



General Assembly

Distr.
GENERAL

A/HRC/AC.1/2/2
26 August 2009

Original: ENGLISH

HUMAN RIGHTS COUNCIL
Ad Hoc Committee
on the Elaboration of Complementary Standards
Second session
Geneva, 19-30 October 2009

**OUTCOME REFERRED TO IN PARAGRAPH 2 (D) OF THE ROAD MAP
ON THE ELABORATION OF COMPLEMENTARY STANDARDS***

**Prepared by the Chairperson-Rapporteur of the Ad Hoc Committee
on the Elaboration of Complementary Standards**

The present document contains a compilation by the Chairperson-Rapporteur of the Ad Hoc Committee on the Elaboration of Complementary Standards of submissions received from member States and groups of States in response to a request for contributions in the form of action points pursuant to paragraph 2 (a) of the road map on the elaboration of complementary standards, as adopted by the Ad Hoc Committee on 19 December 2008 and endorsed by the Human Rights Council in its resolution 10/30.

* Late submission.

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I. INTRODUCTION

1. In line with the road map adopted by the Ad Hoc Committee on the Elaboration of Complementary Standards on 19 December 2008 and further endorsed by the Human Rights Council in its resolution 10/30, the substance of the following action points will be discussed with regard to the scope, form and nature of the complementary standards to be elaborated.
2. The Chairperson has deemed it useful to adopt a victim-oriented approach when compiling, integrating and structuring the contributions, having in mind the comments received following the consultation of 10 July 2009.
3. The “outcome” consists of four parts. The first part is dedicated to action points on definitions and principles, as this is requested by several member States and groups; the second part addresses action points on the elaboration of complementary standards aimed at providing victims of racism, racial discrimination, xenophobia and related intolerance, including their contemporary forms and manifestations, with the maximum protection through the enhancement, optimization and strengthening of the monitoring procedures of the Committee on the Elimination of Racial Discrimination and national monitoring mechanisms; the third part addresses action points on the elaboration of complementary standards aimed at providing victims of racism, racial discrimination, xenophobia and related intolerance, including their contemporary forms and manifestations, with the maximum protection through substantive provisions as to thematic issues; and the fourth part is dedicated to other contributions presented as action points and not covered in parts II to IV.
4. The numbering of these four parts does not imply any hierarchy and aims only to provide a structure for the contributions received.

II. ACTION POINTS ON DEFINITIONS AND PRINCIPLES

A. Principles

5. Some member States have emphasized that any new international complementary standard will have to offer a clear added value to the promotion and protection of human rights, reinforce the international human rights system, respect its principles and not weaken, question, contradict, confuse, undermine or duplicate existing norms, in particular those contained in legally binding international instruments (the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women) as well as in other documents, such as the Universal Declaration of Human Rights, the Durban Declaration and Programme of Action and the first Durban Review Conference outcome document.

B. Definitions

6. Some member States/groups consider that the Ad Hoc Committee when elaborating complementary standards should introduce:

- (a) A definition of racism, in addition to that of racial discrimination contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination, describing this phenomenon as “the belief that a ground such as race, colour, language, religion, nationality or national or ethnic origin justifies contempt for a person or group of persons, or the notion of superiority of a person or group of persons”;
- (b) Definitions of “direct” and “indirect” racial discrimination to be elaborated in order to establish a more comprehensive approach towards combating racism and racial discrimination. Furthermore, the concepts of “segregation” and “discrimination by association” may be considered;
- (c) A definition of “xenophobia” using existing literature on this phenomenon. It should contain explicit reference to possible causal links such as minority, migrant and refugee status;
- (d) Definitions of “Islamophobia”, “Anti-Semitism”, “Christianophobia” and “ideological racism” should be introduced. These scourges should also be criminalized in all their manifestations, and made punishable offences in accordance with international human rights law;
- (e) A definition of racial, ethnic and religious profiling should be elaborated, prioritizing human rights protection;
- (f) A definition of “hate crimes”, so as to incorporate, inter alia, the recognition that both individuals, groups of individuals and property can be the target and victim of hate crimes, a mix and amalgam of the concepts of race, ethnicity, religion and national origin in order to cover the widest scope possible in addressing hate crimes, and an emphasis on the link between hate crimes committed against individuals with specific characteristics and the risks and crimes encountered by the broader group to which the individual belongs.

