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

Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mutuma Ruteere^{*}

Summary

The unprecedented, rapid development of new communication and information technologies, such as the Internet and social media, has enabled wider dissemination of racist and xenophobic content that incites racial hatred and violence. In response, States, international and regional organizations, civil society and the private sector have undertaken a variety of legal and policy initiatives.

In the present report, the Special Rapporteur examines the context, key trends and the manifestations of racism on the Internet and social media, and provides an overview of the legal and policy frameworks and the measures taken at international, regional and national levels, as well as some of the regulatory norms adopted by Internet and social network providers. He presents examples of measures taken to respond to the use of the Internet and social media to propagate racism, hatred, xenophobia and related intolerance, while highlighting the overall positive contribution of the Internet and social media as an effective tool for combating racism, discrimination, xenophobia and related intolerance.

^{*} Late submission.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 16/33. It builds upon the report of the Special Rapporteur submitted to the General Assembly (A/67/326), in which he examined issues relating to the use of new information technologies, including the Internet, for disseminating racist ideas, hate messages and inciting racial hatred and violence. It also builds upon reports of previous mandate holders, taking into account recent developments and information gathered in particular through an expert meeting and research conducted by the Special Rapporteur.

2. The present report should be considered together with the previous report of the Special Rapporteur, in which he raised concerns at the use of the Internet and social media by extremist groups and individuals to disseminate racist ideas and to propagate racism, racial discrimination, xenophobia and related intolerance. States, national human rights institutions, civil society organizations and academics have also expressed concern regarding the increased use of the Internet and social media to proliferate, promote and disseminate racist ideas by extremist political parties, movements and groups. Concerns have also been raised about the rising number of incidents of racist violence and crimes against, in particular, ethnic and religious minorities and migrants, and the lack of adequate data on such violence and crimes. Extremist groups and movements, particularly far-right movements, use the Internet and social media networks not only as a means to disseminate hate speech and incite racial violence and abuse against specific groups of individuals, but also as a recruitment platform for potential new members.

3. Although there are a number of legal, regulatory, technical and other practical challenges to the fight against racism and incitement to hatred and violence on the Internet, the enforcement of laws and regulations is challenging owing to the complexity occasioned by the lack of clarity of legal terms. The effectiveness of national legislation also becomes limited since States adopt differing laws, policies or approaches with regard to hate or racist content on the Internet. In addition, due to their transborder nature, cases related to racism, incitement to racial hatred and violence through the Internet most often fall under different jurisdictions, depending on where the inappropriate or illegal content was hosted and created and where hate crimes prompted by such racist or xenophobic content took place.

4. The unprecedented, rapid development of new communication and information technologies, including the Internet, has enabled wider dissemination of racist and xenophobic content that incites racial hatred and violence. In response, States, international and regional organizations have undertaken a variety of legal and policy initiatives. Civil society organizations have also contributed to addressing this phenomenon through various measures and initiatives. Some technological measures have also been initiated by the private sector, including social media platforms and networks. A more comprehensive approach to combat the challenge is however necessary. Such an approach should involve dialogue and consultation among the relevant actors and stakeholders.

5. In the present report, the Special Rapporteur, after providing an overview of his activities, examines the context, key trends, manifestations of racism on the internet and social media (sections A and B). He then provides an overview of the legal and policy frameworks and measures taken at the international, regional and national levels, and also some of the regulatory frameworks adopted by Internet and social network providers (section C). He then presents different examples of measures for responding to the use of the Internet and social media to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance (section D), while highlighting the positive contribution of the Internet and social media as an effective tool for combating racism,

racial discrimination, xenophobia and related intolerance. The conclusions and recommendations are outlined in section VI.

II. Activities of the Special Rapporteur

A. Country visits

6. The Special Rapporteur would like to thank the Governments of Greece and of the Republic of Korea, which have accepted his request for country visits. He welcomes the agreement on dates with regard to the visit to the Republic of Korea for September and October 2014, and hopes to undertake the visit to Greece before the end of 2014.

7. The Special Rapporteur renewed his request to visit India, South Africa and Thailand, for which he was awaiting an invitation at the time of writing. The Special Rapporteur also sent a request for a follow-up visit to Japan and a request for a visit to Fiji.

8. The Special Rapporteur visited Mauritania from 2 to 8 September 2013.¹ He expresses his sincere gratitude to the Government for its cooperation and openness in the preparation and conduct of his visit.

B. Other activities

9. On 14 and 15 May 2013, the Special Rapporteur participated in a conference on the theme "Right-wing extremism and hate crime: minorities under pressure in Europe and beyond", in Oslo, organized by the Ministry of Foreign Affairs of Norway. The conference brought together international experts to discuss challenges and possible solutions relating to the rise of right-wing extremism and hate crimes directed against minorities in Europe and beyond.

10. On 24 and 25 June 2013, the Special Rapporteur attended the International Meeting for Equality and Non-Discrimination in Mexico City, organized by the Mexican National Council to Prevent Discrimination (CONAPRED). The meeting brought together international experts to debate and review international efforts to prevent discrimination and share good practices.

11. On 6 and 7 March 2014, the Special Rapporteur participated in the third and final meeting of the Teaching Respect for All Advisory Group at the United Nations Educational, Scientific and Cultural Organization (UNESCO), Paris, which reviewed the outcomes of several pilot projects conducted at the national level and validated the Teaching Respect for All Toolbox, an initiative undertaken by UNESCO to develop educational material promoting non-discrimination and inclusion.

12. On 20 March 2014, the Special Rapporteur held an exchange of views with the European Commission against Racism and Intolerance of the Council of Europe in Strasbourg, where themes of common interest and possible areas of future cooperation were discussed.

¹ See A/HRC/23/49/Add.1.

