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HUMAN RIGHTS COUNCIL  
Thirteenth session  
Agenda item 9

**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND  
ALL FORMS OF DISCRIMINATION: COMPREHENSIVE  
IMPLEMENTATION OF AND FOLLOW-UP TO THE DURBAN  
DECLARATION AND PROGRAMME OF ACTION**

**Ad Hoc Committee on the Elaboration of Complementary Standards  
(second session)**

**Report as approved ad referendum on 30 October 2009  
with amendments and proposals received within the following  
two weeks to statements delivered during the session**

**Chairperson-Rapporteur: Mr. Idriss Jazaïry (Algeria)**

## **INTRODUCTION**

1. The Ad Hoc Committee on the elaboration of complementary standards submitted its report (A/HRC/13/58) pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30.
2. In order to conform with the Note by the Secretariat on control and limitation of documentation (A/58/CRP.7), the thematic section of the above-mentioned report only contains text proposals formulated during the session, as well as amendments and proposals submitted to the Secretariat up to two weeks following the session, provided the proposals were articulated during the session.
3. Summaries of views and full position papers are contained in this conference room paper, unedited and in English only, and available online at <http://www2.ohchr.org/english/issues/racism/2ndAdHocCommittee.htm>.

### **I. ORGANIZATION OF THE SESSION**

4. The Ad Hoc Committee on the elaboration of complementary standards held its second session from 19 to 30 October 2009, holding 14 meetings in total.

#### **A. Attendance**

5. The session was attended by representatives of Member States and non-Member States represented by observers, UN entities, intergovernmental organizations, and non-governmental organizations in consultative status with the Economic and Social Council.

#### **B. Opening of the session**

6. Ms. Mona Rishmawi, Chief of the Rule of Law, Equality and Non-Discrimination of the Office of the High Commissioner for Human Rights welcomed the delegates to the second session of the Ad Hoc Committee on the elaboration of complementary standards (further referred to as the Ad Hoc Committee), which provided an opportunity to build on the momentum of the Durban Review Conference. She indicated that the wide range of ideas contained in the outcome referred to in paragraph 2(d) of the roadmap offered an opportunity for constructive engagement, and gave an overview of the historical process leading up to the establishment of the mandate of the Ad Hoc Committee.

#### **C. Election of the Chairman-Rapporteur**

7. H.E. Idriss Jazaïry, Permanent Representative of Algeria, was re-elected Chairperson-Rapporteur of the Ad Hoc Committee by acclamation. He thanked delegates for their confidence and emphasized that the specific focus of the second session would be on the outcome referred to in paragraph 2(d) of the roadmap on the elaboration of complementary standards, contained in document A/HRC/AD.1/2/2 (further referred to as the outcome document under the roadmap).

8. The Chair explained the following parameters were used for the elaboration of this document:

- Paragraph 199 of the DDPA;
- Human Rights Council decision 3/103 establishing the mandate of the Ad Hoc Committee;
- Human Rights Council resolution 10/30 which endorsed the roadmap;
- Core international human rights treaties.

9. The Chair underlined that he had taken the comments formulated during the informal meeting of 10 July 2009 into account for the elaboration of the outcome document under the roadmap. He noted, however, that some contributions received did not fall under the mandate of the Ad Hoc Committee, interfered with mandates of other mechanisms, or pertained to process, thematic issues or principled positions. In order to enhance transparency, a section summarizing the views and comments of Member States had nevertheless also been included in the outcome document. The Chair requested that discussions focus on the main sections of the outcome document under the roadmap. Given the nature of the substantive issues included in the outcome document, a victim-oriented approach was imperative. He welcomed the opportunity for the Ad Hoc Committee to advance its endeavors and expressed his wishes for a fruitful, effective and substantive session.

#### **D. Adoption of the agenda and organization of work**

10. The Chair invited comments on the agenda contained in document A/HRC/AC.1/2/1. In the course of discussion, statements on the agenda were frequently intertwined with statements on the organization and draft programme of work contained in document A/HRC/AC.1/2/CRP.1. Both items are therefore addressed under the same heading.

11. Nigeria, on behalf of the African Group, indicated it could not accept the agenda and programme of work as structured and requested that the Chair elaborate a new agenda and a new programme of work that would allow the Committee to start the process of elaborating a new international instrument.

12. Sweden on behalf of the European Union stated that, while the EU was not against the principle of adopting complementary standards, it felt the decision to do so should be consensual. Furthermore Sweden underlined that any identification of gaps must be based on empirical data and not simply views; the need to adopt standards needed to be rational and evidence-based. Any complementary standards should not undermine or duplicate existing standards, and all relevant stakeholders should be associated to the process, including members of CERD. Sweden also stated that agreement on these principles was necessary before it could endorse the proposed agenda. Azerbaijan supported the elaboration of complementary standards since some challenges

are not covered by CERD and emphasized that consensus should not be a precondition for the work of the Committee.

13. Argentina expressed, on behalf of Brazil, Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Switzerland, Mexico, Chile and Uruguay, that due consideration was to be given to the study of the Committee on the Elimination of Racial Discrimination, contained in document A/HRC/4/WG.3/7, and the study by the five experts, contained in document A/HRC/4/WG.3/6. Argentina added that a discussion on the identification of procedural and substantive gaps should precede any discussion on themes and should be conducted in a spirit of consensus, a view supported by Norway.

14. The United States of America did not believe new norms were necessary or useful. The problem was not one of gaps in the existing international legal framework, but rather one of gaps in the implementation of existing norms. Understanding why some approaches did or did not work would be more useful than elaborating new norms. Self-examination and scrutiny was important for all States.

15. The Russian Federation stressed that complementary standards should not undermine existing standards. In particular, the work of the Ad Hoc Committee should take into account the Outcome Document of the Durban Review Conference.

16. Sweden, on behalf of the EU, felt that the outcome document under the roadmap and the draft programme of work did not accurately reflect the contributions submitted by the European Union. Key principles of the EU had not been included in the principles section of the outcome document under the roadmap. Sweden requested that the outcome document under the roadmap and the programme of work be revised. It stated the outcome document under the roadmap had a strong religious bias which did not accurately reflect the contributions received. On the other hand, double and multiple forms of discrimination, including discrimination based on gender and sexual orientation, as well as the need for universal ratification and better implementation of ICERD, were insufficiently visible in the outcome document under the roadmap and the draft programme of work.

17. Canada stressed the importance of proceeding by consensus, a view also emphasized by other delegations of the Western Group. Cuba flagged that this was an artificial debate as the principle of consensus constituted a de facto veto right. Pakistan, on behalf of the OIC, stated that only UN rules of procedure were to guide the work of the Ad Hoc Committee and that while consensus remained desirable, it was not the only way forward. The OIC also commented on the allegation that the outcome document of the roadmap was biased in favor of religious intolerance. The view was expressed that maybe this was the case because it was also a burning reality.

18. Nigeria, on behalf of the African Group, warned against the insinuation that some issues might be more important than others. Nigeria also alleged that consensus was being used as a pretext by those States who preferred not to genuinely engage in the discussion. Nigeria also noted that, while the idea of consensus was inherent to negotiations, it was not forced on any meeting as a condition, as doing so would make it a constraining factor against the prevailing

UN Rules of Procedure guiding all UN meetings. Hence, amendments to the rules should be made at the UN General Assembly and not in a subsidiary body.

19. Ireland expressed its resentment over the fact that legitimate positions by Western countries were being interpreted by some as a reluctance to deal thoroughly, honestly and seriously with the problem of racism, while in fact exactly the opposite was the case. The delegate cited the example of his country which recently hosted a visit by CERD experts. Denmark added that any outcome of the Ad Hoc Committee would not have the same weight or impact if not decided by consensus, a position supported by Greece. Portugal inquired about the applicable rules of procedure. Mexico stated consensus was not the only way forward, but a minimum level of agreement on the topics to be addressed was necessary.

20. The Syrian Arab Republic, supported by the Islamic Republic of Iran, noted that the issue of complementary standards sprung from the constant evolution of international human rights law and that consensus and unanimity were not identical. The Syrian delegate also inquired why the outcome document under the roadmap was not available in Arabic. The Chair, after having been informed by the Secretariat that the document would be available in Arabic soon, expressed his dissatisfaction over the late availability of the translation.

21. The Chair cited the Rules of Procedure of the General Assembly contained in document A/520/Rev.17 and deducted that, as a subsidiary body of the Human Rights Council, the Ad Hoc Committee had to apply the rules of procedure of the Human Rights Council which, in turn, applied the rules of procedure of the General Assembly. There was no legal ambiguity in this respect. As the Chair, however, H.E. Idriss Jazaïry obviously preferred consensus. This did not mean, however, that a document which was not adopted by consensus was not a valid document. Indeed, such an approach would contradict the very essence of multilateralism. He also clarified that the outcome document under the roadmap presented substance and procedure separately, and that it was obvious that the document could have been structured in a myriad of other ways. As for the issue of sexual orientation, the Chair informed that some States had requested in prior sessions that the discussion ought to focus on racial discrimination only, while others favored a focus on all forms of discrimination. Hours had already been devoted to this issue, inconclusively, and it had become clear that the matter was not conducive to consensus. The Chair then proposed that informal consultations take place on a draft programme of work which would enable the Ad Hoc Committee to elaborate complementary standards, indicating the nature of the instruments was not pre-determined.

22. An indigenous representative, speaking on behalf of Indigenous Peoples and Nations Coalition, the International Council for Human Rights and the Indian Council of South America, stated that the rights of peoples under foreign occupation had to be addressed directly.

23. At the opening of the second meeting, the Chair presented the revised agenda contained in document A/HRC/AC.1/2/1/Rev.1. The Ad Hoc Committee adopted this agenda for its second session.

24. Discussions on the draft programme of work were pursued during the second and third meetings. At the opening of the fourth meeting, pending final approval of the draft programme of work, it was agreed that discussions would be pursued in alphabetical order on the basis of themes submitted by States or groups for inclusion in the draft programme of work.

**1. Advocacy and incitement to racial, ethnic, national and religious hatred**

25. Nigeria, on behalf of the African Group, made the following proposals:

1. *State Parties shall condemn any propaganda, practice, or organization aimed at justifying or encouraging any form of racial hatred or discrimination targeting people of particular groups, such as racial, ethnic or religious groups, refugees, asylum seekers, internally displaced persons, stateless individuals, migrants and migrant workers, communities based on descent, such as people of African descent, indigenous people, minorities and people under foreign occupation.*
2. *State Parties shall immediately undertake to adopt positive measures designed to eliminate all incitement to racial, ethnic or religious hatred or discrimination and, to this end, shall commit themselves, inter alia:*
  - a) *to declare an offence punishable by law all dissemination of ideas aimed at discrimination or hatred, as well as all acts of violence or incitement to such acts against any particular group of persons;*
  - b) *to declare illegal and prohibit organizations, and also organized and all other propaganda activities, which encourage and incite racial, ethnic or religious hatred or discrimination, and shall declare participation in such organizations or activities as an offence punishable by law;*
  - c) *not to permit national or local public authorities to incite racial hatred or discrimination;*
  - d) *not to permit political parties to incite racial hatred or discrimination.*

26. Switzerland stated, on behalf of Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Argentina, Mexico, Brazil, Chile, and Uruguay, that the elements of this issue were already covered by existing international instruments, particularly Article 4 of the ICERD and Article 20 of the ICCPR. It further suggested that:

1. *The Human Rights Committee and the CERD could consult with States and stakeholders and possibly consider elaborating a joint General Comment on the issue of advocacy and incitement to hatred, as enshrined in the above-mentioned articles, in the framework of their respective competencies and bearing in mind article 19 of the ICCPR.*

27. Pakistan, on behalf of the OIC, expressed support for the proposal formulated by Nigeria, on behalf of the African Group, while proposing the following amendments and additions:

1. *Replace the word “condemn” in the first line of the first proposal by the word “prohibit” and add “ethnic, national, and religious” between the words “racial” and “hatred” in the second line.*
2. *Add “ethnic, national, and religious” between the words “racial” and “hatred” in the second line of the second proposal.*
  - a) *Add “racial, ethnic, national, and religious” after “aimed at” in the first line.*
  - b) *Add “ethnic, national, and religious” after “racial” in the first line.*
  - c) *Add “ethnic, national, and religious” after “racial” in the first line.*
  - d) *to strengthen their legislations or adopt necessary legal provisions to prohibit and suppress racist and xenophobic platforms and to discourage the integration of political parties who promote such platforms in government alliances in order to legitimize the implementation of these platforms.*

28. In addition, Pakistan, on behalf of the OIC, added the following two proposals:

1. *States Parties shall, in accordance with human rights standards, declare illegal and prohibit all organizations based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote national, racial and religious hatred and discrimination in any form.*
2. *States Parties shall promulgate, where they do not exist, specific legislation prohibiting any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*

29. There was a discussion as to the existence or not of gaps in regard to this issue. Liechtenstein, Sweden on behalf of the European Union, Ireland, Norway, Denmark, The Netherlands, the United States of America, Belgium, The United Kingdom, France, Canada and Germany considered that, based on empirical data and fact based reports, no evidence had been put forward to substantiate the need to develop new standards. What was really at issue was the improvement of implementation of existing instruments.

