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

**DRAFT**

**Report of the Ad Hoc Committee on the elaboration of complementary standards  
on its second session**

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

## I. INTRODUCTION

The Ad Hoc Committee on the elaboration of complementary standards submits the present report pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30.

## II. ORGANIZATION OF THE SESSION

The Ad Hoc Committee held its session from 19 to 30 October 2009, holding 14 meetings in total.

### A. Attendance

The session was attended by representatives of Member States, 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

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 (further referred to as the outcome document under 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

H.E. Idriss Jazairy, Permanent Representative of Algeria, was re-elected Chairperson-Rapporteur of the Ad Hoc Committee on the Elaboration of International Complementary Standards by acclamation.

The Chairperson-Rapporteur 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. 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.

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

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. The items are therefore addressed under the same heading.

The African Group indicated it could not accept the outcome document as it was structured as a basis for the programme of work 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.

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, the need to adopt standards needed to be research and evidence-based, complementary standards should not undermine or duplicate existing standards, and all relevant stakeholders should be associated to the process, including members of CERD. The EU also submitted that agreement on these principles was necessary before it could endorse the proposed agenda.

Argentina expressed, on behalf of Brazil, Japan, Republic of Korea, Switzerland, Mexico, Chile, 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. The group stated 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.

The United States of America did not believe new norms were necessary or useful as long as there remained important 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.

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

The EU felt that the outcome document 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. The EU therefore 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, were insufficiently visible in the outcome document under the roadmap and the draft programme of work.

Canada emphasized the importance of proceeding by consensus, a view which was emphasized by other delegations for the Western Group. Cuba flagged that this was an artificial debate as the principle of consensus constituted a de facto veto right. 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. Maybe this was the case because it was also a burning reality.

The African Group warned against insinuating that some issues might be more important than others. The Group also alleged that consensus was being used as a pretext by those States who did not wish to genuinely engage in the discussion. 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. He 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 needed.

The Syrian Arab Republic, supported by Iran, stated 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 shortly in Arabic, expressed his dissatisfaction over the late availability of the Arab translation.

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 Jazairy 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 this issue was not conducive to consensus. The Chair 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.

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.

----- Wednesday, 21-10-2009 PM

At the opening of the second meeting of the Ad Hoc Committee in the afternoon of Wednesday, 21 October 2009, the Chair presented the revised agenda contained in document A/HRC/AC.1/2/1/Rev.1. The Ad Hoc Committee adopted the agenda as contained in document A/HRC/AC.1/2/1/Rev.1 for its second session.

----- Thursday, 29-10-2009 AM

Discussions on the draft programme of work were pursued during the second and third meeting.

----- Thursday, 29-10-2009 PM

The Chair opened the fourth meeting in the afternoon of Thursday, 29 October 2009. Pending final approval of the draft programme of work, it was agreed 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.

**a) Advocacy and incitement to racial, ethnic, national and religious hatred**

The African Group made the following proposal:

1. *State Parties States 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 in 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.*

Switzerland stated, on behalf of a number of countries from different regions<sup>1</sup>, that the elements of issue 1 were already covered by existing international instruments, particularly Article 4 of the ICERD and Article 20 of the ICCPR. It further suggested that:

*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.*

Pakistan 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.*
  - e) *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 legitimizing the implementation of these platforms*

In addition, Pakistan added the following two proposals:

1. *States Parties shall, in accordance with the human rights standards, declare illegal and to 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.*

<sup>1</sup> Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Japan, Mexico, Republic of Korea, Switzerland and Uruguay

2. *States Parties shall promulgate, where they do not exist, a specific legislation prohibiting any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.*

There was a discussion as to the existence or not of a gap in regard to this issue. Switzerland, Liechtenstein, Sweden on behalf of the European Union, Ireland, Norway, Denmark, The Netherlands, The United States of America and Belgium, The United Kingdom, France, Canada and Germany considered there were no substantive gaps and that what was really at issue was the improvement of implementation of existing instruments. States that believed there was a gap included Nigeria on behalf of the African Group, Syria, South Africa, Pakistan on behalf of the OIC and Algeria. Argentina submitted there was a need to identify exactly which gaps were being referenced. Pakistan 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.

