the Eurobarometer survey on perceptions of antisemitism, conducted in 28 European Union Member States, about 89 per cent of Jewish respondents and 50 per cent of general respondents expressed concern that antisemitism was increasing in their country.¹¹

30. The prevalence of hate speech in politics is a serious problem in many countries. It is a threat to racial equality and undermines racial, ethnic and religious groups' trust in government. A confidential submission from a non-governmental organization from Canada shed light on the discriminatory challenges indigenous peoples faced, describing in detail how the confluence of racism, xenophobia, settler denialism and white supremacy had driven the resurgence of racism against indigenous peoples and other racial groups in Canada.

31. In the United Kingdom of Great Britain and Northern Ireland, 672 hate crimes were recorded between 1 April 2017 and 31 March 2018.¹² In 2019, Community Security Trust recorded 1,805 antisemitic incidents across the State, the highest annual total to date.¹³ Civil society groups reported that a climate of hate was being driven by politicians and contributing to increased racist incidents. Human rights groups raised serious concerns about the Prime Minister's racist, Islamophobic and homophobic statements targeting, respectively, Black British communities, Muslim women and gay men.¹⁴

32. In its survey of antisemitic attitudes in 18 countries, including 14 countries in Eastern and Western Europe, Argentina, Brazil, Canada and South Africa,¹⁵ the Anti-Defamation League found an increase in antisemitic prejudice.¹⁶ The 2019 survey drew on 11 questions that the League has used in global polling since 1964. The findings revealed a high rate of antisemitism among the more than 9,000 individuals polled between April and June 2019. They also revealed that one in four Europeans said they believed in most of the antisemitic beliefs referenced in the poll.¹⁷

33. The hate crime statistics compiled by the Federal Bureau of Investigation for 2018, the most recent available, showed that 7,120 hate crimes had been reported in the United States of America, of which 1,419 were religious hate crimes (835 of those antisemitic), 4,047 were based on race, ethnicity or ancestry and 1,196 were motivated by sexual orientation.¹⁸ The documentation by the Anti-Defamation League of antisemitic and racist incidents and incidents against lesbian, gay, bisexual and transgender people in the United States revealed that there had been 2,713 cases in 2019 as compared to 1,214 cases in 2018

⁹ See also Guy Hedgecoe, "Spanish elections: how the far-right Vox party found its footing", BBC News, 11 November 2019.

¹⁰ European Union Agency for Fundamental Rights, "Antisemitism: overview of data", pp. 8–9.

¹¹ *Ibid.*, p. 96.

¹² European Union Agency for Fundamental Rights, "Antisemitism: overview of data", p. 87. See also A/73/305 and Corr.1, para. 22.

¹³ Community Security Trust, "2019 annual review", p. 14. Available at <https://cst.org.uk/data/file/a/c/Annual%20Review%202019-web.1583750042.pdf>.

¹⁴ Confidential submissions to the Special Rapporteur.

¹⁵ The detailed list of all 18 countries and survey questions can be found at <https://global100.adl.org/about/2019>.

¹⁶ Anti-Defamation League, "ADL global survey of 18 countries finds hardcore anti-Semitic attitudes remain pervasive", 21 November 2019. Available at www.adl.org/news/press-releases/adl-global-survey-of-18-countries-finds-hardcore-anti-semitic-attitudes-remain.

¹⁷ See www.adl.org/adl-global-100.

¹⁸ See <https://ucr.fbi.gov/hate-crime/2018/tables/table-1.xls>.

