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**Elimination of racism, racial discrimination, xenophobia and related intolerance: elimination of racism, racial discrimination, xenophobia and related intolerance**

## **Contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

### **Note by the Secretary-General**

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ashwini K.P., in accordance with Human Rights Council resolution [52/36](#) and Assembly resolution [78/234](#).

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\* [A/79/150](#).



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

*Summary*

In the present report, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Ashwini K.P., examines special measures, which are targeted benefits for underrepresented or marginalized racial and ethnic groups, aimed at achieving substantive equality. The Special Rapporteur notes the significant lack of understanding, awareness and adoption of special measures globally. She reminds States that special measures are an integral component in addressing systemic racial inequalities, which are frequently rooted in historical patterns of enslavement, colonialism and apartheid. The Special Rapporteur offers recommendations to States and other stakeholders to improve the effective implementation of international human rights law obligations relating to special measures. The Special Rapporteur calls upon States to design special measures on the basis of a robust understanding of systemic racism and disaggregated data; seek the active participation of intended beneficiaries; address intersectional discrimination; accompany special measures with broader anti-racism and equality measures; implement monitoring systems; and avoid the premature withdrawal of special measures. The Special Rapporteur also calls for greater efforts in increasing understanding and awareness of the root causes of systemic racial inequalities and the crucial role of special measures in combating the legacies of historical wrongs. In addition, the Special Rapporteur summarizes the activities that she has undertaken since reporting to the General Assembly in October 2023.

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## I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution [52/36](#), in which the Council requested the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to submit an annual report to the General Assembly. In the present report, the Special Rapporteur examines special measures that are aimed at providing substantive equality for all by providing targeted benefits to underrepresented or marginalized racial or ethnic groups. The Special Rapporteur also summarizes the activities that she has undertaken since reporting to the Assembly in October 2023.

2. Special measures are an integral part of remedying the legacies of historical patterns of enslavement, colonialism and apartheid. As such, this topic is aligned with the Special Rapporteur's commitment to integrating the examination of the impact of the historical legacies of colonialism and enslavement on contemporary forms of racism, racial discrimination, xenophobia and related intolerance into all aspects of her work.<sup>1</sup> She also responds to the lack of awareness and understanding, as well as to the inadequate adoption, of special measures worldwide. She asserts that better understanding and acceptance of the existence of racial inequalities and their root causes will lead to increased adoption of special measures.

3. The Special Rapporteur reminds States that special measures are an important part of the suite of measures needed to address racial discrimination experienced globally, and that States are obliged under international human rights law to implement special measures. The Special Rapporteur calls upon States to improve the effectiveness of special measures by ensuring that they are designed in consultation with intended beneficiaries and based on disaggregated data and a robust understanding of systemic racism. She also calls upon States to ensure that special measures address intersectional discrimination and are combined with broader anti-racism and equality measures, and that special measures are regularly reviewed, amended as needed and not withdrawn prematurely.

4. To inform the report, the Special Rapporteur issued a call for submissions addressed to Member States of the United Nations and other stakeholders, including civil society organizations, international organizations and national human rights institutions. The Special Rapporteur extends her sincere gratitude to all Member States and other stakeholders that have submitted information. She has drawn upon the input received in the preparation of the present report and remains open to an ongoing dialogue with all relevant stakeholders on this important topic.

## II. Summary of activities

5. Since reporting to the General Assembly in October 2023, the Special Rapporteur undertook a country visit to the United States of America, between 31 October and 14 November 2023. She presented the findings from that visit to the fifty-sixth session of the Human Rights Council, in July 2024.<sup>2</sup> The Special Rapporteur also presented a report on artificial intelligence, in which she asserted that the ways in which the predominant assumption that technology was objective and neutral was allowing artificial intelligence to perpetuate racial discrimination.<sup>3</sup> She also presented her report on combating the glorification of Nazism, neo-Nazism and other practices that contribute to fuelling contemporary forms of racism, racial

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<sup>1</sup> [A/HRC/53/60](#), paras. 48 and 56.

<sup>2</sup> See [A/HRC/56/68/Add.1](#).

<sup>3</sup> [A/HRC/56/68](#).

discrimination, xenophobia and related intolerance.<sup>4</sup> Between 5 and 16 August 2024, the Special Rapporteur undertook a country visit to Brazil. The findings from that visit will be presented to the fifth-ninth session of Human Rights Council, in June 2025.

6. In January 2024, the Special Rapporteur attended the regional meeting for Asia and the Pacific on the International Decade for People of African Descent. In February 2024, the Special Rapporteur attended the International Conference on Food Justice from a Human Rights Perspective, on the theme “Challenges of reality and future stakes”. In April 2024, she attended the third session of the Permanent Forum on People of African Descent, where she gave a presentation on overcoming systemic racism and historical harm in education.

### III. Special measures

#### A. The concept of special measures

7. Special measures, which are often referred to as “affirmative action”, “affirmative measures” or “positive measures”, are the provision of targeted benefits to underrepresented or marginalized racial and ethnic groups, aimed at ensuring equitable representation and the equal enjoyment of human rights by all.

8. Well-known examples of special measures include reservations or quotas within political representation, targeted recruitment in employment and university admission policies that allow race, ethnicity or caste to be considered in assessing prospective students. Special measures may also exist in the form of scholarships, financial aid for university tuition or university accommodation, mentorships, or other kinds of educational support for marginalized racial or ethnic groups. Two additional domains in which targeted interventions have frequently been employed are public housing and health care.

9. Special measures are underpinned by the well-established human rights principle that treating all people identically cannot address inequities caused by differences and existing disadvantages; substantive equality can only be achieved by taking cognizance of the historical oppression of marginalized communities. In certain circumstances, identical treatment also amounts to indirect discrimination. The Special Rapporteur echoes the calls of other United Nations experts to refrain from using the terms “reverse discrimination” and “positive discrimination”.<sup>5</sup> Special measures are not an exception to the prohibition against discrimination. They are an integral part of the suite of strategies that States are obligated to implement, aimed at achieving the equality and representation of racial and ethnic groups.

10. The scope of the present report is limited to analysing special measures aimed primarily at reducing racial and ethnic inequalities. However, the Special Rapporteur notes that special measures should be taken to ensure the substantive equality and representation of other underrepresented or marginalized groups, such as persons with disabilities, women and girls, LGBTQIA+ persons and older persons. The Special Rapporteur encourages States to consider how special measures can be used to address intersectional discrimination and inequality.

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<sup>4</sup> [A/HRC/56/67](#).

<sup>5</sup> For example, [E/CN.4/Sub.2/2002/21](#), para. 5, and [CERD/C/GC/32](#), para. 12.

## B. International human rights law framework

11. The meaning of the term “special measures” and the obligation of States to take special measures are found in article 1, paragraph 4, and article 2, paragraph 2, of the International Convention on the Elimination of All Forms of Racial Discrimination. The following is stated in article 1, paragraph 4, thereof:

Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

The following is stated in article 2, paragraph 2, thereof:

States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

12. In 2009, in an effort to address the difficulties observed in understanding special measures, the Committee on the Elimination of Racial Discrimination published general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination. Importantly, in that general recommendation, it is emphasized that the aim of the Convention is to achieve substantive equality in the enjoyment and exercise of human rights and fundamental freedoms, rather than merely formal equality, and it is reaffirmed that States not only have an obligation to make special measures permissible but also to take special measures where there is disparate enjoyment of human rights by persons and groups in the State party.<sup>6</sup> The Special Rapporteur concurs with the Committee’s view that special measures are not an exception to the principle of non-discrimination, but are integral to its meaning and essential to the aim of the Convention of eliminating racial discrimination and advancing human dignity and effective equality.<sup>7</sup>

13. In general recommendation No. 32, it is clarified that special measures should be:<sup>8</sup>

(a) Appropriate to the situation to be remedied, legitimate and necessary in a democratic society, respecting the principles of fairness and proportionality;

(b) Inclusive of the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture and participation in public life;

<sup>6</sup> CERD/C/GC/32, paras. 1, 6, 8, 14 and 30.

