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Annex

**Contribution of the Council of Europe
to the Implementation of the Durban Declaration
and Programme of Action**

**Council of Europe Action to Combat Racism and Intolerance
(2001-2008)**

**Contribution submitted
by the Secretary General of the Council of Europe
to the Durban Review Conference (20-24 April 2009)**

I. Introduction

1.

discrimination. CoE actions also encompass manifestations of racism aimed at individuals or groups based upon a broad catalogue of grounds including not only race, colour and national or ethnic origin, but also language, religion and nationality.ⁱⁱ Furthermore, the CoE is keenly aware that racism constantly mutates, taking on new forms in different contexts at different times, and therefore seeks to ensure that its actions cover all of the contemporary forms.

6. ECRI has noted many positive developments in European states in recent years, especially as concerns strengthening legislation aimed at providing

specific victims and the overall fight against racism and racial discrimination and that all of its actions are in accordance with the general principle of the equal dignity of all human beings.

Africans and people of African descent

11. Anti-black racism remains an important problem in many European countries and does not receive sufficient attention. It manifests itself as discrimination in different fields of life, such as employment, law enforcement, housing and sport. In its 2007 Annual report ECRI notes that black people are not only victims of racism because of the colour of their skin, but also because

- welfare; conduct of law enforcement officials; cultural identity; awareness-raising; and data collection.
15. In 2006, the Council of Europe Commissioner for Human Rights (CHR) published a thematic report on the human rights situation of the Roma, Sinti and Travellers in Europe. This report addressed major human rights concerns regarding the Roma in Europe while underlining their seriousness and the necessity to take urgent action to improve the situation. Under each section – discrimination in housing, education, employment and health care, racially-motivated violence and relations with law enforcement authorities, issues related to asylum, displacement and trafficking in human beings – the Commissioner made recommendations to member states as to the type of action required. While most country reports of the CHR include an assessment of the situation of Roma, the CHR has also carried out special visits to member states to address emergencies faced by Roma followed by recommendations to the government concerned for remedying the situation. The Commissioner has highlighted the fact that the discrimination experienced by Roma, Sinti and Travellers is aggravated by multiple forms of discrimination such as gender discrimination.
 16. In 2007, the European Court of Human Rights gave a landmark decision in the case of *DH and Others v Czech Republic* finding that the disproportionate number of children of Roma origin in special schools for children with learning disabilities amounted to indirect discrimination in violation of Article 14 (prohibition of discrimination) of the European Convention on Human Rights read in conjunction with Article 2 of Protocol No.1 (right to education).^{vi} The problem of channelling Roma children into schools for children with mental disabilities or other forms of segregated schooling exists in several European countries. With this decision, the Court has made clear that this is illegal and that European states have an obligation to put an end to such discrimination against Roma in education.
 17. In 2002, following the WCAR, the CoE's existing Group of Specialists on Roma/Gypsies (MG-S-ROM) expanded its areas of responsibility to include Travellers and was renamed Committee of Experts on Roma and Travellers. MG-S-ROM provides recommendations and advice which have assisted governments and public bodies to develop legislation, policies and strategies to improve the situation of Roma and Travellers. The CoE Division on Roma and Travellers, which co-ordinates MG-S-ROM, also provides member states with expertise in adopting and implementing national strategies for Roma. These strategies or programmes now exist in more than 20 European countries, many of them adopted at the instigation and with the assistance of the CoE. The Division has also been very active in capacity-building of national Roma NGOs in several member states.
 18. In December 2004 a special Partnership Agreement was signed between the CoE and the newly created European Roma and Travellers Forum - an organisation representing Roma and Travellers across Europe. The Agreement provides for a CoE contribution in terms of funds and human resources and enables the Forum to have a privileged relationship with these sectors of the organisation dealing with issues relevant to Roma and Travellers.
 19. During 2006 and 2007 the Council of Europe, together with the European Commission, carried out the Dosta! awareness-raising Campaign in five South Eastern European countries to address anti-Gypsyism and build bridges between Roma and the majority society. In 2008 the Campaign was extended to other countries.