The EU submitted the following proposal:

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.*

The United States of America made the following proposal for actions:

*Member states are called upon to:*

3. *Speak out against intolerance, including advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility, or violence;*
4. *Adopt measures to criminalize the incitement to imminent violence based on race or religion;*
5. *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*
6. *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.*

----- Friday, 23-10-2009 AM

The Chair opened the fifth meeting on Friday, 23 October 2009 with a discussion on the following issue:

**b) Comprehensive anti-discrimination legislation**

Several countries, including Sweden, Italy, the UK, Ireland, Indonesia, Brazil, Canada, Slovakia gave a detailed overview of the national anti-discrimination legislation and measures they had adopted to combat racism, racial discrimination, xenophobia and related intolerance.

The US submitted the following proposal:

*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. The EU emphasized in particular that:

1. *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;*

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 be examined, in particular articles 1 and 73 of the UN Charter

The African Group advocated the adoption of an optional protocol to CERD to address gaps in international instruments in the particular aspect of discrimination related to racism, 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 requires, 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.*

Mexico and Ecuador supported the proposal by the African Group on migrants and asylum seekers. Argentina also expressed interest in this proposal. It affirmed that it would be important to address any application gaps in legislation on migrants, expressing concern over the detention of 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.

Several States from the Western Group expressed that the forms and manifestations of racial discrimination 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 UK delegate raised the question whether 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 on the basis, facts and motivations justifying these proposals.

There was disagreement on the method of work to comply strictly with the mandate of the Ad Hoc Committee: some felt that action points were 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.

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 stated 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.

The United Kingdom proposed, building on the US proposal, *that experts be invited to brief the Ad Hoc Committee on the implementation of national anti-discrimination legislation*. The UK proposal was supported by Argentina, Ireland, Mexico, Norway, Denmark, the US and Canada. Nigeria 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 UK proposal, but in view of technical difficulties in organizing an exchange with some 50 experts, all with their own view, favored sending the conclusions of the Ad Hoc Committee to the relevant treaty monitoring bodies to these bodies for an opinion upon completion of its work. 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 UK proposal 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.

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.

----- Friday, 23-10-2009 PM

The Chair opened the sixth meeting on Friday, 23 October 2009 in the afternoon, explaining that further consultations were necessary before the Programme of Work could be adopted. The agreement to continue discussion of issues put forward in alphabetical order as recorded in the draft programme of work not yet adopted was therefore extended. Accordingly, the meeting considered the issue of "discrimination based on religion or belief."

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

Pakistan, on behalf of the OIC, made the following proposal of text:

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.*

There was a discussion on whether a substantive gap existed regarding this issue. Those States that emphasized the existence of a gap were Pakistan, Iran, South Africa, Saudi Arabia and Syria.

Those States that thought there was no gap were Mexico, Denmark, The United States of America, Canada and Sweden on behalf of the European Union. 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, The United States of America, 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.

Germany stated that discrimination based on religion was different to defamation of religions and the two should be kept separate. Mexico suggested *that a digest of case studies be published in order to shed light on existing practices in this field and regionally developed jurisprudence could also be included therein*. 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 the problem.

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 and that the Former Special Rapporteur had highlighted this increase and had called for a strengthening of international instruments on 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 or belief, including education and legislation, and that the issue was adequately covered by existing international instruments.

Nigeria made the following proposal of text:

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

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.

----- Monday, 26-10-2009 PM

The Chair opened the seventh meeting on Monday, 26 October 2009, in the afternoon, and 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 delegates for the purposes of adoption. The meeting was adjourned until the following day.

----- Tuesday, 27-10-2009 AM

At the opening of the eight meeting in the morning of Tuesday, 27 October 2009, upon proposal of 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. The following theme was considered accordingly:

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

The UK presented regional and domestic efforts in this area, expressing the hope that the elements provided could be useful *in the discussion of complementary standards that could take the form of guidelines or best practices* and asked its statement to be recorded in the report. The EU stated that national mechanisms complemented international norms and mechanisms and constituted the best way to combat discrimination. Ireland, Belgium, Canada, US, Netherlands, Brazil, France, Poland briefed the meeting on monitoring bodies and other measures these 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. It further called for complaints regarding multiple forms of discrimination to be handled by the same body.

The African Group expressed the view that 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.

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. *[The need to] 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 by 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.

In response to the OIC proposal, Sweden 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.