<sup>7</sup> Ibid., para. 20.

<sup>8</sup> Ibid., paras. 11, 13–16, 18, 21, 27 and 34.

- (c) Temporary, ceasing after the objectives for which they have been taken have been achieved;
- (d) Designed and implemented through prior consultation with affected communities and the active participation of such communities;
- (e) Available to individuals who self-identify as belonging to the targeted group;
- (f) Taken for the sole purpose of ensuring equal enjoyment of human rights and fundamental freedoms;
- (g) One component in the ensemble of provisions in the Convention dedicated to the objective of eliminating racial discrimination, the successful achievement of which will require the faithful implementation of all provisions of the Convention;
- (h) Different than general measures taken to secure human rights on a non-discriminatory basis to persons and groups;
- (i) Different than specific rights pertaining to certain categories of person or community, such as Indigenous land rights, for which permanent measures may be needed.

14. In 2011, the Committee on the Elimination of Racial Discrimination issued general recommendation No. 34 on racial discrimination against people of African descent, in which specific recommendations are made to States to implement special measures aimed at eliminating all forms of racial discrimination against people of African descent. In the general recommendation, the Committee recommended that States formulate and implement national strategies, including special measures, with the participation of people of African descent; educate and raise the awareness of the public of the importance of special measures to address the situation of victims of racial discrimination, especially discrimination as a result of historical factors; and develop and implement special measures aimed at promoting the employment of people of African descent in the public and private sectors.<sup>9</sup>

15. In the Durban Declaration and Programme of Action (2001), the necessity for special measures aimed at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing is recognized. It is also stated in the Declaration that special measures should include those to achieve appropriate representation in educational institutions, housing, political parties, parliaments and employment, especially in the judiciary, the police, the army and other civil services. In the Declaration, States are expressly requested to promote understanding among society at large of the importance of special measures to overcome disadvantages faced by Indigenous Peoples.<sup>10</sup>

16. Within other international human rights instruments, there are limited references to special measures specifically addressing racial or ethnic inequities. The Discrimination (Employment and Occupation) Convention, 1958 (No. 111) of the International Labour Organization allows for special measures designed to meet the particular requirements of persons who, for reasons such as sex, age, disablement, family responsibilities, or social or cultural status, are generally recognized to require special protection or assistance, and those should not be deemed to be discrimination.<sup>11</sup> While there is no express mention of race therein, the Special

<sup>9</sup> See [CERD/C/GC/34](#).

<sup>10</sup> [A/CONF.189/12](#) and [A/CONF.189/12/Corr.1](#), chap. I.

<sup>11</sup> United Nations, Treaty Series, vol. 362, No. 5181, art. 5, para. 2.

Rapporteur notes that, due to the inclusion of the words “such as”, the list of attributes provided is non-exhaustive and includes ethnicity or race.

17. The United Nations Declaration on the Rights of Indigenous Peoples (2007) provides a more express reference to the obligation of States to take special measures and the need to consider intersectionality in doing so, including that States should take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions. Particular attention should be paid to the rights and special needs of Indigenous elders, women, youth, children and persons with disabilities.<sup>12</sup>

18. In the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992), the importance of special measures is referred to, albeit without the explicit use of the term “special measures”. It is clarified in article 8, paragraph 3, thereof that “measures taken by States to ensure the effective enjoyment of the rights set forth in the present Declaration shall not *prima facie* be considered contrary to the principle of equality contained in the Universal Declaration of Human Rights”.

19. At the regional level, it is recognized in both the Inter-American Convention against All Forms of Discrimination and Intolerance and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance that the principle of equality presupposes an obligation on the part of States to adopt special measures,<sup>13</sup> and it is stated in both conventions that special measures should not be deemed discrimination.<sup>14</sup> It is reaffirmed in Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) that the principle of non-discrimination does not prevent States from taking measures in order to promote full and effective equality, provided that there is an objective and reasonable justification for those measures.<sup>15</sup>

### C. Special measures to combat systemic racism

20. Special measures are an important tool that States must use to ensure the adequate development and protection of certain racial or ethnic groups, or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. Special measures are also crucial to combat systemic racism, which exists globally. Systemic racism can be understood to be the operation of a complex, interrelated system of laws, policies, practices and attitudes in State institutions, the private sector and societal structures that, combined, result in direct or indirect, intentional or unintentional, *de jure* or *de facto* discrimination, distinction, exclusion, restriction or preference on the basis of race, colour, descent or national or ethnic origin. Systemic racism often manifests itself in pervasive racial stereotypes, prejudice and bias and is frequently rooted in histories and legacies of enslavement, the transatlantic trade in enslaved Africans and colonialism.<sup>16</sup> Contemporary manifestations of racial discrimination cannot be understood in a historical vacuum. The impact of the harmful legacies of colonialism and enslavement on contemporary forms and manifestations of racism, racial discrimination, xenophobia and related intolerance, including those relating to civil,

<sup>12</sup> General Assembly resolution 61/295, annex, art. 21, para. 2.

<sup>13</sup> Preambular para. 4 in both conventions.

<sup>14</sup> Art. 1, para. 4, and art. 1, para. 5, respectively.

<sup>15</sup> Preambular para. 3.

<sup>16</sup> A/HRC/47/53, para. 9.



political, economic, social, cultural and group rights, is abundantly clear across the globe.<sup>17</sup>

21. Special measures must therefore be understood within the context that societies are inherently hierarchal, limiting equitable space and opportunities for historically marginalized communities. Historically rooted racial discrimination and systemic inequalities are evident in socioeconomic disadvantage; low participation and representation in political and institutional decision-making; difficulties in obtaining access to the labour market; difficulties in gaining access to and completing education, as well as the quality of education, resulting in intergenerational poverty; lack of social recognition; and disproportionate incarceration rates.<sup>18</sup> This results in persistent gaps in access to social capital for the overall empowerment of racially and ethnically marginalized communities.

22. Special measures, when designed and implemented in compliance with international human rights law standards, can function to combat systemic racism in several interconnected and mutually reinforcing ways. Special measures in domains such as education, employment and political representation can be a tool for ensuring the participation of those from marginalized racial and ethnic groups and facilitating their socioeconomic empowerment, thereby serving to dismantle some of the complex and interrelated systems of systemic racism. The representation of those from racially and ethnically marginalized groups in different institutions and domains can also play an important role in ensuring that societal discourse and decision-making reflect diverse and lived experiences, approaches, viewpoints and prerequisites. Inclusive and equitable policies and decision-making can serve to address racial discrimination and inequality, contribute to social cohesion and political stability, and reduce the risk of conflict.<sup>19</sup>

23. The representation of individuals from marginalized racial and ethnic groups in institutions can enhance opportunities for younger generations to pursue similar educational or career paths, meaning that special measures can have a positive compounding effect on eliminating racial inequalities. Special measures, when designed and implemented in accordance with international human rights law standards, can also help to break down the pervasive racial stereotypes, prejudices and biases that are an integral part of systemic racism.

24. Moreover, special measures can play an important role in rectifying and providing reparations for historical injustices. As the Special Rapporteur's mandate has previously highlighted, historical racial injustices, including enslavement and colonialism, remain largely unaccounted for today and require restitution, compensation, rehabilitation and guarantees of non-repetition.<sup>20</sup> A reparatory approach to justice involves accountability and reparations for the harms of colonialism and enslavement, as well as the eradication of the persisting structures of racial inequality, subordination and discrimination. The Special Rapporteur echoes the calls of her predecessors to States to effectively implement their obligation to put in place special measures to correct historical violations and harms.<sup>21</sup> The important role that special measures can play within a reparative approach to justice has also been expressed and supported widely, including by the Working Group of Experts on People of African Descent, the Committee on the Elimination of Racial

<sup>17</sup> See [A/HRC/53/60](#).

<sup>18</sup> See [CERD/C/GC/34](#).

