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## Human Rights Council

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Racism, racial discrimination, xenophobia and  
related forms of intolerance: follow-up to  
and implementation of the Durban Declaration  
and Programme of Action

### **DRAFT Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its third session**

(Geneva, 22 – 23 November 2010 and 11 - 21 April 2011)

Chairperson-Rapporteur: Mr. Jerry Mathews Matjila (South Africa)

*Summary*

**DRAFT REPORT (21 April 2011)**

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## I. INTRODUCTION

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

## II. ORGANIZATION OF THE SESSION

2. The Ad Hoc Committee held the first part of its third session from 22 to 23 November 2010 and the second part from 11 to 21 April 2011. During the first part of the session, the Ad Hoc Committee held two meetings. During the second part, it held [nine] meetings.

### A. Attendance

3. The session was attended by representatives of Member States, Non-Member States represented by observers, intergovernmental organizations and non-governmental organizations (NGOs) in consultative status with the Economic and Social Council.

### B. Opening of the session

4. The first meeting of the third session of the Ad Hoc Committee on the Elaboration of Complementary Standards was opened on 22 November 2010. It was scheduled to be held from 22 November to 3 December 2010 and a draft agenda A/HRC/AC.1/3/1 had been circulated. Mr. Yury Boychenko, Chief of the Anti-Discrimination Section, Office of the High Commissioner for Human Rights welcomed the delegates and noting that the position of Chairperson-Rapporteur for the Ad Hoc Committee on the Elaboration of Complementary Standards remained vacant, adjourned the meeting in order to hold further informal consultations with the Regional Groups of States on the matter. The second meeting of the third session of the Ad Hoc Committee on the Elaboration of Complementary Standards took place on 23 November, during which Mr. Boychenko reported to the Committee on the results of his consultations. As no Chairperson-Rapporteur had been identified, the third session was adjourned sine die.

5. The resumed third session of the Ad Hoc Committee on the Elaboration of Complementary Standards took place from 11 to 21 April 2011. The third meeting was opened on 11 April by the Secretariat, and Mr. Yury Boychenko, Chief of the Anti-Discrimination Section, addressed the delegates, noting the openness and cooperation of the pre-sessional consultations which had recently taken between Regional Groups. He encouraged them to continue working towards finding a "comfort zone" within which a constructive debate could be held and which common ground could be found to work on anti-discrimination issues. He hoped that the Committee would be able to mark a new start in terms of openness, cooperation and consensus amongst members and participants.

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

6. The Ad Hoc Committee elected H.E. Jerry Mathews Matjila, Permanent Representative of the Republic of South Africa to the United Nations Office at Geneva as its Chairperson-Rapporteur, by acclamation. In his introductory remarks, Mr. Matjila appealed to delegates to focus on the victims of racism and racial discrimination and work to protect past, present and future victims, strongly encouraging the delegates to use their diversity to find common ground upon which to assist victims.

### **D. Adoption of the agenda**

7. During the third meeting of the session, the Ad-Hoc Committee adopted the agenda for the resumed third session (A/HRC/AC.1/3/1/Rev.1).

### **E. Organization of work**

8. At the third meeting, the Chairperson-Rapporteur introduced the draft programme of work contained in document (A/HRC/AC.1/3/CRP.1).

9. Some delegations (European Union, United States of America, Switzerland) requested prior knowledge about the programme of work and information in particular concerning the topics to be considered during the informal discussions proposed for the three days from 13-15 April, noting that the Committee was being asked to adopt an agenda without information as to its exact content. There were also questions about the "outcome" since the draft programme of work referred to conclusions and recommendations and that this would be a "premature outcome". The European Union also expressed reservations about the fact that full interpretation services would likely only be possible for five of the scheduled nine days of the session.

10. Nigeria (on behalf of African Group), Pakistan (on behalf of Organization of the Islamic Conference), Algeria, and Morocco noted that in past sessions, the programme of work had been adopted before identification of substantive topics (referring to paragraph 72 of A/HRC/13/58). It was added that the programme was for mainly for guidance and could be amended at a later point, if required.