III. Use of the Internet and social media for propagating racism, racial discrimination, xenophobia and related intolerance

A. Context

13. In his report to the General Assembly (A/67/326), the Special Rapporteur undertook a preliminary examination of the issue of racism and the Internet, illustrating some of the key trends and challenges posed by the use of the Internet to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance.

14. In the present report, the Special Rapporteur builds upon the previous discussions, and illustrates some of the more recent manifestations of racism and hate on the Internet and social media networks. He discusses the applicable legislation and standards at the international, regional and national levels, but also through the norms of some key providers of social media platforms available on the Internet. Drawing from studies and from an expert meeting that he convened in New York on 11 and 12 November 2013, with the participation of academics, representatives of Internet and social media providers and civil society, the Special Rapporteur seeks to provide an updated overview of the remaining challenges and some good practices in the fight against racism and discrimination on and through the Internet.

15. At the above-mentioned expert meeting, discussions were held on the key issues, dilemmas and challenges posed in combating the propagation of racist and xenophobic content and incitement to violence on the Internet and social media, the governance of racist and xenophobic content on the Internet, and the balance between the protection of freedom of opinion and expression and the control of racist and xenophobic content and incitement to violence on the Internet. Views were exchanged on the key legal and policy measures taken at the national, regional and international levels, and good practices in combating racist and xenophobic content and in the promotion of the Internet as a tool against racism, racial discrimination and xenophobia were highlighted. The Special Rapporteur thanks the Association for Progressive Communications and Article 19 for their role in the successful outcome of the expert meeting.

B. Manifestations of racism, xenophobia, hate speech and other related forms of intolerance on the Internet and social media networks

16. The Internet, unlike traditional forms of communication and information technologies, has a tremendous capacity to transmit and disseminate information instantly to different parts of the world. It enables users to access and provide content with relative anonymity. Materials and content available on the Internet can be shared across national borders and be hosted in different countries with different legal regimes. Since the worldwide web was created 25 years ago, it has brought many benefits to all aspects of modern life as it continues to spread globally; more recently, social media platforms have emerged and become increasingly popular, and made it significantly easier for users to share information, photographs and links with friends and family. Since the creation of social media platforms, the Internet has evolved even more rapidly, to the extent that, today, every minute, 100 hours of videos are posted on the YouTube platform, and more than 1.5 billion photographs are uploaded every week on the Facebook network.

17. One of the greatest drawbacks of the Internet, however, is the fact that it also provides a platform to racist and hateful movements. The authors Abraham H. Foxman and

Christopher Wolf recently described the situation of how racism, xenophobia and hate manifest on the Internet:

Today there are powerful new tools for spreading lies, fomenting hatred, and encouraging violence. [...] The openness and wide availability of the internet that we celebrate has sadly allowed it to become a powerful and virulent platform not just for anti-Semitism but for many forms of hatred that are directly linked to growing online incivility, to the marginalization and targeting of minorities, to the spread of falsehoods that threaten to mislead a generation of young people, to political polarization, and to real-world violence.

The authors accurately perceive the dangers and challenges posed by the Internet and social media:

Instead of being under the central control of a political party or group, the power of the Internet lies in its viral nature. Everyone can be a publisher, even the most vicious anti-Semite, racist, bigot, homophobe, sexist, or purveyor of hatred. The ease and rapidity with which websites, social media pages, video and audio downloads, and instant messages can be created and disseminated on-line make Internet propaganda almost impossible to track, control, and combat. Links, viral e-mails, and “re-tweets” enable lies to self-propagate with appalling speed.²

18. The Special Rapporteur observes that there is an increasing use of electronic communication technologies, such as electronic mail and the Internet, to disseminate racist and xenophobic information and to incite racial hatred and violence. Right-wing extremist groups and racist organizations use the Internet in their transborder communications and exchange of racist materials. As technology evolves, extremist hate sites have similarly grown in both number and technological sophistication.

19. The Special Rapporteur notes with serious concern the use of the Internet and social media by extremist groups and individuals to disseminate racist ideas and to propagate racism, racial discrimination, xenophobia and related intolerance. This concern has also been echoed by many States, non-governmental organizations and Internet providers and social media platforms. One major consequence of the dissemination of such information is that the more people see hateful information, the more they tend to accept it and believe that the ideas are normal and mainstream.

20. Another major concern is that extremist groups and movements, particularly far-right movements, use the Internet and social media platforms not only as a means to disseminate hate speech and to incite racial violence and abuse against specific groups of individuals, but also as a recruitment platform for potential new members. The potential of the Internet is used to expand their networks of individuals, movements and groups, as it allows the rapid and more far-reaching dissemination of information about their aims and facilitates the sending of invitations to events and meetings. The web is also used by extremist movements and groups to distribute newsletters, video clips and other materials. It is worrying that calls for violence against individuals and groups advocating anti-racism activities are placed on websites and social media to intimidate, exert pressure or stop social or political actions or activities directed against extremist groups.³

21. The situation of marginalized persons and groups who are discriminated against on the Internet and social media largely reflects the challenges they face in the real world. While Internet technology has helped to connect and empower minority groups and

² Abraham H. Foxman and Christopher Wolf, *Viral Hate: Containing its Spread on the Internet* (New York, Palgrave Macmillan, 2013).

³ See A/HRC/26/50.

individuals, it has also increased their vulnerability by collecting their personal information, which can be accessed by extremists, allowing the groups to extend their reach. The Internet and social media can also empower extremist groups by giving them the illusion that their hateful beliefs are shared by a large community. This justification of their beliefs sometimes affords them the confidence to follow through with hate crimes in real life. Thus, hate and racism move from the virtual to the real world, with a disproportionate impact on marginalized groups.