– a 44 per cent increase.¹⁹ The Southern Poverty Law Center reported that there had also been a 43 per cent increase in the number of anti-lesbian, gay, bisexual and transgender hate groups in the United States.²⁰

IV. Issue in focus: antisemitic racism and other forms of racism and related intolerance

34. Robert S. Wistrich, an antisemitism scholar and former head of the Vidal Sassoon International Center for the Study of Antisemitism at the University of Jerusalem, has highlighted the parallels between antisemitism and other forms of racism and related intolerance, and has underscored that doctrines of racial superiority “serve to justify and rationalize the will to exclusion of the ‘collective other’, defined as alien, different, more primitive, or inferior”.²¹ Sociologist and civil rights activist W.E.B. Du Bois also highlighted the similarities between antisemitism and other forms of racism. Witnessing first-hand the oppression of Jews in Poland opened Mr. Du Bois’ eyes to the oppression of Jews and its parallels to the fight of African Americans for racial equality in the United States.²² Mr. Du Bois’ last visit to Poland, in 1949, was significant, revealing to him the intersections between racial and religious discrimination. He stated: “So that the ghetto of Warsaw helped me to emerge from a certain social provincialism into a broader conception of what the fight against race segregation, religious discrimination, and the oppression by wealth had to become if civilization was going to triumph and broaden in the world”.²³

35. The demonization of “the other” is a central tool of neo-Nazism, and its racist and antisemitic ideology casts Jews as the “archetypal other”. Neo-Nazi ideology also espouses hatred and demonizes racial, ethnic and religious groups, including people of African descent, Muslims, Slavic peoples, lesbian, gay, bisexual, transgender and intersex people, women, and persons with disabilities.²⁴

36. The transnational conspiracy that the “white race” is under threat of extinction has spurred racial hatred and deadly attacks around the world,²⁵ including in Canada, France, Germany; Greece, New Zealand, Norway, the United Kingdom and the United States. Conspiracy theories are another feature of neo-Nazi and extremist ideologies; these conspiracies target Jews, as well as other racial, religious and ethnic groups.

37. White genocide theory in the United States maintains that Jews are manipulating black Americans to achieve racial heterogeneity and global domination.²⁶ This conspiracy, dating back to slavery, claims that African Americans will wage a war to eliminate the “white race”.²⁷ The conspiracy relies on racist tropes of Jews as nefarious and all-powerful and African Americans as unintelligent and violent, in order to advance claims of an imminent race war.²⁸ White supremacists in South Africa and the United States also falsely

¹⁹ Anti-Defamation League, “White supremacists double down on propaganda in 2019”, 11 February 2020. Available at www.adl.org/blog/white-supremacists-double-down-on-propaganda-in-2019.

²⁰ Southern Poverty Law Center, “Extremist hate threatens pluralistic democracy”, 18 March 2020. Available at www.splcenter.org/news/2020/03/18/year-hate-and-extremism-2019.

²¹ Robert S. Wistrich, “Introduction: the devil, the Jews, and hatred of the other”, in *Demonizing the Other: Antisemitism, Racism and Xenophobia*, Robert S. Wistrich, ed. (London, Routledge, 1999), p. 2.

²² See W.E.B. Du Bois, *The Social Theory of W.E.B. Du Bois* (London, Pine Forge Press, 2004).

²³ Du Bois, *Social Theory*, p. 46.

²⁴ A/HRC/38/53, para. 5.

²⁵ Rosa Schwartzburg, “The ‘white replacement theory’ motivates alt-right killers the world over”, *The Guardian*, 5 August 2019. See also Paul Stoker, “The great replacement theory: a historical perspective” (Open Democracy), 19 September 2019, and Lois Beckett, “More than 175 killed worldwide in last eight years in white nationalist-linked attacks”, *The Guardian*, 4 August 2019.

²⁶ See, for example, Stoker, “The great replacement theory”. See also Anti-Defamation League, “White genocide”, available at www.adl.org/resources/glossary-terms/white-genocide.

²⁷ Rosa Schwartzburg, “No, there isn’t a white genocide”, *Jacobin*, 4 September 2019.