Muslims and Islamophobia

20. In its 2007 Annual report ECRI noted that it was “concerned by the continuing climate of hostility towards persons who are Muslim or are perceived to be Muslim, and deplores the fact that Islamophobia continues to manifest itself in different guises within European societies. Muslim communities and their members continue to face prejudice, negative attitudes and discrimination. The discourse of certain political figures or some of the media contributes to this negative climate, which can sometimes lead to acts of violence against Muslim communities.”^{vii} The climate of opinion with respect to Muslims in Europe has been particularly affected by the “fight against terrorism”. ECRI’s third cycle country monitoring reports frequently discuss racism and discrimination directed against Muslims and recommend that authorities take action to address these problems. ECRI’s General Policy Recommendation No.5 concentrates on “Combating Intolerance against Muslims” and provides detailed guidelines on this subject.

Jews and anti-Semitism

21. During recent years ECRI has continued to document an increase in violent acts of anti-Semitism and the spread of new manifestations. Its country reports consistently examine anti-Semitism. ECRI’s General Policy Recommendation No.9 (GPR 9) on the fight against anti-Semitism is the first European legal instrument on this specific subject. GPR 9 notes that new manifestations “have often closely followed contemporary world developments such as the situation in the Middle East”. It also underlines that “these manifestations are not exclusively the actions of marginal or radical groups, but are often mainstream phenomena, including in schools, that are becoming increasingly perceived as commonplace occurrences.” In GPR 9, ECRI notes that it is: “Profoundly convinced that combating anti-Semitism, while requiring actions taking into account its specificities, is an integral and intrinsic component of the fight against racism.”^{viii} A considerable part of GPR 9’s guidelines sets out the anti-Semitic acts which ECRI believes should be addressed through criminal law.

Migrants and refugees

22. Under the European Social Charter (ESC), Article 19 protects the rights of migrant workers. One of the obligations under Article 19(1) is that states must take measures to prevent misleading propaganda relating to immigration and emigration. According to the case law of the European Committee of Social Rights (ECSR), which monitors compliance by states with their obligations under the ESC, for action against misleading propaganda to be effective, it should include legal and practical measures to tackle racism and xenophobia as well as trafficking. Such measures, which should be aimed at the whole population, are necessary inter alia to counter the spread of stereotyped assumptions that migrants are inclined to crime, violence, drug abuse or disease. States must also take measures to raise awareness amongst law enforcement officials, including officials who are in first contact with migrants.
23. The Parliamentary Assembly has paid particular attention to the issue of rights of irregular migrants and in 2006 adopted Resolution 1509 on Human Rights of Irregular Migrants,

Resolution 1568 on Regularisation Programmes for Irregular Migrants, highlighting that the many millions of irregular migrants in Europe should not be left in the shadows of society, facing an uncertain future and exploitation, when there were no reasonable expectations of their return to their countries of origin. The Assembly is currently examining the difficult situation of “Europe’s boat-people”, the reception conditions offered to them and the conditions in which they are detained. A Resolution is scheduled to be adopted by the Assembly on this issue in November 2008.

24. In 2007, the Commissioner for Human Rights released an Issue Paper on the Human Rights of Irregular Migrants in Europe, in which he describes the various risks faced by such migrants and suggests how host states might reinforce the protection of this vulnerable group. The Commissioner had already adopted a Recommendation on the rights of foreigners wishing to enter the territory of member states of the CoE and the carrying out of expulsion procedures in 2001. The Commissioner has also published a series of Viewpoints regarding the protection of human rights of migrants, refugees, internally displaced and stateless persons in Europe. Among other issues, he has highlighted human rights concerns in EU law and policy on migration including the manner of returning undocumented migrants to their countries of origin.
25. In its country reports, ECRI regularly examines the situation of migrants, asylum seekers and refugees. In recent years, ECRI has repeatedly drawn attention to a climate of political debate about immigration which has not only hardened considerably, but also tends to stigmatise entire communities, notably foreigners. The latter are frequently presented as the persons responsible for the deterioration of security, unemployment and increased public expenditure. ECRI warns that this process of stigmatisation provides a breeding ground for racial discrimination towards this part of Europe’s population.
26. In 2006, the Congress of Local and Regional Authorities launched the “Cities for Local Integration Policy” Network. The network seeks, through a structured exchange of experiences among cities, to support the effective and sustainable social, economic and societal integration of migrants and to combat social inequality and discrimination. The network currently numbers around 30 members with cities from different parts of Europe including medium-sized and larger cities.
27. Of specific concern is the situation of immigration detainees. The European Committee for