C. Legal, policy and regulatory frameworks and measures taken at the international, regional and national levels by Internet and social media providers

22. In response to these above-described developments, international and regional organizations and States have undertaken a variety of legal and policy initiatives. Civil society and the private sector, and Internet and social media providers in particular, have also contributed to addressing this phenomenon through various measures and initiatives.

1. International frameworks and initiatives

23. The International Convention on the Elimination of All Forms of Racial Discrimination provides in its article 4 (a) that States parties shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, as well as incitement to racial discrimination; and in article 4 (b) it provides that States parties shall declare illegal and prohibit organized and all other propaganda activities which promote and incite racial discrimination.

24. A number of United Nations human rights mechanisms have addressed the issue of the use of the Internet and social media to propagate racism, racial hatred, xenophobia, racial discrimination and related intolerance. The Committee on the Elimination of Racial Discrimination, in its general recommendation XXIX on descent-based discrimination, recommended that States take strict measures against any incitement to discrimination or violence against descent-based communities, including through the Internet. Furthermore, in its general recommendation XXX on discrimination against non-citizens, the Committee recommended that action be taken to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of “non-citizen” population groups, in particular by politicians, officials, educators and the media, on the Internet and other electronic communications networks. The Committee has also expressed concern at the dissemination of racist propaganda on the Internet in a number of recent concluding observations issued after consideration of regular reports submitted by States parties, recalling that such dissemination falls within the scope of prohibitions of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination.

25. More recently, at its eighty-first session, held in August 2012, the Committee on the Elimination of Discrimination organized a thematic discussion on racist hate speech, which also touched upon the issue of the Internet and led to the adoption by the Committee of its general recommendation XXXV on combating hate speech. In the recommendation, the Committee recalled that racist hate speech, whether originating from individuals or groups, can take many forms, notably in being disseminated through electronic media, the Internet and social networking sites, and reminded States to pay full attention to all these manifestations of racism, xenophobia and related intolerance and to take effective measures to combat them. The Committee called upon States to encourage public and private media to adopt codes of professional ethics, and recalled the essential role played by the Internet and social media in the promotion and dissemination of ideas and opinions. The Committee

recommended that Internet and social media service providers ensure self-regulation and compliance with codes of ethics, as had been underlined previously in the Durban Declaration and Programme of Action.

26. The Durban Declaration and Programme of Action, adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, highlighted several important areas of action, in particular, the positive contribution made by the new information and communications technologies, including the Internet, in combating racism through rapid and wide-reaching communication. The progression of racism, discrimination, xenophobia and intolerance through the new information and communications technologies, including the Internet, was however a cause for concern for relevant stakeholders. As such, States were encouraged to implement legal sanctions, in accordance with relevant international human rights law, with regard to incitement to racial hatred on the Internet and social media. Furthermore, the Durban Declaration and Programme of Action called upon States to encourage Internet service providers to establish and disseminate specific voluntary codes of conduct and self-regulatory measures against the dissemination of racist messages, to set up mediating bodies at the national and international levels, also involving civil society, and to adopt appropriate legislation for the prosecution of those responsible for incitement to racial hatred or violence through the Internet and social media.

27. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression addressed the issue of the right of all individuals to seek, receive and impart information and ideas of all kinds through the Internet in 2011, when he underscored the unique and transformative nature of the Internet not only in enabling individuals to exercise their right to freedom of opinion and expression, but also a wide range of other human rights, and to promote the progress of society as a whole.⁴ The Special Rapporteur also addressed the circumstances under which the dissemination of certain types of information could be restricted, the issues of arbitrary blocking or filtering of content, the criminalization of legitimate expression and the imposition of intermediary liability.

28. The Rabat Plan of Action on the prohibition of advocacy on national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, adopted in 2012, reiterated that all human rights are universal, indivisible and interdependent and interrelated, and recalled the interdependence between freedom of expression and other human rights. The realization of freedom of expression enabled public debate, giving voice to different perspectives and viewpoints and playing a crucial role in ensuring democracy and international peace and security. The Rabat Plan of Action also stressed the importance of the role that the media and other means of public communication, such as the Internet and social media, play in enabling free expression and the realization of equality, and reiterated that freedom of expression and freedom of religion or belief are mutually dependent and reinforcing.

29. The United Nations Educational, Scientific and Cultural Organization (UNESCO) developed an integrated strategy to combat racism, discrimination, xenophobia and intolerance based on a series of studies and consultations on different aspects and forms of racism, xenophobia and discrimination, including the issue of combating racist propaganda in the media, in particular in cyberspace. The strategy includes a set of measures to be taken by the Organization in response to the potential use of new information and communications technologies, in particular the Internet, to spread racist, intolerant or discriminatory ideas. In 2013, UNESCO also developed the Teaching Respect for All

⁴ See A/HRC/17/27.

initiative, where the use of Internet in the classroom and curriculum is encouraged for an inclusive and tolerant curriculum, and makes recommendations for the development of new practices, particularly for youth with different cultural backgrounds and perspectives.

30. The United Nations Office on Drugs and Crime has also addressed the issue of cybercrime, including specific computer-related acts involving racism and xenophobia, by various means, such as providing technical assistance and training to States to improve national legislation and building the capacity of national authorities to prevent, detect, investigate and prosecute such crimes in all their forms. The International Telecommunication Union (ITU) has also been involved in the issue of cybersecurity and efforts to combat cybercrime since the World Summit on the Information Society and the ITU Plenipotentiary Conference, held in Guadalajara, Mexico, in 2010. ITU has also initiated the Global Cybersecurity Agenda, a framework for international cooperation aimed at enhancing global public confidence and security in the information society. ITU provides Member States with support through specific initiatives and activities related to legal, technical and procedural measures, organizational structures, and capacity-building and international cooperation on cybersecurity.