11. The Chairperson stated a wish to facilitate Committee's work and that programme of work was indicative in order to "start work" and that the programme of work being proposed could easily be revised, as required. The Chairperson appealed to the Ad Hoc Committee to place its confidence in the Chairperson and indicated that the reference to "conclusions and recommendations" could be replaced with "way forward". The Ad Hoc Committee eventually "took note" of and also "provisionally adopted" the draft programme of work.

12. At its sixth meeting, the Ad Hoc Committee adopted the draft programme of work for the resumed third session (A/HRC/AC.1/3/CRP.1/Rev.2). During the resumed session the Committee worked for - - days and held [seven] meetings.

### III. INTRODUCTION OF AND FIRST DISCUSSION ON THE CHAIRPERSON'S PROPOSED TOPICS

13. At the end of the third meeting, the Chairperson introduced his proposal of four initial topics for discussion during the session: "xenophobia; incitement to racial, ethnic and religious hatred; racial and xenophobic acts committed through information and communication technologies; and racial, ethnic and religious profiling."
14. At the fourth meeting the Chairperson explained that these four topics were being introduced as it was physically impossible to deal with all issues pertaining to racism, racial discrimination, xenophobia, and related intolerance. It was intended that the Ad Hoc Committee attempt to deal with the "burning issues" of the times. While the list was not exhaustive and presented in no particular order, it was an attempt to reflect key topics and concerns of participants. The list should be seen as part of a continuum since "best practices" would soon be considered by the Human Rights Council during its 17th session. He underscored an incremental approach to the issues but that these topics could start the process. Finally, these topics presented an opportunity to borrow and learn from others. The Chairperson foreseeing the need for intensive discussions hoped that the list of four topics could be narrowed again to two or three topics for discussion during the resumed third session.
15. The Chairperson then presented a brief introduction of each of the four topics. "Xenophobia" was a topic inspired by recent terrible experiences in South Africa and the need to study this phenomenon more closely. "Incitement to racial, ethnic and religious hatred" has been the focus of attention during recent sessions of the Human Rights Council, noting that the last session had adopted a resolution by consensus and that he wished to build on this. The topic of "racial and xenophobic acts committed through information and communication technologies" was informed by the Council of Europe's Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems and the thinking to borrow, update and universalize the Protocol. The topic of "racial, ethnic and religious profiling" was timely and measures by the European Union to eliminate profiling were cited.
16. Participants exchanged preliminary thoughts about proposal and the topics. There were questions posed about the criteria for selection and some sentiment that while not 'ranked' the eventual selection of four topics implied some preference. Some delegations noted that the listing was a starting point for discussions only. The Chairperson noted a general feeling to support the proposal and discuss the topics but that more consultation across and between Regional Groups was likely required. He proposed that informal consultations take place over the next days in order that the Ad Hoc Committee arrives at one or two topics to eventually be considered more formally at the Ad Hoc Committee on 18 April.
17. The United States of America suggested that the title of "Incitement to racial, ethnic and religious hatred" be revised to "Advocacy and incitement to racial, ethnic national and religious hatred." Nigeria speaking on behalf of the Africa Group, supported this revision.

18. After some discussion and at the suggestion of European Union, two additional topics “racism and sport” and “establishment, designation or maintaining of national mechanisms with competences to protect and prevent against discrimination” were added to the list of topics.

19. Argentina (speaking on behalf of Armenia, Brazil, Chile, Guatemala, Japan, Republic of Korea, Mexico, Switzerland and Uruguay) expressed some concern that their delegations had prepared for the session on the basis of the Durban Declaration and Programme of Action and that the list would be closed at six topics. The importance of expert participation (such as CERD and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance) in discussions was highlighted, noting the need to hold an informed debate and discussion on the topics.

20. The session was suspended in order that informational consultations take place. The Chairperson informed the delegates that H.E. Mothusi B.R. Palai, Permanent Representative of Botswana to the United Nations Office at Geneva, would facilitate the informal sessions which would be held between 13 April and 14/15 April. The formal meetings of the Committee would resume again on 18 April 2011.

#### **IV. REPORT OF THE FACILITATOR ON THE INFORMAL CONSULTATIONS**

21. At its fifth meeting on 18 April, the Chairperson-Rapporteur opened the meeting and invited the facilitator of the informal consultations, H.E. Mothusi B.R. Palai, Permanent Representative of Botswana to the United Nations Office at Geneva, to present an oral report to the Ad Hoc Committee on the results of the consultations which had taken place the preceding week.