²⁸ See, for example, Anti-Defamation League, “New hate and old: the changing face of American white supremacy”.

claim that white genocide is taking place in South Africa. The international conspiracy that black South Africans are carrying out a genocide campaign against white South African farmers is propagated by Suidlanders, a South African right-wing Afrikaner group, and white supremacists and alt-right groups in the United States.²⁹ These claims have deep historical roots. During the apartheid era, white supremacists everywhere had championed the racist policy of South Africa, based on white supremacy, and had sought to replicate the system of institutionalized racism.

38. Denialism, the refusal to accept an occurrence or fact even though there is overwhelming evidence and consensus to support the finding, distorts the historical record. It is also a threat to democracy and human rights. As discussed below, those who deny the historical truth of the Holocaust, settler colonialism and slavery do so to promote their agenda, advance white supremacy and scapegoat racial, ethnic and religious groups.

39. Holocaust denialism is a form of antisemitism. It is an attempt to absolve the perpetrators of responsibility. The International Holocaust Remembrance Alliance has described the ways in which Holocaust denial is manifested: (a) condoning or minimizing the atrocities of the Holocaust; (b) claiming that the number of victims of the Holocaust were grossly exaggerated; (c) accusing Jews of being responsible for the Holocaust (i.e., victim-blaming); (d) portraying the Holocaust as a positive event; and (e) attributing blame to other countries or ethnic groups.³⁰

40. Holocaust deniers rely on conspiracy theories to refute the Holocaust and delegitimize the victims of the genocide. Deniers claim that the legitimate accounts of the Holocaust are fabricated by Jews to garner sympathy and extract reparations from Germany.³¹ They distort or cherry pick evidence to advance their false claims that Jews died as a result of disease, hunger or other indiscriminate injuries in the Second World War.³²

41. Holocaust denial has also played a central role in shaping and reinforcing stereotypes and prejudice about Jews. Characterizing Jews as controlling and dominating or blaming Jews for “exaggerating” or “creating” the Holocaust for political or financial gain are centuries-old antisemitic tropes used to dehumanize Jews and portray Nazi rule in a positive light. These conspiracies rely on and perpetuate classic racist tropes of Jews as powerful and sinister.³³

42. Many international bodies have adopted resolutions, guidelines and studies condemning Holocaust denial, including the General Assembly of the United Nations, the Organization for Security and Cooperation in Europe and the European Union Agency for Fundamental Rights. In *Garaudy v. France*, the European Court of Human Rights found that “disputing the existence of crimes against humanity was, therefore, one of the most severe forms of racial defamation and of incitement to hatred of Jews. The denial or rewriting of this type of historical fact undermined the values on which the fight against

²⁹ James Pogue, “The myth of white genocide”, *Harper’s Magazine* (15 February 2019). Available at <https://pulitzercenter.org/reporting/myth-white-genocide>. See also Carla Hill, “The racist obsession with South African ‘white genocide’”, Anti-Defamation League, 24 August 2018. Available at www.adl.org/blog/the-racist-obsession-with-south-african-white-genocide.

³⁰ International Holocaust Remembrance Alliance, “Working definition of holocaust denial and distortion”. Available at www.holocaustremembrance.com/resources/working-definitions-and-charters. See also United Nations Educational, Scientific and Cultural Organization and Organization of Security and Cooperation in Europe (UNESCO), *Addressing Anti-Semitism through Education: Guidelines for Policymakers* (Paris, 2018).

³¹ Southern Poverty Law Center, “Holocaust denial”. Available at www.splcenter.org/fighting-hate/extremist-files/ideology/holocaust-denial.

³² Ibid. See also International Holocaust Remembrance Alliance, “Working definition of holocaust denial and distortion”.

³³ See, for example, UNESCO, *Addressing Anti-Semitism through Education*, and Wistrich, “Introduction: the devil, the Jews, and hatred of the other”.

racism and anti-Semitism was based and constituted a serious threat to public order. It was incompatible with democracy and human rights.”³⁴

43. A submission received for the present report highlighted the ways in which settler colonial denialism was similarly prejudicial to indigenous peoples. In the submission, the Union of British Columbia Indian Chiefs highlighted how the whitewashing of settler colonialism minimizes the devastating impact of colonialism on indigenous peoples in Canada. They further reported that condonement or minimization of the harmful impacts of settler colonialism was pervasive among citizens and political figures.