2. Regional frameworks and initiatives

31. At the regional level, the Council of Europe Convention on Cybercrime and the Additional Protocol thereto constitute a legally binding framework with the widest reach. The Convention, which entered into force on 1 July 2004, is the first international treaty on crimes committed via the Internet and other computer networks dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. The Additional Protocol, which concerns the criminalization of acts of a racist and xenophobic nature committed through computer systems and entered into force on 1 March 2006, makes the publication of racist and xenophobic propaganda via computer networks a criminal offence. The Additional Protocol also specifies that States parties are to adopt legislative and other measures that make a number of actions criminal offenses, including distributing or otherwise making available racist and xenophobic material; racist and xenophobic-motivated threats; racist and xenophobic-motivated insults; the denial, gross minimization, approval or justification of genocide or crimes against humanity; and aiding and abetting any of these actions.

32. The European Commission against Racism and Intolerance adopted General Policy Recommendation No. 6 in 2000, which focuses on combating the dissemination of racist, xenophobic, and anti-Semitic material on the Internet. The Commission also outlined a set of recommendations for Council of Europe Member States, one of which was the passing of a protocol to address racism and xenophobia on the Internet, which led to the above-mentioned Additional Protocol. The Commission has also published reports on reconciling freedom of expression with combating racism and on addressing racist content on the Internet.

33. The Council of Europe sponsored two initiatives against racism and hate on the Internet. The No Hate Speech Movement, a campaign focused on youth, was launched in 2012 to map hate speech online, to raise awareness about the risks that hate speech pose to democracy, to reduce acceptance of hate speech online and to advocate development and consensus on European policy instruments combating hate speech. This initiative also led to the creation of Hate Speech Watch, an online platform designed to monitor online hate speech content and to facilitate coordinated action against it. The Council of Europe has also initiated Young People Combating Hate Speech Online, an initiative with the aim of equipping young people and youth organizations with competences and tools to recognize and take positive action against discrimination and hate speech.

34. The Organization for Security and Cooperation in Europe (OSCE) has been enhancing its work in combating racism, racial discrimination, xenophobia and related intolerance on the Internet, starting in 2003, when the OSCE Ministerial Council made a commitment to combat hate crimes fuelled by racist, xenophobic and anti-Semitic propaganda on the Internet. In 2009, OSCE assigned the Office for Democratic Institutions and Human Rights with the task of exploring the potential link between the use of the Internet and bias-motivated violence and the harm it causes, as well as eventual practical steps to be taken.⁵ More recently, in 2010, OSCE adopted the Astana Declaration in which it called upon Member States, in cooperation with civil society, to increase their efforts to counter the incitement to imminent violence and hate crimes, including through the Internet, while respecting the freedom of expression, and for using the Internet to promote democracy and tolerance education.

35. In 1998, the European Union adopted an action plan that encouraged self-regulatory initiatives to deal with illegal and harmful Internet content, including the creation of a European network of hotlines for Internet users to report illegal content such as child pornography; the development of self-regulatory and content-monitoring schemes by access and content providers; and the development of internationally compatible and interoperable rating and filtering schemes to protect users. In May 2005, the European Union extended the action plan, entitled the “‘Safer Internet plus’ programme”, for the period 2005-2008, to promote safer use of the Internet and new online technologies, and particularly to fight against illegal content, such as child pornography and racist material, and content that is potentially harmful to children or unwanted by the end-user. More recently, the Safer Internet Programme (2009-2013) was implemented to promote safer use of the Internet and other communication technologies, to educate users, particularly children, parents and carers, and to fight against illegal content and harmful conduct online, such as “grooming and bullying”.

36. Other regional initiatives have been taken to reach a common understanding and coordination on principles and standards for the fight against cybercrime and to improve cybersecurity. In 2002, the Commonwealth of Nations developed a model law on cybercrime that provided a legal framework to harmonize legislation within the Commonwealth and to enable international cooperation. The same year, the Organization for Economic Cooperation and Development completed its Guidelines for the Security of Information Systems and Networks. It is now conducting a review of the Guidelines.

37. Similar regional initiatives aimed at reaching a common understanding and coordination on principles and standards for fighting cybercrime and improving cybersecurity have also been taken in other regional organizations. In 2001, the Association of Southeast Asian Nations (ASEAN) adopted a work programme to implement the ASEAN Plan of Action to Combat Transnational Crime. At the thirteenth ASEAN Senior Officials Meeting on Transnational Crime, in 2013, a work programme for 2013-2015 was adopted, which focused also on cybercrime and cybersecurity. In 2002, the Asia-Pacific Economic Cooperation (APEC) issued a cybersecurity strategy that outlined five areas for cooperation, including legal developments, information-sharing and cooperation, security and technical guidelines, public awareness, and training and education. More recently, APEC reiterated the commitment made to strengthen the domestic legal and regulatory framework on cybercrime and encouraged member States in particular to create strategies to create a trusted, secure and sustainable online environment, to address the misuse of the Internet, to develop watch, warning and incident response and recovery capabilities to help prevent cyberattacks, and to support cooperative efforts among economies to promote a

⁵ Available from <http://www.osce.org/cio/40695>.

secure online environment. In 2007, the League of Arab States and the Gulf Cooperation Council made a recommendation to seek a joint approach on cybercrime-related issues by taking into consideration international standards. In 2009, the Economic Community of West African States (ECOWAS) adopted a directive on fighting cybercrime in the ECOWAS region that provided a legal framework for its member States. In 2012, the East African Community adopted a framework for cyberlaw, which provided an overview of the legal issues relating to intellectual property, competition, taxation and information security.