22. Mr. Palai stated that the meetings took place from approximately 10 to 13.00 and 15.00 to 18.00 on 13 and 14 April and from 10.00 to 13.00 on 15 April. It was noted that there was a constructive engagement and that the atmosphere was in total quite positive. The open-mindedness despite some differences of opinion was remarkable. It was explained that the basis of the choices was that the topics present the most comfort to the most delegations. Cognizant of the “stalemate”, an absolute need to start work was generally acknowledged. A manageable workload had been sought bearing in mind during discussions and while making choices the Chairperson’s instructions to arrive at two or three topics. It was reported that a seventh topic “Procedural gaps with regard to ICERD” had been added at the request of

23. Argentina (speaking on behalf of Armenia, Brazil, Chile, Guatemala, Japan, Republic of Korea, Mexico, Switzerland and Uruguay).

24. With regard to the topics, after fruitful discussions, three to four topics seemed to provide a good focus for discussions, topic 1 “Xenophobia”; topic 2 “ Advocacy and incitement to racial, ethnic, national and religious hatred”; topic 5 “Racism and sport”; and topic 6 “Establishment, designation or maintaining of national mechanisms with competences to protect and prevent against discrimination.” An understanding about a minimalist approach in order to get started was cited. It was reported that as topic 1 “Xenophobia” and topic 6

“Establishment, designation or maintaining of national mechanisms with competences to protect and prevent against racism, racial discrimination, xenophobia and related intolerance” did not have significant opposition, they were good topics upon which to start work. In view of the need to keep the group together, topic 2 “Advocacy and incitement to racial, ethnic, national and religious hatred” had been dropped.

25. It was reported that in response to questions about the future of the remaining five topics, it was explained that these topics were still on the table but that topic 1 and topic 2 were to allow the Committee to commence some work. It was reiterated that there was no prioritization in the selection. With regard to the question about the introduction of new topics in the future, it was stated that the informal consultations had not been tasked to exhaust the topics and that the remaining five topics and future topics were still open.

26. The questions concerning methodology and the nature of the outcome as raised during the informal consultations were cited. While recognizing some feelings of discontent, it was felt that on the basis of these two choices, the Ad Hoc Committee could move forward.

27. The Chairperson expressed appreciation to the facilitator for all the efforts during the informal consultations and confirmed that the selection of 1 or 2 topics to start work did not mean that other topics were excluded.

28. Nigeria, speaking on behalf of the African Group, confirmed that the facilitator discharged the assigned task very well. ; however, the perception that xenophobia was accepted was correct, topic 6 on “national mechanisms” posed “serious reservations” for the Africa Group since it was a cross-cutting topic, but the African Group was nevertheless prepared to discuss it. With regard to topic 2 “Advocacy and incitement to racial, ethnic, national and religious hatred” the European Union and The United States of America seemed to have difficulty with language and formulation of the topic rather than the subject matter itself. The African Group proposed that if topic 2 be dropped due to disagreement, and then likewise so should topic 6. Similarly, if topic 6 to which the African Group has reservations however was being taken on board, then so should topic 2 be taken on board as well. Either there should be complete agreement on the topics or the two with reservations should be included in the list of topics to be discussed during the session.

29. The European Union welcomed the facilitator’s efforts and work stating that the report of the facilitator was accurate. It was mentioned that xenophobia was not entirely within the comfort zone of the European Union but that these selections were the best way to move the Ad Hoc Committee forward. Recalling the starting point of the informal consultations, the issues of ownership and authorship of topics should not be raised.

30. The United States of America confirmed that its disagreement with topic 2 was more so an issue of “characterization” rather than reality or substance. Recalling the recent Human Rights Council resolution A/HRC/16/18, it was suggested that the Ad Hoc Committee move forward on that consensus resolution rather than revert to previous terminology and focus.