<sup>19</sup> Simone Schotte, Rachel Gisselquist and Tharcisio Leone, *Does Affirmative Action Address Ethnic Inequality?: A Systematic Review of the Literature*, World Institute for Development Economics Research of the United Nations University (UNU-WIDER) Working Paper 2023/14 (Helsinki, UNU-WIDER, 2023), pp. 5 and 17.

<sup>20</sup> [A/74/321](#), para. 6.

<sup>21</sup> *Ibid.*, para. 28; see also [A/68/333](#).

Discrimination, and past and present United Nations High Commissioners for Human Rights.<sup>22</sup> The fourth pillar of the agenda towards transformative change for racial justice and equality of the High Commissioner is “Redress: confront past legacies, take special measures and deliver reparatory justice”.<sup>23</sup> In this respect, the Special Rapporteur reminds States that it is not necessary to prove “historic” discrimination in order to validate a programme of special measures; the emphasis should be placed on correcting present disparities and on preventing further imbalances from arising.<sup>24</sup>

## IV. Examples of special measures

25. In this section, the Special Rapporteur provides examples of special measures in three areas in which they have most commonly been implemented: political representation, higher education and employment. The examples provided are non-exhaustive.

### A. Political representation

26. Special measures in political representation are well established in some States and often take the form of quotas in electoral lists or in seats in parliaments. The benefits of special measures in political representation are substantial and multifaceted. Special measures in political representation can combat historical and systemic discrimination by providing opportunities to marginalized groups that have historically been underrepresented and can help to break down barriers and challenges that candidates from marginalized racial or ethnic groups may face, including limited access to political networks and resources. Special measures in political representation can promote a sense of belonging and inclusion, fostering social cohesion and stability, and prevent social and ethnic conflicts by ensuring that all voices are heard and considered. Special measures in political representation can also lead to inclusive policies and decision-making, which encompasses a wider range of issues and viewpoints, leading to more effective and equitable policy outcomes, including by raising the needs and rights of marginalized groups. In addition, special measures can lead to the increased political participation of other members of the targeted racial or ethnic group, and the individuals who have directly benefited may inspire younger generations to pursue leadership roles. Special measures also strengthen democratic systems by ensuring the representation of all racial and ethnic groups.

27. India was the first country to implement special measures in political representation, referred to as “reservations”.<sup>25</sup> Shortly after independence, India introduced a comprehensive and systematic set of special measures. The Indian Constitution of 1950 enshrined provisions for the reservation of seats in legislatures, educational institutions and government jobs for “scheduled castes” and “scheduled tribes” (Indigenous Peoples outside the caste system) to address historical injustices and social discrimination.<sup>26</sup> These measures were aimed at promoting social justice and ensuring equal opportunities for marginalized communities. The implementation of these policies began with the reservation of seats in Parliament and state legislatures, followed by reservations in public sector employment and educational

<sup>22</sup> A/74/321, paras. 8 and 28; A/68/333, para. 18; A/64/271, para. 42; A/HRC/21/60/Add.2, para. 25; CERD/C/GC/34; and A/HRC/54/66, para. 61.

<sup>23</sup> A/HRC/47/53, annex and paras. 55–61.

<sup>24</sup> CERD/C/GC/32, para. 22.

<sup>25</sup> Schotte, Gisselquist and Leone, *Does Affirmative Action Address Ethnic Inequality?*, p. 5.

<sup>26</sup> Constitution of India, adopted on 26 November 1949 and entered into force on 26 January 1950.

institutions on the basis of proportional representation. Over time, the scope of affirmative action was expanded to include “other backward classes”, which recognized the need for broader inclusion of socially and educationally disadvantaged groups. Reservations in India have been instrumental in improving the political representation of marginalized castes. The reservation of seats for women in local governance beginning in 1992 has also significantly increased the political participation and representation of women.<sup>27</sup>

28. In the past two decades, multiple States in all regions of the world have provided reservations or quotas in political representation to marginalized racial or ethnic groups. In New Zealand, the Electoral Act provides a proportional representation system, which resulted in an increase in reserved seats for the Māori to five seats in 1996, six seats in 1999 and seven seats in 2002. There are reserved seats for Indigenous Peoples in national parliaments or key public offices in many other countries, such as the Plurinational State of Bolivia, Chile, Fiji, Indonesia, Jordan, Peru and the Bolivarian Republic of Venezuela, and Taiwan Province of China, and reserved legislative seats for minorities in Croatia and Nepal.<sup>28</sup> Singapore has introduced quotas for ethnic minorities for political candidates, and Romania and Serbia have reduced the threshold for ethnic political parties to obtain seats in parliament.<sup>29</sup>

## B. Employment

29. Several States have also adopted special measures in employment, most commonly in public sector employment. These include quotas, preferential hiring between equally qualified applicants, targeted recruitment programmes, pre-employment training programmes, and mentorships. The benefits of special measures in employment can substantially reduce racial inequalities. Special measures in employment help to rectify the historical and systemic disadvantages faced by certain racial and ethnic groups, promoting fairness and justice in employment practices. They can counter unconscious and systemic biases that may disadvantage certain groups in hiring and promotions. Special measures in employment can also help to reduce income inequality and promote social mobility and break cycles of intergenerational poverty. Special measures in employment can contribute to the economic development of marginalized communities. They can also reduce stereotyping and prejudices against marginalized racial and ethnic groups, improve workplace culture, and reduce discrimination in the workplace. This, in turn, can contribute to broader social cohesion and harmony. Like in political representation, special measures in employment can improve decision-making, with diverse teams and workplaces leading to innovative solutions and new approaches to challenges that take into consideration a variety of perspectives. This is particularly important in the public sector, especially in the development of policies affecting marginalized racial or ethnic groups.

30. For example, there are quotas based on ethnicity in public sector employment and public procurement in Burundi, Nigeria, Pakistan and Viet Nam, racial quotas in Brazil, Costa Rica and Uruguay, non-quota measures for racial groups in Ecuador,

<sup>27</sup> United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women), “India passes law to reserve seats for women legislators”, 4 October 2023. Available at <https://www.unwomen.org/en/news-stories/feature-story/2023/10/india-passes-law-to-reserve-seats-for-women-legislators>.

<sup>28</sup> Schotte, Gisselquist and Leone, *Does Affirmative Action Address Ethnic Inequality?*, pp. 13 and 16.

<sup>29</sup> *Ibid.*, p. 16.

Namibia, South Africa and the United States and measures for ethnic minorities in Albania, China, Croatia, Hungary, Israel, Romania and Serbia.<sup>30</sup>

31. In Ecuador, the Government provides tax incentives to companies that hire Indigenous Peoples and people of African descent.<sup>31</sup> In Croatia, there are targeted measures to increase recruitment of Roma, including co-financed employment and internships of up to 24 months for first-time work experience.<sup>32</sup> In Costa Rica, a 2022 affirmative action law in favour of people of African descent requires every public institution to allocate at least 7 per cent of vacant jobs per year to people of African descent, provided that these applicants meet, under equal conditions, the legal and constitutional requirements.<sup>33</sup>

32. The Committee on the Elimination of Racial Discrimination welcomed the introduction in Brazil in 2014 a public service quota law. However, the Committee expressed concern about the decrease in the effective implementation of the law in recent years.<sup>34</sup> The Special Rapporteur notes that eligibility criteria vary across institutions, leading to confusion and potential misuse, and that there is a lack of effective monitoring and enforcement mechanisms, making it difficult to ensure compliance and address any fraud or abuse.<sup>35</sup> The Committee also welcomed the adoption of special measures in Viet Nam aimed at ensuring the representation of officials from ethnic minorities in public and political positions. The legislative mandated quota of 18 per cent was met by the fifteenth National Assembly (2021–2026) and, for the first time, smaller ethnic minority groups, including the Mang and the Brau, are represented.<sup>36</sup>

33. In Northern Ireland, the Fair Employment and Treatment Order, adopted in 1998, has successfully contributed to greater equality in the workforce. The Order requires employers with more than 10 employees to monitor the composition of their workforce, submit annual reports to the Equality Commission and take remedial action if any imbalances are identified. The Order also requires employers to carry out a full review of their employment policies and practices every three years. While the framework was aimed at reducing segregation between Catholics and Protestants (rather than equality for racial or ethnic groups), it is a positive example of special measures working effectively and has reduced obstacles to inclusion and advancement of minorities, women, persons with disabilities, people living with HIV/AIDS, non-citizens and others.<sup>37</sup>

<sup>30</sup> Rachel M. Gisselquist, Simone Schotte and Min J. Kim, *Affirmative action around the world: Insights from a new dataset*, UNU-WIDER Working Paper 2023/59 (Helsinki, UNU-WIDER, 2023), p. 11.