38. In 2004, the Organization of American States (OAS) implemented the Inter-American Integral Strategy to Combat Threats to Cyber Security, the main objectives of which were to establish national “alert, watch and warning” groups, known as Computer Security Incident Response Teams, in each country, to create a hemispheric watch and warning network providing guidance and support to cybersecurity technicians from around the Americas, and to promote a culture and awareness of cybersecurity for the region. Other initiatives by OAS include the Inter-American Cooperation Portal on Cyber-Crime and the meetings of Ministers of Justice or Other Ministers or Attorneys General of the Americas, which are aimed at strengthening hemispheric cooperation in the investigation and prosecution of cybercriminality. More recently, in 2013, OAS and the Latin American and Caribbean Internet Addresses Registry signed a cybersecurity agreement to strengthen the development of the ties among Governments, the private sector and civil society in the Americas, thus ensuring a multidimensional approach to cybersecurity.

39. Although the above-mentioned initiatives include specific computer-related crimes involving incitement to racial hatred and violence, the majority of them do not specifically address content-related offences, such as the dissemination of racist ideas or incitement to racial hatred and violence on the Internet and social media, focusing rather on other forms of cybercrime and cybersecurity concerns.

3. Legal and regulatory frameworks taken at the national level and by Internet and social media providers

40. The issues of racism and incitement to racial hatred and violence on the Internet and social media have been addressed not only through national frameworks but also through different initiatives taken by Internet service providers and social media platforms. The Special Rapporteur has identified three main models emerging from the different frameworks and initiatives: the censorship model; the regulatory framework; and the freedom of speech approach.

41. Internet and social media censorship consists of suppressing information and ideas in order to “protect” society from “reprehensible” ideas. States are able to censor Internet content through various means, such as by setting up agencies to monitor the Internet and deciding what to censor according to established norms. This can also be achieved, by both States and Internet and social media providers, by programming Internet routers to block or censor the flow of specific data from Internet servers to service providers, and therefore to Internet and social media users. Moreover, when “objectionable” information is posted online, States can promptly demand that the Internet provider or social media platform remove it. In order to be effective, this type of censorship requires States to have extremely efficient systems in place to track and survey posted content and then to quickly remove it. Internet providers or social media platforms themselves may also achieve this goal, although with a lesser degree of efficiency.

42. The Special Rapporteur believes that while censorship does not necessarily need to serve illegitimate ends and can be used to suppress racially hateful speech, there are significant drawbacks. Censorship policies can have a chilling effect, as users who know that their online activities are screened by a government agency are less inclined to engage in freedom of expression. Users can be further deterred if they are unsure whether the

information they post will be removed or their liability will be invoked. In the view of the Special Rapporteur, the main concern is that censorship impedes the fundamental right to freedom of expression, as expressed in article 19 of the International Covenant on Civil and Political Rights and subsequent concluding observations.

43. Another model is the regulation framework, implemented either by the State or the Internet or social media provider. States can create a legal framework that determines what content on the web can be considered illegal. Under this model, a court or regulatory body determines whether the content should pursuant to the applicable law, be blocked, before the said content is filtered or removed. Alternatively, a non-governmental organization can be given the responsibility of monitoring the content posted on the Internet. While courts are usually seen as independent of political influence, a watchdog organization might, however, be viewed as applying government policies.

44. The Special Rapporteur was informed that, under the regulatory model, users may also be able to submit information to the overseeing body on content they feel violates the law and should be removed. This allows Internet users to implement self-censorship, and it also helps to ensure that illegal content will be found and removed, given that more users are looking out for it. A major benefit of the regulatory model is that it is more transparent than censorship. Internet users are usually aware of what information is allowed, and can have a voice in deciding what content will be blocked by voting for the politicians who make these laws. However, one drawback of allowing users to submit removal requests is that the decision-making process is often not transparent. Thus, after users submit their requests, they have no way of knowing why their request was granted or denied. This issue can be mitigated by ensuring that Internet users are informed of the decision-making process on content removal.

45. The above-mentioned regulatory model has been set up in France, where content and activity on the Internet is regulated by law LCEN 2004-575. The law relieves Internet service providers and social media platforms of responsibility for illegal content if they have “no knowledge of illegal activity or material” or if they have “acted promptly to remove or block access to it as soon as it was discovered”. The providers are also not held responsible if they did not know how the illegal activity or material arose. Once a judicial order is issued and proper notice is given, the hosting website is liable for any further reposting of the illegal material. A website may also be held liable for redirecting Internet users to other websites hosting illegal content. The benefit of the regulatory system used in France is that it is more transparent, with a court assessing whether a website should be blocked before any filtering is implemented. Moreover, it allows the Internet or social media provider the opportunity to remove the objectionable information prior to the issuance of a court order.

46. The Special Rapporteur was informed that, in the United Kingdom of Great Britain and Northern Ireland, the Internet is regulated by the Office of Communications (Ofcom), the mandates of which includes protecting audiences against harmful material, unfairness and infringements of privacy. Internet service providers and social media platforms are considered mere conduits of information and are not responsible for any illegal information transmitted. Although the State does not require providers and platforms to monitor information being transmitted, some filter certain types of content, such as child pornography materials, on their own initiative. In such a filtering system, called CleanFeed, the Internet Watch Foundation, a non-profit organization, works with the Government to compile a list of websites it deems illegal, then transmits the information to Internet service providers. The body, which is funded by the Internet industry, works with the police, the Home Office and the Crown Prosecution Service to receive public complaints and to determine whether the content hosted on a website is illegal. In the CleanFeed system, however, the list of filtered websites is not made public, which can lead to abuse when

determining which content should be filtered. Moreover, the body's decisions are not subject to judicial review, because it was not created by legislation, but has its own internal appeal procedure.

