

To: Secretariat of the Human Rights Council Advisory Committee
From: E. Tendayi Achiume, UN Special Rapporteur on contemporary forms of racism, racism, racial discrimination, xenophobia and related intolerance
In re: Study to be prepared by the Committee further to General Assembly resolution 72/157, “A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action”
Date: 2019 January 07

To the Secretariat of the Human Rights Council Advisory Committee,

I am honored to submit the following in support of your study on the global call to fight racism. Please also find enclosed my first two thematic reports, two reports on combatting the glorification of neo-Nazism, a recent article published in *Sur: International Journal on Human Rights*, and remarks I delivered during the December 2018 Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration.

Regards,



E. Tendayi Achiume

UN Special Rapporteur on contemporary forms of racism, racism, racial discrimination, xenophobia and related intolerance

ENCL: 6 documents

A/HRC/38/52

A/73/305

A/HRC/38/53

A/73/312

E. Tendayi Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*, 28 SUR: INTL. J. HUM. RTS. (2018).

E. Tendayi Achiume, *An International Human Rights-Based Approach to Implementation of the Global Compact for Migration, presented at The Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration (Dec. 10, 2018).*

Submission by E. Tendayi Achiume, UN Special Rapporteur on contemporary forms of racism, racism, racial discrimination, xenophobia and related intolerance

In support of the Human Rights Council Advisory Committee's preparations of a study responsive to General Assembly resolution 72/157, "A global call for concrete action for the total elimination of racism, racial discrimination, xenophobia and related intolerance and the comprehensive implementation of and follow-up to the Durban Declaration and Programme of Action"

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INTRODUCTION

1. Today, racial equality remains seriously under threat. In a recent report, for example, I document the rise and spread of right-wing nationalist populism around the world, which has unleashing of unashamed public discourses and practices of racism, xenophobia, misogyny, and other forms of intolerance, including at the highest levels of political office. There can be no doubt that United Nations member states, international institutions and organizations, and other actors must respond swiftly to persisting scourges of racism, xenophobia, and intolerance. This action must address racial discrimination and inequality, as well as the historical, social, and political contexts that have enabled them.
2. My submission to the Human Rights Council Advisory Committee contains two main sections. I begin by discussing the principles that must ground the fight against all forms of racial inequality. In the second section, I briefly introduce my four official reports in my capacity as UN Special Rapporteur on contemporary forms of racism, racism, racial discrimination, xenophobia and related intolerance, each of which embodies the aforementioned principles. I close this section by briefly discussing my recent article in *Sur: International Journal on Human Rights*, and remarks I delivered at the December 2018 Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration.

PRINCIPLES THAT MUST GUIDE THE PURSUIT OF RACIAL EQUALITY WITHIN THE UNITED NATIONS SYSTEM

3. In my thematic reports, I have emphasized three principles that must guide our efforts to combat all forms of racism, racial discrimination, xenophobia and related intolerance: pursuing a substantive approach to racial equality, employing a more comprehensive view of intersectionality, and including racially subordinated groups and their representatives in policy-making and implementation on racial equality. Being fundamental to an international human rights approach to the elimination of all forms of racism, I urge the Human Rights Council Advisory Committee to include them in their forthcoming report. For further discussion of these principles, I suggest that the Committee consult my reports and my recent *Sur* article, "Putting Racial Equality onto the Global Human Rights Agenda."¹

¹ E. Tendayi Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*, 28 SUR: INTL. J. HUM. RTS. (2018), <http://sur.conectas.org/en/putting-racial-equality-onto-the-global-human-rights-agenda>.