V. Applicable racial equality framework

44. The Special Rapporteur recalls that international human rights law is based on the premise that all persons, by virtue of their humanity, should enjoy all human rights without discrimination on any grounds. Article 1 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination defines racial discrimination as 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.

45. The Human Rights Committee and the Committee on Economic, Social and Cultural Rights have reiterated that the rights outlined in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights must be guaranteed to everyone, including non-citizens and persons belonging to racial, ethnic and religious minorities.³⁵ The Special Rapporteur highlights that the prohibition on racial discrimination in the international human rights framework is aimed at guaranteeing substantive equality rather than a formal provision of equality. It therefore requires States to take action to combat intentional or purposeful racial discrimination, as well as to tackle de facto or unintentional racial discrimination.³⁶

46. With respect to antisemitic violence, the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights require States parties to take immediate action to end and remediate violent attacks against Jews. Article 5 of the Convention creates an obligation for States parties to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law in the enjoyment, inter alia, of 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. Article 9 of the Covenant also grants everyone the right to liberty and security of person. The Human Rights Committee has stated that the right to security of person protects individuals against intentional infliction of bodily or mental injury, regardless of whether the victim is detained or non-detained, and that the right requires States parties to protect individuals from foreseeable threats to life or bodily integrity proceeding from any governmental or private actors. Furthermore, the Committee has stated that States parties must take both measures to prevent future injury and retrospective measures, such as enforcement of criminal laws, in response to past injury.³⁷

³⁴ Application No. 65831/01, decision of inadmissibility, 24 June 2003. See <https://hudoc.echr.coe.int/eng-press#%7B%22itemid%22:%5B%22003-788339-805233%22%5D%7D>.

³⁵ See Human Rights Committee, general comment No. 15 (1986) on the position of aliens under the Covenant, paras. 1–2, and general comment No. 23 (1994) on the rights of minorities; and Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009) on non-discrimination in economic, social and cultural rights, paras. 24 and 30.

³⁶ Committee on the Elimination of Racial Discrimination, general recommendation No. 32 (2009) on the meaning and scope of special measures in the Convention, paras. 6–10.

³⁷ Human Rights Committee, general comment No. 35 (2014) on liberty and security of person, para. 9.

47. The Convention and the Covenant also impose strong limitations on the propagation of racist and xenophobic ideas, and outlaw the advocacy of national, racial or religious prejudices that amount to incitement to discrimination, hostility or violence. Speech that constitutes advocacy of antisemitic racial and religious prejudices that amount to incitement to discrimination, hostility or violence is thus unlawful and prohibited under the applicable legal frameworks.

48. In accordance with article 2 (1) of the International Convention on the Elimination of All Forms of Racial Discrimination, Member States should not sponsor, defend or support racial discrimination by any persons or organizations, including those espousing racial superiority and intolerance. Article 4 of the Convention requires States parties to condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. This means that States parties must take action to prohibit organizations meeting the conditions articulated in article 4 (b), including in contexts in which such organizations use antisemitic fervour to attempt to mainstream their extreme ideologies or racial, ethnic or religious hatred and intolerance. Legislation alone is not sufficient. Article 6 of the Convention makes clear that effective protection from and remedies for racial discrimination are just as important as formal provisions.

49. Article 4 of the Convention also requires States parties to undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination, and to make punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin. The Committee on the Elimination of Racial Discrimination has recommended concrete guidance for States parties on the adoption of legislation combating racist speech falling under article 4, and the Special Rapporteur encourages States to review the Committee's general recommendation No. 35 (2013) on combating racist hate speech in order to benefit from that guidance. In the general recommendation, the Committee highlights a number of factors that should inform the practice of Member States. Significantly, the Committee recalls that the proscription of racist hate speech and the flourishing of freedom of expression should be seen as complementary and not the expression of a zero-sum game. In paragraph 45 of the general recommendation, the Committee states that, instead, the rights to equality and freedom from discrimination, and the right to freedom of expression, should be fully reflected in law, policy and practice as mutually supportive human rights, as discussed in more detail below.