47. An alternative way of addressing racism and hate speech on the Internet and social media is to apply no kind of censorship or regulation, based on the ideal of freedom of speech and expression. Users are free to express their ideas and post comments or content that can be offensive, racist, xenophobic or hateful in any kind of meaning, and other users react to such racist or hateful speech or content by counter-speech. Although such an approach limits the interference of the State or of Internet or social media providers, it can allow anyone to spread hateful or racist language, ideas or contents that can offend, ridicule or marginalize a specific individual, group or population. Such an unlimited right to freedom of speech and expression can also be destructive to society because it may increase tensions between certain groups and cause unrest.

48. The United States of America provides an example of freedom of speech that seeks to limit prohibitions, based on the First Amendment to the Constitution. In the case of *Chaplinsky v. New Hampshire* (1942), the Supreme Court of the United States ruled that:

There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any constitutional problem. These include the lewd and obscene, the profane, the libelous, and the insulting or "fighting" words – those which by their very utterance inflict injury or tend to incite an immediate breach of peace... It has been well observed that such utterances are no essential part of any exposition of ideas, and are of such slight social value as a step to truth that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality.

49. Since the case, the Supreme Court has also ruled that persons are free to choose the words that best express their feelings, and that strong or offensive language may better convey the person's feelings. It has since then also struck down States' laws that were considered too broad in prohibiting speech, on the grounds that, if the statute suffers from overreach, the effect is to chill free speech. A restriction may, however, be placed on freedom of speech when the insulting or hate speech is likely to incite to or promote violence, and can thus be prohibited. Nevertheless, this violence must be of an immediate threat. The Supreme Court has not directly specified which degree of offensiveness of the language used may constitute such an immediate threat.

50. Nevertheless, the Special Rapporteur recalls article 19, paragraph 3, of the International Covenant on Civil and Political Rights, and article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, which stipulate that the right to freedom of opinion and expression may be restricted legitimately under international human rights law essentially to safeguard the rights of others, and that that States are to declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination, and prohibit activities that promote and incite racial discrimination. Content that may be restricted includes child pornography (to protect the rights of children), hate speech (to protect the rights of affected communities), defamation (to protect the rights and reputation of others against unwarranted attacks), direct and public incitement to commit genocide (to protect the rights of others), and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (to protect the rights of others, such as the right to life).⁶

⁶ See A/HRC/17/27.

4. Models of regulation initiated by Internet and social media providers

51. Internet and social media providers also have set up internal regulatory frameworks; for example, Google has implemented an internal regulation policy that allows users to report content that they believe should be flagged for removal by Google services (www.google.com/transparencyreport/removals/copyright/faq/). Through the system, users submit separate requests on an online form for each service from which they believe content should be removed. These are considered legal notices, each of which is entered in a database, called “Chilling Effects”, on requests for the removal of information from the Internet. The purpose of Chilling Effects is to protect websites from cease-and-desist orders issued by people claiming that posted content is copyrighted, and to determine whether the content is illegal or violates Google policies. While Google has set up a process for removing offensive information, such as racist contents or hate speech, the final say in determining which content to remove or hide remains the sole prerogative of Google.

52. Similarly, Twitter adheres to a policy on reporting violations of the website’s terms of service (<http://support.twitter.com/articles/20169222-country-withheld-content>), which comprises an internal process of deciding which tweets should be removed for violating terms. The policy only highlights which content is not allowed, such as impersonation, sharing a third person’s private information, and violence and threats, which raises the issue of lack of transparency in this internal regulatory process.

53. Another social media platform, Facebook, has also set up a removal policy for offensive content, although there have been criticism to its apparent lack of transparency. The Special Rapporteur was informed that users have been confronted with the arbitrary removal of content deemed abusive or offensive without being given. He also learned that users who reported racist or offensive content had not seen it removed, despite complaints submitted to social media moderators. Although Facebook has an extensive list in its terms of service (www.facebook.com/legal/terms) of prohibited content, users still do not know exactly what content will be censored, removed or left unattended, given that the platform retains the power to remove posts and content giving any reason. This lack of transparency has raised concern for users, some of whom believe that the process and reasons for removing posted content are unfair and prejudicial, while other requests to remove racist or offensive material are ignored.

54. The Special Rapporteur notes that Internet providers and social media platforms seem to be increasingly adapting their norms and policies to the State where users post content. Providers and platforms accordingly record, store and provide information on users and information accessed, sometimes a prerequisite for permission to operate in the country concerned. The Special Rapporteur also reiterates his concern at the issue of what content is to be considered “racist”, “illegal” or “inciting hatred”, and his views that Internet providers and social media networks should not make decisions regarding user-generated content, and take such actions as removing or filtering content on their own.⁷ He also agrees with the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression that censorship measures should never be delegated to private entities, and that intermediaries such as social media platforms should not be held liable for refusing to take action that infringes individuals’ human rights. Any requests to prevent access to content or to disclose private information for strictly limited purposes, such as the administration of criminal justice, should be submitted through a court or a competent body independent of political, commercial or other unwarranted influences.⁸

⁷ See A/67/326, para. 48.

⁸ A/HRC/17/27, para. 75.

D. Civil society initiatives to counter racism, xenophobia, discrimination and other related hate speech on the Internet and social media

55. Civil society actors are essential to the efforts to combat racism and hate on the Internet and social media. The Special Rapporteur therefore highlights below some of the projects and contributions brought to his attention and which complement the initiatives taken at the international, regional and national levels. These actors often work together with international, regional or national authorities in allowing victims of racism, racial discrimination and xenophobia to defend their rights and to express their views on the Internet and social media.