this field, entered into force on 1 February 2008. It sets out measures to prevent trafficking in human beings, to prosecute the traffickers and to provide protection to victims and safeguard their human rights. It applies to all victims of trafficking and all forms of exploitation, including sexual exploitation, forced labour or services, slavery or practices

III. Measures of prevention, education and protection aimed at the eradication of racism, racial discrimination, xenophobia and related intolerance at the national, regional and international levels

34. Part III of the DPA focuses on the range of measures needed to eradicate racism, racial discrimination, xenophobia and related intolerance in the long term as well as to address current forms through legislative and policy measures.
35. The CoE's work in this field monitors the action taken by member states and provides them with detailed guidelines on improvements. The CoE also undertakes continent-wide activities and co-ordinates cross-fertilisation of experiences between European countries. These problems have long plagued Europe, and effectively combating them requires broad-ranging changes in societal institutions and longstanding practices as well as individual and group attitudes and behaviours. This can only be achieved through recognising problems; enacting effectively implemented legislation; creating specialised institutions to promote change, strengthen measures and provide expert advice in this area; adopting policies aimed at combating all forms of direct and indirect discrimination; positive action to achieve full and effective equality and facilitate full participation; long-term educational and awareness raising work to combat racist stereotypes and promote appreciation of diversity; and changing the nature of the information and ideas about minorities and immigrants disseminated by public opinion leaders, such as the media and politicians.

Legal protection against racism, racial discrimination, xenophobia and related intolerance

36. Since the WCAR, Council of Europe bodies have significantly advanced European legal protection against racism, racial discrimination, xenophobia and related intolerance.
37. The European Court of Human Rights (ECtHR), which safeguards the respect of obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) by issuing judgments which are legally binding on State Parties, has made a number of decisions which significantly reinforce protection against racial discrimination and certain forms of racially motivated crimes. Based on the premise that "racial violence is a particular affront to human dignity" and "racial discrimination a particularly invidious kind of discrimination", the ECtHR requires "special vigilance and a vigorous reaction" from the authorities. It also insists that "the authorities must use all available means to combat racism, thereby reinforcing democracy's vision of a society-0.t4u65 so

significantly expand the Court's role in respect of measures to eliminate the widespread practices of indirect discrimination which affect minority groups across Europe.

40. In addition, Protocol 12 to the ECHR entered into force on 1 April 2005. So far, 37 of the Council of Europe's 47 member states have signed the Protocol, and 17 have ratified it. Protocol 12 adds a free-standing non-discrimination provision to the ECHR, extending the ECHR's protection against discrimination to "any right secured by law". Protection under Article 14 only applies to the enjoyment of those rights guaranteed by the ECHR. Protocol 12 therefore opens the way for the ECtHR to rule on states' obligations regarding the many cases of discrimination previously outside the ECHR's scope that occur across Europe.
41. The European Committee for Social Rights (ECSR)