31. Nigeria, speaking on behalf of the African Group reiterated that it could accept “religion of belief” as termed in the recent Human Rights Council resolution and reiterated that topic 6

was essentially a cross-cutting issue which could be fit under all topics on the table for consideration. Pakistan on behalf of the Organization of the Islamic Conference, Algeria and Zimbabwe supported the position of the African Group.

32. Switzerland and Lichtenstein supported the position of the European Union concerning the facilitator's report on the selection of topics.

33. The Chairperson decided that there was additional work to be carried out to reach an agreement on the topics and proposed bilateral consultations with each of the Regional Groups throughout the remainder of the day. A report would be made to the Ad Hoc Committee on the outcome of these bilateral discussions the next day.

## **V. REPORT OF THE CHAIRPERSON ON THE BILATERAL DISCUSSIONS**

34. At the sixth meeting, the Chairperson-Rapporteur reported on the results of the bilateral consultations with Regional Groups. Expressing appreciation to the Regional Groups, it was reiterated that all topics were on the table and reminded the Committee about the proposed incremental approach. Despite a divergence, Regional Groups came closer together in a spirit of compromise to arrive at a consensus regarding the topics to be discussed.

35. The proposal that the Regional Coordinators agreed to put to the Ad Hoc Committee through the Chair was that topic 1 on "Xenophobia" and Topic 6 "Establishment, designation, or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance" (as amended), would be the topics for discussion.

36. The Chairperson explained that the next two meetings would be dedicated to two topics and that preliminary discussion would take place, including input on how those topics may be tackled more thoroughly at the forthcoming session.

37. The revised programme of work was adopted, as amended.

## **VI. DISCUSSION ON THE TOPIC OF "XENOPHOBIA"**

38. At its seventh meeting, the Chair introduced a Preliminary Discussion Note on "Xenophobia" prepared by the Secretariat and invited comments on the topic from the Ad Hoc Committee.

39. Liechtenstein noted the issue of working methods and underlined the need to consider how the discussion on xenophobia would be taken forward to the next session of Ad Hoc Committee on the Elaboration of Complementary Standards. It was proposed that the working definition for xenophobia should be "discrimination against non-citizens" and the assessment for whether a complementary standard was required should be whether or not discrimination against non-citizens was covered by the International Convention on the Elimination of All Forms of Racial Discrimination. Keeping in mind General Comment No. 30 of the Committee on the Elimination of Racial Discrimination, it was important to assess how the CERD



Committee was applying this General Comment, in practice. It would be useful to look at how the Convention was being applied by the CERD in its more than thirty-two detailed General Comments and its concluding observations made to many States over the years. While not legally binding, the implementation aspect was important and, an analysis of concluding observations of how xenophobia was being considered by the CERD could prove instructive. In line with paragraph 119 of the Durban Review Conference Outcome document, it would also be beneficial to consider how xenophobia was being addressed at the regional level around the world as well as at the national level. Finally, it would be interesting to determine how the CERD was addressing the issue of “non-citizens” in the wider sense.

40. Speaking on behalf of the African Group, the delegate from Nigeria stated that Article 1 of the ICERD made no mention of ‘xenophobia’ in the definition of racial discrimination. He referred to the theory concerning the deconstruction of racism and xenophobia by the former United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Mr. Doudou Diène. He noted that the CERD monitored States parties on basis of law not general comments, adding that national legislation was the basis of consideration by the CERD. It was added that a victim-centred approach must focus on victim’s rights and due process clearly defined in law. He added that elaboration of a new instrument was not necessarily foreseen given the ICERD, however an additional protocol was likely required to strengthen ICERD. In defining ‘xenophobia’, a clear linkage must be made to the existing International Convention on the Elimination of All Forms of Racial Discrimination in order for it to be ‘complementary’. In A/HRC/13/CRP.1 sub-paragraphs a) and b) of paragraph 159 referred to, in this context, gaps which existed and which must be addressed.

41. Cuba stated that as ‘xenophobia’ was a new phenomenon of the past twenty years, it was clearly the duty of the Ad Hoc Committee to address it and that there were clearly gaps with respect to its treatment in the ICERD. The delegate added that in Cuba’s opinion, General Comments of the CERD could be valuable but they were not legally binding and that the comments of a group of experts were without legal status. It was added that any definition of ‘xenophobia’ should be as broad as possible and that the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should be studied.