A representative of the Association for World Education and the World Union for Progressive Judaism expressed concern over the number of the 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.

Consistent with its belief that gaps existed only in the implementation of existing international obligations, the US, supported by France, Norway, proposed that States engage in a critical self-assessment of the existence and effectiveness of national measures and mechanisms and presented the following proposal:

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.*

The Netherlands expressed the view that guidelines or *a compilation of best practices on national mechanisms to prevent and protect against discrimination* could be useful and requested that this be reflected in the report. Brazil also welcomed a best practice exchange mechanism.

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.

#### e) Genocide

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. Having due regard to the mandate of the Ad Hoc committee, however, the African Group proposed that a different forum be established to address this issue.

Switzerland, on behalf of Argentina and 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. Prompt universal ratification of the Rome Statute in this context was essential.

Argentina and Switzerland formulated the following proposal:

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.*

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. 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 stated that it was rather the lack of action. Hence, the EU felt existing international instruments and mechanisms sufficiently covered the issue of genocide.

Rwanda stated the Genocide Convention was over 50 years old and had not prevented genocide from being perpetrated in Rwanda. It called for the following complementary standards:

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.*

Armenia formulated the following proposal:

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.*

Nigeria stated that perhaps a clear definition of genocide could have prevented the Rwandan genocide and that there was a 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.

Turkey supported the African Group and 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 addresses concerns that may exist in this regard. It stated denial of genocide was a controversial concept which nourishes political debates. 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.

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

---- Tuesday, 27-10-2009 PM

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 recognise 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.

#### **f) Hate crimes**

South Africa stated that concern over the occurrence of hate crimes is growing and that one could cite many examples of this, such as ethnic cleansing in Bosnia, genocide in Rwanda, murders of innocent people committed by the skinheads on the basis of their race, and many crimes motivated by racial, ethnic and religious reasons, which have led to the loss of many lives. It added that the relevant international instruments are not specific enough and do not contain a specific definition of hate crimes. A definition of hate crimes should be incorporated in the additional protocol that the Ad Hoc Committee has been mandated to elaborate. 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. 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.

The European Union made 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.*

The United States of America stated that hate crimes hurt not only the victims, but societies as a whole. The delegate then gave the definition of hate crimes used in the US and examples of



actions that its government had taken to combat hate crimes. The delegate made three suggestions to advance the fight against hate crimes:

*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.*

Argentina, on behalf of a group of countries, suggested that *a compilation should be made of national legislation to combat hate crimes as well as guidelines on the issue.*

Algeria, Nigeria and Pakistan supported the statement made by South Africa regarding the need for a definition of hate crimes. Denmark stated that the issue is sufficiently covered by international jurisprudence and interpretation. Sweden stated that the issue of hate crimes is already covered by international instruments and that the gap is one of implementation Norway

stated that it is not convinced of the need for more standards on this issue and that the proposal made by the United States of America is very interesting.

The NGO CRED stated that sanctions are not enough, human behaviour must be looked at and 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 exists and is readily available in Syria that encourages hate crimes. The representative added that the teaching of hatred was the problem and had to be stopped. The delegate of Syria mentioned that the book referred to existed only in Arabic language and referred only to the protection of the Jews by the Islamic community in the face of Byzantine persecution during the Middle Ages and directed no criticism at the Jews.

### **g) Human rights education**

Italy, on behalf of the Cross-Regional Platform on Human Rights Education and Training, stated that the Human Rights Council is working on two main areas regarding human rights education; that of the World Programme for Human Rights Education and a Draft Declaration on Human Rights Education and Training. The delegate of Italy emphasized the importance of both these areas of work and the relevance of these initiatives to the discussions of the Committee. Morocco expressed its support for the statement made by Italy and stated that paragraphs 5 and 7 of the ICERD refer to human rights education in combating 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 delegate added that the seminar that was held in Marrakesh on Human Rights Education and Training had led them to include a paragraph on non discrimination in the Draft Declaration on Human Rights Education and Training. Japan, on behalf of a number of countries from different regions, stated that human rights education is of great importance and underlined the significance of the World Programme for Human Rights Education.

Sweden, Canada, The United States of America, Slovenia, Nigeria and Indonesia, underlined the importance of human rights education, as recognized in the DDPA and ICERD and several examples of national practice were given. 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 is important in combating hate crimes and that there should be a review of schools curricula.