50. Article 19 of the International Covenant on Civil and Political Rights protects freedom of opinion and of expression, which may be subject to certain restrictions, but only such as are provided by law and are necessary for respect of the rights or reputations of others or for the protection of national security or of public order, or of public health or morals. Any restriction on freedom of speech must not only be a matter of necessity, but must be proportionately tailored to achieve the legitimate end that warrants the restriction.³⁸ Article 20 of the Covenant states specifically that States parties must prohibit, by law, any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The Human Rights Committee and a number of other human rights mechanisms have interpreted this provision as creating a high threshold, because limitations on speech must remain exceptional. When individuals or groups meet this high threshold, however, including in the context of antisemitic hate speech, States must hold these actors to account for their violations of international human rights law.

51. Freedom of expression is also enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee on the Elimination of Racial Discrimination has reiterated that freedom of expression is integrated into the Convention, and that the Convention contributes to a fuller understanding of the parameters

³⁸ Human Rights Committee, general comment No. 34 (2011) on the freedoms of opinion and expression, paras. 33–35. See also, for example, *Velichkin v. Belarus* (CCPR/C/85/D/1022/2001).

of freedom of expression under international human rights law. For determining what racist expression should be punishable by law, the Committee stresses the importance of context, which includes: (a) the content and form of the speech; (b) the economic, social and political climate; (c) the position or status of the speaker; (d) the reach of the speech; and (e) the objectives of the speech.³⁹ Member States, and even private actors such as the technology companies that often directly interface with racist and xenophobic content online, must remain vigilant in their identification of racist expression in national climates in which certain groups, including neo-Nazis, are openly committed to spreading and enforcing intolerance. The Committee warns that racist speech may sometimes rely on indirect language to disguise its targets or objectives, and may rely on coded symbolic communication to achieve its ends. Even incitement may be express or implied, through actions such as displays of racist symbols or distribution of materials as well as words.⁴⁰

52. Member States must take urgent action to ensure that racist expression violating the standards set out in the International Convention on the Elimination of All Forms of Racial Discrimination are made punishable by law. The Committee on the Elimination of Racial Discrimination has recommended that the criminalization of forms of racist expression be reserved for serious cases, to be proven beyond reasonable doubt, that the application of criminal sanctions be governed by the principles of legality, proportionality and necessity, and that less serious cases should be dealt with using non-criminal sanctions.⁴¹

53. Unfortunately, sometimes Member States use concerns about racist or intolerant speech as a pretext for illegitimately quashing expression that is compliant with human rights. The Committee on the Elimination of Racial Discrimination has observed with concern that broad or vague restrictions on freedom of speech have been used to the detriment of groups protected by the Convention. The Special Rapporteur endorses the Committee's position that international human rights law prohibits States from using measures to monitor and combat racist speech as a pretext to curtail expressions of protest at injustice, social discontent or opposition.⁴² Overly broad defamation and slander laws that target minority religious groups, political opponents, academics, human rights defenders or others who appropriately exercise their freedom of expression should not be tolerated. The Special Rapporteur also strongly condemns attempts by public and private actors to co-opt the language of equality and non-discrimination as a means of stifling legitimate expression. Similarly, she further condemns attempts by public and private actors to use the language of freedom of expression or association as a means of, or cover for, violating the rights of others to equality and non-discrimination.

54. The Committee on the Elimination of Racial Discrimination has highlighted that, although article 4 has operated as the principle vehicle for the prohibition of racist speech, the Convention contains other provisions essential for fulfilling the objectives articulated in that article. Article 4 expressly invokes article 5, which guarantees the right to equality before the law and the right to be free from racial discrimination in the enjoyment of rights, including freedom of expression. Article 6 requires the provision of effective remedies for violations of rights enshrined in the Convention, as indicated above, and article 7 underscores the importance of education in promoting equality and tolerance.