<sup>31</sup> Submission from Ecuador.

<sup>32</sup> Committee of Experts on Roma and Traveller Issues, *Thematic Report on How to Stimulate Governments to Employ Roma and Travellers in Governmental Institutions and Public Administration* (Strasbourg, France, Council of Europe, 2022), p. 20.

<sup>33</sup> Submission from Costa Rica, p. 11.

<sup>34</sup> CERD/C/BRA/CO/18-20, paras. 22 and 23.

<sup>35</sup> Visit of the Special Rapporteur to Brazil: end-of-visit statement, 16 August 2024. Available at <https://www.ohchr.org/sites/default/files/documents/issues/racism/sr/statements/20240816-com-stm-brazil-sr-racism.pdf>.

<sup>36</sup> CERD/C/VNM/CO/15-17, para. 18.

<sup>37</sup> Office of the United Nations High Commissioner for Human Rights (OHCHR) and Equal Rights Trust, *Protecting Minority Rights: A Practical Guide to Developing Comprehensive Anti-Discrimination Legislation* (United Nations publication, 2023), p. 71.

## C. Education

34. Another common area of public life in which States have adopted special measures is education, most commonly tertiary education. Special measures in education include quotas and consideration of race in admissions criteria, as well as “softer” measures, such as scholarships and financial aid, or a combination of approaches. Research from 2014 revealed that one quarter of countries had some form of special measures in higher education, although most such measures were aimed at gender equality, rather than marginalized racial or ethnic groups.<sup>38</sup>

35. The Special Rapporteur reminds States of the undeniable transformative potential of higher education to help to break generational cycles of poverty and social exclusion. Education can provide access to opportunities to those from marginalized racial and ethnic groups to gain economic, social and political power to challenge and dismantle systemic racism.<sup>39</sup> Furthermore, universities in the United States successfully argued, until 2023, for the use of affirmative action on the basis that diversity enriches the educational experience for all.<sup>40</sup>

36. In Mexico, the federal General Education Law provides that the inclusion of Indigenous Peoples and people of African descent should be prioritized, and the National Autonomous University of Mexico provides scholarships to students who self-identify as Indigenous or of African descent. Since 2004, 950 students have received support through these scholarships, comprising 53 per cent women and 47 per cent men.<sup>41</sup> North Macedonia provides quotas for Roma in enrolment in higher education, as well as scholarships to Roma students and free higher education to Roma women over 35 years of age in an attempt to address the intersectional discrimination faced by Roma women.<sup>42</sup>

37. Several Latin American countries, such as Colombia, Costa Rica, Ecuador and Uruguay, have quotas in education for people of African descent, and Kenya, Nigeria and Pakistan have quotas for marginalized ethnic groups.<sup>43</sup> Colombia also has an education loan fund for students of African descent and a scholarship programme for people of African descent in Bogotá.<sup>44</sup> In addition to the quotas of its National Institute of Employment and Vocational Training for people of African descent, Uruguay provides scholarships and other forms of assistance to students of African descent.<sup>45</sup>

38. In Costa Rica, the national strategy for employability and human talent (2023–2027) identifies gaps in the labour market that affect vulnerable populations, such as people of African descent, Indigenous Peoples and LGBTQIA+ persons, and is aimed at prioritizing the inclusion of these populations through programmes aimed at social mobility, such as study loans for Indigenous Peoples.<sup>46</sup>

<sup>38</sup> Laura Dudley Jenkins and Michele S. Moses, eds., *Affirmative Action Matters: Creating Opportunities for Students Around the World* (New York and London, Routledge/Taylor and Francis, 2014).

<sup>39</sup> A/HRC/56/68/Add.1, para. 19.

<sup>40</sup> See, for example, Supreme Court of the United States of America, *Fisher v. University of Texas at Austin et al.*, No. 11–345, 24 June 2013; and Camille Giraut, “From privileges to rights: changing perceptions of racial quotas in Brazil”, *Ethnic and Racial Studies* (2023), p. 3.

<sup>41</sup> Submission from Mexico City Human Rights Commission.

<sup>42</sup> Republic of North Macedonia, *Strategy for Inclusion of Roma 2022–2030*, p. 71.

<sup>43</sup> Gisselquist, Schotte and Kim, *Affirmative action around the world*, p. 10.

<sup>44</sup> Economic Commission for Latin America and the Caribbean, *Afrodescendent Women in Latin America and the Caribbean: Debts of Equality* (United Nations publication, 2018), p. 32.

<sup>45</sup> Ibid.

<sup>46</sup> Submission from Costa Rica, p. 11.

39. In India, reservations in higher education are provided to “scheduled castes”, “scheduled tribes” and “other backward classes”. This includes subsidized financial assistance and fellowships enabling students from marginalized castes to pursue higher education, including through study loans and scholarships for overseas education.<sup>47</sup> In 2003, the Siddis, who are people of African descent in India, were categorized as scheduled tribes (Indigenous), a classification that has enabled them to gain access to special measures in education and employment.

40. Brazil has been described as a “regional leader in affirmative action policies in employment and education for people of African descent and other marginalized groups”.<sup>48</sup> Some states in Brazil began to introduce special measures regarding tertiary education in the early 2000s. These policies were subject to legal challenge, with claims that the policies were discriminatory. However, on 26 April 2012, the Federal Supreme Court of Brazil unanimously held that racial quotas in education were constitutional, and on 29 August 2012, Brazil adopted the Quota Law (Law No. 12.711), which mandated that federal higher education and technical institutions reserve places for people of African descent, Quilombolas, Indigenous Peoples, public school graduates and low-income students.<sup>49</sup>

41. The Committee on the Elimination of Racial Discrimination welcomed the Quota Law, which it described as an affirmative action law that has significantly increased the enrolment of people of African descent in institutions of higher education.<sup>50</sup> In the 2017 universal periodic review of Brazil, the Government reported that the number of allocations to Brazilians of African descent in higher education had grown from 37,100 in 2013 to 82,800 in 2015.<sup>51</sup> Conversely, universities with race-neutral policies saw no significant changes in the racial profile of their students. There is also evidence that the quota system has increased the enrolment of disadvantaged students not explicitly targeted by the policies, namely students with parents with a low level of education.<sup>52</sup>

42. In Australia, there is financial support available to Aboriginal and Torres Strait Islander students or apprentices to assist with school and boarding fees, living and travel costs and the costs of school materials.<sup>53</sup> In 2002, a non-Indigenous student brought a legal claim against the Government of Australia for allegedly discriminating against him racially, as he was ineligible for such financial support. The court dismissed the claim, finding such payments to be a special measure.<sup>54</sup> Similar, “softer” measures, such as scholarships and financial aid for Indigenous Peoples, are also available in several other States, including Canada, Chile, Fiji and Indonesia, and Taiwan Province of China.<sup>55</sup>

<sup>47</sup> Government of India, Ministry of Social Justice and Empowerment. Available at <https://socialjustice.gov.in/scheme-cat>.

<sup>48</sup> A/HRC/27/68/Add.1, para. 25.

<sup>49</sup> OHCHR, *Protecting Minority Rights*, pp. 61 and 62.

<sup>50</sup> CERD/C/BRA/CO/18-20, para. 18.

<sup>51</sup> A/HRC/WG.6/27/BRA/1, para. 53.