The EU submitted the following proposal:

- 1. 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;*

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.*

The United States of America made the following proposals for action:

1. *Governments are requested to address human rights education in periodic treaty reports and / or in the Universal Periodic Review process.*

#### Human Rights Education Policies

2. *Promoted a high level conference to discuss different educational approaches, methodologies, curricula, and teaching resources available to educators to combat intolerance against racial and religious groups;*
3. *Promote empirical and analytical research on the causes and consequences of intolerance and discrimination against communities;*
4. *Collect and analyze information and materials on tolerance, diversity, and human rights education in public school systems;*
5. *Create website of educational tools;*
6. *Create a compendium of best practices in field of human rights education;*
7. *Develop guidelines on how to counter discrimination;*
8. *Work on informing and sensitizing governmental authorities about the negative impact of discrimination and intolerance;*

#### Schools

9. *Develop guidelines for educators to accommodate the needs of religious students;*
10. *Share information on teaching materials, textbooks and curriculum that promote equality and understanding between religious and racial groups and counter stereotypes;*
11. *Monitor the manifestations of intolerance on schools and campuses;*
12. *Increase the quality and quantity of cultural exchange programs between religious and racial communities, both domestically and internationally, including student exchanges, study trips and visits to places of worship;*
13. *Encourage states to review school curriculum and text books to correct misrepresentation of racial and religious groups and to recognize the contributions of all communities to society;*

### Partnerships

14. *Identify role models (famous people) and designate them as ambassador of human rights education/tolerance and anti-discrimination;*
15. *Provide systematic support for grassroots organizations working actively with youth to promote tolerance, acceptance and non-discrimination;*
16. *Encourage the active engagement of school authorities with students of diverse backgrounds and their parents by establishing regular contacts with them to exchange on the educational process of the student;*
17. *Create networks for youth NGOs and education experts dealing with intolerance and discrimination;*
18. *Create forums to bring together religious leaders, the media, educators, and community leaders to discuss the causes and consequences of discrimination and intolerance and to develop strategies to counter this phenomenon;*
19. *Organize awareness raising campaigns, intercultural and interfaith dialogue activities and training programmes to counter discrimination and stereotypes.*

### Government

20. *Build the capacity of legal and judicial sector professionals to address intolerance and discrimination;*
21. *Build the capacity of relevant government ministries and national commissions on anti-discrimination standards;*
22. *Provide legislative assistance for drafting new legislation designed to promote and protect the rights of all citizens and for introducing reforms to existing laws touch non-discrimination and tolerance;*

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

23. *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;*
24. *Make widely accessible information about victims' rights and remedies in situations of racial and religious discrimination and violence; and*
25. *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:*

- 26. Provide systematic support for grassroots organizations working actively with youth to promote tolerance, diversity and non-discrimination;*
- 27. Create networks for youth NGOs and education experts dealing with intolerance and discrimination; and*
- 28. 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.*

A number of countries from different regions (Argentina, Brazil, Chile, Colombia, Dominican Republic, Guatemala, Japan, Mexico, the Republic of Korea, Switzerland and Uruguay) made the following proposal:

- 1. States should further develop their national action plans and initiatives in the area of human rights education in order to raise the awareness of the public and shift our society toward a more tolerant and respectful one.<sup>2</sup>*

The EU proposed the following:

- 1. 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:*
- 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.*

#### **h) Implementation of existing norms and standards**

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<sup>2</sup> Draft declaration on human rights education training will be presented to the Human Rights Council in March 2010.

The EU stated that the ratification of the ICERD and the ICCPR are fundamental to the fight against racism and that new international instruments will not overcome the lack of implementation of the existing instruments. It made the following proposal:

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. *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;*
3. *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 programme of work.*

Sweden then gave several examples of its national practice. The delegate added that the Committee should look at the reasons why States are not fully implementing the existing standards. Korea, the United States of America, Canada, Poland, France, Denmark and Liechtenstein agreed that it was an issue of implementation of existing standards. Brazil stated that the issue of reservations is of great importance and that the withdrawal of reservations would advance the fight against racism and racial discrimination. Ireland stated that the lack of engagement by States with the international system is a problem. South Africa and Nigeria stated that the issue being discussed is outside the scope of the Committee. Algeria stated that there are not sufficient standards available to States.

