



# International Service for Human Rights

## The Reports in Short

ISHR's summaries of documents for the UN Commission on Human Rights  
62nd Session and Human Rights Council 2<sup>nd</sup> Session

The Special Rapporteur on Contemporary forms of racism, racial discrimination,  
xenophobia and related intolerance<sup>1</sup>

Name of Mandate Holder  
Doudou Diène

### Mandate

The mandate was created in 1993<sup>2</sup>, based on the recognition of racism and racial discrimination as among the most serious violations of human rights in the contemporary world, and the continuing and widespread prevalence of these types of practices. The mandate was also established in view of the growing magnitude and changing forms of racism and racial discrimination that require periodic re-examination of the methods used to combat them. The Special Rapporteur monitors incidents of racism, racial discrimination, xenophobia and related intolerance, as well as governmental measures to overcome them, and makes recommendations on specific measures which should be taken at the national, regional and international levels.

### Activities

- Annual report;
- Communications transmitted to Governments'
- Mission to Japan;
- Mission to Brazil;
- Mission to Switzerland;
- The Special Rapporteur submitted a report on the situation of Muslims and Arab peoples in various parts of the world;
- In 2005, the Special Rapporteur requested information on follow-up to his visits from Canada, Colombia, Côte d'Ivoire, Guatemala, Guyana, Honduras, Nicaragua and Trinidad and Tobago. The Government of Trinidad and Tobago and the United Nations Resident Coordinator in Guatemala provided follow-up information. The Special Rapporteur commended Guatemala in particular for follow-up measures and argued that other countries should follow its example.

### Annual Report<sup>3</sup>

### **Scope**

This report briefly summarises the Special Rapporteur's interim report<sup>4</sup> to the General Assembly and should be read in conjunction with the reports on the question of political platforms which promote or incite racial discrimination<sup>5</sup> and on the situation of Arab and Muslim populations in various regions of the world<sup>6</sup>. The report mainly summarises the activities of the Special Rapporteur and reviews contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance.

### **Summary and key conclusions**

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<sup>1</sup> Summaries prepared by Cléa Thouin, Intern, ISHR, supervised and edited by Meghna Abraham, Information Program, ISHR.

<sup>2</sup> Commission on Human Rights *Resolution 1993/20*.

<sup>3</sup> Report submitted by Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, E/CN.4/2006/16, 18 January 2006.

<sup>4</sup> A/60/283, 19 August 2005.

<sup>5</sup> E/CN.4/2006/54, 26 January 2006.

<sup>6</sup> E/CN.4/2006/17.

The Special Rapporteur has relied on a dual approach in all activities: close monitoring and analysis of old and new forms of racism, racial discrimination and xenophobia, and a dual strategy to combat them including both a political and legal, as well as a cultural and ethical dimension. A fundamental element in the dialogue between the Special Rapporteur and countries as well as in reports is the exchange of information among countries in the context of measures to combat racism, racial discrimination and xenophobia.

The Special Rapporteur has identified a number of ominous trends within the resurgence of racism, racial discrimination and xenophobia.