<sup>52</sup> Renato Schwambach Vieira and Mary Arends-Kuenning, “Affirmative action in Brazilian universities: effects on the enrolment of targeted groups”, *Economics of Education Review*, vol. 73 (December 2019).

<sup>53</sup> See [www.servicessaustralia.gov.au/abstudy](http://www.servicessaustralia.gov.au/abstudy).

<sup>54</sup> Federal Magistrates Court of Australia (FMCA), *Bruch v. Commonwealth*, FMCA No. 29, 2002.

<sup>55</sup> Gisselquist, Schotte and Kim, *Affirmative action around the world*, p. 10.



## V. Challenges to the effective implementation of special measures

43. The Special Rapporteur notes that many special measures have been instrumental in improving the access of marginalized racial or ethnic groups to education, employment and political representation.<sup>56</sup> However, despite these advancements, significant challenges remain in ensuring that special measures are implemented effectively in accordance with international human rights law standards. She outlines some of the major challenges to the effective implementation of special measures, including the lack of understanding and adoption of special measures, the lack of broad societal support, the use of special measures in isolation, failure to address intersectionality, insufficient disaggregated data and monitoring mechanisms, the lack of full and effective consultation and active participation of intended beneficiaries, and the premature and abrupt withdrawal of special measures.

### A. Misinterpretation and lack of understanding

44. The Special Rapporteur notes with concern the general lack of awareness and understanding of special measures throughout the world. The Special Rapporteur also notes that discussions on special measures tend to be focused entirely on quotas and neglect the positive and reparatory aspects of special measures.

45. While their differences can sometimes be conceptually complex, special measures should be differentiated from general measures aimed at reducing racial discrimination and inequalities. Anti-discrimination laws may benefit marginalized racial or ethnic groups that are more likely to be discriminated against, but they are not special measures. Similarly, providing anti-discrimination training is not a special measure, even if the topic is targeted, such as the provision of specific training to law enforcement to prevent discrimination against people of African descent. Such training is a measure to avoid and eliminate harm that may occur to individuals from racially and ethnically marginalized communities, but is classified as a general measure, not as a special measure. Similarly, culturally sensitive health-care programmes and access to traditional medicine are general measures, not special measures.

46. Special measures should also not be confused with the specific rights of certain groups, such as Indigenous land, fishing or herding rights. They are rights recognized in international human rights law, for which permanent measures may be needed.<sup>57</sup> For example, the Nordic Saami Convention establishes reindeer husbandry as a sole right of the Saami in Saami reindeer grazing areas. These are rights belonging to the Saami, and they differ from temporary special measures.

47. Special measures are policies that ensure representation and enable the overall socioeconomic, political and educational empowerment of racially or ethnically marginalized groups, including caste-oppressed groups.

### B. Insufficient implementation

48. The lack of understanding and awareness of social biases against special measures is a major factor in the inadequate adoption of special measures and the

<sup>56</sup> Schotte, Gisselquist and Leone, *Does Affirmative Action Address Ethnic Inequality?*, pp. 23, 25 and 29.

<sup>57</sup> [A/HRC/10/11/Add.1](#), para. 12; [CERD/C/GC/34](#), para. 15; and Committee on the Elimination of Discrimination against Women, general recommendation No. 25 (2004), para. 19.

insufficient resourcing of many special measures programmes. Many in the United Nations system share the Special Rapporteur's view that States need to urgently increase the adoption of special measures. The United Nations High Commissioner for Human Rights has stated that there is insufficient use of special measures,<sup>58</sup> and the Committee on the Elimination of Racial Discrimination has continually and repeatedly expressed concern about the lack of information on special measures taken by States parties<sup>59</sup> and called upon States to adopt special measures to address inequities relating to racial and ethnic groups.<sup>60</sup> Similarly, the Human Rights Committee has called upon States to adopt special measures to increase the representation of Indigenous Peoples and people of African descent to give full effect to the provisions of the International Covenant on Civil and Political Rights.<sup>61</sup>

49. One of the primary challenges is the limited or biased understanding of special measures by policymakers and stakeholders. Many decision makers lack an understanding of the purpose and scope of these measures, leading to inconsistent application and limited effectiveness. The Special Rapporteur urges States to establish strong systems for auditing existing special measures and gaps where special measures are needed to ensure effective implementation.

50. The Special Rapporteur also notes the overall lack of special measures regarding people of African descent in Europe despite evident racial discrimination and the legacies of colonialism. Nearly half the people of African descent surveyed in the European Union experienced racial discrimination, with an increase from 39 per cent in 2016 to 45 per cent in 2022.<sup>62</sup>

### C. Lack of broad societal support

51. The Special Rapporteur notes with deep concern the growing pushback against special measures, and anti-racism measures more generally, in many parts of the world. She expresses her concern about this move away from special measures, which States are obligated to adopt where there is disparate enjoyment of human rights among persons and groups in a State party. The Special Rapporteur reminds States that special measures are a key part of dismantling persistent and structural racial inequities.

52. The Special Rapporteur asserts that one of the major reasons for this pushback is a lack of acceptance that racism and racial inequalities exist, which results in a lack of acceptance that there is a need for special measures.<sup>63</sup> She expresses her deep concern over the existing social biases and apathy towards special measures and anti-racism policies. The terms “reverse racism” and “reverse discrimination” are often used to critique the efforts introduced by governments to promote equality,

<sup>58</sup> [A/HRC/51/53](#), para. 48.

<sup>59</sup> For example, [CERD/C/QAT/CO/22-23](#), para. 16; [CERD/C/DEU/CO/23-26](#), para. 19; [CERD/C/MAR/CO/19-21](#), para. 21; and [CERD/C/HRV/CO/9-14](#), para. 9.

<sup>60</sup> For example, [CERD/C/USA/CO/10-12](#), para. 9; [CERD/C/MDA/CO/12-14](#), para. 22; [CERD/C/DEU/CO/23-26](#), para. 19; [CERD/C/BGR/CO/23-25](#), paras. 19 and 25; [CERD/C/MAR/CO/19-21](#), para. 22; [CERD/C/SEN/CO/19-23](#), para. 9; [CERD/C/URY/CO/24-26](#), paras. 8 and 26; [CERD/C/NAM/CO/16-18](#), paras. 19 and 21; [CERD/C/NIC/CO/15-21](#), paras. 17 and 41; [CERD/C/TJK/CO/12-13](#), paras. 18 and 21; [CERD/C/PRT/CO/18-19](#), paras. 28 and 30; and [CERD/C/ARG/CO/24-26](#), para. 21.

<sup>61</sup> For example, [CCPR/C/MEX/CO/6](#), para. 11; [CCPR/C/IRQ/CO/6](#), para. 41; and [CCPR/C/GTM/CO/4](#), para. 9.

<sup>62</sup> European Union Agency for Fundamental Rights, *Being Black in the EU: Experiences of People of African Descent* (Luxembourg: Publications Office of the European Union, 2023), p. 14.

<sup>63</sup> For example, [A/HRC/27/68/Add.1](#), paras. 26 and 57.



remedy structural discrimination and provide redress for historical injustices.<sup>64</sup> Social and racial biases, including white supremacist approaches, have resulted in a misinterpretation of special measures provided to racially and ethnically marginalized communities. Similar narrative patterns are applied by caste supremacists in the context of special measures provided to caste-oppressed communities.

53. Often ignored in such arguments is the reality that inequalities exist and that merit-based processes alone may largely benefit people who have not been subject to the legacies of enslavement, colonialism, apartheid or other forms of discrimination. This is often referred to as the “myth of merit”. The belief that success is purely the result of individual talent, effort and hard work is underpinned by the incorrect assumption that everyone has an equal opportunity to succeed, and it ignores systemic inequalities and institutionalized forms of exclusion based on race and ethnicity, descent and other similar identities. The other aspect of the myth of merit is non-acknowledgment of existing discrimination, or the misconceived notion of racial or related forms of discrimination as things of the past. The myth of merit also overlooks the advantages that individuals from privileged groups may inherit from their social and hereditary background, including generational wealth, social networks and access to high-quality education, housing and health care.