III. ACTION POINTS ON THE ELABORATION OF COMPLEMENTARY STANDARDS AIMED AT PROVIDING VICTIMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, INCLUDING THEIR CONTEMPORARY FORMS AND MANIFESTATIONS, WITH THE MAXIMUM PROTECTION THROUGH THE ENHANCEMENT, THE OPTIMIZATION AND THE STRENGTHENING OF THE MONITORING PROCEDURES OF THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION AND NATIONAL MONITORING MECHANISMS

A. Monitoring procedures of the Committee on the Elimination of Racial Discrimination

7. Some member States/groups have emphasized that complementary standards to be elaborated must aim to strengthen the monitoring procedures of the Committee on the Elimination of Racial Discrimination.

8. Some member States have underlined the need to optimize the existing monitoring mechanisms of the International Convention on the Elimination of All Forms of Racial Discrimination/the Committee on the Elimination of Racial Discrimination, to optimize the practice and effectiveness of the follow-up procedure of the Committee and of the complaint procedure under article 14 of the Convention. The same member States have referred to the need for enhanced compliance by States with their reporting obligations.

9. Other member States have emphasized that the Ad Hoc Committee should consider concrete proposals to put into effect recommendations contained in the report of the Committee on the Elimination of Racial Discrimination regarding a follow-up procedure to recommendations, an inquiry procedure and country visits in the framework of these procedures.¹

B. National monitoring mechanisms

10. Some member States/groups were of the view that the focus should be on the establishment, designation or maintenance of national mechanisms with competence to protect against and prevent discrimination on the grounds of race, colour, religion, descent, national or ethnic origin, as well as to promote equality at the domestic level, or to develop global model legislation/guidelines in this area, as an option to reinforce the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

11. Other member States/groups consider that complementary standards to be elaborated should provide provisions aimed at establishing national monitoring bodies.

12. Some other member States emphasized that the process should focus on ensuring that States have the requisite capacity at the national level, by creating national human rights institutions to deal with racism and discrimination and cooperate fully with the Committee on the Elimination of Racial Discrimination and other relevant mechanisms.

13. According to other member States/groups, the new instrument to be elaborated should also provide for the establishment of an independent specialized body to monitor the whole process related to racio-religious discrimination; collect, compile, analyse, publish, and disseminate statistical data on racism and racial discrimination; assist victims, investigate cases, monitor legislation, advise legislative and executive authorities and provide training to police, prosecutors, and judges on legislation, planning and execution of relevant provisions of the instrument; as well as raise awareness on promoting tolerance and preventing defamation of religions.

¹ A/HRC/4/WG.3/7.

IV. ACTION POINTS ON THE ELABORATION OF COMPLEMENTARY STANDARDS AIMED AT PROVIDING VICTIMS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE, INCLUDING THEIR CONTEMPORARY FORMS AND MANIFESTATIONS, WITH THE MAXIMUM PROTECTION THROUGH SUBSTANTIVE PROVISIONS

A. Modern information and communication technologies

14. Some member States have referred to the need for further analysis of racism on the Internet.

15. Other member States/groups consider that modern information and communication technologies must be explicitly recognized as falling under the scope of the outcome document on complementary standards. Within this context, they emphasized that cybercrime should be made a punishable offence in international human rights law and that complementary standards should be elaborated to provide for the prohibition of cybercrime in international human rights law, where it is used to promote racial and religious hatred, intolerance and incitement to violence.

16. Some member States consider that complementary standards to be elaborated should, through a new instrument, provide for legal restrictions on the dissemination or distribution or production, in public or otherwise, of all ideas based upon racial and religious superiority or hatred and incitement to hatred and violence, including through resort to modern information and communication technologies.

B. Human rights education

17. Some member States/groups underlined the importance of the revision of school curricula that should give emphasis to the role of cultural diversity and human rights education in promoting tolerance and preventing racism, racial discrimination, xenophobia and related intolerance.

18. Other member States have underscored the fact that the elaboration of possible complementary standards should take into account the work on and the content of the draft declaration on human rights education and training currently being elaborated by the Advisory Committee of the Human Rights Council.

19. Some other member States and groups consider that it is essential for States to elaborate provisions on human rights education, with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations, as well as among racial and ethnic groups.