- The general increase in the **defamation of religion**: The resurgence of **anti-Semitism** is manifested mainly in the increase of individual acts, the resilience of intellectual legitimisation, particularly through the use of the Internet, and most seriously, political exploitation. The resurgence of **Christianophobia** is due mainly to its political use in the dynamic of war of civilisations and religions engendered by the events of 11 September 2001, leading to a climate of hostility between Islam and Christianity. This climate is undergoing intellectual and ideological legitimisation, as exemplified by Samuel Huntington's theory of clash of civilisations. Christianophobia is undergoing a theological escalation and geographical expansion through the proselytising of various evangelical movements, particularly in Asia, which engender hostility on the part of followers of traditional local religions.
- The increasing importance in '**identity constructs**' of a **rejection of multiculturalism**: The problem of multiculturalism is at the centre of present-day identity crises in most regions of the world, exemplified by the current crisis in the suburbs of France. The problem is grounded in the fundamental contradiction between the framework of the nation State, as the expression of an exclusive national identity, and the dynamic of multiculturalism at work in those societies. Memory and values are particularly important in this respect as there is a conflict between the construction, legitimisation or imposition of a national memory or system of values as a unique model and point of reference, and the claiming by other groups or communities of an acknowledgement of their particular memories or values. The **modern republican model of integration/assimilation**, which constructs national unity on particular values viewed as the foundation of the republican political system, has contributed to the increase in racism and xenophobia and profound identity crises in Europe through its political exploitation and its profound refusal of cultural diversity. These crises are signs of the emergence of a new, multicultural, national identity.
- The increasingly overt **intellectual legitimisation** of racism, racial discrimination and xenophobia: The most profound and lasting manifestations of racism and discrimination are the result of long-term intellectual constructs, which have shaped sensibilities, outlooks and value systems and have therefore created cultures of racism and xenophobia.
- The racist and xenophobic treatment of asylum-seekers, refugees and immigrants at **points of entry** and in waiting areas, particularly airports, ports and stations: In the context of the fight against terrorism, the treatment of such groups is characterised by suspicion, mistrust, fear, and cultural and religious hostility. This results in the widespread implementation of national policies, which restrict economic and social rights in particular and human rights in general, that are first applied at the points of entry to a country.
- The increase of **racism in sport**, in particular football: This issue was discussed in the Special Rapporteur's previous report to the General Assembly<sup>7</sup> and a previous general report to the Commission on Human Rights<sup>8</sup>. This increase is mainly due to the exacerbation of the nationalistic dimensions of competitions, the over-commercialisation of sport, and comments and behaviour of coaches who trivialise or legitimise racist or xenophobic incidents. The Special Rapporteur intensified contacts with sports bodies, including the International Federation of Association Football (FIFA), which has undertaken several positive initiatives such as creating a multiethnic team of FIFA Ambassadors against Racism, and organising an annual Anti-Discrimination Day. The Union of European Football Associations (UEFA) has stepped up its campaign against racism, publishing an anti-racism guide for football and organising the ninth edition of the Anti-Racist Word Cup.

### **Key recommendations**

- The Special Rapporteur recommends the adoption of **legislation against racism**, racial discrimination and xenophobia.
- The Commission and Member States should promote the link between efforts to combat racism, racial discrimination and xenophobia, and the construction of democratic, interactive and egalitarian multiculturalism, to ensure that cultural diversity becomes an effective weapon against racism.

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<sup>7</sup> A/59/329, 7 September 2004.

<sup>8</sup> E/CN.4/2005/18, 13 December 2004.

- The Commission should draw the attention of Member States to the **historical** and **cultural depth of racism**. Efforts to combat racism should therefore involve economic, social and political measures, but should also relate to the question of identity.
- The Commission should draw the attention of Member States to the importance on the **intellectual front** of efforts to combat racism and thus to combat, through education and information, ideas and concepts likely to incite or legitimise racism, in particular on the Internet. There should be efforts to counter historical revisionism and recognition of the specific memories of all communities.
- The Commission should stress the seriousness of racist and xenophobic manifestations and practices at **points of entry to countries**, reception areas and waiting areas and should emphasise the importance of scrupulous respect for fundamental human rights, the presence of civil human rights organizations, proper levels of sanitation and the availability of recourse procedures and defence mechanisms in such areas.
- In order to eradicate the increasing **racism in sports**, the Commission should encourage, support and promote specific programs and initiatives by international sports bodies and measures by States on education, awareness raising and prevention. International, regional and national sports bodies should promote codes of ethics against racism in sport and should cooperate more closely on this issue.
- The United Nations should support the organisation of a **major event** against racism in connection with the **2006 World Cup** in Germany.

Mission to Japan<sup>9</sup>

### Scope

A mission to Japan was undertaken from 3 to 11 July 2005. The Special Rapporteur met with all stakeholders such as members of the government, local authorities, representatives of non-governmental organisations and the Japan Federation of Bar Associations. He also visited a number of communities.