30. Nigeria, on behalf of the African Group, Syria, South Africa, Pakistan, on behalf of the OIC, and Algeria affirmed that there were gaps. Argentina submitted there was a need to identify exactly which gaps were being referenced. Pakistan, on behalf of the OIC, stated that the words “xenophobia” and “defamation of religions” did not exist in any international human rights instrument. Pakistan was open, however, to hearing from experts.

31. The EU submitted the following proposals:

1. *States should condemn any advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence;*
2. *States should implement existing standards regarding incitement to racial or religious hatred and violence.*

32. The United States of America made the following proposals for action in this area:

*Member states are called upon to:*

1. *Speak out against intolerance, including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence;*
2. *Adopt measures to criminalize the incitement to imminent violence based on race or religion;*
3. *Censure, as appropriate, government officials who in their official capacity advocate for racial, ethnic, and religious hatred that constitutes incitement to discrimination, hostility, or violence; and*
4. *Present in their periodic reports to the Human Rights Committee and the Committee on the Elimination of all Forms of Racial Discrimination, and include in their Universal Periodic Review report to the Human Rights Council, a full account of the measures that they have taken consistent with their obligations under international law, including equal protection of the law, to address and combat advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.*

## **2. Comprehensive anti-discrimination legislation**

33. Several States, including Sweden, Italy, the UK, Ireland, Indonesia, Brazil, Canada, and Slovakia gave detailed overviews of their national anti-discrimination legislation and measures they have adopted to combat racism, racial discrimination, xenophobia and related intolerance. Sweden, on behalf of the European Union, outlined the comprehensive regional anti-discrimination legislation in place to ensure that certain forms and expressions of racism and xenophobia are punishable in all Member States by effective, proportionate and dissuasive criminal penalties. It highlighted that discrimination and intolerance is global, and that it is not limited to certain regions, countries, religions or belief-systems.

34. The United States of America submitted the following proposals for action in this area:

*Members States are called upon to:*

1. *Compile a comprehensive list of current laws prohibiting racial and religious discrimination;*
2. *Review existing national laws to ensure that protections against racial and religious discrimination comply with their obligations under international human rights law;*
3. *Facilitate an international meeting of national experts to assess this legislation and evaluate its effectiveness in practice;*
4. *Assess whether their current domestic institutions robustly enforce anti-discrimination laws, and determine actions necessary to fill any gaps in enforcement;*
5. *Assess whether domestic institutions appropriately enforce such anti-discrimination laws equally among members of all racial and religious groups within the State;*
6. *Establish, if one does not already exist, a national body or bodies responsible for ensuring the implementation of anti-discrimination laws, investigation of cases, maintenance of relevant statistics, reviewing allegations of failed or improper enforcement, and for bringing cases against individuals who violate the law;*
7. *Take effective measures to ensure equal access to governmental programs or activities, irrespective of an individual's race or religion;*
8. *Take effective measures to ensure that government officials in the conduct of their public duties do not discriminate based on an individual's race or religion;*
9. *Take effective measures to ensure that members of racial or religious minority groups have equal access to housing, education, and employment;*
10. *Foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to the public realm;*
11. *Encourage representation and meaningful participation of individuals, irrespective of their race or religion, in all sectors of society, especially in government; and*
12. *Undertake strong efforts to counter racial or religious profiling which is understood to be the invidious use of race, religion or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures.*

The proposal was supported by the UK, Ireland, France, Canada, and Slovakia.

35. An indigenous representative, speaking on behalf of Indigenous Peoples and Nations Coalition, the International Council for Human Rights and the Indian Council of South America, requested that historical and institutional forms of racism also are examined, in particular articles 1 and 73 of the UN Charter.

36. Nigeria, speaking for the African Group, affirmed its interest in an “additional protocol” to the ICERD, which is of course inherently optional, to address gaps in international instruments regarding racial discrimination, xenophobia and related intolerance. In this spirit, it contributed the following proposal, supported by the OIC:

1. *State parties shall review and, as and where required, modify their laws, policies, and practices relating to migration, asylum, and citizenship, on the basis of relevant international human rights instruments, and not solely on the basis of security considerations; they shall notably avoid any criminalization or ethnic approach to such issues, thus making the said laws, policies and practices free from racial, religious and ethnic discrimination and compatible with State obligations as enshrined in international human rights instruments.*
2. *State parties shall take all other necessary actions to combat racism, racial discrimination, xenophobia and related intolerance, in particular the new contemporary forms of racism, through specific measures and programme including in the areas of legislation, judiciary and administrative systems, education and information.*

The proposal put forward was supported by Mexico and Ecuador. Argentina also expressed interest in the proposal. The Argentinean delegate, expressing concern over the detention of migrants, affirmed that it would be important to address gaps in legislation on migrants. He further called on all States to ratify the International Convention on the Rights of Migrant Workers and Members of their Families as well as other core human rights instruments.

37. Several States from the Western Group expressed that the forms and manifestations of racial discrimination which the African Group’s proposal sought to address were sufficiently covered by existing international norms and standards. The UK recalled that the Outcome Document of the Durban Review Conference reaffirmed that the ICERD was the principal international instrument in the fight against racism and several countries from the Western Group requested that the discussion be brought back to the implementation of the ICERD and a discussion on good practices. The delegate of the United Kingdom raised the question if the proposals were not in contradiction with the Outcome Document of the Durban Review Conference. Denmark said proposals ought to be followed by detailed explanations of the basis, facts and motivations justifying these proposals.

38. There was disagreement on the method of work to comply with the mandate of the Ad Hoc Committee: some felt that action points had to be put forward in the format of concrete proposals, while others considered it was too early to do so. The Chair affirmed that the two points of view would be reflected in the report of the session.

39. The *Cercle de recherche sur les droits et les devoirs de la personne humaine (CRED)* highlighted that both national and international legislation were insufficient to combat racism and favored the development of codes of conduct in the area of freedom of expression and association, as well as a universal declaration on human responsibilities. The representative of the Association of World Citizens noted that additional resources were essential to effectively implement international measures on trafficking in human beings and organs at the national level, and that no amount of instruments could remedy the lack of bilateral, regional and international cooperation.

40. The United Kingdom made the following proposal, building on the US proposal, which was also supported by Argentina, Ireland, Mexico, Norway, Denmark, the US and Canada:

1. *That experts be invited to brief the Ad Hoc Committee on the implementation of national anti-discrimination legislation.*

41. Nigeria, speaking for the African Group, rejected the proposal put forward by the UK, indicating that information on racism and intolerance was widely available. The Nigerian delegate further affirmed that no international instrument covered cybercrime, hate crimes, racial profiling or xenophobia. Ecuador supported the proposal of the United Kingdom, but in view of technical difficulties in organizing an exchange with some 50 experts, all with their own views, favored instead sending the conclusions of the Ad Hoc Committee, upon completion of its work, to the relevant treaty monitoring bodies for an opinion.

42. The Syrian Arab Republic stated it was not opposed to expert opinions, but that the opinions expressed by certain bodies in the past had only created discord. Argentina affirmed that the proposal by the United Kingdom was not incompatible with the mandate of the Ad Hoc Committee; rather it would solidify its work. He warned against prejudging on the position of the experts who might actually support the case for additional standards.

43. An indigenous representative, speaking on behalf of Indigenous Peoples and Nations Coalition, the International Council for Human Rights and the Indian Council of South America, flagged that, from his experience, experts frequently disagreed on key issues and were unable to reach consensus.

44. The Chair opened the sixth meeting, explaining that further consultations were necessary before the programme of work could be adopted. The agreement to continue the discussion of issues put forward in alphabetical order, as recorded in the draft programme of work not yet adopted was therefore extended.

### **3. Discrimination based on religion or belief**

45. Pakistan, on behalf of the OIC, made the following proposals:

1. *States Parties shall prohibit by law the uttering of matters that are grossly abusive or insulting in relation to matters held sacred by any religion thereby causing outrage among a substantial number of the adherents to that religion.*
2. *States Parties must enact legal prohibitions on publication of material that negatively stereotypes, insults, or uses offensive language on matters regarded by followers of any religion or belief as sacred or inherent to their dignity as human beings, with the aim of protecting their fundamental human rights.*
3. *States Parties shall prohibit public insults and defamation of religions, public incitement to violence, threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.*
4. *States Parties shall provide, within their respective legal and constitutional systems, adequate protection against acts of hatred, discrimination, intimidation, and coercion resulting from defamation of religions, and incitement to religious hatred in general, and take all possible measures to promote tolerance and respect for all religions and beliefs.*
5. *States Parties shall penalize public expressions with racist aims, or of an ideology which claims the superiority of, or which deprecates or denigrates, a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin, and enact legal prohibitions on offences in which religious motives are aggravating factors.*
6. *States Parties shall apply and reinforce existing laws in order to combat and deny impunity for all manifestations and acts of racism, racial discrimination, xenophobia and related intolerance against national or ethnic, religious and linguistic minorities and migrants and the stereotypes applied to them, including on the basis of religion or belief.*

46. There was a discussion on whether a substantive gap existed regarding this issue. States that emphasized the existence of a gap were Pakistan, on behalf of the OIC, Iran, South Africa, Saudi Arabia and Syria. States that deemed there was no gap were Mexico, on behalf of Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Switzerland, Argentina, Chile, Brazil and Uruguay; Denmark, the United States of America, Canada and Sweden, on behalf of the European Union.

47. Azerbaijan stated that the former Special Rapporteur had noted that defamation of religions was a disturbing trend and that freedom of expression had been abused in this context. Sweden, on behalf of the European Union, Mexico, on behalf of Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Switzerland, Argentina, Chile, Brazil and Uruguay; Norway, Denmark, Poland, and France expressed their opposition to defamation of religions being regarded as a human rights legal concept, explaining that human rights were relevant to individuals but not religions. Sweden on behalf of the EU argued that all relevant Special Rapporteurs, the general outcome of the arts. 19/20 seminar in October 2008 as well as the negotiations leading up to the Outcome Document of the Durban Review Conference had concluded that the concept did not belong in a human rights discourse. Sweden quoted the Special Rapporteur on freedom of belief who has cautioned against excessive or vague legislation on religions issues, which could create tensions and problems rather than solve them. Sweden reiterated that the European Union firmly believed that any complementary standards should respond to a specific need identified through a rational, comprehensive and fact-based process. It rejected in the strongest terms any new standard connected with the so-called concept of “defamation of religions”. The United States of America also noted that one individual’s sincere belief in his or her own religion may well conflict with or be deemed offensive by another’s sincerely held view and expression of his or her belief, and that it would be impossible and inappropriate for an international legal framework or States to attempt to adjudicate or mediate between those views. Germany stated that discrimination based on religion was different to defamation of religions and the two should be kept separate. Portugal stated that if defamation of religions was a problem then it was not necessarily human rights mechanisms and instruments that should be called upon to address this problem.

48. Mexico, on behalf of Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Switzerland, Argentina, Brazil, Chile and Uruguay, made the following suggestion:

1. *Publish a digest of case studies, in which regionally developed jurisprudence could also be included, in order to shed light on existing practices in this field.*

49. The United States of America gave several examples of actions taken by its authorities to combat incidents of discrimination based on religion or belief. Iran stated that defamation of religions was increasing in the world, that the Former Special Rapporteur had highlighted this increase and had called for a strengthening of international instruments to combat racism. Sweden stated that the Special Rapporteur on freedom of religion or belief had informed that governments had several tools at their disposal to counter discrimination based on religion of belief, including education and legislation, and that the issue was adequately covered by existing international instruments.

50. Nigeria, on behalf of the African Group, made the following proposal:

1. *States are to include in their criminal legislation offences in which religious motives are an aggravating factor.*

51. The Becket Fund for Religious Liberty stated that all the necessary tools to protect freedom of religion and belief existed in international instruments and that the problem was one of implementation. It added that there was a difference between incitement and provocation and that only incitement is, and should be, punishable by law.

52. At the opening of the seventh meeting, the Chair explained that consultations were ongoing as to how the issues of refugees, returnees and IDPs could be added to the programme of work and how, in more general terms, the programme of work could be reformulated so as to be acceptable to all delegations for adoption. Azerbaijan supported the inclusion of the issue of internally displaced persons in the programme of work. The meeting was adjourned until the following day.

53. At the opening of the eight meeting, upon proposal by the Chair, the consideration of issues as recorded in the draft programme of work continued in alphabetical order, pending adoption of the draft programme of work.

**4. Establishment, designation or maintaining of national mechanisms with competences to protect and prevent against discrimination.**

54. The United Kingdom presented regional and domestic efforts in this area, expressing the hope that the elements provided could be useful and considered *that complementary standards could take the form of guidelines or best practices*.

55. Sweden, on behalf of the EU, stated that national mechanisms, for example national action plans, complemented international norms and mechanisms. It underlined that existing norms and standards, when fully implemented and complemented by strong national mechanisms as well as monitoring by the CERD, were the most effective way to combat discrimination. Ireland, Belgium, Canada, US, Netherlands, Brazil, France, Poland briefed the meeting on monitoring bodies and other measures their countries had put in place to address discrimination. Liechtenstein added there was also a local and a regional dimension to this issue and highlighted the important role of European Commission against Racism and Intolerance (ECRI). It further called for complaints regarding multiple forms of discrimination to be handled by the same body.