54. The Special Rapporteur notes that special measures in education have been the subject of vigorous debate, legislative threats, legal challenges and societal pushback. As a result, private educational institutions and governments are increasingly adopting race-neutral or multifaceted affirmation action policies.<sup>65</sup> For example, in its 2023 decisions in *Students for Fair Admissions v. Harvard* and *Students for Fair Admissions v. University of North Carolina*, the Supreme Court of the United States effectively eliminated the use of race as a factor in college admissions.<sup>66</sup> Following this contentious decision, many bills have been introduced across the United States to ban not only affirmative action policies but the full scope of diversity, equity, inclusion and accessibility policies and programmes.<sup>67</sup> Since 2023, 85 bills targeting such programmes have been introduced in the United States.<sup>68</sup> It is also concerning that this type of litigation may find its way into other sectors beyond education, such as employment, specifically hiring policies. In June 2023, a United States Court of Appeals entered an order blocking a venture capital firm dedicated to funding businesses founded by women of colour from issuing entrepreneurship grants limited to Black women business owners, deciding that that practice likely discriminated against business owners of other races.<sup>69</sup>

55. The Special Rapporteur expresses her deep concern about the removal of policies at educational institutions that are crucial to dismantling systemic racism and ensuring representation.

56. The Special Rapporteur calls upon States and the United Nations to enhance understanding and awareness of systemic racism, the legacies of historical patterns of enslavement, colonialism and apartheid, and the crucial role of special measures in

<sup>64</sup> Submission from Southern Poverty Law Center, p. 3; and submission from South Africa, p. 3.

<sup>65</sup> Laura Dudley Jenkins and Michele S. Moses, “Affirmative action initiatives around the world”, *International Higher Education*, No. 77 (fall 2014), pp. 5 and 6.

<sup>66</sup> A/HRC/56/68/Add.1, para. 18; and Supreme Court of the United States, *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, No. 20–1199, 29 June 2023.

<sup>67</sup> Submission from Southern Poverty Law Center, p. 3.

<sup>68</sup> *The Chronicle of Higher Education*, DEI Legislation Tracker. Available at <https://www.chronicle.com/article/here-are-the-states-where-lawmakers-are-seeking-to-ban-colleges-dei-efforts> (accessed on 30 July 2024).

<sup>69</sup> United States Court of Appeals for the Eleventh Circuit, *American Alliance for Equal Rights v. Fearless Fund Management, LLC, et al.*, No. 23-13138, 3 June 2024; and submission from Southern Poverty Law Center, p. 6.

combating these racial inequalities and, most importantly, to emphasize the positive outcomes of effective implementation of special measures. The Special Rapporteur recommends that States create national plans to spread general and educational awareness to combat stereotypes and prejudices against special measures and to counter the spread of misinformation about special measures.

#### D. Special measures in isolation

57. Another challenge for special measures is ensuring that benefits are accessible to all members within a marginalized racial or ethnic group. Differences in social, economic and educational status disproportionately affect the most marginalized persons within marginalized racial and ethnic groups. Special measures have been criticized by certain groups for reaching only the most economically or politically advantaged members of targeted racial or ethnic groups. However, the Special Rapporteur highlights that these claims are not backed up by strong empirical data and that special measures have innumerable indirect benefits for the broader racial or ethnic group, in addition to their direct benefits for selected individuals.<sup>70</sup> Furthermore, special measures can be designed and implemented in such a way as to ensure that they are accessible to the most marginalized persons within racial or ethnic groups, including by adopting a combination of special measures and other general measures to empower the most marginalized.

58. Various States have attempted to ensure that the most marginalized persons can gain access to the benefits of special measures. For instance, in Brazil, there is a maximum allowable income to be eligible for quotas in higher education, which was lowered from 1.5 times the minimum wage to 1 times the minimum wage per capita under the new quota law of 2023.<sup>71</sup> However, historical forms of discrimination function in the most nuanced forms, subjecting even the most economically or politically advantaged members of targeted racial or ethnic groups and caste-oppressed groups to overt and covert forms of discrimination and exclusion. In this context, the Special Rapporteur cautions against restricting access to special measures on the sole basis of economic criteria and calls for a more nuanced and holistic understanding of marginalization caused by racism, racial discrimination and other similar forms of exclusion.

59. The Special Rapporteur encourages States to ensure that special measures are accompanied by other general measures that support their effective implementation and to take a holistic approach to addressing racial discrimination. In isolation, special measures are less likely to achieve their aim of improving equality and may lead to perpetuation of the isolation, segregation, stereotypes or stigma of the intended beneficiaries of such positive actions.<sup>72</sup> Instead, special measures should be used in conjunction with a suite of other anti-racial discrimination and equality measures. The Special Rapporteur echoes the observation of the Committee on the Elimination of Racial Discrimination, which stated, “Special measures are one component in the ensemble of provisions in the Convention dedicated to the objective of eliminating racial discrimination, the successful achievement of which will require the faithful implementation of all Convention provisions”.<sup>73</sup>

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<sup>70</sup> Constance de la Vega, “The special measures mandate of the International Convention on the Elimination of All Forms of Racial Discrimination: lessons from the United States and South Africa”, *ILSA Journal of International & Comparative Law*, vol. 16, No. 3 (2010), pp. 669 and 670.

<sup>71</sup> Rosana Heringer, “Affirmative action policies in higher education in Brazil: outcomes and future challenges”, *Social Sciences*, vol. 13, No. 3 (February 2024), p. 18.

<sup>72</sup> OHCHR, *Protecting Minority Rights*, p. xiv.

<sup>73</sup> CERD/C/GC/32, para. 11.

60. For example, these measures may need to be accompanied by measures that also improve equality in literacy and education levels to ensure that people can gain access to positions reserved for them. Special measures should also be accompanied by general anti-discrimination measures to ensure that quotas are adhered to and that applicants are not dissuaded from applying for reserved positions and are not subject to discrimination once they have secured a reserved place, which can affect retention rates. In Pakistan, there is a 5 per cent quota in the public service for all minorities, including scheduled castes. However, there have been challenges in meeting the quota, and in 2014, the Supreme Court of Pakistan directed the Federal Government and the provincial governments to ensure enforcement of job quotas reserved for minorities and to create institutions to monitor and enforce the laws.<sup>74</sup> The reasons for this low implementation reportedly include the absence of monitoring and enforcement of quotas; ongoing discrimination in recruitment; the failure of job advertisements to specify minority quotas; and the low literacy rate among minority applicants, which excludes them from many positions, especially those at higher levels.<sup>75</sup>

61. In Mexico City, the programme entitled “Mi Beca para Empezar” (My Scholarship to Get Started) is aimed at improving the income of families with children, adolescents, young people or adults enrolled in basic education.<sup>76</sup> However, social support does not guarantee school attendance, and a combination of measures is needed, including communication, budgetary and adaption tools, training for educational personnel on taking an intersectional and intercultural approach, and many other policies, plans and programmes that contribute to addressing the structural causes that maintain current disparities.<sup>77</sup>

62. The Special Rapporteur reminds States that special measures can and should be much more than just quotas. While quotas can be an effective tool, so too can other forms of special measures, including targeted recruitment strategies, mentorship programmes, and financial aid and scholarships. For example, while quotas in higher education in Brazil have contributed to the increased participation of people of African descent, Quilombolas and Indigenous Peoples, there is a need for better student retention policies, combining financial aid, pedagogical support and other strategies to increase the sense of belonging for students availing of quotas.<sup>78</sup>

## E. Limited attention to intersectionality

63. Another challenge to the effective implementation of special measures is the lack of consideration of intersectional discrimination in the development and implementation of these measures.<sup>79</sup> Individuals from marginalized groups often face multiple intersecting forms of discrimination based on race, ethnicity, sex, gender, age, disability, sexual orientation and/or other factors. Some special measures may not directly benefit individuals experiencing intersectional discrimination within the

<sup>74</sup> Supreme Court of Pakistan, S.M.C. 1/2014, verdict of 19 June 2024, para. 37.