Principle 1: Embracing obligations to achieve racial equality

4. Direct forms of discrimination have occupied much of the international human rights system's focus on race and human rights. The emphasis of the UN and member States typically falls on explicit racial prejudice and the obligation to condemn racist acts, violence, and speeches. In their advocacy work, Global NGOs tend to prioritize cases of explicit discrimination. Unfortunately, the focus on direct discrimination and discriminatory intent has come at the expense of attention to structural forms of discrimination and the obligation to pursue racial equality. Although examples of structural racism and racial inequality abound,² these less direct forms of discrimination frequently escape the attention of the international human rights system.
5. Taking concrete action toward the elimination of racism and xenophobia requires the international human rights system to embrace fully its obligations to achieve racial equality. Attention only to direct, intentional discrimination has never been enough to satisfy States' international human rights commitments; the broad prohibition of racial discrimination in ICERD and other sources of international human rights law has always required States to do more to achieve substantive racial equality. In adopting these treaties, States have committed to enacting formal equality before the law and to combatting discrimination in *effect*,³ and to dismantling structural forms of discrimination,⁴ including through special measures and affirmative action where necessary.

Principle 2: Employing a more comprehensive view of intersectionality

6. An intersectional approach is vital for achieving racial equality.⁵ The Committee on the Elimination of Racial Discrimination frequently attends to intersectional human rights issues, and has drawn States' attention to the importance of an intersectional analysis. In practice, however, intersectional analyses of human rights violations tend to be overly narrow, frequently focusing superficially on gender, and neglecting racial dimensions of intersectional discrimination altogether.
7. The following comprehensive definition of intersectionality captures the appropriate meaning of this concept:

The idea of “intersectionality” seeks to capture both the structural and dynamic consequences of the interaction between two or more forms of discrimination or systems of subordination. It specifically addresses the manner in which racism, patriarchy, economic disadvantages and other discriminatory systems contribute to create layers of inequality that structures the relative positions of women and men, races and other groups. Moreover, it addresses the way that specific acts and policies create

² Examples include, among many others, de facto discrimination against migrants of color, and persistent financial, health, and environmental inequities imposed on racial minorities.

³ See Committee on the Elimination of Racial Discrimination, general recommendation No. 32, paras. 6–7.

⁴ See, for example, Committee on the Elimination of Racial Discrimination, general recommendation No. 34 (2011) on racial discrimination against people of African descent, paras. 5–7.

⁵ See, for example, A/HRC/RES/7/34, para. 3(d).

burdens that flow along these intersecting axes contributing actively to create a dynamic of disempowerment.⁶

8. In taking effective, concrete action against all forms of racism, xenophobia, and intolerance, the international human rights system must prioritize a more comprehensive view of intersectionality. Intersectionality is vital to achieving substantive equality but it requires attention to all the operational social categories that shape the experience of discrimination and intolerance: race, gender, ethnicity, national origin, class, religion, disability status, sex, sexual orientation and others. True racial equality requires taking seriously the experiences and expertise of cis and transwomen, LGBTQ persons, persons with disabilities, the poor, undocumented individuals, and other marginalized groups. Similarly, real equality for women, for LGBTQ persons, persons with disabilities, and others will never be a reality without attention to how race structures the subordination of these groups.

Principle 3: Meaningfully including racially subordinated groups in policy-making and implementation

9. Although the international human rights system recognizes that the work of achieving racial equality is work that must be done by all, the system has yet to take seriously the fact that those groups and persons subject to racial discrimination and subordination possess vital knowledge on the nature of their oppression, as well as on strategy and priorities essential for achieving racial equality.
10. Those who seek to realize the human right to racial equality have an obligation to ensure the meaningful representation and leadership of racially subordinated groups in global human rights organizations and institutions, including the United Nations. To achieve such meaningful engagement, international human rights actors must manifest serious commitment to this cause: individuals, institutions, and organizations must prepare themselves to accept that the nature of their work, goals, and strategic approaches may need to change significantly once they begin to take seriously the experiences and perspectives of racially subordinated groups.⁷

RECENT ANALYSES BY THE SPECIAL RAPPORTEUR

11. The three principles above have guided the production of the reports, article, and statements that I mention briefly below, and which are attached to this submission.