56. The African Group expressed the view that issues pertaining to implementation could not be considered gaps and that only issues for which no international instrument existed constituted a gap. The examples of racial profiling, xenophobia, defamation, hate crimes, and cybercrime were given.

57. The OIC affirmed that national mechanisms were sufficiently covered by article 6 of ICERD, but that a global mechanism was necessary to address contemporary forms of racism, such as xenophobia against Muslim migrants, and presented the following proposal:

1. *Establish an independent specialized body to monitor the whole process related to racio-religious discrimination and intolerance: collect, compile, analyze, publish and disseminate statistical data on racism and racial discrimination; assist victims,*

*investigate cases, monitor legislation, and provide training to police, prosecutors and judges on legislation, planning and execution of relevant provisions of the instrument as well as to raise awareness on promoting tolerance and preventing defamation of religions.*

The OIC linked its proposal to the idea of an observatory which had been discussed in the course of the Durban Review process. The view was expressed that, in spite of the measures and mechanisms put in place, racism and xenophobia were on the rise.

58. In response to the OIC proposal, Sweden, on behalf of the EU, informed that existing standards adequately covered these issues and that no additional legally binding instruments were needed. Sweden recommended that effective use of national mechanisms and sharing of best practices be the focus of the debate and placed on record its firm opposition to the concept of defamation of religions. It submitted the following proposal:

1. *Considering the importance of national mechanisms to protect against discrimination, States should adopt national action plans for human rights.*

59. A representative of the Association for World Education and the World Union for Progressive Judaism expressed concern over the number of anti-Semitic publications and pamphlets on display in Syrian bookstores. This led him to believe that the Ad Hoc Committee absolutely needed to take up the issue of discrimination on the basis of religion or belief.

60. Considering that gaps existed only in the implementation of existing international obligations, the US, supported by France and Norway, proposed that States engage in a critical self-assessment of the existence and effectiveness of national measures and mechanisms, and presented the following proposals:

1. *All Member States to submit reports on their national mechanisms by March 2010 and non-governmental organizations to submit their input on this topic as well.*
2. *States that currently lack anti-discrimination mechanisms should establish or designate new mechanisms by December 2010. States that already have mechanisms established should identify concrete steps to improve these mechanisms with the ultimate goal of providing a truly comprehensive anti-discrimination framework within their national government. All Member States should report on their progress by February 2011.*

61. The Netherlands noted *that guidelines or a compilation of best practices on national mechanisms to prevent and protect against discrimination could be useful.* Brazil also welcomed a best practice exchange mechanism.

62. An indigenous representative, speaking on behalf of Indigenous Peoples and Nations Coalition, the International Council for Human Rights and the Indian Council of South America challenged the territorial integrity principle which he claimed was frequently invoked to evade

human rights obligations. The NGO CRED reported it had conducted a study in Cameroun on discrimination on the basis of language and ethnic origin and its links to poverty. Poverty reduction and capacity building were therefore two essential strategies for fostering behaviors that would eliminate discrimination. The representative of the Association of World Citizens stated an independent observatory of civil society was also necessary, in addition to additional resources and capacity building efforts to ensure democratic participation.

## 5. Genocide

63. South Africa, on behalf of the African Group, stated that genocide had been recognized as a crime against humanity. Nevertheless, the following gaps existed in the Genocide Convention: the fact that the Convention had no treaty-monitoring body, the fact that the definition of genocide placed a heavy burden of proof on those alleging the crime, the lack of preventative mechanisms, and the need to provide reparation for families of victims of genocide. Considering that the mandate of the Ad Hoc Committee is to elaborate complementary standards to ICERD, South Africa, on behalf of the African Group, supported by Pakistan, on behalf of the OIC, proposed *that a different forum be established to address this issue.*

64. Switzerland, on behalf of Argentina and Switzerland noted that the crime of genocide was defined in the 1948 Convention on the Prevention and Punishment of the Crime of Genocide and that this important Convention, although ratified by over 130 countries, still failed to meet universal ratification. It therefore called on all States that did not yet ratify this Convention to consider doing so as a matter of priority. Also, Switzerland stated that the two countries were organizing regional forums on the prevention of genocide to exchange ideas and experiences. Policies for dealing with the past and the fight against impunity in its judicial and non-judicial aspects also played an important role in prevention strategies. In this context, prompt universal ratification of the Rome Statute was essential.

65. Argentina and Switzerland formulated the following proposals:

1. *Allocate appropriate attention and resources to early warning mechanisms and prevention strategies on the international and regional levels;*
2. *Develop regional ownership of genocide prevention strategies, developing approaches in full respect of social and cultural contexts, in order to complement work and progress made at the international level.*

66. Sweden, on behalf of the EU, called for addressing the root causes of violence and gave an overview of UN mechanisms and procedures for the prevention of genocide, as well as the relevant international legal instruments. Sweden emphasized the key role of the International Criminal Court in combating impunity and fostering a culture of accountability. It flagged that the Special Rapporteur on Freedom of Religion or Belief, Ms. Asma Jahangir, had questioned whether the genocide in Rwanda had taken place due to lack of legislation and had noted that it was rather the lack of action from the international community. The EU stated that existing international instruments and mechanisms, if ratified and effectively implemented at national

level sufficiently covered the issue of genocide. It proposed that *States should ratify the Genocide Convention, the Rome Statute of the ICC, the ICCPR and other existing relevant international treaties, as well as cooperate fully with the Special Advisor on the prevention of genocide, including by accepting his requests for visits.*

67. The United States of America reiterated that the 1948 Convention on the Prevention of the Crime of Genocide made clear that genocide is a crime under international law that must be prevented and punished. It also raised the serious issue of incitement to genocide, stating that while direct and public incitement to genocide has unfortunately continued to occur since the 1948 Convention, this did not necessarily happen because of a lack of an international legal regime with regard to such incitement, but rather because of a lack of implementation by States and, at times, a tolerance, acquiescence, and even encouragement of genocide by some State officials.

68. Rwanda stated the Genocide Convention was over 50 years old and had not prevented genocide from being perpetrated in Rwanda. The Rwandan delegate pointed out that there were gaps in the Convention and other relevant international instruments with regard to denial, revision and trivialization of genocide, and concerning reparations for the victims of genocide that needed to be addressed. It proposed the following measures:

1. *Creation of a monitoring body of the Convention on Genocide, to be called the Committee on Genocide to follow up upon the implementation of the Convention;*
2. *Creation of a new mandate and appointment of a Special Rapporteur or Independent Expert to examine new trends and all relevant issues related to genocide in coordination with the UN special representative of the SG on genocide;*
3. *Preparation of an additional protocol to the Convention on Genocide;*
4. *Preparation of resolutions or recommendations of the UN General Assembly or the Human Rights Council on this issue.*

69. The Armenian delegation identified two concepts, namely “combating denial of the crime of genocide and crimes against humanity” and “the responsibility to protect.” Both required complementary standards in order to address current challenges in the prevention of genocide. The Armenian delegation proposed the following measures:

1. *To initiate a compilation report scrutinizing the various national and supra national legislation which address the issue of combating denial of the crime of genocide and crimes against humanity;*
2. *To request the Office of the Special Adviser to the Secretary-General on the Prevention of Genocide to comment on the ongoing evolution of the concept of the responsibility to protect.*

70. Nigeria, on behalf of the African Group, noted that perhaps a clear definition of genocide could have prevented the Rwandan genocide and highlighted the need for a monitoring body on the Convention Genocide, for example a Special Rapporteur. Also, an optional protocol to define the crime of genocide was necessary.

71. Turkey supported the African Group in recalling that the mandate of the Ad Hoc Committee is limited to the elaboration of additional standards to ICERD. Turkey referred to paragraph 121 of the study of the five experts to underline that there were no gaps. It emphasized that this subject was already covered by existing international legal instruments and that the Convention of 1948 on the prevention of Genocide addressed concerns that may exist in this regard. It stated denial of genocide was a controversial concept which nourished political debate. Turkey therefore concluded that there was no need to adopt complementary standards in the area of genocide. Norway and Canada supported this view, but called for better implementation of existing instruments.

72. Pakistan, on behalf of the OIC, said that important issues of prevention and protection were brought to the fore that needed to be dealt with. However, the mandate of the Ad Hoc Committee was what it was and this subject *did not fall under its mandate*.

73. The NGO Association of World Citizens stated that the media had a responsibility to objectively inform and not distort information. The representative of the NGOs Association for World Education and the World Union for Progressive Judaism stated that it was time to recognize Judeophobia, anti-Semitism, and incitement to hatred against Jews that had already led to genocide. The NGO CRED urged all States to sign the Genocide Convention and called for a UN body to monitor cases of genocide.

## **6. Hate crimes**

74. South Africa, on behalf of the African Group, expressed growing concern over the occurrence of hate crimes and cited examples such as ethnic cleansing in Bosnia, genocide in Rwanda, murders of innocent people committed by skinheads on the basis of race, and crimes motivated by race, ethnicity and religion causing the loss of life. It added that the relevant international instruments were not specific enough and failed to define hate crimes. South Africa made the following proposal:

1. *A definition of hate crimes should be incorporated in the additional protocol that the Ad Hoc Committee has been mandated to elaborate.*
2. *Furthermore, this definition should be cognizant of and provide for the fact that individuals and groups of individuals, including their property may be targeted on the basis of one or more of the following factors: race, religion, ethnicity and national origin in order to cover the widest scope possible in addressing hate crimes.*
3. *It is also important to emphasize here, that provision should be made for the criminalization of offences in which religious motives are an aggravating factor.*

75. Sweden, on behalf of the EU, drew attention to the fact that some States lacked accurate data about the nature and extent of hate crimes. It submitted the following proposal:

1. *State should collect and publish data information on hate crimes in order to strengthen their efforts to combat racism, racial discrimination, xenophobia and related intolerance.*

76. The United States of America noted that hate crimes did not only hurt the victims, but societies as a whole. The US delegate then gave the definition of hate crimes used in the US and provided examples of action the government had taken to combat hate crimes. The United States of America made the following proposals for action in this area:

*Member States are called upon to strengthen their legislative frameworks against acts of violence or intimidation motivated in whole or in part by an offender's bias against, inter alia, race or religion, i.e. hate crimes by:*

1. *Enacting, where they do not already exist, laws that expressly address such hate crimes;*
2. *Effectively tracking relevant crime statistics to determine whether new laws are needed in this regard; and*
3. *Undertaking legislative, inter-agency or other special inquiries into the problem of hate crimes.*

*Member States are called upon to enhance enforcement of such hate crimes laws and policies by:*

4. *Monitoring hate crimes incidents to determine whether hate crimes laws are being implemented;*
5. *Taking effective measures to ensuring that institutions created to counter hate crimes have adequate resources;*
6. *Taking effective measures to ensure robust enforcement of hate crimes laws; and*
7. *Providing proper hate crimes training to prosecutors, judges, and law enforcement officials.*

*Member States are called upon to pursue proactive outreach to relevant communities and concerned groups to:*

8. *Acknowledge and condemn hate crimes based on race or religion and speak out against official racial or religious intolerance and bigotry;*
9. *Educate the public about hate crimes, including legal redress mechanisms; and*

10. *Create forums for working on confidence-building measures after instances of hate crimes.*

77. Argentina, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Chile, Switzerland, Mexico, Japan, Brazil and Uruguay, stated that there was no justification for hate crimes motivated by racism or multiple grounds of discrimination, including nationality, gender identity and sexual orientation, and suggested *that a compilation should be made of national legislation to combat hate crimes as well as guidelines on the issue.*

78. Algeria, Nigeria, and Pakistan, on behalf of the OIC, supported the statement made by South Africa, on behalf of the African Group, regarding the need for a definition of hate crimes. Denmark stated the issue was sufficiently covered by international jurisprudence and interpretation. Sweden, on behalf of the EU, also noted that the issue of hate crimes was already covered by international instruments and flagged that the gap was one of implementation of existing standards. Norway expressed it was not convinced of the need for more standards on this issue and expressed interest in the proposal put forward by the United States of America.

79. The NGO CRED stated that sanctions were not enough, and human behaviour ought to be looked at through the concept of duties, not just rights. The representative of the NGOs Association for World Education and the World Union for Progressive Judaism stated that a book encouraging hate crimes was readily available in the Syrian Arab Republic and added that the teaching of hatred had to be stopped. The delegate of the Syrian Arab Republic mentioned that the book referred to existed only in Arabic and highlights the protection and the liberation of the Jews, by the Islamic army, in the face of a long Byzantine persecution and oppression in the seventh century.

## **7. Human rights education**

80. Italy (on behalf of the Cross-Regional Platform on Human Rights Education and Training) stated that the Human Rights Council was working on the World Programme for Human Rights Education on the one hand and a Draft Declaration on Human Rights Education and Training on the other. The delegate of Italy emphasized the relevance of these initiatives to the discussions of the Ad Hoc Committee. Morocco expressed support for the statement made by Italy and noted that paragraphs 5 and 7 of the ICERD refer to human rights education in combating racial discrimination, as do paragraphs 95 and 225 of the DDPA, and paragraphs 22 and 107 of the Outcome Document of the Durban Review Conference. The Moroccan delegate added that a paragraph on non-discrimination had been included in the Draft Declaration on Human Rights Education and Training on the occasion of the seminar held in Marrakesh on Human Rights Education and Training. Japan, on behalf of Colombia, Dominican Republic, Guatemala, Brazil, Argentina, the Republic of Korea, Switzerland, Mexico, Chile and Uruguay, referencing the World Programme for Human Rights Education, emphasized the importance of human rights education.