42. In response to an earlier intervention, United Kingdom of Great Britain and Northern Ireland took the floor noting that while the serious issues being considered were very emotive, interventions should focus on the substance of the discussions. For the record, the delegate wished to make a factual correction to a previous intervention and underscored the multicultural and diverse society of the United Kingdom of Great Britain and Northern Ireland.

43. The European Union agreed that ‘xenophobia’ was considered by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 and the Review Conference of 2009, however, no standards had ever been established apart from very broad dictionary terms. In this respect, xenophobia could be considered in tandem with other grounds and that there was, in effect, no one definition of ‘xenophobia’. It was posited that xenophobia was perhaps a compounding or extra or additional factor, which must be combined with other grounds to have meaning. For example, discrimination or violence based on xenophobia was cited. In this respect, the approach of the delegate of Liechtenstein concerning

accumulated grounds in Article 1 of ICERD was interesting. It was added that sub-paragraphs 2 and 3 of Article 1 of the Convention allowed for distinction and that perhaps the CERD Committee was already equipped to deal with the issue of xenophobia. The European Union recalled the need for more expertise, research on this issue and that it would be very important to hear directly from the CERD Committee concerning its competence in this area and as to whether additional provisions or protocols were required. The

44. European Union noted its satisfaction that EU regional initiatives were included in the preliminary discussion note, appreciating the acknowledgment and noting that measures were being taken to address xenophobia at the regional level.

45. France supported the position of European Union and the approach put forward by Liechtenstein. Speaking to the etymology of 'xenophobia', the Greek 'xenos' for 'foreigners' and 'phobia' meaning fear, France made a precision that xenophobia was essentially about treating those of another nationality differently. It was added that though not mentioned explicitly, the scourge of xenophobia was addressed within the ambit of the Article 1 definition in ICERD. The question was raised as to whether a definition of xenophobia was necessary to change the situation with respect to victims on the ground. Therefore it was also important to assess whether the content of the ICERD definition was transposed to the national legislation of countries, thereby giving coverage to xenophobia therein.

46. Algeria noted that it was unable to accept the equivalence between 'racial discrimination' in ICERD and xenophobia. It was noted that the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems of the Council of Europe refers to xenophobic acts via the internet without any link or connection to the ground of nationality. With regard to the legal basis of General Comments and concluding observations, it was recalled that during the reviews of Member States, the CERD inquired about the implementation of the ICERD provisions at the national level and not the domestication of the Committee's General Comments. It was also underscored that a victim could not invoke a General Comment in a court of law. It was added that the content of General Comments may be interesting but a discussion could be held concerning how they could be transposed to an instrument and the Chairperson should on behalf of the Ad Hoc Committee resort to appropriate expertise in that regard.

47. Brazil expressed appreciation that the Ad Hoc Committee was finally able to hold this type of substantive discussion, underlining that this was a first brainstorming by the Ad Hoc Committee on the topic of xenophobia. Some questions should be considered collectively by the Ad Hoc Committee such as definition of xenophobia versus the broader definition of racial discrimination in the ICERD, the need to always reflect on the implications for potential victims, and the wisdom in seeking the views of the CERD Committee, since a possible additional protocol would likely be monitored by them. It was added that the CERD views would not be determinative but they could prove a starting point in the Ad Hoc Committee's consideration since their views would have bearing on how a potential protocol would work in practice.

48. The United States of America welcomed the discussion on issues of substance and specifically on how manifestations of xenophobia are currently addressed on the ground and

the effectiveness of such measures. The definition of "racial discrimination" in the ICERD was broad enough to cover manifestations of xenophobia and suggesting otherwise could undermine ICERD's effectiveness. While looking forward to hear other States' experience in this, the delegate gave examples of how the United States of America had imported ICERD provisions into its federal legislation and the measures it had taken, including policy efforts, to combat acts of xenophobia.

49. Zimbabwe posited that racial discrimination as defined by ICERD and xenophobia was not equivalent. The fact that at the Durban Declaration and Programme of Action mentioned xenophobia indicates that it was to be considered as separate from discrimination, although there are links.