C. Advocacy and incitement to racial, ethnic, national and religious hatred

20. Some member States/groups are of the view that combating incitement to racial and religious hatred falls under the scope of the outcome document on complementary standards. According to these States, such acts include:

(a) Public insults and defamation and threats against a person or group of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

(b) The public expression of prejudice which has the purpose or effect of denigrating a group of persons on the basis of the above-mentioned grounds;

(c) The public dissemination or distribution, or the production of written, audio or visual or other material containing manifestations of racism and racial discrimination targeted by the International Convention on the Elimination of All Forms of Racial Discrimination and the present submission.

According to the above-mentioned member States/groups, these acts must be criminalized in national laws, and the perpetrators thereof punished, as well as those instigating, aiding or abetting them.

21. Some other member States consider that studies should be elaborated, over the course of a year, for the consideration of the Ad Hoc Committee on the following themes:

(a) The underlying causes of and social pressures contributing to the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. The study would seek to elaborate, through a careful analysis of empirical data on the occurrence and nature of such advocacy, customized, practical recommendations on how best to promote tolerance and diversity without restricting human rights and fundamental freedoms;

(b) Global trends related to advocacy of hatred in order to examine the current trends related to such advocacy, including State and societal reactions and the factors that help minimize violent societal reaction to such advocacy. This study would be conducted through multi-stakeholder workshops and seminars. Presentations in this context would include the experiences of groups in various parts of the world facing racism, racial discrimination, xenophobia and related intolerance;

(c) Evolution of legal policy frameworks in order to provide an assessment of the evolution of domestic legal and policy frameworks dealing with these issues, and of their effectiveness or otherwise in dealing with intolerance and discrimination. The assessment to be conducted would also review any distinctions made within these frameworks between actions taken based upon a moral and social responsibility to combat advocacy of national, racial or religious hatred on the one hand and those based upon the legal obligation to prohibit such advocacy on the other, and analyse the relative results of each;

(d) A compilation of successful and unsuccessful approaches and lessons learned on the ground should be elaborated to highlight what has actually worked in promoting greater tolerance and diversity: whether the limitations on hate-filled speech have helped to reduce acts of intolerance and promote religiously and racially diverse societies, whether such limitations have been implemented in a non-discriminatory manner, and what the correlation is between domestic prohibitions on such advocacy and instances or patterns of discrimination and continued allegations of human rights violations.

22. Some other member States/groups consider that the Human Rights Committee and the Committee on the Elimination of Racial Discrimination should consult with States and stakeholders and consider elaborating a joint general comment on the issue of incitement to hatred in the framework of their respective competence and bearing in mind article 19 of the International Covenant on Civil and Political Rights.

23. Some other member States/groups emphasized that the new internationally binding normative standards to be developed in the area of racism, racial discrimination, xenophobia and related intolerance should incorporate as contemporary issues incitement to religious hatred, discrimination and violence, the abuse of the right to freedom of expression in the context of racio-religious profiling, and negative/offensive or insulting stereotyping, incitement to discrimination, hatred and violence. Such new standards should provide for legal restrictions to public incitement to violence, or threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin.

24. These States emphasized the need to further define the existence of the link between an act of incitement and the likelihood of a violation, or the threshold required for reaching such a determination, to achieve consistent and uniform application and maximize protection for actual or potential victims.

25. Some member States/groups, emphasizing that the right to freedom of expression should be exercised with the responsibilities and limitations as prescribed by law, highlighted the necessity for States to stop the publication of blasphemous caricatures and films and the campaigns for anti-Islamic regulations and to take all possible legal and administrative measures to prevent continuation of these acts.

D. Discrimination based on religion or belief

26. Some member States/groups consider that complementary standards to be elaborated should address:

- (a) Defamation of religions, religious personalities, holy books, scriptures and symbols;
- (b) Provocative portrayals of objects of religious veneration as a malicious violation of the spirit of tolerance;
- (c) Prohibition of publication of material with the aim of protecting the rights of others and against seriously or gratuitously offensive attacks on matters regarded as sacred by the followers of any religion.