Brazil stated that better implementation is not enough and advocated *enhanced cooperation between States and with special procedures*. The United Kingdom supported the statement by Brazil, adding that *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*. Italy stated that the question of implementation is fundamental but also *cooperation with special mechanisms by extending invitations*. 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*. Nigeria stated that the Committee must make action-oriented proposals to address the gaps and that this is its mandate.

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 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. The NGO CRED stated that the *Committee was here to draw up new standards, not look at implementation of existing ones*. Zimbabwe stated that there are

evolving forms of discrimination that require complementary standards to fill the gap or gaps that exist and that recommendation 199 of the DDPA should be adhered to by the Committee.

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

1. *A comprehensive report should be elaborated on the ratification of ICERD, ICCPR and ICESCR with identification of reasons for the non-ratification and clear figures on the reporting status of States Parties to these instruments. The report should be completed in time for the Committee to include it in a discussion on implementation under the same item in the next year's Programme of Work.*

**i) 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**

Sweden 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, concluding with a call for national practices to be shared. Mexico stated that due recourse before the law is essential for combating racism and impunity, adding that no additional standards are necessary and that improved implementation is what is needed. The United Kingdom stated that they have comprehensive laws for both direct and indirect discrimination and underlined the importance of the provision of legal aid in fighting impunity. 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 at 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*

**j) Intercultural and interreligious dialogue**

The United States of America, Indonesia and Sweden gave several examples of initiatives that have been taken in this regard. Sweden added that the nature of such a dialogue must be characterized by tolerance, respect and sensitivity to gender issues. Sweden suggested that UNESCO's experts be called upon to assist the Committee on this issue. Sweden concluded by stating that there is no need for complementary standards on this issue. Saudi Arabia stated that King Abdullah has called for an intercultural dialogue to ensure that societies can reinforce common principles. Brazil, on behalf of a number of countries from different regions, stated that laws alone can not change minds and that dialogue is also needed, adding that the Alliance of Civilizations is a good mechanism for promoting such dialogue and 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.*

Canada and Italy stated that this is a very important issue and a key complement to legislation. Nigeria stated that the issue is important but not relevant to the mandate of the Committee. The NGO The Becket Fund for Religious Liberty stated that interreligious and intercultural dialogue were important but were in conflict with the idea of defamation of religions as a discussion between belief systems will be hampered by a concept of defamation of religion if the latter were to become law. The United States of America made the following proposal:

*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.*

----- Wednesday, 28-10-2009 AM

The Chair opened the tenth meeting of the Ad Hoc Committee on Wednesday, 28 October 2009, in the morning and 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.

#### **g) Monitoring procedures of CERD and other mechanisms.**

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*. The EU, supported by Canada, Norway, expressed that *ratification and implementation of ICERD was the way to address all types of racial discrimination*,



*including contemporary forms. Japan added that the adoption of a procedural instrument could be envisaged, provided CERD experts found this meaningful. Canada stated that CERD had a number of mechanisms at its disposal and that new mechanisms were not warranted.*

Japan and Mexico, on behalf of a number of countries from different regions, stated that international monitoring needed to be improved. *If new, binding standards were needed, they could focus on follow-up, investigations, on-site inspections or country visits.*

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 acknowledged that monitoring was important, as well as reporting, implementation and follow-up, but reiterated its view that gaps in implementation could not be considered gaps for the purpose of the mandate of the Ad Hoc Committee. Cuba added the Ad Hoc Committee had a special mandate which left no room to consider the implementation of already existing standards. Lack of implementation of existing standards was rather to be addressed by the Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action. The Ad Hoc Committee needed to proceed with its mandate on questions such as historical reparation, migrants, xenophobia, and foreign occupation. Syria expressed concern over the rise of hostility towards Muslims in Europe and the denial by some of this problem.