⁶ See Division for the Advancement of Women, OHCHR and United Nations Development Fund for Women, *Gender and racial discrimination: report of the Expert Group Meeting, 21–24 November 2000*, <http://www.un.org/womenwatch/daw/csw/genrac/report.htm>.

⁷ Funding models and institutional organizational models and priorities may need to change, for example, to account for the how the strategies and priorities of social movements can differ from those of bureaucratized civil society. Furthermore, organizations may need to audit the representativeness of the staff and leadership of these organizations, and take measures (including investment in training and capacity-building) to address marginalization or exclusion of racially subordinated groups.

12. Pursuant to my mandate,⁸ I produced two reports in 2018 on critical issues in the elimination of racial discrimination. My first thematic report of 2018⁹ addresses the issue of racial discrimination in the context of laws, policies and practices concerning citizenship, nationality, and immigration. That report identifies and reviews contemporary racist and xenophobic ideologies, and institutionalized laws, policies, and practices, which together have a racially discriminatory effect on individuals' and groups' access to citizenship, nationality, and immigration status. The report also highlights the impact of ethno-nationalism, and draws attention to how ethno-nationalists and other groups manipulate national anxieties about national security and economic prosperity to achieve and advance racist and xenophobic policies against indigenous peoples, non-nationals, and other minority groups.
13. My second thematic report of 2018¹⁰ analyses the threat posed by nationalist populism to the fundamental human rights principles of non-discrimination and equality. The focus of the report is ascendant nationalist populist ideologies and strategies that pose a sobering threat to racial equality by fueling discrimination, intolerance and the creation of institutions and structures that will have enduring legacies of racial exclusion. The report condemns nationalist populism that advances exclusionary or repressive practices and policies that harm individuals or groups on the basis of their race, ethnicity, national origin, and religion, including in combination with gender, sexual orientation, disability status, migratory status, or other related social categories.
14. I also completed two reports in 2018 on combatting the glorification of neo-Nazism.¹¹ The first report¹² addresses recent, concerning shifts in ideologies and support for Nazism and neo-Nazism, especially the broadening of neo-Nazi groups to embrace white nationalists and right-wing populist movements. The second report¹³ addresses digital technology's roles in the spread and manifestation of neo-Nazism and related intolerance.
15. In my recent article in *Sur: Journal on International Human Rights*,¹⁴ I emphasize the need for international human rights actors to prioritize racial equality. I begin by outlining dynamics that have marginalized racial equality within the global human rights agenda and international human rights systems. My discussion of how to prioritize racial equality and dismantle racial subordination tracks the three principles I discussed above: embracing a substantive approach to racial equality, intersectionality, and "looking to the bottom."
16. In December 2018, I spoke at the Intergovernmental Conference to Adopt the Global Compact for Safe, Orderly and Regular Migration. My prepared contribution, entitled "an International Human Rights-Based Approach to Implementation of the Global Compact for Migration," emphasizes what a human rights-based approach to GCM implementation requires. My remarks focus on the obligation to ensure that GCM implementation accords

⁸ A/HRC/RES/34/35.

⁹ A/HRC/38/52.

¹⁰ A/73/305.

¹¹ These reports were drafted pursuant to GA resolution 72/156.

¹² A/HRC/38/53.

¹³ A/73/312.

¹⁴ E. Tendayi Achiume, *Putting Racial Equality onto the Global Human Rights Agenda*, 28 SUR: INTL. J. HUM. RTS. (2018), <http://sur.conectas.org/en/putting-racial-equality-onto-the-global-human-rights-agenda>.

with a substantive approach to international human rights, as well as the obligation to institutionalize human rights within the GCM's implementation machinery. My remarks close by underscoring international human rights obligations to achieve substantive equality and satisfy non-discrimination principles. I stress that States must not only recognize the intimate links between racial equality and the global governance of migration governance but also recognize the grave harms that arise when States fail to embed equality and non-discrimination principles in all migration law, policy, and enforcement. I further call on States to demonstrate bold, visionary, and responsible leadership by adopting a human rights-based approach to the GCM's implementation.