81. Sweden, on behalf of the EU, Canada, The United States of America, Slovenia; Nigeria, on behalf of the African Group, and Indonesia, also underscored the importance of human rights education, as recognized by the DDPa and ICERD, and, in this context, provided examples of national practice.

82. The representative of the NGOs Association for World Education and the World Union for Progressive Judaism stated that the teaching of human rights in schools was important to combat hate crimes and he called for the review of school curricula.

83. The EU made the following proposals:

1. *States should implement existing commitments regarding human rights education, including human rights education for children and youth and human rights education for public officials and professionals, which are included in ICERD, DDPa and other relevant instruments, and States should support ongoing efforts to promote human rights education, in particular the process of elaboration of a UN Declaration on human rights education and training and the implementation of the World Programme for Human Rights Education;*
2. *Call on States to consider formulating and implementing national action plans and ensuring human rights education, as important means to promote tolerance and respect for diversity.*

84. The United States of America made the following proposals for action in this area:

*Member States are called upon to engage in a multi-faceted approach to human rights training:*

1. *Institute and expand training programs to inform and sensitize governmental authorities about actions, perceptions and biases that may contribute to racial and religious discrimination and intolerance;*
2. *Make widely accessible information about victims' rights and remedies in situations of racial and religious discrimination and violence; and*
3. *Conduct a public awareness campaign and widely disseminate relevant international human rights instruments, such as the UDHR, the Declaration on Religious Minorities, the ICERD, and the ICCPR; create forums to bring together leaders from different religious and racial communities, the media, and educators to discuss these instruments and the causes and consequences of discrimination and intolerance and to develop strategies to counter these phenomena;*

*Members States are called upon to engage in the following outreach to youth:*

4. *Provide systematic support for grassroots organizations working actively with youth to promote tolerance, diversity and non-discrimination;*

5. *Create networks for youth NGOs and education experts dealing with intolerance and discrimination; and*
6. *Build public-private partnerships to support and fund public education efforts, arts performances, film festivals, educational tours, and academic conferences that disseminate information on the richness of diverse cultures and on the importance of cultural interaction.*

85. Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Japan, Mexico, the Republic of Korea, Switzerland and Uruguay proposed the following:

1. *States should support the ongoing efforts of the World Programme of Human Rights Education and the drafting of the United Nations Declaration on Education and Training.*

## **8. Implementation of existing norms and standards**

86. Sweden, on behalf of the EU, highlighted that the implementation of existing norms and standards ought to be prioritized as the ratification of ICERD, the ICCPR and ICESCR were fundamental tools in the fight against racism, racial discrimination and related intolerance. New international instruments would not overcome the lack of implementation of the existing instruments. The EU made the following proposals:

1. *States should ratify or accede to the ICERD as a matter of high priority, recognizing that this Convention remains the legal basis of the international community to fight racial discrimination;*
2. *States should fully comply with their obligations under ICERD, including with their reporting obligations;*
3. *In order to protect all individuals against racial discrimination, States should also ratify and fully implement the International Covenant on Civil and Political Rights, as well as the International Covenant on Economic, Social and Cultural Rights;*
4. *The Ad Hoc Committee encourages the Secretariat, in conjunction with the relevant Treaty Bodies, to produce a comprehensive report on the ratification of ICERD, ICCPR and ICESCR and clear figures on the reporting status of States Parties to these instruments, within existing resources. This report should be completed in time for the Ad Hoc Committee to include it in a discussion on implementation under the same item in next year's programme of work.*

87. After giving examples of its national practice, the Swedish delegate encouraged the Ad Hoc Committee to examine why States were not fully implementing existing standards. The Republic of Korea, on behalf of Colombia, Dominican Republic, Guatemala, Japan, Argentina, Switzerland, Mexico, Chile, Brazil and Uruguay; the United States of America, Canada, Poland,

France, Denmark and Liechtenstein agreed that the implementation of existing standards remained a great challenge in effectively fighting racism. Brazil noted that the withdrawal of reservations to international human rights instruments ratified by States would considerably advance the fight against racism and racial discrimination. Ireland denounced the lack of engagement by States with the international human rights system. South Africa and Nigeria, on behalf of the African Group, stated that the issue under discussion fell outside the scope of the Ad Hoc Committee. Algeria explained that States had insufficient standards at their disposal in this area. Brazil noted that better implementation of human rights standards was insufficient and advocated *enhanced cooperation between States and with special procedures*.

88. The UK made the following proposal:

1. *States should collaborate more and discuss what each one is doing at the national level to ensure that the ICERD and other international norms and standards are implemented.*

89. Italy stated that the question of implementation of existing norms is fundamental, also through cooperation with UN special procedures and treaty bodies. In this regard, States should consider issuing “standing invitations” to special procedures and constantly reviewing their reservations to core human rights treaties. Canada suggested that *the Ad Hoc Committee should consider the creation of a compilation of all the relevant reports in order to have a truly comprehensive discussion*.

90. Nigeria, on behalf of the African Group, underlined that the mandate of the Ad Hoc Committee was to formulate action-oriented proposals to address the gaps in international standards. Zimbabwe stated that evolving forms of discrimination required complementary standards to fill existing gaps and stressed the need for the Ad Hoc Committee to adhere to paragraph 199 of the DDPA.

91. The NGO Freedom House stated that it was in support of better implementation and that there is no need for new standards. Canada suggested that *the Ad Hoc Committee should consider the creation of a compilation of all the relevant reports in order to have a truly comprehensive discussion*. The NGO CRED stated that *the Committee was here to draw up new standards, not look at implementation of existing ones*.

92. An indigenous representative, speaking on behalf of Indigenous Peoples and nations Coalition, the International Council for Human Rights and the Indian Council of South America stated that special mechanisms were not respecting their own mandates. The NGO Association of World Citizens stated that racism is a way of protecting acquired privileges and that the letter of the law is respected but not the spirit.

**9. Impunity for acts of racism, racial discrimination, xenophobia and related intolerance, including its contemporary manifestations; provisions of free legal aid to victims; interim measures in the interest of victims**

93. Sweden, on behalf of the EU, stated that the fight against impunity is very important for the European Union and that existing international standards such as the ICERD provide comprehensive standards in this regard. The delegate then gave several examples of the relevant legal framework and mechanisms in the European Union, and concluded by *calling upon States to share best practices on effective national legal provisions against impunity for acts of racism and racial discrimination.*

94. Sweden, on behalf of the European Union, made the following proposal:

1. *States should encourage national specialized monitoring bodies to:*
  - a) *monitor the content and effect of national legislation and policies intended to combat racial discrimination and making proposals for possible modifications;*
  - b) *raise public awareness of these issues;*
  - c) *provide aid and assistance to victims, including legal aid;*
  - d) *promote and contribute to the training of certain key groups;*
  - e) *provide advice and information to national authorities.*

95. Mexico stated that due recourse before the law was essential for combating racism and impunity, adding that no additional standards were needed, but implementation of existing standards improved. The United Kingdom noted it had adopted comprehensive legislation for both direct and indirect discrimination and underlined the importance of providing legal aid to fight impunity.

**10. Intercultural and interreligious dialogue**

96. The United States of America, Indonesia, Sweden, on behalf of the EU, and Italy gave examples of initiatives taken in this area. Sweden added that the nature of the dialogue needed to be characterized by tolerance, respect, and sensitivity to gender issues. The Swedish delegate further suggested *that UNESCO's experts be called upon to assist the Committee on this issue* and concluded there was no need for complementary standards on the subject matter.

97. Saudi Arabia drew attention to the fact that King Abdullah had called for intercultural dialogue to ensure that societies can reinforce common principles.

98. Brazil, on behalf of Colombia, Dominican Republic, Guatemala, Japan, Argentina, Switzerland, Mexico, Chile, the Republic of Korea and Uruguay, noted that laws alone could not change minds and that dialogue is also needed, adding that the Alliance of Civilizations is a good

mechanism for promoting intercultural dialogue. The Brazilian delegate flagged that in 2010 Brazil will host a meeting of the Alliance of Civilizations. It submitted the following proposal:

1. *States should support initiatives that aim at promoting mutual understanding among different cultures and religions such as the Alliance of Civilizations.*

99. Canada stated that dialogue was a key complement to legislation. Nigeria, on behalf of the African Group, stated that the issue, although important, was not relevant to the mandate of the Committee.

100. The NGO the Becket Fund for Religious Liberty stated that interreligious and intercultural dialogue, albeit important, conflicted with the notion of defamation of religions, since a discussion between belief systems would be hampered by the concept of defamation of religion if the latter were to become law.

101. The United States of America made the following proposal for action in this area:

*Member States are called upon to:*

1. *Encourage the creation of collaborative networks of faith leaders, civil society leaders, and policy makers to build mutual understanding, promote dialogue, and inspire constructive action toward shared policy goals;*
2. *Help facilitate domestic interfaith meetings including representatives of all religious communities within their societies to pursue tangible outcomes, such as service projects in the fields of education, health, conflict resolution, employment, integration, and media education;*
3. *Create a faith-based Advisory Council within the government to, inter alia, identify and address potential areas of tension between different racial and religious communities and assist with conflict resolution and mediation;*
4. *Encourage training of government officials on effective outreach strategies; and*
5. *Encourage efforts of community leaders to discuss within their communities causes of discrimination and practices to counter them.*

102. At the opening of the tenth meeting, the Chair introduced the revised draft programme of work (A/HRC/AC.1/2/CRP.1/Rev.5). Shortly after, a revised draft programme of work (A/HRC/AC.1/2/CRP.1/Rev.6) was circulated. The Chair stated it included a listing of issues to be considered by the Ad Hoc Committee without prejudice to the position of Member States. The programme of work was adopted. The Ad Hoc Committee accordingly pursued consideration of issues listed in what had now become the adopted programme of work.

## 11. Monitoring procedures of CERD and other mechanisms

103. The US indicated that over 50 State parties to the ICERD were in arrears with submitting their reports. Rather than trying to revise monitoring procedures, attention should be given to the *timely submission of reports*. Sweden, on behalf of the EU, supported by Canada and Norway, expressed that *ratification and implementation of ICERD and other relevant international treaties was the way to address all types of racial discrimination, including contemporary forms of racism* and made the following proposals:

1. *States should take seriously their reporting to the UN Treaty Bodies and submit their reports in time;*
2. *States should enhance follow-up to the implementation of the recommendations of the CERD.*

Canada stated that CERD had a number of mechanisms at its disposal and that new mechanisms were not warranted.

104. Japan, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Argentina, Switzerland, Mexico, Chile, Brazil and Uruguay, *added that the adoption of a procedural instrument could be envisaged, provided CERD experts found this meaningful*. It made the following suggestion:

1. *That the Ad-hoc Committee invite the members of CERD to exchange views on its concrete proposals.*

105. A discussion then took place on whether the mandate of the Ad Hoc Committee included the consideration and discussion of gaps and on whether or not the Ad Hoc Committee was to further discuss the conclusions of the CERD study and the report of the five experts. Nigeria, on behalf of the African Group, acknowledged that monitoring was important, as well as reporting, implementation and follow-up, but reiterated its view that gaps in the implementation of human rights standards could not be considered gaps for the purpose of the mandate of the Ad Hoc Committee. Cuba added that the Ad Hoc Committee had a special mandate which left no room to consider the implementation of existing human rights standards. Lack of implementation of existing standards should rather be addressed by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action. The Cuban delegate added that the Ad Hoc Committee needed to proceed with its mandate on questions such as historical reparation, migrants, xenophobia, and foreign occupation. The Syrian Arab Republic expressed concern over the rise of hostility towards Muslims in Europe and the denial by some of this problem.

106. Liechtenstein, supported by Denmark, submitted that discussions on the enhancement of the monitoring procedures of CERD were clearly part of the mandate of the Ad Hoc Committee, that gaps needed to be demonstrated and that standards to remedy gaps could be binding or non-binding. Nigeria, on behalf of the African Group, repeated that, in the absence of an identifiable

gap with respect to the issue ad hand, no additional protocol could be elaborated on the subject matter. Ireland placed on record that its understanding of the parameters of this discussion included the consideration of the report by CERD and the five experts.

107. Greece called for *a multi-stakeholder dialogue which would include parliamentarians*.

108. Azerbaijan stated that the CERD study was not the only relevant report and cited, as an example, paragraph 106 of the concluding recommendations of the 4<sup>th</sup> session of the Intergovernmental Working Group on the effective implementation of the DDPA which had identified substantial and procedural gaps.

109. An indigenous representative said experts frequently lacked independence and stated there were gaps on foreign occupation in international legal instruments. The representative of the Media Institute of Southern Africa expressed concern that freedom of expression was being compromised by new standards criminalizing media work and practice. The representative emphasized the media played a key role in combating racism and he called on States to protect freedom of expression.

110. The Chair of the Ad Hoc Committee read out paragraph 199 of the DDPA and reminded the Ad Hoc Committee of resolution 6/21 of 2007, according to which there would be no more than two days to reflect on contributions and studies. The real question, in his view, pertained to the fundamentals of multilateralism. As resolutions 6/21 and 3/103 had been adopted by vote, the mandate of the Ad Hoc Committee was questioned by those who had voted against the resolutions. Liechtenstein made the point that the majority of UN member States had not participated in the vote, contrary to the Durban Review Conference at which the Outcome Document was adopted by consensus.