Liechtenstein, supported by Denmark and Italy, submitted that *proposals to give CERD additional standards were clearly part of the mandate of this Committee*, that gaps needed to be demonstrated and that standards to remedy gaps could be binding or non-binding. Nigeria repeated that no additional protocol could be elaborated on the issue at hand, because there was no gap in this instrument. Ireland placed on record that its understanding of the parameters of this discussion included the consideration of the report of CERD and the five experts. Greece called for a multi-stakeholder dialogue which would include parliamentarians. Azerbaijan stated that the CERD study was not the only relevant report. He cited the example of para 106 of the concluding recommendations of the 4<sup>th</sup> session of the IGWG had identified substantial and procedural gaps

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 in the approach of new standards which sought to criminalize media work and practice. The media played a key role in combating racism and he called on States to protect freedom of expression.

The Chair 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 2 days to reflect on contributions on 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 in which the Outcome Document had been adopted by consensus.

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.

#### **h) Multiple forms of discrimination**

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

1. *To request the Office of The High Commissioner for Human Rights the elaboration of 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 especial 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.*

The EU requested States to make the following commitment:

1. *promote and protect human rights of all persons, regardless of sexual orientation and gender identity;*
2. *take all the 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. *ensure that human rights violations based on sexual orientation or gender identity are investigated and perpetrators held accountable and brought to justice.*

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 Group underlined the specific vulnerability of women, as recognized by CERD in general recommendation 25. It submitted the following proposal:

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.*

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

Switzerland, on behalf of a number of countries from different regions, 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.* It suggested the issue be studied further, in consultation with CERD *which might consider elaborating a general comment on the issue.* 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.

The OIC reminded the Ad Hoc Committee of the footnote on page 11 of the DDPA, flagging this limited the grounds of discrimination under discussion. It proceeded to make the following proposal:

1. *State 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. *State 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. *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.*

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 for persons fleeing conflict and an end to clandestine military programmes which targeted vessels carrying migrants.

#### **i) Non-discrimination in the provision of aid to victims of natural catastrophes**

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. *Proposes to the Committee to evaluate to request to the High Commissioner for Human Rights, that in collaboration with ISDR, IASC and the humanitarian agencies (UNHCR, CICR) to elaborate a study regarding the need for elaborate guide lines for states and their authorities against discrimination in all phases (before, during and after the disasters) the of the response to affected persons by natural disasters.*
2. *An international legal rule on the non-discrimination (without distinction as to race, colour, or national or ethnic origin) in the assistance and protection of affected persons by natural disasters in relation to the immediate response, reconstruction and prevention through measures of risk reduction made in function of the needs, especially for the most vulnerable, would be a clear advance in the elimination of discrimination on a crescent portion of humanity.*

Liechtenstein inquired if such a norm would also apply to victims of man-made disasters or internal conflicts. Panama clarified the proposal included both internally displaced persons and non internally displaced persons.

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, the issue needed to be contextualized to racial discrimination.

----- Wednesday, 28-10-2009 PM

The Chair opened the eleventh meeting in the afternoon of Wednesday, 28 October 2009 with a discussion on the following issue:

**j) Protection of migrants against racist, discriminatory and xenophobic practices**

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.*

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.*

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 Lichtenstein's proposal of a study.

Nigeria stated that a discussion of migration by the Committee should be in reference to international migration, not internal, as internal migrants enjoyed all the rights afforded to other persons in their country. The DDPA, the delegate added, recognized non-nationals as victims of discrimination, not internal migrants. The delegate of Nigeria 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.*

The European Union stated that migration and asylum policies in the EU had to comply with international human rights law. Article 14 of the European Convention on Human Rights enshrined the right to non-discrimination. Sweden added that there are no substantive gaps in international instruments regarding this issue. Liechtenstein stated that there is 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 the countries of origin should also be looked at, as well as the country of reception. Pakistan, Nigeria, Mexico, Argentina and Algeria stated that in contrast to international migrants, internal migrants do not have their rights affected due to their migration and so are not relevant for this discussion. Ecuador stated that paragraph 38 of the report of the Five Experts says that acts of xenophobia and intolerance are not covered by existing international instruments and this should be remedied. Algeria stated that there is a recommendation by the Five Experts directed at the CERD to deal

with xenophobia in their general comments but Algeria would favour an international instrument in this regard.