### Summary and key conclusions

- There is racial discrimination and xenophobia in Japan, and it affects three circles of discriminated groups: the national minorities – the Buraku, the Ainu, and the people of Okinawa; people and descendants of former Japanese colonies – Korea and China; and foreigners and migrants;
- The **Ainu** are the only indigenous population in Japan. Historically they were used for forced labour and Ainu society and culture was damaged by an official policy of assimilation. Only in 1997 did the Government adopt a law that recognises the specificity of the Ainu culture and the need to preserve it;
- The **people of Okinawa** were annexed in 1879. The most serious discrimination they endure is linked to the presence of American military bases on their island. In the late 19<sup>th</sup> century a class system was established placing the most humble class at the bottom of the system: the **Buraku** people. The Government recognised the deep discrimination suffered by the Buraku people in the 1960s, and adopted special measures to improve their living conditions. However, these laws were terminated in 2002 and a discriminatory mentality persists against the Buraku people;
- There is a large community of **Koreans** living in Japan, as a result of the annexation of Korea in 1910. Discrimination against Koreans occurs within schools, in employment and in their access to social protection. Another important aspect is the issue of sexual slavery of Korean women during WWII;
- **Foreign communities** also suffer from discrimination, notably from discriminatory statements made by public officials, and the problem of private and quasi-public establishments refusing entrance to people based on nationality or race;
- Discrimination is manifested primarily in social and economic aspects. Minorities live in a situation of marginalisation in their access to education, employment, health, and housing;
- Discrimination is also of a political nature and national minorities are invisible in State institutions;
- There is also a profound discrimination of a cultural and historical nature. This is reflected in the poor recognition and transmission of the history of those communities, and in the perpetuation of the existing discriminatory image of those groups, stemming from the construction of identity in Japan, the writing and teaching of Japanese history, the image of communities concerned, and their perception by the society;
- A number of laws have been adopted which promote the rights of certain minorities, but there is no national legislation that outlaws racial discrimination and provides a remedy for the victims;
- A Human Rights Protection Bill is being discussed;

<sup>9</sup> E/CN.4/2006/16/Add.2, 24 January 2006.

- Japan has made a reservation to CERD in relation to the obligation of the State to punish the dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination. Propaganda of ideas based on racial superiority or hatred are not offences under Japanese law;
- Women usually suffer from double discrimination, both inside and outside their communities.

### Key Recommendations

- The Government must **recognise** the **existence of racial discrimination** in Japan and express the political will to combat it;
- The Government should adopt a **national law against discrimination**, which should penalise racial discrimination and make it an offence to carry out propaganda or form organisations based on racial superiority or hatred or promote or incite racial discrimination;
- The draft human rights bill should include a clear ban of racism, racial discrimination and xenophobia;
- An **independent national commission for equality and human rights** should be established. This commission should draft a national plan of action to fight against all forms of discrimination;
- The government should focus on **changing the discriminatory mentalities** of the population by the process of re-writing and teaching of history; programs of promotion on the culture of discriminated groups, and of inter-cultural and inter-religious dialogue;
- The government should **consult** with minority groups on policies and legislations that concern them and political representation of minorities should be guaranteed in State institutions;
- Japan should recognise the Ainu as an indigenous people and an investigation should be launched on the issue of whether the continued existence of US military bases in Okinawa is compatible with the respect of the fundamental human rights of the people of Okinawa;
- The Government should adopt appropriate measures to guarantee that foreigners are treated equally in Japan;
- Minorities should ensure that **women** can exercise their rights on an equal footing with men.

Mission to Brazil<sup>10</sup>

### Scope

The report covers a visit to Brazil from 17 to 26 October 2006, during which the Special Rapporteur met with the President, some Ministers, other representatives of the Government at national and local levels, parliamentarians, members of the judiciary, non-governmental organisations, media representatives, members of various religions and communities, and UN officials.