Establishment and reinforcement of independent specialised national institutions

48. ECRI is the Council of Europe's independent specialised body responsible for combating racism, racial discrimination, xenophobia, anti-Semitism and related intolerance. ECRI's action covers all necessary measures to combat violence, discrimination and prejudice against persons or groups of persons on grounds of race, colour, language, religion, nationality or national or ethnic origin. The entirety of its work furthers implementation of the DPA. ECRI's task is to provide CoE member states with concrete and practical advice on how to tackle problems of racism, racial discrimination, xenophobia, anti-Semitism and related intolerance in their country. To this end, it examines the legal framework in each country for combating racism and racial discrimination, its practical implementation, the existence of independent bodies to assist victims of racism, the situation of vulnerable groups in specific policy areas (such as education, employment and housing.) and the tone of political and public debate around issues relevant for these groups.
49. ECRI has made clear that the obligations of states in this area, as in other areas of human rights, include both negative obligations (refraining from discriminating) and positive obligations (actively guaranteei

out the different powers which should be included in the competence of such bodies in the context of legislation aimed at combating racism and racial discrimination.^{xx} In line with the DPA, ECRI has stepped up its co-operation with national specialised bodies in this field. In particular, it has held a number of meetings with representatives of these bodies focused on complex issues of mutual interest which are important to the fight against racism and discrimination. These meetings have to date focused on anti-discrimination legislation and the role of specialised bodies (November 2003); mediation and other forms of dispute resolution in cases of racism and raci 0 0 12 488.52 740.3003 0 1February20036);powm

Actions, including positive measures, to eliminate racism and racial discrimination across key fields of life

58. The DPA urged states to take a wide range of action-oriented policies, including positive measures to ensure non-discrimination in key fields of life.
59. Furthering such measures is a fundamental aspect of ECRI's work. Through its country-

their substantial powers to take a wide range of active measures to combat all forms of racism.

Politicians and political parties

64. In September 2003, the President of the CoE's Parliamentary Assembly (PACE), along with the President of the European Parliament, signed the Charter of European Political Parties for a Non-Racist Society. The Charter calls on political parties to act responsibly when dealing with issues related to race, ethnic and national origin and religion. It encourages political parties to work towards fair representation of racial, ethnic, national and religious minorities within and at all levels of their party system. PACE also adopted its own resolution on "racist, xenophobic and intolerant discourse in politics."^{xxvi} In this Resolution, it strongly encourages the application of this Charter throughout Europe. It also expresses support for the establishment of a permanent body representative of political parties from all Europe to monitor implementation of the Charter. In addition it recommends that political parties in all member states of the Council of Europe sign the Charter, fully and effectively implement its provisions and co-operate in the establishment and thereafter in the activities of a supervisory body.
65. In March 2005, ECRI adopted a Declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse. The Declaration suggests the following practical and self-regulatory measures which can be taken by political parties or national parliaments; the signature and implementation by European political parties of the Charter of European Political Parties for a Non-Racist Society; effective implementation of criminal law provisions against racist offences; the adoption and implementation of provisions penalising the leadership of any group which promotes racism, as well as support for such groups and participation in their activities; and the establishment of an obligation to suppress public financing of organisations which promote racism, including public financing of political parties. ECRI also calls on political parties to formulate a clear political message in favour of diversity in European societies and for courageous and effective political leadership which respects and promotes human rights. ECRI also regularly addresses this problem in its country monitoring work and has developed extensive standards on the subject.

Education and awareness-raising measures

66. Furthering the DPA in the area of education and awareness-raising, the CoE has carried out a wide range of activities to eliminate racism and racial discrimination in the education sector, promote appreciation of diversity and tolerance, develop intercultural dialogue and more generally further democratic culture and human rights values. These activities include elaborating European legal standards, providing legal and policy guidance to states, forums, seminars, training programmes, curriculum development and Europe-wide campaigns.
- 67.

educational efforts and even an ethos of bilingualism and plurilingualism with regard to languages. Different situations and different groups may need to be treated differently in order to ensure effective equality and access to good quality education for all persons.”^{xxix}

68. ECRI's GPR 10 on "Combating racism and racial discrimination"

Local and Regional Authorities has also issued a Recommendation on integration through sport. This Recommendation invites local authorities to use sporting activities as a means of promoting the integration of people from immigrant backgrounds^{xxx}. On the occasion of the 2008 UEFA European Football Championship, ECRI issued a declaration on the topic of combating racism in football. ECRI is also currently preparing a General Policy Recommendation specifically focused on combating racism in sport.