<sup>75</sup> Centre for Social Justice and Peoples Commission for Minorities’ Rights, “Implementation of job quota for religious minorities in Pakistan”, provisional report, pp. 11–13. Available at <https://csjpak.org/pdf/Study-implementation-of-Job-Quota-AA.pdf>.

<sup>76</sup> See [www.mibecaparaempezar.cdmx.gob.mx/dudas](http://www.mibecaparaempezar.cdmx.gob.mx/dudas) (in Spanish).

<sup>77</sup> Submission from Human Rights Commission of Mexico City, p. 2.

<sup>78</sup> End-of-visit statement of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to Brazil, 16 August 2024, pp. 7 and 8, available at [www.ohchr.org/sites/default/files/documents/issues/racism/sr/statements/20240816-eom-stm-brazil-sr-racism.pdf](http://www.ohchr.org/sites/default/files/documents/issues/racism/sr/statements/20240816-eom-stm-brazil-sr-racism.pdf); and Heringer, “Affirmative action policies in higher education in Brazil”, p. 18.

<sup>79</sup> Schotte, Gisselquist and Leone, *Does Affirmative Action Address Ethnic Inequality?*, pp. 1, 5 and 26.

marginalized ethnic or racial group, including women and girls; children and youth; older persons; persons with disabilities; LGBTQIA+ persons; migrants; and forcibly displaced persons, including refugees, internally displaced persons and asylum-seekers.<sup>80</sup>

64. For example, compared with their male counterparts, women from a marginalized racial or ethnic group may not benefit from special measures due to persisting gender discrimination and a lack of social capital. Similarly, they may not benefit from quotas for all women, as women from non-marginalized racial or ethnic groups may have greater social capital and are thus more likely to gain access to the reserved places for women. Compared with white women, for women of colour, race plays a crucial role in economic and political empowerment. The combined effect of race and gender can make it challenging for women of colour to overcome systemic racism. For instance, the representation of Black academic staff in senior positions remains low and, of nearly 23,000 university professors in the United Kingdom of Great Britain and Northern Ireland, reportedly only 41 are Black women.<sup>81</sup> In the context of caste in India, Dalit women, who are characterized as unequal on the basis of caste and gender, are at the bottom of the economic and social structures – there are wide variations in human development indicators between Dalit women and upper-caste women. For instance, in 2009–2010, the literacy rate among Dalit women was reportedly 55.9 per cent compared with 76.5 per cent among upper-caste women. The unemployment rate for female Dalit university graduates was 29.3 per cent compared with 12 per cent for upper-caste women.<sup>82</sup>

65. The Special Rapporteur calls upon States to ensure that special measures consider intersectional forms of discrimination. The Committee on the Elimination of Racial Discrimination has also called upon States to adopt special measures regarding people facing intersectional forms of discrimination. For example, the Committee recommended that, in formulating special measures, Brazil should first improve the enjoyment of economic and social rights by Black and Indigenous women, as encouraged in the 2030 Agenda for Sustainable Development to reach the furthest behind first. The Committee also noted that the quota system in Brazil had been less effective at granting access to university to people who faced intersectional forms of discrimination, including people of African descent with disabilities. The Committee recommended that Brazil strengthen its quota system, including by ensuring the access of people of African descent and Indigenous Peoples facing intersectional forms of discrimination, including those with disabilities.<sup>83</sup> Similarly, the Committee recommended that Portugal mainstream gender, age, disability, and sexual orientation and gender identity into all special measures aimed at combating multiple and intersectional forms of discrimination, including racial discrimination.<sup>84</sup>

<sup>80</sup> See United Nations network on racial discrimination and protection of minorities, *Guidance Note on Intersectionality, Racial Discrimination & Protection of Minorities* (2023). Available at [www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf](http://www.ohchr.org/sites/default/files/documents/issues/minorities/30th-anniversary/2022-09-22/GuidanceNoteonIntersectionality.pdf).

<sup>81</sup> Victoria Showunmi, “Visible, invisible: Black women in higher education”, *Frontiers in Sociology*, vol. 8 (April 2023).

<sup>82</sup> Nidhi Sadana Sabharwal and Wandana Sonalkar, “Dalit women in India: at the crossroads of gender, class, and caste”, *Global Justice: Theory Practice Rhetoric*, vol. 8, No. 1 (July 2015), pp. 55, 58 and 61.

<sup>83</sup> CERD/C/BRA/CO/18-20, paras. 14, 18 and 19 (c).

<sup>84</sup> CERD/C/PRT/CO/18-19, para. 14.

## F. Insufficient disaggregated data and monitoring mechanisms

66. The Special Rapporteur urges States to collect accurate data, disaggregated by race, colour, descent, caste, ethnic or national origin, and other factors, and incorporate a gender perspective on the socioeconomic and cultural status and conditions of the various groups in the population.<sup>85</sup> This should be done in accordance with strict safeguards and international human rights law. Such disaggregated data are crucial to effectively target and implement special measures. States must also establish effective monitoring systems to ensure that special measures are working as intended and to amend them as necessary.<sup>86</sup> Developing comprehensive and disaggregated data collection and establishing transparent monitoring frameworks are essential for evaluating progress and ensuring accountability for the effective implementation of special measures. This should be done with the meaningful participation of intended beneficiaries.

67. The Special Rapporteur notes with concern the lack of disaggregated data and monitoring mechanisms for special measures globally.<sup>87</sup> The dearth of disaggregated data is a key obstacle to devising effective and targeted special measures and other policies to address racial inequities. The lack of data also makes it more challenging to argue for their necessity and effectiveness, leading in turn to underutilization of special measures. In addition, effective implementation of special measures requires comprehensive empirical data. The Special Rapporteur urges States to adopt an inclusive and intersectional approach to data collection.

68. In 2015, a predecessor of the Special Rapporteur prepared a thematic report on the obligation of States to collect ethnically disaggregated data with a view to addressing discrimination. In that report, he expressed his concern about the continued absence of data disaggregated by ethnicity and other prohibited grounds of discrimination, and he stressed the indispensable role and benefits of collecting disaggregated data to effectively combat discrimination and implement equality.<sup>88</sup> The Committee on the Elimination of Racial Discrimination has continually and repeatedly called upon States to collect disaggregated data,<sup>89</sup> to establish monitoring and evaluation mechanisms to conduct regular impact assessments of the special measures implemented and to obtain information on the effectiveness of special measures.<sup>90</sup> This call has also been made by the High Commissioner for Human Rights and the Secretary-General of the United Nations in relation to people of African descent.<sup>91</sup>

69. The lack of effective monitoring mechanisms can also allow government departments, institutions and companies to misrepresent their compliance with special measures, thus distorting the results of special measures and their effectiveness. For example, in South Africa, measures have been taken to address cases of companies misrepresenting their compliance with the Broad-Based Black Economic Empowerment Amendment Act to gain benefits through a practice known as “fronting”.<sup>92</sup>

<sup>85</sup> CERD/C/GC/32, para. 17; submission from South Africa, p. 4; A/68/333, para. 79; and A/HRC/47/CRP.1, para. 71.

<sup>86</sup> CERD/C/GC/32, para. 35.

<sup>87</sup> For example, CERD/C/ZAF/CO/9-11, para. 18; and CERD/C/PRT/CO/18-19, para. 13.

<sup>88</sup> A/70/335, Summary.

<sup>89</sup> For example, CERD/C/PRT/CO/18-19, paras. 6 and 13; CERD/C/BRA/CO/18-20, paras. 4 and 5; and CERD/C/PAK/CO/21-23, para. 11.

<sup>90</sup> CERD/C/ZAF/CO/9-11, para. 19 (a).

<sup>91</sup> For example, A/HRC/47/CRP.1, para. 70 ff.; and OHCHR, “Disaggregated data to advance the human rights of people of African descent: progress and challenges” (United Nations publication, 2023).

<sup>92</sup> See Republic of South Africa, Department of Trade, Industry and Competition, “Fronting”, available at [www.thedtic.gov.za/financial-and-non-financial-support/b-bbee/fronting/](http://www.thedtic.gov.za/financial-and-non-financial-support/b-bbee/fronting/).