### Summary and key conclusions

- Brazil is party to most core international human rights instruments, including the *International Convention on the Elimination of All Forms of Racial Discrimination* and the domestic legal system provides for a clear prohibition of racial discrimination.
- **Racial discrimination is however deeply rooted** in Brazil and has influenced the structure of the entire society for the last five centuries, reflected in the match between political, social and economic marginalisation and the map of human and cultural specificities. The founding of the **system of slavery** on 'racist intellectual and ideological pillars', describing the enslaved Africans as culturally and mentally inferior in order to legitimise their status as an economic good, also profoundly impacted Brazilian mentalities.
- The federal authorities recognise the existence and depth of racism and the need to deeply transform current mentalities, and have adopted a number of laws and institutions to combat racism, including a law on teaching of African history in primary school, affirmative action programs in universities, the establishment of the Special Secretariat for the Promotion of Racial Equality (SEPPPIR), the creation of a National Indigenous Foundation (FUNAI) to protect the rights of the indigenous population, the Indians, especially with regard to land, health, education, economy, and participation.
- There is however resistance to these policies at different levels of society in general, and from some federal and local authorities and lack of funding means these laws have not produced concrete changes.
- There are contradicting developments between the 'folklorization' and **instrumentalisation of the culture** and religions of these communities as a means of hiding the reality of racism and discrimination, and the lack of representation of these communities in the media and structures and places of power.

<sup>10</sup> E/CN.4/2006/16/Add.3, 28 February 2006.

This discrimination affects principally the indigenous Indian community and the population of African descent, but also certain migrant workers, refugees and asylum-seekers:

- Blacks and Indians are seriously **under-represented in State institutions**, are generally excluded from all sectors of society, and confined to difficult jobs and the lowest salaries. As a result, half the Black population lives in poverty without access to health services. They also form the overwhelming majority of the inhabitants of *favelas*, where conditions of life are poor and degrading.
- Blacks suffer from high levels of violence, often at the hand of police officials acting in impunity.
- Black women suffer from multiple violence; the poorest are victims of drug dealers and domestic violence and are subjected to exploitation as domestic workers without any protection under labour laws. Around 30 per cent of black women have been subjected to sterilisation following a governmental policy.
- **Quilombos communities**<sup>11</sup> face great difficulties in securing ownership and recognition of their land and are living in insecurity and extremely precarious social and economic conditions.
- There is a process of **destruction of the indigenous economy, way of life and identity** accompanied by, often a, violent **invasion of their land**. While the process of land demarcation was supposed to be complete in 1993, only 37 per cent has been demarcated so far. Basic services are also lacking in Indian communities and they suffer from a total lack of dialogue with the Government and a relationship of conflict with FUNAI.

### **Key recommendations**

- Eradication efforts should be constant and involve all Ministries as well as the private sector and civil society and should be undertaken through two key steps: the establishment of a **national commission on truth and reconciliation on racism and racial discrimination**; and the translation of the conclusions and recommendations of the commission into a comprehensive national program for the eradication of racism and the promotion of racial equality.
- **SEPPPIR should be strengthened** as a full federal department at the centre of the federal Government and a **national commission for equality and human rights** should be established.
- The Government should prioritise the **prevention and repression of violence against Indians and Afro-Brazilians** and a specialised police unit should be established for the protection of these vulnerable groups.
- The government should proceed urgently to the **recognition and handing over of property titles to quilombos communities**, as well as urgently organise appropriate security and provision of basic goods and services.
- The Government should ensure the **protection of Indian communities**, ensure appropriate provision of health and education, and establish a parliamentarian commission on the violence perpetrated against Indians over their lands.
- **FUNAI** should be headed by a person fully respected by the majority of communities and should receive sufficient funding.
- The Government should find appropriate **affirmative action** means to guarantee political representation of the Black and Indian communities in State institutions.
- The Government and Parliament should take action to **impede and sanction the attacks and defamation against Afro-descendant religions**, notably through inter-religious dialogue.
- The Government should ensure that immigration and other relevant authorities treat **asylum-seekers and refugees** in accordance with international provisions and standards.
- The Government should continue its strong support for the activities of the **Organisation of American States** to combat racism and racial discrimination, in particular the drafting of an Inter-American convention against racism.

Mission to Switzerland<sup>12</sup>

### **Scope**

A mission to Switzerland was undertaken from 9 to 13 January 2006. The Special Rapporteur visited three language regions in the country. He met with federal and cantonal authorities; representatives of non-governmental organisations and other civil society groups; interviewed members and representatives of foreign communities and national ethnic, cultural and religious minorities. The Special Rapporteur also visited a detention centre and an asylum-seekers' border registration centre in Basel, and spoke with asylum-seekers who been denied asylum.