56. The International Network against Cyber Hate (www.inach.net), based in Amsterdam, unites organizations from around the world to promote responsibility and citizenship on the Internet, and to counter hate speech. Its main activity is to act as an exchange platform for the numerous member organizations based in different countries, stimulating the sharing of knowledge in order to find new solutions for the challenges posed by hate speech in social media. Similarly, the Magenta Foundation, a non-profit organization, also based in Amsterdam, acts in response to human rights violations perpetrated in Europe and elsewhere. With the main objective of combating racism, anti-Semitism and discrimination based on ethnicity, the organization began to focus special attention on discrimination on the Internet in 1996. With the assistance of the Government of the Netherlands, the Foundation created the first complaints bureau for discrimination on the Internet (www.meldpunt.nl/), for handling complaints on discrimination on the Internet from servers based in the Netherlands. When the bureau deems that a complaint is acceptable, the website or social media platform is notified and requested to remove the content; in the event of non-compliance, the bureau may take legal action. In 2012, 78 per cent of notifications from public complaints were successful in leading to the removal of racist content and hate speech.⁹ Besides handling complaints, the bureau promotes educative measures, such as public lectures in universities and workshops for the Dutch Police Department and the Public Prosecutor's Office. It also engages in research projects concerning trends in discrimination on the Internet.

57. The Southern Poverty Law Center (www.splcenter.org/), based in Montgomery, Alabama (United States of America), is dedicated to the fight against hate, racism and other forms of intolerance, and to seeking justice for the most vulnerable members of society. The early identification and the removal of racist content online are vital in preventing hate speech from spreading. The organization monitors the media and social websites in the United States for hate groups and hate speech based on racism or gender discrimination. Its findings are published online in a dedicated blog and in a quarterly report. The organization has also updates its own "hate map", which reflects the number and localization of hate speech groups in the United States.

58. The Anti-Defamation League (www.adl.org) is an organization active in the fight against anti-Semitism, racism and xenophobia. It has initiated education seminars for youth to stop cyberbullying, hate and intolerance online. One of the League's initiatives, the Cyber-Hate Action Guide, is directed at helping victims of cyberbullying. In the Guide compiles the hate speech policies of major websites based in the United States, and informs Internet users on how to report hate speech activities on each site.

59. The Association for Progressive Communications (www.apc.org) advocates for the creation of inclusive and non-discriminatory policies online. Several of its projects are aimed at combating gender-based discrimination and women's rights, while others are

⁹ See www.magenta.nl/en/projects/8-mdi.

aimed at empowering women in Internet policy decisions. The Association's website hosts an online forum for the discussion of issues relating to gender-based discrimination. It also publishes a collaborative report, the Global Information Society Watch, which monitors the implementation of international commitments made by States, with a special focus on human rights.

60. Bytes for All (content.bytesforall.pk) is a human rights organization and research think tank based in Pakistan that advocates for discussions on information and communication technologies and human rights. Discussions of this type have resulted in an initiative with the objectives of securing freedom of expression online, strengthening the digital security of human rights defenders and ending gender-based violence online. The Open Net Initiative launched by the organization aims to investigate the impact posed by the increasing amount of censorship on the Internet.

61. The Take Back the Tech initiative, which involves several human rights organizations, including the Association for Progressive Communications and Bytes for All, is aimed at ending gender-based violence by increasing the influence that women have on policymaking on the Internet and in social media. It creates an online environment that features effective and reliable systems for reporting violence against women and empowering women in discussions that involve the creation of policy for social networking platforms, web hosting and telephone operators.

62. The Umati initiative developed by the iHub innovation centre (www.ihub.co.ke) based in Nairobi aims at proposing a workable definition of hate speech and a contextualized methodology for its analysis; collecting and monitoring the occurrence of hate speech in Kenya; and promoting civic education and interaction both online and offline. Similarly, the It Gets Better project (www.itgetsbetter.org), started in 2010 in Los Angeles (United States of America), aims to provide emotional, psychological and legal support for LGBT youth victims of hate and discrimination. The project acts on social media platforms such as Facebook, Twitter and YouTube, posting positive and inspiring messages to those suffering from gender-based discrimination. Many important public figures have participated in video messages posted by the project. In Europe, iCud (Internet: Creatively Unveiling Discrimination) (digitaldiscrimination.eu), the combined effort of five grassroots organizations in different European Union countries and the University of Rovira i Virgili in Tarragona (Spain), is a project designed to raise awareness and to explore innovative ways to combat discrimination online. The initiative, which is supported by the Fundamental Rights and Citizenship Funding Programme of the European Union, is aimed at creating a framework for understanding hate speech and discrimination on the Internet, in addition to being an innovative model for combating discriminatory material.

63. The Special Rapporteur would also like to mention some mobile applications developed to combat racism, homophobia and hate speech. The "Kick It Out" app (www.kickitout.org), developed jointly by Make Positive and Sherry Design Studios, is designed to address racism in football matches. Endorsed by the Premier League and Football League in the United Kingdom, the app allows match-goers and supporters to report racism, anti-Semitism and homophobia in real time during the matches. The information collected is then forwarded to clubs and government bodies. Another application, "Everyday Racism", was developed by the Australian organization All Together Now and is supported by the University of Melbourne and other academic institutions in Australia (alltogethernow.org.au). Designed to raise awareness of racism against Aboriginal peoples, the application challenges players to live a week in the life of an Aboriginal person in order to gain an understanding of the prejudice that Aboriginals face. In France, the "app'Licra" application (www.licra.org/fr/l'app-licra-1ere-application-

antiraciste) allows individuals to take a picture of hate speech or racist graffiti attach its location and forward the information to the authorities, which can then remove it.