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

#### **k) Protection of people under foreign occupation from racist and discriminatory practices**

Syria gave several examples of racist and discriminatory practices in this context, stating that the situation has been referred to in paragraphs 5 and 10 of the Outcome Document of the Durban Review Conference and by the Five Experts. The United States of America, Denmark, Switzerland, Portugal, Canada and Sweden stated that the Fourth Geneva Convention protects the population of countries under foreign occupation and there is no need for complementary standards on this. Pakistan and Syria made the following proposal:

- 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 the States.*

Azerbaijan stated that there is no clear definition of ethnic cleansing and one is needed. Syria stated that the discussion was not about stopping foreign occupation but rather about addressing racism under foreign occupation. 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.

#### **l) Protection of refugees, returnees and IDPs against racism and discriminatory practices**

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 that migration and asylum policies must comply with international law.*

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 to take necessary action and measures not to prevent them, including refugees, returnees and IDPs from returning to such land.*

Azerbaijan stated that there is a gap in this area as there is no legally binding international convention that covers IDPs. The delegate highlighted the recently adopted African Convention on IDPs. Sweden stated that it recognizes the challenges involved in migration and refugee flows but the Five Experts had stated that there are no gaps. Enhanced implementation is what is needed. UNHCR stated that racism and discrimination directed at refugees has increased recently and UNHCR is willing to extend technical cooperation to States in this regard.

Liechtenstein welcomed the inclusion of returnees in the discussion and stated that although there are the Guiding Principles on IDPs there is 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.*

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.*

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

The United States of America stated that the existing international framework under the ICERD and the ICCPR provides sufficient protection and that implementation is the issue. The delegate then gave examples of actions taken in his country, adding that education and training are essential components to the prevention and combating of racial profiling. South Africa stated that measures to combat terrorism must respect human rights and that there is a need for a definition of racial profiling. South Africa 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.*

Chile, on behalf of a number of countries from different regions, stated that it condemned terrorism and upholds the right of States to combat terrorism in accordance with the law, but noted that measures taken in this regard, must comply with human rights law and an automatic linkage with any race, nationality, or religion would be a violation of human right 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.*

Norway rejected racial profiling and noted that it is against Norwegian law, that it diverts resources away from where they could be better used, that it creates a false sense of security and that it violates human rights. Sweden stated that respecting the human rights of minorities is key to the fight against terrorism. Sweden expressed support for Resolution 10/15 on combating terrorism while respecting human rights and added that all those suspected of terrorism must be treated in the same way regardless of their race, religion or nationality. Sweden stated that it would be happy to share its practices with other States and concluded that there is no need for complementary standards on this issue.

Pakistan stated that since 2001 racial profiling had increased, adding that the OIC rejects racial discrimination and while it condemns terrorism, it rejects racial profiling in combating terrorism. Algeria stated that racial profiling is clearly discriminatory, that the Working Group of Experts on People of African Descent had affirmed this and that there exists a need for a definition of racial profiling. Nigeria supported South Africa's statement and proposal France suggested that the Committee draw upon work of UN mechanisms such as the Working Group of Experts on People of African Descent and others such as the CERD, which refers to the issue in recommendation 31 of 2005. The delegate added that the fact that the CERD has made recommendations on this issue shows that a norm already exists and any new norm would be a duplication.

The OIC stated the *new instrument should provide for mandatory prohibition by law 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.*

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



Nigeria recognized that the European Council had done a lot of work on this issue, including a protocol on racial cybercrime and suggested *that an additional protocol would be a good idea and could be modeled on the European protocol*. Sweden 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. 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. The United States of America stated that it had serious reservations about limiting the Internet and characterizing cybercrimes as violations of human rights, adding that existing international instruments cover the issue. Pakistan 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.

The EU submitted the following proposal:

1. *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;*
2. *States should promote the positive role that new media, including the Internet, can play in the fight against racism.*

The African Group submitted the following proposal:

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.*

----- Thursday, 29-10-2009 AM

The Chair opened the 12th meeting on the morning of Thursday, 29 October.

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

The African Group submitted the following proposal:

1. *State Parties shall assure to every victim of racial discrimination which 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 of every victim of racial discrimination to just and adequate reparation for any material or moral damage suffered as a result of such discrimination;*
3. *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;*
4. *The provisions of paragraph (1) are without prejudices to other prosecutions, including criminal prosecutions against the perpetrator(s) of such acts of racial discrimination.*

After hearing several interventions, the Chair welcomed the convergence of views on this issue. The problem was identified by all, the question remained what was to be done about it. There was a discussion on whether adopting a complementary standard on this matter would weaken the existing international obligations or not. Liechtenstein, supported by other Western countries, stated that the adoption of even a non-binding instrument would weaken international obligations. Nigeria and Algeria submitted that a number of countries had adopted national laws, but that abuse was still taking place which in their view demonstrated that national laws were inadequate and international standardization was necessary.