<sup>11</sup> Communities set up by enslaved Africans who escaped or rebelled against their slavery.

<sup>12</sup> *Preliminary Note on the mission to Switzerland*, E/CN.4/2006/16/Add.4, 3 February 2006.

## **Summary and Key Conclusions**

- Following the visit of the Special Rapporteur, the spokesman for the UDC (Swiss People's Party), a political party, challenged the competence of the Special Rapporteur on the basis of his nationality<sup>13</sup>. The Federal Department of Foreign Affairs and other members of the Federal Government who expressed regret at the statement;
- The Special Rapporteur noted that the Swiss authorities recognised the existence of problems related to racism and xenophobia, but generally expressed the view that these problems were not really serious. Members of foreign communities and national minorities however, reported deep-rooted and persistent manifestations of racism, racial discrimination and xenophobia;
- The Special Rapporteur based his assessment on considerations of the nature of and responsibility for manifestations of racism; the political will to combat such manifestations; and the legal and juridical strategy deployed in the fight against racism and xenophobia;
- The manifestations of discrimination related to factors such as the growing emphasis on rhetoric based on the "defence of national identity" and "the threat of the foreign presence" in political attitudes and platforms, and in some sectors of the media, reflected the existence of racist and xenophobic tendencies;
- There is a lack of clarity or political determination in the fight against racism and xenophobia. There are also opposing tendencies between a political will to implement the Durban Programme of Action manifested in the establishment of the Service for Combating Racism; and a lack of political consensus at the highest levels with proposals to abolish these services. The unique nature of the Swiss political system has also meant that there is no coherent general approach, national political program or legislation to fight racial discrimination;
- There is a lack of reliable data and statistics on incidents of racism and xenophobia and data is not standardised between cantons, which makes it difficult to assess this phenomenon and limits the effectiveness of anti-racism policies and programs;
- There have been some positive initiatives, notably in Basel;
- There is a weakness in the political and legal strategy to combat racism and xenophobia, and legislative initiatives tend to approach immigration issues purely from a security point of view and to criminalise foreigners, immigrants and asylum-seekers;
- There are also alarming signs of the influence of a racist and xenophobic culture in law enforcement.

Summary of cases transmitted to Governments and replies received<sup>14</sup>

### **Scope**

The report outlines the communications sent to Governments by the Special Rapporteur between 31 January 2005 and 31 January 2006, replies received from Governments during the same period, and observations of the Special Rapporteur.

### **Summary and key conclusions**

Please note that countries marked with an asterix responded to current or previous communications.

- The Special Rapporteur transmitted communications to Canada\*, Chile, Colombia, Côte d'Ivoire, Denmark, the Dominican Republic, France, India, the Islamic Republic of Iran, Israel, Latvia\*, Myanmar, Nepal, Nicaragua, Niger, Peru, Poland, Romania, the Russian Federation\*, Saudi Arabia, the Sudan, Switzerland\*, the United States of America, and the European Union.

Report on the situation of Muslims and Arab peoples in various parts of the world<sup>15</sup>

### **Scope**

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<sup>13</sup> The UDC spokesperson is reported to have stated, "it is fair enough for a United Nations representative to criticize us since we are now members of the United Nations, but it is a bit much if the comments are made by a Senegalese." See p. 2 of the report.

<sup>14</sup> E/CN.4/2006/16/Add.1, 27 March 2006.

<sup>15</sup> E/CN.4/2006/17, 13 February 2006.

The report is based on the conclusions and recommendations of an expert seminar on the situation of Muslims and Arab peoples in various parts of the world organised by the OHCHR and the Fundación Tres Culturas on the 18 and 19 November 2005, as well as other meetings and sources of information.