55. In paragraph 84 of the Durban Declaration, the participants at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance condemned the persistence and resurgence of neo-Nazism, neo-Fascism and violent nationalist ideologies based on racial or national prejudice. In paragraph 85 of the Declaration, they condemned political platforms and organizations based on, among other things, doctrines of racial superiority and related discrimination, as well as legislation and practices based on racism, racial discrimination, xenophobia and related intolerance, highlighting that they were incompatible with democracy and transparent and accountable governance. Furthermore,

³⁹ Committee on the Elimination of Racial Discrimination, general recommendation No. 35, paras. 4 and 15.

⁴⁰ *Ibid.*, paras. 7 and 16.

⁴¹ *Ibid.*, para. 12. See also Human Rights Committee, general comment No. 34, paras. 22–25 and 33–35.

⁴² Committee on the Elimination of Racial Discrimination, general recommendation No. 35, para. 20.

participating States reaffirmed, in paragraph 94 of the Declaration, that the stigmatization of people of different origins by acts or omissions of public authorities, institutions, the media, political parties or national or local organizations was not only an act of racial discrimination but could also incite the recurrence of such acts, thereby resulting in the creation of a vicious circle that reinforced racist attitudes and prejudices and required universal condemnation.

56. The Rabat Plan of Action on the prohibition of advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence also contains a high threshold for restrictions on freedom of expression.⁴³ It outlines a six-part threshold test in keeping with the approach of the Committee on the Elimination of Racial Discrimination, taking into account the following factors: context; speaker; intent; content and form; extent of the speech act; and likelihood, including imminence. The consultative process undertaken in the context of creating the Plan of Action was aimed at enhancing understanding of the relationship between freedom of expression and incitement to hatred. In paragraph 11 of the Plan of Action, concern was expressed that perpetrators of incidents that were in violation of article 20 of the International Covenant on Civil and Political Rights were often not punished and, at the same time, that de facto persecution persisted, through the abuse of vague domestic legislation, jurisprudence and policies. It was also found that anti-incitement laws in countries worldwide were at times excessively narrow or vague. It was recommended in paragraph 21 of the Plan of Action that domestic legal frameworks on incitement to hatred expressly refer to article 20 (2) of the Covenant and include robust definitions of key terms such as “hatred”, “discrimination”, “violence” and “hostility” as defined in the Camden Principles on Freedom of Expression and Equality.⁴⁴

57. With respect to remedial measures for victims of antisemitic hate crimes and hate speech, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 2 of the International Covenant on Civil and Political Rights require States parties to ensure that everyone within their jurisdiction has access to effective protection and remedies through competent tribunals and other State institutions. As mentioned above, article 6 of the Convention further states that victims of racial discrimination must also have the right to seek adequate reparation or satisfaction for any discrimination they experience.

58. Finally, the Special Rapporteur notes that international human rights law underscores the role of education in promoting tolerance. Article 26 (2) of the Universal Declaration of Human Rights stipulates that education is to promote understanding, tolerance and friendship among all nations, racial or religious groups. Article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination requires States parties to adopt immediate and effective measures, particularly in the fields of 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 ethnic groups. Paragraph 95 of the Durban Declaration recognizes that education is a key to changing attitudes and behaviour based on racism, racial discrimination, xenophobia and related intolerance and to promoting tolerance and respect for diversity in societies and friendship among all nations and racial or religious groups. Paragraph 97 of the Declaration spells out the importance of human rights education, especially among children and young people, in the prevention and eradication of all forms of intolerance and discrimination.

⁴³ For details about the Rabat Plan of Action and its consultation process, see www.ohchr.org/EN/Issues/FreedomOpinion/Articles19-20/Pages/Index.aspx.