**p) Xenophobia**

Nigeria argued that xenophobia was a contemporary form of racism not covered under international instruments. The Group of African States submitted the following proposal:

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 as criminal offence under its domestic law, the following acts or conduct:*
  - c) *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.*

- d) *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.*

Liechtenstein, supported by Poland, rejected the interpretation that ICERD did not cover xenophobia and pointed out that CERD in many cases made recommendations on xenophobia, including two general comments on non-citizens. For Algeria, it was one thing for the Committee to make a General Comment related to xenophobia, but quite another to address a gap in international law.

The Chair then concluded the substantive portion of the programme of work. The upside of the exercise was the broad recognition of a large number of problems which had been raised under the different items. The Chair noted there was regional division on the development of contemporary forms of racism, xenophobia and related intolerance. Yet a difference in perception also existed as to how broad the diagnosis was to be. Some members felt that broader concerns of discrimination ought to be addressed, while others felt the focus ought to be on racial discrimination and xenophobia. A more substantial difference that had prevailed throughout the discussion was that, once a diagnosis had been made, there were radical differences of opinion in terms of the remedies. Some felt that remedies were to be based on the strict interpretation of resolutions detailing the content of 199 of the DDPA as well as resolutions Human Rights Council resolutions 6/21 and 10/30. There were interpretation differences as to what these resolutions actually contained in terms of mandate. Some felt it was restricted to the elaboration of legal standards, while others felt it ought to include the field-based identification of gaps. Then there were differences as to whether there were insufficiencies in the international legal framework. A large number of members had not supported the two resolutions. However, other States that had supported the mandate had a different interpretation on where the onus of proof lied as to the determination on complementary standards to be adopted. Some participants had expressed their desire to adopt complementary standards, while others had objected to this way forward. These differences had not stymied efforts to get the discussions started which had created some hope that the objective could be pursued, by consensus and only in the last analysis by vote. As a Chair he would promote consensus, but the ultimate decision was to be taken by the States. The Chair argued for a common approach to maintain peace and the issues under discussion had a direct impact on the latter. Mutual accommodation was necessary to marginalize extremist groups on both sides. He requested that groups draw up a procedural approach for the way forward even if on the substance there was no agreement, because progress had been made and now the members needed to make progress. He called for convergence and mutual accommodation among groups. He then adjourned the meeting.

----- Thursday, 29-10-2009 PM

The Chair opened the 13<sup>th</sup> meeting in the afternoon of Thursday, 29 October 2009

#### E. DISCUSSION ON THE WAY FORWARD FOR FUTURE SESSIONS

Pakistan stated that the way forward had to mean tangible actions, 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. The United States, supported by Australia, stressed there was consensus on the necessity to address the grave problems of racism, racial and religious discrimination, racial profiling, hate crimes and xenophobia. However, the United States and other States felt what was needed was to strengthen implementation. Argentina, in the name of a number of countries from different regions plus the Dominican Republic and Guatemala, recommended the exchange of best practices and said it was unconvinced about the need for complementary standards. The delegate recommended further study of the issue. The US, Sweden, Canada, Liechtenstein and Norway stated their position that there was no need for complementary standards. Canada added that good practices needed to be shared and recommended that further discussion on the issue take place. Nigeria stated that the report needed to contain all specific proposals and that it expected the next session to draft complementary standards. 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. The US, Sweden speaking for the EU and Argentina speaking for a number of states from different regions, distributed structured documents recapitulating in logical order their positions on issues raised in sequential order in the program of work. The US also requested that this structured recapitulation be covered in the report. The EU asked that its document be reproduced verbatim. In the absence of consensus, the Chairman decided to stick to the traditional form of reporting whereby proposals are included in the report according to the sequence of the program of work. At the conclusion of this discussion, the Chair closed the meeting.

-----Friday, 30-10-2009 PM

#### F. ADOPTION OF THE REPORT

The Chair opened the 14<sup>th</sup> meeting in the afternoon of Friday, 30 October 2009.