111. Argentina, supported by Mexico and Brazil, responded it had voted in favor of the resolution creating the AD Hoc Committee and had always had a constructive position. It nevertheless felt there needed to be more discussion on the substance of each of the issues and that this did not mean it agreed that binding standards were required.

## **12. Multiple forms of discrimination**

112. Colombia, México, Guatemala, Costa Rica, Panamá, Nicaragua, Dominican Republic, Ecuador, Brazil, Chile, Argentina, and Uruguay submitted the following proposal:

- 1. To request that the Office of The High Commissioner for Human Rights elaborate a compilation of general comments of the Human Rights treaty bodies related to the interpretation and implementation of the expressions “multiples forms of discrimination” and discrimination by “other status”, and to include in such compilation the accepted recommendations and voluntary commitments of the States under the UPR process, and the recommendations of the special procedures regarding the fight against “multiple forms of discrimination” and discrimination by “other status”. Such compilation could be an important source of information to the*

*national human rights institutions in order to help them to implement national policies in the fight against “multiple forms of discrimination” and discrimination by “other status”. Also, this information could be useful to develop a set of guidelines that can contribute to strengthen the efforts of States in this area.*

113. The EU requested States to make the following commitments:

1. *To promote and protect the human rights of all persons, regardless of sexual orientation and gender identity;*
2. *To take all necessary measures, in particular legislative or administrative, to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention;*
3. *To ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.*

114. The EU proposed that *every individual should have the right to have their sexual orientation protected and to be free from violence, harassment, discrimination, exclusion, stigmatization and prejudice.*

115. The African Group stated its position that the issue at hand ought to be limited to a clear intersectionality between race on the one hand and other grounds of discrimination which could include gender, religion, colour, descent, national or ethnic origin. The African Group underlined the specific vulnerability of women, as recognized by CERD in its general recommendation 25.

116. The US called on States *to collect data on the incidence of multiple form of discrimination within their jurisdiction and to analyze whether the implementation of existing laws against discrimination was adequate.*

117. Switzerland, on behalf of Colombia, México, Guatemala, Nicaragua, Dominican Republic, Ecuador, Brazil, Chile, Argentina and Uruguay stated it *favoured an inclusive approach on multiple and aggravated forms of discrimination and that there was no justification to restricting the discussion on the grounds of discrimination explicitly mentioned in the DDPA* and also stated the need to address, inter alia, nationality, national origin, minority status, marital status, disability, HIV-AIDS status, gender identity and sexual orientation. It suggested the issue be studied further, in consultation with CERD and made the following proposal:

1. *That CERD might consider elaborating a general comment on the issue.*

118. The UK added that the UPR also provided a forum for addressing double and multiple forms of discrimination. Iran expressed its principled opposition to any reference to sexual orientation.

119. Reminding of the footnote on page 11 of the DDPA, Pakistan, on behalf of the OIC made the following proposals, which were also made by Nigeria, on behalf of the African Group:

1. *The States Parties shall condemn, combat and prohibit by law, any form of double or multiple discrimination on the grounds of race, ethnicity, gender and religion;*
2. *The States Parties shall give new and urgent attention to the rights of women facing multiple forms of discrimination, exclusion, violence and that due consideration is given to the most disadvantaged and vulnerable women, including from minority communities who face problems compounded by their uniquely disadvantaged positions in society;*
3. *That States shall prosecute civil and criminal cases of violations of the human rights of women, both on the basis of gender and on the basis of belonging to certain racial and religious communities, and bring such offenders to justice.*

120. One NGO stated women were frequent targets of double, even triple discrimination and cited the examples of Bosnian women, Dalit women, poor girls who were victims of sexual exploitation. The NGO International Action for Peace and Development in the Great Lakes stated that developing countries were being blackmailed into taking back refugees in return for receiving development aid. It called for granting temporary asylum to persons fleeing conflict and an end to clandestine military programmes which targeted vessels carrying migrants.

### **13. Non-discrimination in the provision of aid to victims of natural catastrophes**

121. Colombia, on behalf of GRULAC, called for a universal, legally binding standard to protect the victims of natural disasters. Colombia had circulated a document containing six reasons why this issue was important to GRULAC and suggested the following language:

1. *To propose to the Ad Hoc Committee to request the High Commissioner for Human Rights, to conduct, in collaboration with ISDR, IASC and the humanitarian agencies (UNHCR, ICRC), a study regarding the need to elaborate Principles and Guidelines for States and their authorities for the elimination of discrimination against people affected by natural disasters in all phases of the response to natural disaster (before, during and after the disaster).*
2. *An international legal rule on non-discrimination (without distinction as to race, colour, or national or ethnic origin) in the assistance and protection of persons affected by natural disasters in relation to the immediate response, reconstruction and prevention, through measures of risk reduction made regarding the needs, especially for the most vulnerable, would be a clear advance in the elimination of discrimination on an increasing portion of humanity.*

122. Liechtenstein inquired if such a norm would also apply to victims of man-made disasters or internal conflicts. Panama clarified that the proposal included all persons affected by natural disasters, whether displaced or not, including persons affected by natural disasters that can never return to their places of origin.

123. The EU expressed the view that the issue at hand was well addressed in international instruments, but that unfortunately these instruments frequently lacked implementation. Nigeria stated this was a general issue of discrimination and that, in order to be acceptable to the African Group, it needed to be contextualized to racial discrimination.

124. The Chair opened the eleventh meeting with a discussion on the following issue:

**14. Protection of migrants against racist, discriminatory and xenophobic practices**

125. GRULAC made the following proposal:

1. *This issue should be taken into consideration by the Ad Hoc Committee due to the lack of application of principles and the lack of incorporation of these principles by States, especially the lack of typification in the national legislations of actions, public declarations and propaganda oriented to discrimination or promote against migrants and their families.*

126. Liechtenstein stated that there were more internal migrants in the world than international migrants and that the international instruments did not cover internal migrants. Liechtenstein made the following proposal:

1. *To request the Office of the High Commissioner for Human Rights to prepare a study on the existing international legal framework for the protection of the human rights of international migrants with a view to assessing whether that framework adequately addresses the full enjoyment of their human rights by international migrants in vulnerable situations, in particular with regard to the protection against discrimination based on race, colour, descent or ethnic origin.*

127. Ecuador associated itself with the statement made by GRULAC and suggested *that the proposal be supplemented with the inclusion of IDPs*. Ecuador clarified that the GRULAC proposal was aimed at international migrants and the discrimination directed at them. Ecuador also stated it had no problem with Liechtenstein's proposal of a study.

128. Nigeria, on behalf of the African Group, stated that a discussion of migration by the Ad Hoc Committee should be in reference to international migration, not internal migrants, since internal migrants enjoyed all the rights afforded to other persons in their country. The DDPA, the Nigerian delegate added, recognized non-nationals as victims of discrimination, not internal migrants. The African Group presented the following proposal:

1. *States parties shall review and, where necessary, revise any immigration policies which are inconsistent with international human rights instruments, with a view to eliminating all racist, discriminatory and xenophobic policies and practices against migrants;*
2. *States parties shall combat, prevent and prohibit by law any racist, discriminatory and xenophobic practices against migrants in relation to issues such as employment, social services, including education and health, as well as access to justice, and ensure that their treatment must be in accordance with international human rights instruments, free from racism, racial discrimination, xenophobia and related intolerance;*
3. *States parties shall combat manifestations of a generalized rejection of migrants and actively discourage and protect against all racist demonstrations, acts and practices that generate xenophobic behaviour and negative sentiments towards, or rejection of, migrants;*
4. *States parties shall recognize the same economic opportunities and responsibilities to documented long-term migrants as to other members of society.*

129. Sweden, on behalf of the European Union, stated that migration and asylum policies in the European Union had to comply with international human rights law and that article 14 of the European Convention on Human Rights enshrined the right to non-discrimination. Sweden concluded that there were no substantive gaps in international instruments regarding this issue. Liechtenstein stated that there was no international instrument that deals with internal migrants and that this issue should be looked into, with a view to determining if a new instrument was needed. Azerbaijan stated that the obligations of countries of origin should also be looked at, as well as the country of reception. Pakistan, on behalf of the OIC, Nigeria, on behalf of the African Group, Mexico, Argentina and Algeria stated that, in contrast to international migrants, internal migrants do not have their rights affected due to their migration and therefore were not relevant to this discussion. Ecuador stated that paragraph 38 of the report of the five experts had noted that acts of xenophobia and intolerance were not covered by existing international instruments and stated that this should be remedied. Algeria clarified there was a recommendation by the five experts addressed to the CERD to deal with xenophobia in their general comments. Nevertheless, Algeria would prefer an international instrument to address this issue.

130. Mexico and Canada stated that the protection of migrants was covered by international instruments and that no new legal norms were necessary. However, they noted a distinction between internal and international migrants should not be made as they are both vulnerable to discrimination.

131. The NGO Action pour la Paix et le développement dans la Région de Grands Lacs noted that the 2001 World Conference Against Racism emphasised that racism and xenophobia towards refugees, migrants, asylum seekers and internally displaced persons constitute violations of human rights. It added that the situation of asylum seekers and refugees should be

distinguished from that of migrants and gave examples of measures that should be taken to improve the situation of the three groups. The AIPD also stated that measures should be taken regarding the economic and political relations between North and South in the areas of international cooperation, transnational crime, international debt and illegal immigration.

**15. Protection of people under foreign occupation from racist and discriminatory practices**

132. The Syrian Arab Republic gave several examples of racist and discriminatory practices under this heading, noting that “foreign occupation” was referred to in paragraph 5 of the Outcome Document of the Durban Review Conference. The United States of America, Denmark, Switzerland, Portugal, Canada and Sweden on behalf of the EU stated that the Fourth Geneva Convention protects the population of countries under foreign occupation and there is no need for complementary standards on this, which has also been confirmed by, inter alia, the International Court of Justice.

133. Pakistan, in its national capacity, and Syria made the following proposals, supported by Algeria and the Islamic Republic of Iran:

1. *States parties should ensure that all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance targeted against people living under foreign occupation, colonial or alien domination and under these jurisdictions are addressed and combated in accordance with international human rights law and international humanitarian law with a view to provide effective protection and future prevention of such acts.*
2. *States parties should criminalize acts and crimes where racism, racial discrimination, xenophobia and related intolerance are aggravating motives, targeting people living under foreign occupation, colonial or alien domination, and take all measures to prosecute individuals or groups who commit these crimes including those agents affiliated, directly or indirectly, with States.*

134. Azerbaijan noted that there are some gaps in this field. One of them is the protection of civilians in armed conflicts. Another gap is related to the notion of ethnic cleansing. In some cases, foreign occupation leads to ethnic cleansing which has no clear definition and one is needed. Syria stated that the discussion was not about using ICERD mechanisms to end foreign occupation as such but rather about addressing and eliminating racism and racial discrimination under foreign occupation.

135. An indigenous representative, speaking on behalf of Indigenous Peoples and Nations Coalition, the International Council for Human Rights and the Indian Council of South America, asked whether the Fourth Geneva Convention covered the violation to the right to self determination.

**16. Protection of refugees, returnees and IDPs against racism and discriminatory practices**

136. Sweden on behalf of the EU reiterated the significance of the protection of the rights of IDPs in all parts of the world, in accordance with international human rights, humanitarian and refugee law. Significant progress has been achieved in the strengthening of the normative standards applicable to human rights of IDPs. Sweden underlined however that enhanced efforts towards their implementation are necessary to ensure the promotion and protection of human rights of IDPs. Sweden on behalf of the EU, submitted the following proposal:

1. *States should guarantee fundamental rights, provide protection in accordance with the Geneva Convention relating to the Status of Refugees and migration and asylum policies must comply with international law.*

137. The African Group made the following proposals:

1. *State Parties shall bear the primary duty and responsibility with the support of the International Community for providing protection of and humanitarian assistance to refugees, returnees and IDPs within their territory or jurisdiction without any form of racial discrimination.*
2. *State Parties shall endeavour to protect communities with special attachment to and dependency on land due to their particular culture and spiritual values from being displaced from such lands and where such exist take necessary action and measures not to prevent them, including refugees, returnees and IDPs, from returning to such land.*

138. Azerbaijan stated that there was a gap in this area as no legally binding international convention existed that covered the rights of internally displaced persons (IDPs). The Azeri delegate further highlighted the recently adopted African Convention on IDPs. Sweden on behalf of the EU stated that, while it recognized the challenges involved in migration and refugee flows, and fully agreed with the conclusion of the five experts had found there are no substantive gaps. Hence, enhanced implementation of the already existing standards, such as ICERD, was needed.

139. UNHCR drew attention to the fact that racism and discrimination against refugees had increased in recent times and offered technical cooperation to States in this regard.