50. Botswana noted the need for the Ad Hoc Committee to be free of fear itself in order to consider the topic of xenophobia, noting that Botswana and South Africa had had xenophobic experiences domestically in recent years. It was deemed useful to gather a compilation of incidents and occurrences from around the world to assist in examining the issue of xenophobia. In addition, it would be important to determine the relationship between xenophobia and other 'known abhorrences' and to assess. Implementation issues should be dealt with in conjunction with substantive discussions on xenophobia and the consequences of this should be considered.

51. The delegate from Switzerland stated that a definition was required in order to identify manifestations of xenophobia and questioned whether such manifestations had been appropriately treated by the CERD Committee. Drawing from the Swiss experience, xenophobia did not appear to have been effectively dealt with by the CERD Committee. In agreement with Brazil, Switzerland noted that as CERD was on the "frontline," it would be important to have the opinion of its experts. The need to build upon CERD was underscored and it was queried whether a legal response to xenophobia was really required.

52. Nigeria, speaking on behalf of the African Group recalled that the issue of xenophobia was a very real phenomenon happening to real people and that certain views in the Ad Hoc Committee might appear to negate the reality of victims. It was agreed that there was a need to work on a definition agreeable to all, prior to looking at possible solutions. It was reiterated that Article 1 of ICERD did not refer to xenophobia nor did it refer to 'religion.' Article 2 of the African Charter on Human and Peoples' Rights was read out by the delegate and it was suggested that it was more inclusive and could prove useful to the work of the Ad Hoc Committee.

53. Speaking on behalf of the Organization of the Islamic Conference, the delegate from Pakistan stated that 'xenophobia' could not be equated with the concept of non-citizens. There was a need to study the issue of xenophobia in greater detail and the delegate looked forward to new documentation to inform the discussions at the forthcoming session of the Ad Hoc Committee.

54. Italy stated that it found the interventions by the European Union, Switzerland and Brazil interesting and that it looked forward to further documentation and expert presentations at the next session of the Ad Hoc Committee. In support of a victim-oriented approach, Italy posited

that if the fear was of that which is 'foreign, alien and different' then xenophobia affects citizens and non-citizens alike. Similarly, fear could result in paralysis and inaction as well as acts of violence, incitement and intolerance. It would be important to look at ICERD provisions on violence and incitement whilst developing this issue.

55. France reiterated that it saw xenophobia as a scourge that it acknowledged nationally and in this light it was taking measures domestically to combat it. Its interpretation was that under Article 1(1) the CERD Committee was in a position to look into difficult situations, including xenophobia. It was noted that it was just as pertinent to consider whether the absence of a definition prevented the CERD Committee from addressing xenophobia.

56. South Africa highlighted the 'parallel issue of political will', asking whether apartheid would have ended if it was solely a matter of an implementation issue in respect of the ICERD. It would be instructive to the Ad Hoc Committee to study the CERD General Comments with respect to South Africa's apartheid era to see how they were used in practice, looking at the general comments and implementation gaps. The delegate acknowledged the very good elements being raised in this first discussion including issues of definitions, measures and policy steps to be taken.

57. Turkey recalled the responsibility of States to combat xenophobia adding that it could prove an obstacle to the exercise of rights. What is required is political will to eradicate this phenomenon as well as increased tolerance and understanding of others. In this regard, education was very important. Turkey also underlined the importance of civil society networks and constructive dialogue with actors on the ground.

58. The European Union identified some joint elements emanating from the discussion that afternoon. It stated that while there was no true definition of xenophobia, there was agreement that the phenomenon should be of direct concern to the Ad Hoc Committee and should be dealt with through policies and by legislators. The European Union was of the view that a definition was not necessary to deal with the phenomenon of xenophobia and that the ICERD definition was sufficient to deal with issues of xenophobia. An example was given of how at the European Union level, measures and legislation to protect children have been adopted without an exact legal definition of what is a child.

59. The Chairperson thanked the EU for its intervention noting that it was understood that perhaps a definition was not a requirement to taking action however since the issues were so emotive, it may well be advisable to have a common understanding.