27. According to these member States, complementary standards should provide for:

- (a) Legal prohibition of offences in which religious motives are an aggravating factor;
- (b) Penalization, through the criminal law of States, of public expression with a racist aim, or of an ideology which claims the superiority of, or which depreciates or denigrates a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

(c) Penalization, through the criminal law of States, of the above acts without any discrimination in order to combat impunity for those who commit such acts, instigate, or aid and abet them directly or indirectly;

(d) Legal restriction to public insults and defamation threats against a person or a grouping of persons on the grounds of their race, colour, language, religion, nationality, or national or ethnic origin;

(e) Legal prohibition of 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;

(f) The penalization of the above-mentioned acts by the criminal law of States, without any discrimination, in order to combat impunity for those who commit, instigate, or aid and abet them directly or indirectly.

28. Some other member States proposed the publication of a digest of case studies concerning cases of discrimination on religious grounds affecting the enjoyment of human rights as enshrined in the International Covenant on Civil and Political Rights and as examined by the Human Rights Committee. This is in order to shed light on existing practices in this field. Regionally developed jurisprudence could be included in the above-mentioned digest.

E. Hate crimes

29. Besides the introduction of a definition of the notion of “hate crime” requested by some member States and groups, other member States are of the view that the Ad Hoc Committee should consider compiling national legislation in the field of hate crime and preparing guidelines or model provisions on the basis of best practices.

F. Racial, ethnic and religious profiling and measures to combat terrorism

30. Some member States emphasized that measures to combat terrorism must be consistent with the principles of non-discrimination and with efforts to confront racism. This must include, inter alia, the prohibition, by law, of racial and religious profiling as well as other grounds of discrimination stipulated in international human rights law.

31. Other member States consider in the same vein that the new instrument should provide for:

(a) Measures to combat terrorism to be in full respect for universally recognized standards of international human rights law and international humanitarian law;

(b) 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 provide reparation for victims;

(c) Combating the abuse of the right to freedom of expression in the context of racio-religious profiling, negative/offensive or insulting stereotyping, or incitement to discrimination, hatred and violence;

(d) Penalization of the above-mentioned acts in the criminal law of States, without any discrimination, in order to combat impunity for those who commit such heinous acts, or instigate, or aid and abet them directly or indirectly.

G. Impunity for acts of racism, racial discrimination, xenophobia and related intolerance

32. Some member States/groups emphasized that impunity for acts of racism, racial discrimination, xenophobia and related intolerance, must be prevented and combated.

H. Reparation and remedy for victims of racism, racial discrimination, xenophobia and related intolerance

33. Some member States/groups emphasized that reparation and remedy for victims of racism, racial discrimination, xenophobia and related intolerance must include compensation for both material and moral prejudice, and that legal guarantees for remedy and reparation should be provided to them.

I. Intercultural and interreligious dialogue

34. Some member States/groups are of the view that, when elaborating complementary standards, the Ad Hoc Committee should also look into ways and means of promoting intercultural and interreligious dialogue and cooperation at all levels, especially at the grass-roots level.

35. In this context, it was suggested that provisions to be elaborated should request Governments and political parties not to be complicit in undermining ongoing efforts to promote harmony and friendly relations amongst the various cultures, religions and civilizations.

36. Other member States referred to the benefit of further dialogue on the sharing of best practices relating to fostering cultural understanding, including the role of human rights education.

J. Additional, essential and practical provisions related to the obligations of States

37. Some member States/groups are of the view that complementary standards to be elaborated should also provide for additional essential and practical provisions related to the obligation of States, namely:

(a) Where required, taking decisions on interim measures in the interest of victims of acts of racial/religious discrimination;

(b) Regular review of laws, regulations, policies and administrative measures, with a view to ensuring their consistency with efforts to combat racism, racial discrimination, xenophobia and related intolerance;

(c) Elaboration of provisions on human rights education with a view to combating prejudices which lead to racial/religious discrimination and to promoting understanding, tolerance and friendship among nations, racial, religious and ethnic groups;

(d) The provision of free legal aid and assistance to victims of racism, racial/religious discrimination, xenophobia and related intolerance, in accordance with the victim's needs and requirements;

(e) The compilation of disaggregated statistics, in a manner which respects human and privacy rights, with a view to assessing the overall situation, in particular at the socio-economic level, of racial, ethnic and national minorities.