140. Liechtenstein welcomed the inclusion of returnees in the discussion and stated that, although there were Guiding Principles on IDPs, there was no international convention. The delegate of Liechtenstein made the following proposal:

1. *To invite the Special Representative of the Secretary-General on Internally Displaced Persons to consider elaborating in one of his future reports to the Human Rights Council on the effectiveness of existing international standards with regard to*

*the protection of internally displaced persons against discrimination based on race, colour, descent or ethnic origin.*

141. Morocco made the following proposal:

1. *Calls on States that have the primary responsibility on this subject to put into practice all possible measures that aim to protect refugees against all discriminatory or degrading practices against their dignity and to take the necessary measures to closely monitor their situation.*

## **17. Racial, ethnic and religious profiling and measures to combat terrorism**

142. The United States of America expressed the view that the existing international framework, namely the ICERD and the ICCPR, provided sufficient protection and that the challenge resided in the implementation of existing standards. The delegate then gave examples of actions taken in his country, adding that education and training were essential components to the prevention and combating of racial profiling. South Africa stated that measures to combat terrorism needed to respect human rights and called for a definition of “racial profiling”.

143. South Africa, on behalf of the African Group, made the following proposal:

1. *That a definition of profiling which would prioritize human rights protection be elaborated and agreed upon;*
2. *States must ensure that measures to combat terrorism do not discriminate, in purpose and effect, on the grounds of race, colour, descent, national or ethnic origin, as well as on religious grounds, bearing in mind in this context the intersectionality between racial and religious discrimination;*
3. *States must prohibit by law profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds.*

144. Chile, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Argentina, Switzerland, Mexico, Japan, Brazil and Uruguay, stated that it condemned terrorism and upholds the right of States to combat it in accordance with international law, and also noted that measures taken in this regard must comply with international human rights law and automatic linkage with any race, nationality, or religion could be conducive to wrong conclusions contrary to international human rights law. It submitted the following proposal:

1. *Effective law enforcement of existing legislation is needed. Furthermore, improvements in police officers and other relevant training programmes for State agents as well as human rights education should be carried out.*

145. Norway also condemned racial profiling and noted it was against Norwegian law. The Norwegian delegate added that racial profiling diverted resources from areas where they could be better used, created a false sense of security, and moreover violated human rights. Sweden on behalf of the EU noted that respecting the human rights of minorities was key to the fight against terrorism. The Swedish delegate expressed support for Resolution 10/15 on combating terrorism while respecting human rights and added that terrorism suspects needed to be treated equally, regardless of their race, religion or nationality. Sweden encouraged *the sharing of best practices of comprehensive anti-discrimination legislation* and concluded there was no need for complementary standards on this issue.

146. Sweden, on behalf of the EU, submitted the following proposal:

1. *The sharing of best practices of comprehensive anti-discrimination legislation among States.*

147. Pakistan noted that, since 2001, racial profiling had increased and added that the OIC, while it condemned terrorism, strongly rejected racial profiling as a means to combat terrorism. Algeria stated that racial profiling was clearly discriminatory, that the Working Group of Experts on People of African Descent had affirmed this and that a need for a definition of racial profiling existed. Nigeria supported South Africa's statement and proposal. France suggested that the Ad Hoc Committee could draw upon work of UN mechanisms, including CERD which referred to the issue in recommendation 31 of 2005, and the Working Group of Experts on People of African Descent. The delegate added that the fact that the CERD has made recommendations on this issue demonstrated that a norm already existed and any new norm would merely constitute a duplication.

148. The OIC submitted the following proposal:

1. *The new instrument should provide for mandatory prohibition by law, in order to eliminate racio-religious profiling or profiling based on any grounds of discrimination recognized under international human rights law, with provisions for legal action against perpetrators, as well as legal guarantees to remedy and reparation for victims.*

## **18. Racism, in modern information and communication technologies (racial cybercrime)**

149. Nigeria, on behalf of the African Group, recognized that the European Council had done a lot of work on this issue, including a protocol on cybercrime which deals with racism and xenophobia and suggested *that an additional protocol would be a good idea and could be modeled on the European protocol*. The African Group referred to the Council of Europe's additional protocol on cybercrime to explain that additional protocols are supplementary to existing international instruments, either to address gaps or clarify and strengthen key issues of implementation.

150. Sweden, on behalf of the EU, stated that freedom of expression and the media are fundamental components of a modern democracy and that self regulation by the media has been seen to be an effective measure to protect against crimes such as child pornography. Sweden suggested *the need to use the Internet's potential to preserve an open environment instead of restricting the free flow of information by means of excessive legislation or technical measures*. Brazil gave examples of how it has combated racist crimes on the internet, adding that international cooperation is necessary to an adequate response to this phenomenon as offending material is often transnational in nature.

151. The United States of America stated that existing international human rights treaties are sufficiently broad to cover human rights violations that could be committed through use of Internet, and other treaties address crimes that may be committed through the use of the Internet. The United States recommended that states focus on implementing their existing obligations in a consistent manner.

152. Pakistan, on behalf of the OIC, stated that freedom of expression, although sacred, is not absolute. The NGO Freedom House stated that Article 19.2 of the ICCPR protects the right to freedom of expression and the issue is sufficiently covered by existing international law.

153. The EU submitted the following proposals:

1. *States should ensure that any restrictions to the right to freedom of expression are only on grounds outlined in articles 19(3) and 20; States should reassert that the right to freedom of expression constitutes one of the essential foundations of a democratic society, as it ensures individual self-fulfillment and a pluralistic, tolerant society with access to multitudes of ideas and philosophies;*
2. *States should promote the positive role that new media, including the Internet, can play in the fight against racism.*

154. The African Group submitted the following proposals:

1. *Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally and without right, the following conduct: distributing, or otherwise making available, racist and xenophobic material to the public through a computer system.*
2. *Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offence under its domestic law, the following acts or conduct:*
  - a) *Threatening, through a computer system, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.*

- b) *Insulting publicly, through a computer system, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.*

155. The Chair opened the 12th meeting with a discussion on the following issue:

**19. Reparation and remedies for victims of racism, racial discrimination, xenophobia and related intolerance.**

156. The African Group submitted the following proposals:

1. *State Parties shall assure to every victim of racial discrimination within their jurisdiction adequate legal protection, through recourse to the competent national courts/tribunals and/or other State institutions, as well as the right to seek from such tribunals and/or State institutions just and adequate reparation for any damage suffered as a result of such discrimination;*
2. *State Parties shall guarantee the right of every victim of racial discrimination to just and adequate reparation for any material or moral damage suffered as a result of such discrimination;*

*State Parties shall provide free legal aid and assistance to victims of racism, racial discrimination, xenophobia and related intolerance in accordance with the victims' needs and requirements;*

3. *The provisions of paragraph (1) are without prejudice to other prosecutions, including criminal prosecutions against the perpetrator(s) of such acts of racial discrimination.*

157. Sweden, on behalf of the EU, submitted the following proposals:

1. *States should investigate and prosecute those responsible for gross violations of international human rights law;*
2. *States should adopt appropriate and effective national legislative and administrative measures to provide fair, effective and prompt access to justice.*

158. After hearing several interventions, the Chair welcomed the convergence of views on this issue. While the problem was recognized by all, the question remained what to do about it. Liechtenstein, supported by other Western countries, stated that the adoption of even a non-binding instrument or complementary standard would weaken existing international obligations. Nigeria, on behalf of the African Group, and Algeria submitted that a number of countries had adopted national laws, but that abuse was still taking place. This, in their view, demonstrated that national laws were inadequate and complementary standards were needed.

## 20. Xenophobia

159. Nigeria, on behalf of the African Group, argued that xenophobia was a contemporary form of racism not covered under international human rights instruments. Nigeria, on behalf of the African Group, then submitted the following proposals:

1. *To elaborate a definition of xenophobia, as it has not been integrated in the ICERD;*
2. *Each Party shall adopt such legislative and other measures as may be necessary to establish the following acts or conduct as criminal offence under its domestic law:*
  - a) *Threatening, with the commission of a serious criminal offence as defined under its domestic law, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.*
  - b) *Insulting publicly, (i) persons for the reason that they belong to a group, distinguished by race, colour, descent or national or ethnic origin, as well as religion, if used as a pretext for any of these factors, or (ii) a group of persons which is distinguished by any of these characteristics.*

160. Liechtenstein, supported by Poland, rejected the interpretation that ICERD did not cover xenophobia and pointed out that CERD had already made recommendations for countering xenophobia, including two general comments on non-citizens. For Algeria, it was one thing for the CERD to draft a general comment related to xenophobia, but quite another to address a gap in international law.

161. Sweden, on behalf of the EU, stated that the European Union is convinced that the existing international legal framework provides a sound basis for fighting xenophobia. Implementing laws and regulations at national level, adopted as part of fact-based comprehensive anti-discrimination policy, give us the flexibility to deal effectively with this scourge.

162. The Chair then concluded the substantive portion of the programme of work. He noted that many States had recognized that challenges existed in the different thematic areas. He then proceeded to summarize divergences of positions. First of all, The Chair pointed out that different regions held different opinions on manifestations of contemporary forms of racism, xenophobia and related intolerance. Secondly, different perceptions also existed with respect to the breadth of the diagnosis: while some States felt that all forms of discrimination needed to be addressed, others felt the mandate should be limited to racial discrimination and xenophobia only. In addition, opinions diverged radically with respect to the appropriate remedies: some States, adhering to a strict interpretation of the resolutions detailing the content of 199 of the DDPA, as well as resolutions Human Rights Council resolutions 6/21 and 10/30, felt the mandate of the Ad Hoc Committee was limited to the elaboration of international legal standards only, while others

felt the mandate included the evidence-based identification of gaps. Consensus was also lacking as to whether or not the international legal framework contained insufficiencies.

163. The Chair noted an important number of States had not supported the Human Rights Council decision mandating the creation of the Ad Hoc Committee. States that supported the creation of the Ad Hoc Committee held different opinions as to where the onus of proof lied for the determination on complementary standards to be adopted. Finally, some States had expressed their desire to adopt complementary standards as soon as possible, while others had rejected this way forward.

164. The Chair welcomed the fact that the above-mentioned differences had not stymied efforts to get the discussions underway. He, therefore, expressed the hope that the mandate could be completed, by consensus and only in the last analysis by vote. He added that, while he would encourage a consensus, ultimately decisions were made by States. He advocated a common approach that would lead to peace and called for mutual accommodation among groups in order to marginalize extremists on both sides.

165. The Chair noted that progress had been made in the course of the second session of the Ad Hoc Committee. In spite of the lack of agreement on matters of substance, he invited States to reflect on the most appropriate procedural manner to move forward. After this, he adjourned the meeting.

#### **E. Discussion on the way forward for future sessions**

166. The Chair opened the 13<sup>th</sup> meeting with a discussion on the way forward. Pakistan, on behalf of the OIC, stated that the way forward had to mean tangible action, adding that the Committee was obliged to implement its mandate. The delegate stated that the Chair needed to formulate the proposals made during the session in the form of draft complementary standards and that, in doing so, he could consult relevant experts.

167. Argentina, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Japan, Switzerland, Mexico, Chile, Brazil and Uruguay, noted that consensus should be the working method and remained unconvinced of the need to elaborate complementary standards in the form of an additional protocol.

168. The United States, supported by Australia, stressed there was consensus on the need to address the grave problems of racism, racial and religious discrimination, racial profiling, hate crimes and xenophobia. The US, Canada, Liechtenstein and Norway stated their position that there was no need for complementary standards.

169. Sweden, on behalf of the EU, underlined that empirical or fact-based evidence demonstrating the need for an additional international legal norm was lacking. It was added that possible complementary standards in the sense of article 199 of the DDPA did not necessarily have to be binding, that the scope, form and nature of complementary standards could vary

depending on the gap to be filled and could include guidelines, best practices, general comments of treaty bodies, etcetera.

170. Nigeria, on behalf of the African Group, stated that the report needed to contain all specific proposals and that it expected the next session to draft complementary standards.

171. Liechtenstein stated that any additional protocol to the ICERD would weaken this instrument if the issues in such a protocol were already in the ICERD. Syria stated a new roadmap was needed reflecting the proposals made on the issues. South Africa stated that the way forward was a structured document as referred to in the roadmap.

172. The United States of America, Sweden, on behalf of the EU, and Argentina, on behalf of Colombia, Dominican Republic, Guatemala, the Republic of Korea, Japan, Switzerland, Mexico, Chile, Brazil and Uruguay, distributed structured documents recapitulating their positions and asked for verbatim reproduction of these documents in the report.<sup>1</sup> In the absence of consensus, the Chairman decided to adhere to the traditional form of reporting whereby proposals are included in the report in accordance with the sequence and structure of the programme of work. He then closed the meeting.

#### **F. Adoption of the report**

173. At the opening of the 14<sup>th</sup> meeting, the Chair made his concluding remarks and thanked States for their constructive engagement throughout the session. He informed States that he had received a letter from Pakistan on behalf of the OIC in which it explained its position on defamation of religions.<sup>2</sup> The letter had been forwarded electronically to all States.

174. The Chair then presented the report of the Ad Hoc Committee's second session and gave States two weeks to send any factual amendments to the report to the Secretariat. Subsequently, the report was adopted ad referendum.

175. The Chief of the Rule of Law, Equality and Non-Discrimination Branch of OHCHR made a closing statement on behalf of the High Commissioner for Human Rights, following which the Chair closed the session.