## G. Lack of active participation of intended beneficiaries

70. The Special Rapporteur notes with concern that there is often a lack of consultation with and active participation of intended beneficiaries in the development and implementation of special measures. Without meaningful, inclusive and safe consultation and participation, special measures are unlikely to be effective and achieve their intended goals and, at worst, can severely impinge on the rights of intended beneficiaries.

71. Consultation with intended beneficiaries allows policymakers to understand the specific needs, contexts and challenges faced by different communities, leading to more effective and pertinent policies. The direct participation of intended beneficiaries can help to ensure that policies are inclusive, equitable and culturally sensitive and to avoid unintended consequences and appropriation of the lives of racially or ethnically marginalized groups. Furthermore, when communities are actively involved in the development of special measures, the empowerment and motivation of communities may increase, thereby ensuring the effective implementation of such policies.

72. The Committee on the Elimination of Racial Discrimination has repeatedly called upon States to ensure that special measures are based on consultations with affected communities in accordance with general recommendation No. 32.<sup>93</sup> The Special Rapporteur echoes these calls and urges States to pay particular attention to women, youth and other groups that face specific, unique and compounded challenges.

## H. Premature withdrawal of special measures

73. Special measures should be reviewed regularly to ensure their effectiveness and continued necessity. Special measures should only be ceased once substantive equality and representation have been achieved; however, this may take a significantly long time, given the extent of historical injustices and continuing discrimination. It is impractical to achieve the equitable representation and overall empowerment of racial or ethnically marginalized groups within a set time frame due to the history of systemic discrimination and oppression and their persistence. Therefore, it is essential to implement robust review mechanisms to assess effectiveness and limitations in the implementation of special measures.

74. The Special Rapporteur is concerned that, in reaction to pushback against special measures and global pushback against measures to address racism and racial discrimination in general, some States and other actors have withdrawn or will consider withdrawing special measures prematurely. The Special Rapporteur is deeply concerned by the abrupt or premature withdrawal of special measures, prompted by political interests and right-wing propaganda. The abrupt withdrawal of special measures will undermine the progress made and reinforce existing systemic racism and discrimination. The Special Rapporteur echoes the recommendation of the Committee on the Elimination of Racial Discrimination that States parties should carefully determine whether negative human rights consequences would arise for beneficiary communities following an abrupt withdrawal of special measures, especially if such measures have been established for a lengthy period.<sup>94</sup>

<sup>93</sup> For example, [CERD/C/NAM/CO/16-18](#), para. 21; [CERD/C/URY/CO/24-26](#), para. 26; [CERD/C/NIC/CO/15-21](#), para. 41; [CERD/C/PRT/CO/18-19](#), para. 30; [CERD/C/ARG/CO/24-26](#), para. 21; [CERD/C/BRA/CO/18-20](#), para. 29; and [CERD/C/USA/CO/10-12](#), para. 9.

<sup>94</sup> [CERD/C/GC/32](#), para. 35.



75. The risks of withdrawing special measures prematurely were exemplified by the banning of affirmative action in certain states of the United States prior to the 2023 decisions of the Supreme Court, as raised by the Special Rapporteur following her 2023 visit to the country.<sup>95</sup> In 1996, California banned affirmative action at public universities. Prior to the ban, the University of California campuses in Berkeley and Los Angeles broadly reflected the racial and ethnic composition of the high school graduate population that was eligible for university enrolment. In the first year after the ban, the proportion of Black and Latino students at both campuses decreased by approximately 40 per cent.<sup>96</sup> A quarter-century later, University of California chancellors say that they are still not able to meet their diversity and equity goals despite having dedicated significant resources to outreach and alternative admissions standards.<sup>97</sup> Similarly, since 2006, when the University of Michigan was forced to discontinue its race-conscious admissions policy, the percentage of Black students has decreased, from 7 per cent in that year to 4 per cent in 2021, and the percentage of Native American students decreased, from 1 per cent to just 0.11 per cent.<sup>98</sup>

## VI. Conclusions and recommendations

**76. Special measures are an essential component in the suite of measures needed to address systemic racial discrimination, which is frequently rooted in historical patterns of enslavement, colonialism and apartheid.**

**77. There is a significant lack of understanding, awareness and adoption of special measures globally. The Special Rapporteur has also identified a lack of focus on intersectional discrimination, insufficient disaggregated data and monitoring mechanisms, and a lack of consultation with intended beneficiaries. In addition, she has expressed concern about special measures being taken in isolation and the early or abrupt withdrawal of special measures. It is essential to address the existing gaps between policy objectives and actual implementation to enhance the effectiveness of these measures. To overcome these challenges, the Special Rapporteur proposes the recommendations below.**

**79. States should:**

**(a) Urgently fulfil their obligations under the International Convention on the Elimination of All Forms of Racial Discrimination to adopt special measures in all areas of public life, including education, employment, political representation, housing and health care;**

**(b) Take steps to collect and publish data, disaggregated by race, colour, descent, caste, ethnic or national origin, and gender, on the socioeconomic and cultural status and conditions of the population in order to increase understanding of the nature and magnitude of systemic racism and racial discrimination and identify areas where special measures are needed to inform their design and monitor their effectiveness;**

<sup>95</sup> A/HRC/56/68/Add.1, para. 22.

<sup>96</sup> Zachary Bleemer, "Affirmative Action, Mismatch, and Economic Mobility After California's Proposition 209", Research and Occasional Papers Series (Berkeley, California, Center for Studies in Higher Education, 2020).

<sup>97</sup> University of California, amicus brief filed in the Supreme Court of the United States in support of Harvard College and University of North Carolina, Nos. 20-1199 and 21-707. Available at [www.supremecourt.gov/DocketPDF/20/20-1199/232355/20220801134931730\\_20-1199%20Obsac%20University%20of%20California.pdf](http://www.supremecourt.gov/DocketPDF/20/20-1199/232355/20220801134931730_20-1199%20Obsac%20University%20of%20California.pdf).

<sup>98</sup> University of Michigan, amicus brief filed in the Supreme Court in support of Harvard College and University of North Carolina, Nos. 20-1199 and 21-707, p. 22. Available at [https://record.umich.edu/wp-content/uploads/2022/08/220804\\_AmicusBrief.pdf](https://record.umich.edu/wp-content/uploads/2022/08/220804_AmicusBrief.pdf).

(c) Consult and seek the active participation of intended beneficiaries in the design and implementation of special measures;

(d) Ensure that individuals can self-identify as being part of a racial or ethnic group;

(e) Establish mechanisms to monitor the ongoing effectiveness of special measures, review special measures periodically and reform special measures as needed;

(f) Ensure that special measures are accompanied by other general anti-discrimination and equality measures that reinforce the effectiveness of special measures in combating racial inequalities;

(g) Ensure that special measures address intersectional discrimination, including discrimination faced by women and girls; children and youth; older persons; persons with disabilities; LGBTQIA+ persons; migrants; and forcibly displaced persons, including refugees, internally displaced persons and asylum-seekers from within marginalized racial or ethnic groups;

(h) Refrain from withdrawing special measures prematurely or abruptly;

(i) Educate and raise the awareness of the public of the importance of special measures to combat inequalities, including those caused by the historical patterns of enslavement, colonialism, apartheid and caste-based discrimination;

(j) Take steps to ensure that special measures are adopted and effectively implemented in the private sector;

(k) Take steps to ensure that special measures are adopted and effectively implemented in the judiciary.

78. The United Nations funds and programmes and other entities should:

(a) Increase awareness and understanding of the effectiveness and crucial need for special measures, including to provide redress for enslavement, colonialism and apartheid;

(b) Remind States of their obligation to adopt special measures and encourage States to increase their adoption of special measures;

(c) Encourage all States to collect and publish disaggregated data and perform assessments of the need for special measures within their jurisdiction;

(d) Encourage all States to implement monitoring mechanisms to assess the effectiveness of special measures.

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