⁴⁴ Article 19: International Centre against Censorship, “Camden Principles on Freedom of Expression and Equality” (2009). Available at www.article19.org/resources/camden-principles-freedom-expression-equality/. See also E/CN.4/1996/39, annex, and A/67/357, paras. 39–45.

VI. Recommendations

59. The Special Rapporteur urges Member States to take concrete measures to prevent and combat the rise of antisemitism, in accordance with international human rights standards, and to provide victims with appropriate remedies.

60. The Special Rapporteur recommends that States ensure effective enforcement of laws prohibiting organizations and associations that promote or incite racial, religious and national hatred, while protecting the human rights to freedom of expression and speech. She also urges those States that have made reservations to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination to withdraw those reservations.

61. The Special Rapporteur reiterates her recommendation that Member States adopt comprehensive measures to combat racist hate speech, in line with the recommendations of other United Nations human rights mechanisms and mandate holders. She would like to highlight the recommendations of the Committee on the Elimination of Racial Discrimination, especially general recommendation No. 35, and the adoption of comprehensive measures to address hate speech and xenophobic political discourse.

62. The Special Rapporteur recommends that States develop comprehensive frameworks to combat the glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial discrimination, xenophobia and related intolerance. She urges States to develop, in consultation with civil society and international, regional and national human rights mechanisms, strategies that combat antisemitism and extremist movements, including those of neo-Nazis and white supremacists.

63. The Special Rapporteur recognizes the importance of legislative measures in combating racism, but emphasizes that education is also vital to addressing racism and fostering intercultural dialogue. Education has a central role to play in combating racist stereotypes and promoting diversity. In this regard, civil society can play a critical role in collecting disaggregated data on racist crimes, offering support to victims of hate crime and conducting public awareness campaigns.

64. The Special Rapporteur underlines the importance of making linkages between antisemitic racism and other forms of racism and intolerance. She highlights the need to take action to address racism and xenophobia. She emphasizes the importance of Members States collaborating with a wide array of actors to implement strategies that address the institutional and individual sources of neo-Nazism, white supremacy and other extremist movements.

65. The Special Rapporteur underscores the need to address the distorted portrayals of racial, ethnic and religious groups that reinforce stereotypes and incite violence. She reaffirms the recommendations of the Committee on the Elimination of Racial Discrimination and previous mandate holders that Member States take all necessary and appropriate measures to implement the Durban Declaration and Programme of Action, as well as the outcome document of the Durban Review Conference. The Durban Declaration and Programme of Action, which are comprehensive and outline concrete measures to combat racism, xenophobia and related intolerance, are vital to ensuring effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination and developing a victim-centered approach to combating racism and xenophobia.

66. The Special Rapporteur urges political leaders and political parties to condemn racist hate speech and hold all perpetrators accountable for incitement to hatred and violence.

67. The Special Rapporteur acknowledges the efforts made by several States to monitor hate crime and speech that promotes racist ideology. These efforts should be further strengthened by collecting reliable and comparable disaggregated data. Data should be disaggregated by the grounds on which offences were committed, and the

characteristics of victims and perpetrators, including their gender, age and ethnicity. This information is crucial to ensuring a comprehensive analysis of the scope of the problem of acts of intolerance for the design and implementation of policies to combat intolerance.

68. The Special Rapporteur calls upon States to intensify efforts to address intersectional forms of discrimination and intolerance.

69. The Special Rapporteur recognizes that combating denialism requires that the international community acknowledges and repairs the wrongs of the past. Education plays a key role in promoting diversity and dismantling historical denialism. The Special Rapporteur strongly emphasizes the importance of teaching the truth about slavery, colonialism, the Holocaust and other historical events and tragedies that have shaped our contemporary social, political, legal and economic structures.

70. The Special Rapporteur urges greater collaboration among representatives of different racial, ethnic and religious communities to combat forms of intolerance and discrimination they face in common.