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<sup>1</sup> see A/HRC/13/CRP.1

<sup>2</sup> see A/HRC/13/CRP.1

ANNEX I  
Letter from Pakistan on behalf of OIC

30/10 2009 08:28 FAX +41 22 733 58 23

PAREPUN GENEVA

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Ambassador

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No. Pol/Adhoc CCC/09

29 October 2009

Mr. Chairman,

The OIC attaches immense importance to the issue of combating all forms of racism, racial discrimination, xenophobia and related intolerance. Accordingly, it has supported and remained constructively engaged with all UN initiatives and activities on the subject.

International community is witnessing disturbing growth of new trends and manifestations of racism, racial and religious discrimination, xenophobia and related intolerance, thus threatening the multi-cultural fabric of many of our societies. These multifaceted challenges, which continue to rise, must be countered by the international community. The nature of International Human Rights Law is not static but evolutionary, which provides for addressing these concerns and contemporary manifestations of racism through elaboration of new normative standards. Both the Durban Declaration and Programme of Action and the Outcome document of the Durban Review Conference rightly testify the importance of dealing with this matter on priority.

Establishment of the Ad-Hoc Committee on Complementary Standards through HRC decision 3/103, with the specific mandate to "elaborate, as a matter of priority and necessity, complementary standards in the form of either a Convention or additional Protocol to the ICERD, filling the existing gaps in the Convention, and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred" stems from this very realization. The OIC has, therefore, engaged with the process constructively and would do its utmost to draft the new normative standards in a consensual manner, from a victim oriented approach.

The OIC is ready to discuss all issues put on table by different groups and delegations with the view to addressing existing gaps and contemporary manifestations of racism in a comprehensive manner. OIC contribution to the Adhoc Committee highlights a number of issues that it considers important from the perspective of requiring complementary international norms/ standards. Some of the alarming phenomenon include increased instances of racial and religious hatred, discrimination, violence, negative stereotyping and profiling of racial and religious communities as well as instances of defamation of religions.

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For instance, the British National Party leader Nick Griffin has referred to Islam as a "a vicious and wicked religion"; some in Switzerland are strongly opposed to the construction of minarets on mosques as symbols of Islam; while in Denmark and the Netherlands the personality of Prophet Mohammad (PBUH) has been deliberately ridiculed with the intention to violate the sentiments of Muslims. These are only some of the clear examples not just of discrimination against Muslims as individuals but of Islam as a religion as well as its revered personalities and sacred symbols. Accordingly, the contention that human rights standards should apply only to individuals is not credible.

Therefore, the OIC is advocating the need to address these concepts in a holistic and legal manner to avoid their negative impact on the fundamental rights and freedoms to be enjoyed by the individuals, groups of individuals and communities.

The OIC believes that the attack on sacredly held beliefs and the defamation of religions, religious symbols, personalities and dogmas impinge on the enjoyment of human rights of followers of those religions including the right to freely profess and manifest their religion. The OIC is concerned by the instrumentalization of religions through distortion or ridicule aimed at demeaning and provoking their followers to violence as well as at promoting contempt towards religious communities in order to de-humanize their constituent members with purpose of justifying advocacy of racial and religious hatred and violence against these individuals. The High Commissioner in her address to the 10<sup>th</sup> session rightly stated that States have an obligation to act on limits and restrictions to freedom of expression when it comes to addressing the phenomenon of advocacy and incitement of religious hatred. Hierarchical interpretation of fundamental freedoms ignores the balance and complementarity of such freedoms.

Mr. Doudou Diene, former Special Rapporteur on Racism in his reports on the subject has extensively covered increased instances of defamation of religions as well as the need to combat this phenomenon through balanced interpretation and strict implementation of existing norms as well as the need for their improvement. Accordingly, the OIC has put forward specific proposals to deal with this scourge in the proposed international legal instrument to be elaborated by this Committee. Our proposals are improved versions of existing language in different UN resolutions, national legislations and reports of Venice Commission.

Unfortunately, however, the debate on the subject has been wrongly linked with malafide intentions to its perceived clash with another fundamental right i.e. freedom of opinion and expression. The OIC has repeatedly expressed its commitment to the freedom of opinion and expression, exercise of which, we believe is fundamental to the realization of the right to freedom of religion. However, as also established by the existing jurisprudence, it is not an absolute right and must be exercised with responsibility.

Accordingly, our proposals do not intend to limit or circumscribe the right to freedom of opinion and expression but emphasize the need to create and maintain the delicate balance between the freedom of expression, respect for religions and hate speech. Criticism is important for introspection, dialogue and better understanding but deliberate and premeditated insults and ridiculing does exactly the opposite. It hurts

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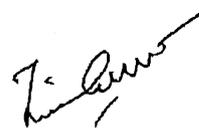
sacredly held beliefs and sentiments, creates social unrest and is a form of psychological violence.

As for debate or criticism there is no limitation within Islam, since there already exist several schools of thought in Islam. However, we do not consider that malicious and insulting attacks on the personality of the Prophet Mohammad (PBUH), ridiculing and insulting interpretation of Holy Koran or ban on religious sites such as mosques etc. contribute to freedom of expression. Defamation of religions leads to negative stereotyping of specific religious groups and communities, affects the enjoyment of all their human rights and works against pluralistic and multicultural societies.

At the same time there exist ample data and legal sources, in theory and practice, to refer when it comes to protection of Jews and their associated objects in the Western countries. All religions are sacred and merit equal respect and protection. Double standards, including institutional preferential treatment for one religion or group of people must be avoided. The OIC demands similar sanctity for all religions, their religious personalities, symbols and followers. Tolerance and understanding cannot merely be addressed through open debate and inter-cultural dialogue as defamation trends are spreading to the grass root levels. These growing tendencies need to be checked by introducing a single universal international human rights framework.

We hope that the foregoing will serve to provide necessary explanation to the rationale behind our specific proposal on defamation of religions, which has become the source of negative publicity of the very important mandate this Committee is tasked with.

May I also request you to kindly circulate this letter to all member states for their information as well as to include this letter in the official records of the proceedings of this committee.



( Zamir Akram )  
Ambassador and Permanent Representative  
Coordinator of the OIC Group on Human  
Rights and Humanitarian Issues

H.E. Mr. Idriss Jazairy  
Chairperson-Rapporteur of the Adhoc Committee  
On the elaboration of Complementary Standards  
Office of the High Commissioner for Human Rights  
Geneva

## ANNEX II

### Written contribution United States of America

#### Action Plan to Combat Racial and Religious Discrimination and Intolerance

*Recalling that the International Convention on the Elimination of All Forms of Racial Discrimination provides, inter alia, that States Parties undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation,*

*Recalling also that the International Covenant on Civil and Political Rights provides, inter alia, that everyone shall have the right to freedom of thought, conscience and religion, which shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching,*

*Deeply concerned about incidents of intolerance, discrimination and violence against persons based on their race or religion in all regions of the world,*

*Determined to enhance the capability of the international community to address and combat such incidents and reverse such disturbing trends,*

*Believing that working together to enhance and strengthen existing legal regimes to protect against discrimination and hate crimes, increase inter-faith efforts, and to expand human rights education are important first steps in combating incidents of intolerance, discrimination and violence based on race and religion,*

*Determined, therefore, to implement the following Action Plan in order to pursue concrete actions aimed at eliminating racial and religious intolerance, discrimination and violence and fostering societies committed to respecting racial and religious diversity,*

#### **I. Comprehensive anti-discrimination legislation**

- *Action:* Members States are called upon to:
  - 1) Compile a comprehensive list of current laws prohibiting racial and religious discrimination;
  - 2) Review existing national laws to ensure that protections against racial and religious discrimination comply with their obligations under international human rights law; and

- 3) Facilitate an international meeting of national experts to assess this legislation and evaluate its effectiveness in practice.
- *Action:* Member States are called upon to:
    - 1) Assess whether their current domestic institutions robustly enforce anti-discrimination laws, and determine actions necessary to fill any gaps in enforcement;
    - 2) Assess whether domestic institutions appropriately enforce such anti-discrimination laws equally among members of all racial and religious groups within the State; and
    - 3) Establish, if one does not already exist, a national body or bodies responsible for ensuring the implementation of anti-discrimination laws, investigation of cases, maintenance of relevant statistics, reviewing allegations of failed or improper enforcement, and for bringing cases against individuals who violate the law.
  - *Action:* Members States are called upon to
    - 1) Take effective measures to ensure equal access to governmental programs or activities, irrespective of an individual's race or religion;
    - 2) Take effective measures to ensure that government officials in the conduct of their public duties do not discriminate based on an individual's race or religion;
    - 3) Take effective measures to ensure that members of racial or religious minority groups have equal access to housing, education, and employment;
    - 4) Foster religious freedom and pluralism by promoting the ability of members of all religious communities to manifest their religion, and to contribute openly and on an equal footing to the public realm;
    - 5) Encourage representation and meaningful participation of individuals, irrespective of their race or religion, in all sectors of society, especially in government; and
    - 6) Undertake strong efforts to counter racial or religious profiling, which is understood to be the invidious use of race, religion or ethnicity as a criterion in conducting stops, searches, and other law enforcement investigative procedures.

## **II. Hate Crimes**

- *Action:* Member States are called upon to strengthen their legislative frameworks against acts of violence or intimidation motivated in whole or in part by an offender's bias against , *inter alia*, race or religion, i.e., hate crimes by:
  - 1) Enacting, where they do not already exist, laws that expressly address such hate crimes;

- 2) Effectively tracking relevant crime statistics to determine whether new laws are needed in this regard; and
  - 3) Undertaking legislative, inter-agency or other special inquiries into the problem of hate crimes.
- *Action:* Member States are called upon to enhance enforcement of such hate crimes laws and policies by:
    - 1) Monitoring hate crimes incidents to determine whether hate crimes laws are being implemented;
    - 2) Taking effective measures to ensuring that institutions created to counter hate crimes have adequate resources;
    - 3) Taking effective measures to ensure robust enforcement of hate crimes laws; and
    - 4) Providing proper hate crimes training to prosecutors, judges, and law enforcement officials.
  - *Action:* Member States are called upon to pursue proactive outreach to relevant communities and concerned groups to:
    - 1) Acknowledge and condemn hate crimes based on race or religion and speak out against official racial or religious intolerance and bigotry;
    - 2) Educate the public about hate crimes, including legal redress mechanisms; and
    - 3) Create forums for working on confidence-building measures after instances of hate crimes.

### **III. Advocacy and Incitement**

- *Action:* Member states are called upon to:
  - 1) Speak out against intolerance, including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence;
  - 2) Adopt measures to criminalize the incitement to imminent violence based on race or religion;
  - 3) Censure, as appropriate, government officials who in their official capacity advocate for racial, ethnic, and religious hatred that constitutes incitement to discrimination, hostility, or violence; and
  - 4) Present in their periodic reports to the Human Rights Committee and the Committee on the Elimination of all Forms of Racial Discrimination, and include in their Universal Periodic Review report to the Human Rights Council, a full account of the measures that

they have taken consistent with their obligations under international law, including equal protection of the law, to address and combat advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence.

#### **IV. Interfaith Efforts**

- *Action:* Member States are called upon to:
  - 1) Encourage the creation of collaborative networks of faith leaders, civil society leaders, and policy makers to build mutual understanding, promote dialogue, and inspire constructive action toward shared policy goals;
  - 2) Help facilitate domestic interfaith meetings including representatives of all religious communities within their societies to pursue tangible outcomes, such as service projects in the fields of education, health, conflict resolution, employment, integration, and media education;
  - 3) Create a faith-based Advisory Council within the government to, inter alia, identify and address potential areas of tension between different racial and religious communities and assist with conflict resolution and mediation;
  - 4) Encourage training of government officials on effective outreach strategies; and
  - 5) Encourage efforts of community leaders to discuss within their communities causes of discrimination and practices to counter them.

#### **V. Human Rights Education**

- *Action:* Member States are called upon to engage in a multi-faceted approach to human rights training:
  - 1) Institute and expand training programs to inform and sensitize governmental authorities about actions, perceptions and biases that may contribute to racial and religious discrimination and intolerance;
  - 2) Make widely accessible information about victims' rights and remedies in situations of racial and religious discrimination and violence; and
  - 3) Conduct a public awareness campaign and widely disseminate relevant international human rights instruments, such as the UDHR, the Declaration on Religious Minorities, the ICERD, and the ICCPR; create forums to bring together leaders from different religious and racial communities, the media, and educators to discuss these instruments and the causes and consequences of discrimination and intolerance and to develop strategies to counter these phenomena.

- *Action:* Members States are called upon to engage in the following outreach to youth:
  - 1) Provide systematic support for grassroots organizations working actively with youth to promote tolerance, diversity and non-discrimination;
  - 2) Create networks for youth NGOs and education experts dealing with intolerance and discrimination; and
  - 3) Build public-private partnerships to support and fund public education efforts, arts performances, film festivals, educational tours, and academic conferences that disseminate information on the richness of diverse cultures and on the importance of cultural interaction.

## **VI. Reporting Requirements**

- Members States are called upon to report to the OHCHR on their efforts with regard to each action point within a 1 year timeframe;
- OHCHR is invited to post reports of Member States on a website maintained by the Anti-Discrimination Unit;
- Civil Society is invited to provide independent reports on implementation of the Action Plan, which should also be posted the website; and
- The Special Rapporteurs on Racism, Freedom of Religion and Belief, Freedom of Opinion and Expression, and the Independent Expert on Minority Issues are encouraged to consider the reporting on this website in the work they are undertaking.