IV. Conclusions and recommendations

64. Addressing racial, ethnic and xenophobic hatred on the Internet and social media networks poses new and complex challenges, particularly given the complexity of the phenomenon and the rapid evolution of technology. The Special Rapporteur nonetheless stresses that the Durban Declaration and Programme of Action and other international human rights instruments, such as the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and certain regional instruments provide a comprehensive framework for possible actions in combating the phenomenon of racial, ethnic and xenophobic hatred. The Rabat Plan of Action also provides a useful framework to States in combating racism. To that end, he welcomes the continued interest in and attention paid to racial and ethnic hatred, in particular on the Internet, by the Committee on the Elimination of Racial Discrimination. He is also grateful for the contribution of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression to this discussion. The Special Rapporteur is keen to continue to promote dialogue on the issue, and welcomes the encouragement expressed by States, other United Nations mechanisms, and Internet and social media providers, as well as civil society organizations and academics, to continue research on the issue of racism and the Internet.

65. The Special Rapporteur also notes that important legal and policy efforts have been made at the regional and national levels to address the spread of racial, ethnic and xenophobic hatred and incitement over the Internet and through social media networks. Legislative measures are central to any strategy to combat racism, ethnic hatred and xenophobia; for this reason, the Special Rapporteur encourages States that have not enacted legislation to combat and prevent racial, ethnic and xenophobic hatred on the Internet and social media to consider doing so. Legislative measures must, however, take into account States' obligations to protect other fundamental rights, such as freedom of expression and opinion, as spelled out in both the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant on Civil and Political Rights, and should not be used as a pretext for censorship.

66. Combating the use of the Internet and social media to propagate racial, ethnic and xenophobic content and incitement to violence requires a multi-stakeholder approach. In this regard, the role of the private sector, in particular Internet service providers and social media platforms, and other relevant industry players is crucial. The Special Rapporteur has highlighted some of the measures already taken by the private sector to address the challenges of racism and incitement to racial hatred and violence on the Internet and social media. The Special Rapporteur would like to point out the positive contribution made by such initiatives as the promotion of end-user empowerment and education; the involvement of Internet service providers and social media platforms in policy discourses and in consultations on the issues of combating racism and incitement to racial hatred and violence on the Internet; the development of intelligent software in the areas of monitoring and filtering; and improvements in co-regulation and self-regulation mechanisms.

67. The Special Rapporteur is aware of the intrinsic limitations of technical measures, but also of the risk that such measures lead to unintended consequences that restrict human rights. Given the multitude of stakeholders that may be involved in combating racism and incitement to racial hatred and violence on the Internet and social media networks, including Governments, private sector and civil society organizations at the national, regional and international levels, the Special Rapporteur emphasizes the importance of establishing clear responsibilities and roles for the different actors, and of strengthening and institutionalizing dialogue and collaboration among them.

68. In accordance with the provisions of the Durban Declaration and Programme of Action and the Rabat Plan of Action, the Special Rapporteur encourages States, civil society and individuals to use the opportunities provided by the Internet and social media to counter the dissemination of ideas based on racial superiority or hatred and to promote equality, non-discrimination and respect for diversity. One possible way of countering racism on the Internet and social media networks is through content diversification, in particular by promoting local content and initiatives. Directing more local content to the global network can contribute to greater understanding, tolerance and respect for diversity and offer great potential for reducing information asymmetry and misperceptions that feed racist and xenophobic sentiment.

69. In the global digital network, the voices of victims of racial discrimination most often remain absent because of their lack of access to the Internet and social media, therefore often leaving racist ideas unchallenged. In this regard, the Special Rapporteur reiterates that States and the private sector should adopt effective and concrete policies and strategies to ensure that access is widely available and affordable for all, on the basis of the principles of non-discrimination of any kind, including on the grounds of race, colour, descent, and ethnic or national origin. National human rights institutions should also be encouraged to lead the development of these initiatives.

70. The Special Rapporteur reminds States of the importance of recognizing the fundamental role that education plays in combating racism, racial discrimination, xenophobia and related intolerance, in particular in promoting the principles of tolerance and respect for ethnic, religious and cultural diversity and preventing the proliferation of extremist racist and xenophobic movements and propaganda. He therefore encourages them to use the unique educational potential of the Internet and social media networks to combat manifestations of racism, racial discrimination, xenophobia and related intolerance in cyberspace.

71. The Special Rapporteur notes the significance of educational and research activities, such as studies on the possible consequences of the dissemination of racist ideas, hate messages and incitement to racial hatred and violence on the Internet and social media; research and analysis on the effectiveness of existing legal, policy and technical measures; the development of educational programmes and training materials for young people; the promotion of media literacy programmes, including technical and textual Internet literacy; and the development and implementation of educational concepts that counter the spread of racist ideas, hate messages and incitement to racial hatred and violence on the Internet and social media.

72. The Special Rapporteur encourages all Internet service providers and social media platforms to issue clear policies on combating racial and ethnic incitement and hatred, and to include them in their term of service. Similarly,

Internet service providers, social media platforms and online moderators should also undertake training and education initiatives to address racism online. Greater understanding of the social experience of users is essential to develop technology that supports rather than marginalizes vulnerable users. Civil society and marginalized communities need support to build strong movements to counter racism and intolerance online. Community ownership of infrastructure, training in network and content management, and alternative software use, including free and open software, can help to bridge existing gaps in knowledge and access.

73. The Special Rapporteur considers it important to continue examining the correlation between manifestations of racism on the Internet and social media and the number of hate crimes and cyberbullying committed. Given the lack of adequate data on this issue, he recommends that States and national human rights institutions increase their efforts to identify, investigate and register such crimes.

74. Lastly, given the rapid development of the Internet and the ever-changing nature of the trends observed, such as in social media networks, the Special Rapporteur would like to remain informed and follow-up regularly on the different dimensions of the problems of racism and the Internet and social media in the future.