K. Double and multiple forms of discrimination

38. Some member States/groups are of the view that double and multiple discrimination, namely gender-related racial discrimination and double discrimination on the grounds of race and religion as contemporary issues, should be incorporated when developing new internationally binding normative standards in the area of racism, racial discrimination, xenophobia and related intolerance.

39. One member State considers that the phenomenon of multiple forms of discrimination and the relationship between racism and religion would benefit from further consideration. However, according to this State, while the creation of additional legally binding instruments is not required to address current challenges, there would be value in further discourse in key areas. These include:

(a) A further study related to multiple forms of discrimination, including the elaboration of grounds of multiple discrimination and a methodology for countering this phenomenon;

(b) Further dialogue relating to the relationship between racism and religion and the sharing of best practices relating to fostering cultural understanding, including the role of human rights education.

40. Other member States/groups consider that multiple forms of discrimination, which include, according to some countries, gender, age, sexual orientation, and religion or belief, should be considered in depth by the Ad Hoc Committee.

L. People under foreign occupation

41. Some member States underlined the necessity for the Ad Hoc Committee to allocate a specific article in the complementary standards to be elaborated to the increasingly demonstrated causative link between foreign occupation and the emergence and prevalence of racist practices and discriminatory acts.

42. The content of such an article should be based, according to these member States on the language contained in paragraphs 5 and 9 of the Durban Review Conference outcome document, and comply with paragraphs 97 and 98 of the study by the five experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance.²

M. Genocide

43. Some member States consider that the outcome document on complementary standards should include measures to address the denial of genocide, as recognized by the United Nations, as an attempt to undermine the recognition of genocide as a crime under international law.

V. OTHER CONTRIBUTIONS PRESENTED AS ACTION POINTS AND NOT COVERED IN PARTS II TO IV ABOVE

44. In several contributions, issues presented as action points were in reality comments and views related to various aspects such as process, thematic issues, principled positions, etc.

45. In order to enhance transparency and inclusiveness, it was thought useful to include a section which summarizes the views and general comments of member States concerning different aspects that might not constitute “exclusively action points”. It would then be up to delegations, during the deliberations of the second session of the Ad Hoc Committee, to decide on the course of action concerning this section.

46. Views and general comments mentioned above will be structured in two parts. The first part relates to general comments and views submitted by member States as to the outcome document referred to in the road map, the need for complementary standards, the format and binding nature of complementary standards to be elaborated, the process, the stakeholders to participate in the process, and the future work of the Ad Hoc Committee. The second part relates to general comments and views relating to thematic issues.

A. General comments and views submitted by member States

1. The outcome document referred to in the road map

47. Some States/groups consider that the outcome referred to in the road map must conform with the format outlined in Human Rights Council decision 3/103 and should include the following general principles and provisions:

(a) Although laws alone are not sufficient to eradicate racism and racial discrimination, laws remain essential to such efforts;

(b) International standards on combating racism must provide for deterrence and be perceived, as far as possible, by actual and potential victims, as satisfactory;

² A/HRC/4/WG.3/6.

(c) No attempt to legitimize racism and racial discrimination can be tolerated in a society ruled by law;

(d) The exercise of the right to freedom of expression, assembly and association may be restricted with a view to combating racism in accordance with international human rights law;

(e) The prohibition of racism and racial discrimination applies to all public authorities, as well as natural and legal persons, both in the public and private spheres;

(f) There is a need for a uniform and consistent application of the law to ensure the effectiveness of international efforts to counter racism and racial discrimination.

2. The need for complementary standards

48. Some member States/groups consider that:

(a) Priority should be given to the implementation of existing standards (the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women) and to the fact that the lack of implementation is the main challenge to overcome. The implementation of the International Convention on the Elimination of All Forms of Racial Discrimination is fundamental for the fight against racism. Some countries indicate that they are ready to transmit information on their national experiences of implementing international anti-discrimination instruments later in the process;

(b) States should fully and effectively implement their obligations under relevant treaties to which they are party, including by, as necessary, adopting and implementing legislation, policies, programmes and other measures;

(c) The implementation of the International Convention on the Elimination of All Forms of Racial Discrimination should be ensured, in line with new forms of racism or related intolerance;

(d) Efforts of the Ad Hoc Committee should focus on the national/domestic level;

(e) Any new international complementary standard will have to meet needs clearly identified through a rational and global process, and be based on empirical evidence and documentation which demonstrates such a need.