### **Summary and key conclusions**

There is a scarcity of reliable information regarding racist or discriminatory acts against Muslims and Arabs in the aftermath of 11 September 2001, and only two countries (Belarus and the USA) have replied to the OHCHR's *note verbale* requesting information:

- The Republic of **Belarus** passed a law acknowledging the part played by Islam in shaping the history of the Belarusian people.
- The Government of the **USA** indicated that it had anticipated a potential backlash against Arabs and Muslims after the events of 11 September 2001 and had therefore publicly and strongly denounced violence and discrimination against Arabs and Muslims and taken a number of initiatives to combat this backlash.
- In most areas of the world since 11 September 2001, there has been a serious **upsurge in manifestation and expressions of discrimination against Muslims and Arab peoples** and acts of violence against their places of worship and culture, the central theme of which has been **hostility towards Islam**.
- **Discrimination has now become more insidious** and less visible, with many countries introducing laws or administrative measures stigmatising communities on a variety of pretexts relating to security or illegal immigration, and specifically designed to control and monitor Muslims and Arab peoples.
- **Islam is identified with terrorism** and excessive emphasis placed on containment, mainly from the security angle, through control of Muslim education and monitoring of places of worship and congregations.
- The upsurge of Islamophobia is at its most alarming in **Europe**, facilitated by the rise of a brand of secularism that is increasingly intolerant of religion in general and the fact that opposition to Islam has been a core element in the construction of European identity.
- Islamophobia is exacerbated by the importance of **far-right racist and xenophobic platforms** in the political programs of democratic parties and increasing **intellectual validation** and theoretical and ideological justification for Islamophobia, embodied in the theory of an unavoidable clash of civilisations. The latter conceals the diversity of political and individuals opinions on this matter and obscures the deep-rooted multiculturalism of Western societies.
- Islamophobia contributes to the erosion of democracy and **respect for human rights**, as exemplified by widespread practices of 'rendition'<sup>16</sup>.
- Analysis of Islamophobia reveals that it is more **political and ideological** than religious in nature.
- The political, demographic and economic importance of countries with a strong Muslim identity, combined with the climate of increasing hostility to Islam, is precipitating a **clash of civilisations and religions**.

### **The cartoons of the prophet Muhammad published in a Danish newspaper**

On 30 September 2005, 12 cartoons of the Prophet Muhammad were published in the Danish newspaper, *Jyllands-Posten*, largely associating Islam with terrorism.

- The cartoons reveal how much the **defamation of religions has become trivialised** and the Danish Government's initial reaction, which was to refuse to adopt an official stance, reflected a failure of commitment and vigilance in combating religious intolerance and incitement to religious hatred.
- The **political and ideological context** in which the cartoons were published; the signing of an accord between the Danish Government and the far-right Danish People's Party restricting access to Danish citizenship and the fact that this party holds 13 per cent of the seats in Parliament, illustrate how the increasing prominence of far-right racist and xenophobic platforms in traditionally democratic political programs facilitates trivialisation of racism and xenophobia.
- The **re-publication of the cartoons in European newspapers** is out of step with international norms that seek an appropriate balance between freedom of expression and religious freedom and exemplifies the responsibility of certain media outlets for conflating Islam with terrorism, thereby contributing to the resurgence of Islamophobia.
- In reply to a joint letter with the Special Rapporteur on freedom of religion or belief, the **Danish Government** indicated that it condemned any expression or action that attempted to demonise groups of

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<sup>16</sup> The deportation of persons covertly detained on suspicion of terrorism to countries practising terrorism, and inhuman or degrading treatment.

people on the basis of religion or ethnic background and argued that freedom of speech is accompanied by a responsibility not to incite hatred or cause fragmentation of the Danish community.

### **Key recommendations**

The Commission should call on Member States:

- To express and demonstrate a firm and determined **political commitment to combating all forms of defamation of religions** in general and to take action to deal with the upsurge in Islamophobia in particular.
- To **advocate peaceful dialogue** and condemn all forms of violence and confrontation in resolving religious tensions.
- To combat and sanction any attempt to seriously **conflate Islam with violence** and **terrorism**.
- To promote **dialogue between cultures** and **religions** through the promotion of in-depth knowledge of each other's religious and cultural traditions, and through political, social and cultural initiatives of interactions and cross-fertilisation of ideas between different communities and their cultural and religious traditions.
- The Commission should encourage all relevant **treaty bodies** to examine the question of the interpretation of existing norms on freedom of expression, religious freedom and non-discrimination, and reflect on whether additional standards are needed for that purpose.
- The Commission should call on the **Special Rapporteur to submit a regular report on defamation of religion**.