## **VII. Next Steps:**

Member States are called upon to convene in the Spring of 2011 to assess progress on the ground in implementation of this Action Plan to combat intolerance, discrimination, and violence against persons on the basis of their race or religion and to determine next steps.

### ANNEX III

#### Written contribution European Union

##### **Proposals for Action submitted by the European Union following discussions at the Second session of the Ad Hoc Committee on the Elaboration of Complementary Standards**

*Reaffirming the need to reject and condemn all manifestations of racism, racial discrimination, xenophobia and related intolerance in all parts of the world and to combat these manifestations wherever they occur;*

*Recalling that the Committee on the Elimination of Racial Discrimination has demonstrated the pertinence and usefulness of the Convention to address new and contemporary forms of discrimination, xenophobia and intolerance; (125)*

*Reaffirming also that the ICERD remains an international legal instrument of undiminished relevance and underlines that it is capable to address all manifestations of racism, racial discrimination and related intolerance, including those occurring today;*

*Reaffirming that any discrimination based on any ground such as sex, race, colour, ethnic or social origin, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited;*

*Confirming that at present there is no universal agreement as to which procedural or substantive "gaps" exists in the current international legal framework;*

*Considering that any complementary standards should respond to a specific need identified through a rational, comprehensive and fact-based process;*

*Emphasizing that priority should be given to the implementation of existing norms and standards;*

*Underlining that the Ad Hoc Committee has not yet provided any empirical or fact-based evidence of the need for any additional international legal norms, and that possible complementary standards in the sense of article 199 of the DDPA, need not necessarily be binding, but that the scope, form and nature of complementary standards could vary according to the gap to be filled, and could include guidelines, best practises, general comments of treaty bodies, etc.*

The EU would like to propose the following action to be taken:

- States should fully comply with their obligations under ICERD, including with their reporting obligations;
- States should ratify or accede to the ICERD as a matter of high priority recognizing that this Convention remains the legal basis of the International Community to fight racial discrimination;

- States should enhance follow-up to the implementation of the recommendations of the CERD including through the organisation of workshops;
- The Ad Hoc Committee might invite the CERD to elaborate on how to further enhance the monitoring procedures of CERD;
- In order to protect all individuals against racial discrimination, States should also ratify and fully implement the International Covenant on Civil and Political Rights as well as the International Covenant on Economic, Social and Cultural Rights;
- States should take seriously their reporting to the UN Treaty Bodies and should submit their reports in time;
- The Ad Hoc Committee encourages the Secretariat in conjunction with the relevant Treaty Bodies to produce a comprehensive report from on the ratification of ICERD, ICCPR and ICESCR and clear figures on the reporting status of States Parties to these instruments, within existing resources. This report should be completed in time for the Ad Hoc Committee to include it in a discussion on implementation under the same item in next year's PoW;
- States should ensure that everyone within their jurisdiction, including victims of racism and discrimination, enjoys full access to justice, as well as access to State institutions and mechanisms in order to seek recognition of wrong-doing and adequate reparation for any damage suffered;
- States should ensure that comprehensive legislation is in place with regard to the prohibition and criminalization of incitement to violence;
- States should fully implement existing instruments, in particular the ICERD and should welcome the broad interpretation given by CERD to the definition of racial discrimination as contained in the Convention so as to address instances of double or multiple forms of discrimination;
- States should promote and protect the human rights of all persons, regardless of sexual orientation and gender identity, ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice, and condemn all forms of discrimination and all other human rights violations based on sexual orientation;
- States should give more attention to multiple and aggravated forms of discrimination and to fight them with increased determination, and share their experiences in combating multiple forms of discrimination, including focus on discrimination on the ground of sexual orientation;
- States should submit an overview of national legislation and best practices to the OHCHR with regard to the effective promotion and protection of sexual orientation or gender identity of every individual;

- The Ad Hoc Committee invites OHCHR to compile an overview within the existing resources of the obstacles in Member States' national legislation to ensure that sexual orientation or gender identity may under no circumstances be the basis for criminal penalties, in particular executions, arrests or detention;
- States should ensure that any restriction on the right to freedom of expression are only on grounds outlined in article 19(3) and 20; States should reassert that the right to freedom of expression constitutes one of the essential foundations of a democratic society, as it ensures individual self fulfillment and a pluralistic, tolerant society with access to multitudes of ideas and philosophies;
- States should establish national institutions to work towards the promotion of equality and protection against discrimination on the grounds of race, colour, sex, descent or national or ethnic origin or other grounds., and in conformity with the Paris Principles;
- States should condemn all forms of hate crimes and adopt effective legislation to prevent and punish all forms of hate crimes, and to take all measures to counteract impunity for hate crimes;
- States should place particular attention to the issue of victim care and compensation with regard to hate crimes, and support a non-tolerance approach towards hate crimes;
- State should collect and publish data information on hate crimes in order to strengthen their efforts to combat racism, racial discrimination, xenophobia and related intolerance;
- States should condemn any advocacy of racial or religious hatred that constitutes incitement to discrimination, hostility or violence;
- States should implement existing standards regarding incitement to racial or religious hatred and violence
- The Ad Hoc Committee should benefit from the outcome of the regional expert workshops to attain a better understanding of the legislative patterns, judicial practices and national policies in the different regions of the world with regard to the concept of incitement to hatred:
- States should recognize that among the multiple factors of a situation that might lead to genocide as defined in the Convention on the Prevention and Punishment of the Crime of Genocide, there are the resurgence of systematic discrimination, the prevalence of expressions of hate speech targeting persons belonging to national, ethnic, racial or religious groups, especially if they are uttered in the context of an actual or potential outbreak of violence and serious and systematic violation of human rights;
- States should ratify the Rome Statute of the International Criminal Court;
- States should cooperate fully with the Special Adviser on the prevention of genocide, including by accepting his requests for visits;

- States should investigate and prosecute those responsible for gross violations of international human rights law;
- States should adopt appropriate and effective national legislative and administrative measures to provide fair, effective and prompt access to justice;
- States should guarantee fundamental rights, provide protection in accordance with the Geneva Convention relating to the Status of Refugees and that migration and asylum policies must comply with international law;
- States should exchange best practices on the effective protection of migrants, refugees, returnees and internally displaced people;
- States of origin, transit and destination of migrants should strengthen their efforts to combat human trafficking and related criminal networks;
- States should promote the positive role that new media, including the Internet, can play in the fight against racism;
- States should exchange best practices on how to prevent the Internet from being used for discriminatory practices;
- States should implement existing commitments regarding human rights education, including human rights education for children and youths and human rights education for public officials and professionals, which are included in ICERD, DDPA and other relevant instruments, and States should support ongoing efforts to promote human rights education, in particular the process of elaboration of a UN Declaration on human rights education and training and the implementation of the World Programme for Human Rights Education:
- Call on States to consider formulating and implementing national action plans and ensuring human rights education, as important means to promote tolerance and respect for diversity.

## **ANNEX IV**

### **Written contribution Argentina, Brazil, Colombia, Dominican Republic, Guatemala, Japan, the Republic of Korea, Switzerland, Mexico, Chile and Uruguay**

During the 2<sup>nd</sup> session of the Ad Hoc Committee on Complementary Standards, the Cross Regional Group (Delegations of Argentina, Brazil, Chile, Japan, Mexico, the Republic of Korea, Switzerland and Uruguay) raised the following action points. The following countries also joined this statement: Colombia, Dominican Republic and Guatemala.

1. The Ad Hoc Committee should decide the following:

#### **Advocacy and incitement to racial, ethnic, national and religious hatred**

The Human Rights Committee and the Committee on the Elimination of Racial Discrimination could consult with States and stakeholders and possibly consider elaborating a joint General Comment on the issue of advocacy and incitement to hatred, as enshrined in Article 20 of the ICCPR and Art 4 of the ICERD, in the framework of their respective competences and bearing in mind Article 19 of the ICCPR.

#### **Discrimination based on religion or belief**

Since the Human Rights Committee has examined cases of discrimination on religious grounds affecting the enjoyment of human rights enshrined in the ICCPR, a digest of case studies could be published in order to shed light on existing practices in this field and regionally developed jurisprudence could also be included therein.

#### **Hate Crimes**

The Ad Hoc Committee on Complementary Standards should consider compiling national legislation in the field of hate crime and, if deemed appropriate, consider preparing guidelines or model provisions.

#### **Monitoring procedures of CERD and of other mechanisms**

The Ad Hoc Committee could address the implementation and procedural gaps with regard to ICERD by considering the concrete proposals put forward by the CERD, namely a follow-up procedure to recommendations, an inquiry procedure and country visits in the framework of these procedures. Therefore, the Ad Hoc Committee invite members of the CERD to exchange views on these recommendations. States could then carefully study these recommendations and present their views on the best ways to deal with these recommendations.

#### **Multiple forms of discrimination**

As we recognize the need to further explore the intersectionality of racial discrimination and multiple and aggravated forms of discrimination as set out in the DDPA, the Committee on the

Elimination of Racial Discrimination could consult with States and stakeholders and possibly consider elaborating a General Comment on the issue.

2. The Ad Hoc Committee will benefit from exchanging of best practices on the following issues:

### **Human Rights Education**

States should support the ongoing efforts of the World Programme of Human Rights Education and the drafting of the United Nations Declaration on Education and Training.

### **Intercultural and inter-religious dialogue**

States should support initiatives that aim at promoting mutual understanding different cultures and religions such as those of the Alliance of Civilizations.

### **Racial, ethnic and religious profiling and measures to combat terrorism**

Effective law enforcement of existing legislation is needed. Furthermore, improvements in police officers and other relevant state agents training programs as well as in human rights education curricula should be carried out.

ANNEX V

Programme of Work for the 2<sup>nd</sup> session of the Ad Hoc Committee on the Elaboration of Complementary Standards (19- 30 October 2009) [version as adopted on 28 October 2009 and circulated as Rev.6]

<i>1<sup>st</sup> week</i>					
	<b>Monday 19.10</b>	<b>Tuesday 20.10</b>	<b>Wednesday 21.10</b>	<b>Thursday 22.10</b>	<b>Friday 23.10</b>
<b>10:00 – 13:00</b>	Election of the Chair ----- <b>Item 1</b> Opening of the Session	Discussion of Agenda ----- Discussion of Programme of Work	Informal Consultations	Discussion of Programme of Work	<b>Item 3</b> Discrimination based on religion or belief
<b>15:00 – 18:00</b>	Discussion of the Agenda ----- Discussion of the Programme of Work ----- Informal consultations	Informal Consultations	<b>Item 2</b> Adoption of the Agenda ----- <b>Item 3</b> Organization of Work ----- Informal Consultations	<b>Item 3</b> Advocacy and incitement to racial, ethnic, national and religious hatred ----- <b>Item 3</b> Comprehensive anti-discrimination legislation ----- Informal Consultations on Programme of Work	Informal Consultations on Programme of Work
<i>2<sup>nd</sup> week</i>					
	<b>Monday 26.10</b>	<b>Tuesday 27.10</b>	<b>Wednesday 28.10</b>	<b>Thursday 29.10</b>	<b>Friday 30.10</b>
<b>10:00 – 13:00</b>	Informal Consultations	<b>Item 3</b> Establishment, designation or maintaining of national mechanisms with competences to protect and prevent against discrimination. ----- <b>Item 3</b> Genocide -----	<b>Item 3</b> Monitoring procedures of CERD and of other mechanisms ----- <b>Item 3</b> Multiple forms of discrimination ----- <b>Item 3</b> Non-discrimination in the provision of aid to victims of natural catastrophes ----- <b>Item 3</b> Protection of migrants against racist, discriminatory and xenophobic practices ----- <b>Item 3</b> Protection of people under foreign occupation from racist and discriminatory practices	<i>Carry Over of Issues</i>  <b>Item 4</b> <b>Discussion on the way forward for future sessions</b>	No plenary meeting (preparation of the report)

<p><b>15:00 – 18:00</b></p>	<p>Informal Consultations</p>	<p><b><u>Item 3</u></b> Hate crimes ----- <b><u>Item 3</u></b> Human rights education ----- <b><u>Item 3</u></b> Implementation of existing norms and standards ----- <b><u>Item 3</u></b> Impunity for acts of racism, racial discrimination, xenophobia and related intolerance, including its contemporary manifestations; provisions of free legal aid to victims; interim measures in the interest of victims ----- <b><u>Item 3</u></b> Intercultural and inter-religious dialogue</p>	<p><b><u>Item 3</u></b> [Option 1: Protection of refugees and IDPs against racist and discriminatory practices.  Option 2: Protection of refugees, returnees, and IDPs against racist and discriminatory practices.]  <b><u>Item 3</u></b> Racial, ethnic and religious profiling and measures to combat terrorism ----- <b><u>Item 3</u></b> Racism, in modern information and communication technologies (racial cybercrime) ----- <b><u>Item 3</u></b> Reparation and remedies for victims of racism, racial discrimination, xenophobia and related intolerance  <b><u>Item 3</u></b> Xenophobia</p>	<p><b><u>Item 4</u></b> <b>Discussion on the way forward for future sessions</b></p>	<p><b><u>Item 5</u></b> Adoption of the report of the 2<sup>nd</sup> session</p>
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