49. One member State expressed its readiness to consider complementary standards aimed at making the International Convention on the Elimination of All Forms of Racial Discrimination more efficient, on the understanding that such standards should respond to specific needs identified through a rational and comprehensive process.

50. Another member State indicated that it does not believe that amendments to the international human rights legal framework, or new interpretation of existing legal obligations, are warranted to fight the scourge of racism, racial discrimination, xenophobia and related intolerance. It indicated that, rather than seeking additional restrictions to expression, it

advocates more robust outreach policies with respect to racial, ethnic and religious groups, as well as the institution of appropriate legal regimes that deal with discriminatory acts and hate crimes. The member State concerned emphasized that it views racism, racial discrimination, xenophobia and related intolerance as serious challenges facing the international community and that they must be dealt with by the Ad Hoc Committee in a deliberate and methodical manner.

3. The format and binding nature of complementary standards to be elaborated

51. Some member States/groups consider that:

(a) Complementary standards must not necessarily be binding and could be in the form of guidelines, good practices and general comments of treaty bodies to clarify the obligations of State parties regarding comprehensive anti-discrimination legislation. If the Ad Hoc Committee decides by consensus to commence the elaboration of complementary standards, these could be not binding and the elaboration of a convention or an optional protocol is not the only option to be considered, as the format of possible complementary standards cannot be decided on before any decision is taken on the themes to be covered;

(b) Addressing the concerns and proposals of different delegations regarding the way to prepare complementary standards does not need to be undertaken in one single document. Multiple options are available to this end and should be determined on a case-by-case basis. Procedural aspects could be addressed through an optional protocol and other issues through, inter alia, general comments of treaty bodies, the compilation and appropriate dissemination of relevant best practices, guidelines, or a declaration;

(c) While considerable challenges exist to effectively addressing, combating and eradicating racism and racial discrimination, a lack of legally binding norms is not an obstacle to achieving progress and the existing framework of international norms and standards provides a firm foundation to address current obstacles to effectively combating racism;

(d) There is no need for an optional protocol to ICERD;

(e) The scope, form and nature of possible complementary standards could vary according to the gap to be filled. All forms of complementary standards must be taken into account, including but not limited to, best practices, guidelines, a protocol or a convention;

(f) Consideration of the scope, form and nature of the response should be undertaken according to the specific characteristics of the gap to be filled (based on empirical analysis and comparison of the impact of domestic measures).

52. Some other member States/groups:

(a) Recall that the outcome referred to in the road map must conform with the format outlined in Human Rights Council decision 3/103;

(b) Consider that the elimination of discrimination and the protection against intolerance is in part a matter of legal protection.

4. The process

53. Some member States and groups emphasized that the process should be transparent and based on consensus and on an impartial, rational, equitable, open, holistic and all-inclusive approach.

54. One member State is of the view that all future work or decisions of the Ad Hoc Committee can only take place on the basis of consensus and that any outcome of the work of the Ad Hoc Committee must have consensus as a prerequisite.

55. Another member State considers that the process has to be tackled in an open spirit and with the objective of elaborating the most efficient tool to solve the problems and breaches that may have been identified.

5. Stakeholders to participate in the process

56. In order to ensure a transparent and efficient process, all relevant actors must be involved. Members of the Committee on the Elimination of Racial Discrimination and other treaty bodies, relevant special procedures, agencies, civil society and non-governmental organizations must closely participate in the work of the Ad Hoc Committee.

6. The future work of the Ad Hoc Committee

57. The following comments and views have been expressed as to the future work of the Ad Hoc Committee.

58. The Ad Hoc Committee should pursue its work in order to determine if there is a real need to elaborate complementary standards. To that effect the Committee should prepare/ask for a comprehensive report with the following purpose:

- To determine the status of ratification of relevant international instruments (the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) by each State through precise figures
- To assess the degree of compliance with reporting obligations to treaty bodies, through clear figures
- To assess and analyse in depth the extent to which the main existing international human rights standards, in particular the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, are implemented, and the reasons behind the lack of implementation
- To assess the manner in which the recommendations of treaty bodies are implemented or followed

Based on the status of implementation of existing international standards and statistical material, the Ad Hoc Committee would be able to:

- Assess in a consensual manner the existence of a real need for complementary standards aimed at filling the implementation gaps in these standards.
- Identify, in a consensual manner, themes that may not be covered by proper implementation of the existing standards. In order to carry out the above-mentioned identification, the Ad Hoc Committee would have to prolong its discussions on the findings, conclusions and recommendations contained in the study of the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures and in the study by the five experts.³
- Analyse the existing obstacles to ratification, reporting and implementation of the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Identified measures should create/achieve workable and practical solutions to address racism and related intolerance and address any identified gaps.