Intercultural dialogue

74. The CoE has in recent years undertaken numerous initiatives to promote intercultural dialogue and mutual understanding. The Third Summit of Heads of States and Governments (2005) made intercultural dialogue a priority of the Organisation. It launched strategies to manage and promote cultural diversity while ensuring the cohesion of societies and encouraged intercultural dialogue including its religious dimension. This was fleshed out in the “Faro Declaration on the Council of Europe’s Strategy for Developing Intercultural Dialogue”, adopted by the Ministers of Culture later in 2005. Promoting and protecting diversity in a spirit of tolerance was also the theme of various instruments which the Council of Europe has adopted since 2001 - conventions and agreements engaging all or some of the member states as well as recommendations, declarations and opinions.^{xxxi} Furthermore, between 2001 and 2007, the Commissioner for Human Rights organised a series of seminars on inter-faith dialogue which included issues concerning education and the relationship of the state with religious communities. The inclusion of factual information about major religions in educational curricula was stressed as a means to prevent racism and xenophobia.
75. In May 2008, the Committee of Ministers of the Council of Europe published a “White Paper on Intercultural Dialogue” under the title “Living Together as Equals in Dignity”. The White Paper provides a conceptual framework and a guide for policy-makers and practitioners. It argues that our common future depends on the ability to safeguard and develop human rights, as enshrined in the European Convention on Human Rights, democracy and the rule of law and to promote mutual understanding. Intercultural dialogue can only thrive, the White Paper maintains, if certain preconditions are met. To advance intercultural dialogue, the democratic governance of cultural diversity should be adapted in many aspects; democratic citizenship and participation should be strengthened; intercultural competences should also be taught and learned; spaces for intercultural dialogue should be created and widened; and intercultural dialogue should be taken to the international level.

Information, communication and the media, including new technologies

76. Numerous Council of Europe bodies have taken measures to further the DPA in the area of information, communication and media. These measures include several standard-setting instruments aimed at dealing with the problem of racist and xenophobic material disseminated via the internet.
77. The PACE adopted a Recommendation on “The Image of Asylum-seekers, Migrants and Refugees in the Media”.^{xxxii} In its country monitoring work, ECRI regularly examines the role the media in each country is playing as a vehicle for either promoting or combating racist ideas. Both the PACE and ECRI recommend that this issue should be addressed through a variety of measures including hate speech legislation and its effective

implementation against the media where provisions are violated; self-regulation by the media profession; guidelines; complaints procedures; training; incentive programmes and the inclusion of diversity within the media.

78. On 28 January 2003, an Additional Protocol to the Convention on Cybercrime was opened for signature. This instrument requires State Parties to adopt such legislative and other measures as may be necessary to establish the following conduct as criminal offences under their domestic laws:

- dissemination of racist and xenophobic material through computer systems;
- racist and xenophobic motivated threats performed through a computer system;
- racist and xenophobic motivated public

^{ix} It notes with concern that women are often subjected to multiple discrimination on grounds of their gender as well as their origin. It also contains specific provisions aimed at protecting immigrant women, who are in a particularly vulnerable situation. It recommends that member States should “ensure that all services and legal remedies available for victims of domestic violence are provided to immigrant women upon their request” (paragraph 24). It also recommends that States should “consider, where needed, granting immigrant women who have been/are victims of domestic violence an independent right to residence in order to enable them to leave their violent husbands without having to leave the host country.” (paragraph 59)

^x Paragraph 26.

^{xi} See the case of *Nachova and others v. Bulgaria*, Applications nos. 43577/98 and 43579/98, 6 July 2005, Grand

how such education should be shaped in terms of content as well as form (rights in education) in order to facilitate the development of the abilities and personality of the child, guarantee child safety and accommodate the linguistic, religious, philosophical aspirations of pupils and their parents.