59. The Ad Hoc Committee should make sure that there is a common agreement on the identification of any gaps and on the best way to address them in order to give effect to any complementary standards and to implement them widely.

60. The Ad Hoc Committee should utilize its resources in encouraging and ensuring that member States implement their international obligations, namely via the identification of good practices or the elaboration of a compilation of recommendations.

61. The reports of the Committee on the Elimination of Racial Discrimination and the five experts must constitute a good basis, for the continuation of the work and deliberations of the Ad Hoc Committee.

B. General comments on some thematic issues

1. Multiple discrimination

62. According to some member States and groups, there is no justification for restricting the protection against multiple discrimination to the grounds explicitly mentioned in the Durban Declaration and Programme of Action.

³ A/HRC/4/WG.3/7 and A/HRC/4/WG.3/6 respectively.

63. A group of member States has emphasized that the object and the purpose of the International Convention on the Elimination of All Forms of Racial Discrimination is to address racial discrimination, which refers to any distinction, exclusion, restriction of preference based on race, colour, descent or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life. The said group of member States, however, considers that there is a need to further explore the intersectionality of racial discrimination and multiple and aggravated forms of discrimination as set out in the Durban Declaration and Programme of Action. In this context, these States consider that the Committee on the Elimination of Racial Discrimination should consult with States and stakeholders and consider elaborating a general comment on this issue.

64. Some other States propose a further study related to multiple forms of discrimination including the elaboration of grounds of multiple discrimination and a methodology for countering this phenomenon.

2. Religious intolerance, incitement to religious hatred and defamation of religions

65. Some member States/groups have underlined the fact that in the last years, especially in the wake of the 9/11 attacks, the most blatant form of discrimination has emerged in the shape of intolerance against a particular community. A continued concern has been expressed at this contemporary manifestation of discrimination which has manifested itself in the form of intolerance against Muslims, Muslim communities and defamation of religions, in particular Islamophobia.

66. The same member States/groups emphasized that Human Rights Council decision 3/103 acknowledged the importance of this fact and has led to the establishment of the Ad Hoc Committee with the specific mandate to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or an additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps in the Convention and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred.

67. In the same vein, it has been emphasized that growing intolerance, discrimination against Muslims, insults against Islam and growing trends of defamation of religions have become pervasive and often condoned in certain countries and communities. Such acts against Muslims and Islam, according to this point of view, are inconsistent with the spirit of the Charter of the United Nations, promoting peaceful coexistence amongst nations, and are in violation of numerous United Nations resolutions including General Assembly resolutions 62/154 and 55/23 and Security Council resolution 1624 (2005).

68. In this context, developing the human rights language to address emerging issues, such as defamation of religions, as an important step forward that is in the interest not only of Muslims but also of the whole international community, was also highlighted.

69. Reference has also been made to the report of the former Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, to the sixth session of the Human Rights Council highlighting the fact that “the increasing trend in defamation of religions cannot be dissociated from a profound reflection on the ominous trends of racism, racial discrimination, xenophobia and related intolerance that are developing in the current political and ideological context”.⁴

70. Some member States are of the view that religious intolerance, incitement to religious hatred, religious intolerance combined with racial and xenophobic prejudices and defamation do not need additional standards, as they are sufficiently covered by existing standards and international normative legal frameworks.

71. A group of States considers that incitement to racial hatred and violence is addressed in article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination and incitement to national, racial or religious hatred is addressed in article 20 of the International Covenant on Civil and Political Rights.

72. Other member States emphasized that the notion of defamation of religions cannot be accepted and has to be replaced, as agreed by the Durban Review Conference, with the notion of “incitement to religious hatred”.

⁴ A/HRC/6/6, para. 5.