^{xxix} Part III.

^{xxx} Recommendation 233(2008), Integration through sport, 14th session, spring session, (Malaga 13 - 14 March, 2008)

^{xxxi} The Framework Convention on the Value of Cultural Heritage for Society (2005) identified how knowledge of this heritage could encourage trust and understanding. Intercultural dialogue became a theme for Ministers responsible for culture in the Opatija Declaration (2003). The Parliamentary Assembly of the Council of Europe has contributed an array of recommendations, resolutions, hearings and debates on various aspects of intercultural and inter-religious dialogue. In Recommendations 245 (2008) on intercultural and interreligious dialogue: an opportunity for local democracy the Congress of Local and Regional Authorities draws attention to the role of local and regional authorities in facilitating intercultural and interreligious dialogue, building on the 12 principles for interfaith dialogue elaborated at its conference in Montchanin and further developed in its 2008 publication "Gods in the city".

^{xxxii} Doc 11011, 10 July 2006. The recommendation highlights that: "The media plays an essential role in ensuring that issues linked to migration, refugees and asylum are portrayed in a fair and balanced way. It is therefore the media's responsibility to also reflect the positive contribution to society made by these persons, and to protect them from negative stereotyping. It is also important that media professionals among the migrants and asylum seekers represent their communities in the media, and that their views, and issues of interest to them and concerning them, be reflected in the media." (paragraph 5)

^{xxxiii} The Declaration provides that "...member states should ensure that national legislation to combat illegal content, for example racism, racial discrimination and child pornography, applies equally to offences committed via ICTs." Paragraph I(1) Moreover, private sector actors are encouraged to take self- and co-regulatory measures addressing in a decisive manner "...hate speech, racism and xenophobia and incitation to violence in a digital environment such as the Internet..." Paragraph II(3) The Declaration also stresses that "any regulatory measure on the media and new communication services should respect and, wherever possible, promote the fundamental values of pluralism, cultural and linguistic diversity, and non-discriminatory access to different means of communication." Paragraph I(3)

^{xxxiv} Guidelines to assist online games providers in their practical understanding of, and compliance with, human rights and fundamental freedoms in the Information Society, in particular with regard to Article 10 of the European Convention on Human Rights, Paragraph 16. These guidelines were prepared by the CoE Group of Specialists on Human Rights in the Information Society in close cooperation with Interactive Software Federation of Europe (ISFE).

^{xxxv} European Roma Rights Center (ERRC) v. Greece, Complaint No. 15/2003, decision on the merits of 8 December 2004; European Roma Rights Center (ERRC) v. Italy, Complaint No. 27/2004, decision on the merits of 7 December 2005; European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 31/2005, decision on the merits of 18 October 2006 and International Movement ATD Fourth World v. France, Complaint No. 33/2006, decision on the merits of 5 December 2007.

^{xxxvi} European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 46/2007; European Roma Rights Center (ERRC) v. Bulgaria, Complaint No. 48/2008; INTERIGHTS v. Greece, Complaint No. 49/2008; European Roma Rights Center (ERRC) v. France Complaint No. 51/2008.

^{xxxvii} As concerns civil and administrative legislation ECRI's recommendations include: awareness-raising campaigns and training sessions aimed at judges, magistrates, lawyers and law enforcement officials on the content of relevant provisions and manifestations of racial discrimination in society; awareness raising measures aimed at the general public, groups vulnerable to racial discrimination, the legal community and other strategic partners about the civil and administrative legal framework in force against discrimination and the mechanisms for invoking it; close monitoring of the implementation of anti-discrimination legislation and measures to improve implementation; collecting data on the implementation of such legislation, notably on the number of complaints filed and the outcome of these complaints, including redress or compensation awarded.

As concerns the application of criminal legislation, ECRI's recommendations concern the role of political authorities, prosecution authorities and law enforcement agencies. They emphasise: the importance of a firm