60. The Association of the World Citizens expressed appreciation for the Chairperson's guidance during the session and underscored the need to define xenophobia and its forms. Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine (CRED) stated that it was important for the Ad Hoc Committee to work on a new text concerning xenophobia, citing the the ILO, IOM, OHCHR definition<sup>1</sup> of xenophobia contained in the

<sup>1</sup> International Migration, Racism, Discrimination and Xenophobia, joint discussion paper prepared for the 2001 Durban Conference, the ILO, IOM and OHCHR, in consultation with UNHCR

preliminary discussion note and arguing that such a definition was accurate and encompassed a group of people broader than the category of 'non-citizens'.

61. Algeria offered the example where despite Article 34 of the Convention on the Rights of the Child which appeared to comprehensively deal with sexual exploitation and abuse of children, Member States saw the need to develop the Optional Protocol to the Convention on the Rights of the Child on the Sale of children, child prostitution and child pornography and suggested that the Ad Hoc Committee might wish to employ this logic.

62. The Chairperson expressed appreciation to participants for their constructive approach adding that although these were preliminary discussions on xenophobia, they were enriching nonetheless. He noted that they had raised several important elements for a substantive debate at the next session of the Ad Hoc Committee. He noted that participants wished to build on what already existed and that it was important to survey how far CERD has advanced on the key issues raised concerning xenophobia. The importance of national mechanisms had also already been raised and therefore served as a good prelude to discussions the next day. He recalled that there was a need to consider the outcome of the Ad Hoc Committee and where it wished to eventually arrive. He reiterated the question of gaps and whether current instruments were sufficient to address xenophobia and the debate on whether there was a need to define xenophobia. He recalled issues concerning the mandate of the Ad Hoc Committee. He reminded participants of the people on the ground and the imperative to translate this discussion in order to impact victims' lives.

## **VII. DISCUSSION ON THE TOPIC OF "ESTABLISHMENT, DESIGNATION OR MAINTAINING OF NATIONAL MECHANISMS WITH COMPETENCES TO PROTECT AGAINST AND PREVENT ALL FORMS AND MANIFESTATIONS OF RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE"**

63. The Chair opened the 8th meeting and introduced item 11, briefly speaking about the preliminary discussion note entitled "Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance." He remarked that the note prepared by the Secretariat had merely placed some thoughts on paper and that the paper was neither restrictive nor exhaustive. He stated that this meeting was intended to be a listening exercise in order to prepare for the October session, where the topic would be discussed at greater depth and length.

64. The European Union stated that while it had proposed this topic, it did not claim any exclusive ownership to it. Expressing appreciation for the paper, it noted that this topic of national mechanisms was beneficial since it was both victim-oriented in that sense that the goal was to provide assistance to victims and it was action-oriented, since it ensured that existing

international instruments were properly utilized by Member States. Discussions should focus on two aspects. The first aspect concerned good or best practices. In this regard, information on occurrences and trends gained through the analysis of data could be gathered. It would be important to also look to initiatives to assist in reporting obligations, awareness-raising and prevention campaigns; assistance to victims in legal and judicial processes; As a second criteria, it would be important that these mechanisms uphold the Principles relating to the status of national institutions (Paris Principles) and it was imperative that the bodies be independent and that their membership be representative.

65. Nigeria speaking on behalf of the African Group reiterated the need to address gaps which have existed since the adoption of the ICERD. It was added that it was premature to speak of questions of accountability without first identifying a legal basis or framework and that it was not possible to speak of mechanisms when gaps had yet to be addressed. It queried why the Council of Europe had elaborated the Additional Protocol to the Convention on cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems if it had not perceived a gap. It was advisable to look at mechanisms following the establishment of complementary standards elaborated to address gaps.

66. France associated itself with the statement made by the European Union and presented the function and competences of the Commission nationale consultative des droits de l'homme (à confirmer). It explained that this institution addressed several kinds of discrimination, through awareness-raising campaigns, intervention in discrimination cases, particularly in the employment sector. Civil society featured prominently in its work. It was noted that France was only one example of a best practice and that other examples from around the world could be used to draw guidelines. It was added that it would also be useful to conduct an assessment on how the CERD had applied article 6 of the ICERD concerning effective protection and remedies through the competent national tribunals and other State institutions against any act of racial discrimination."

67. The United States of America stated that there were two situations at play where there could be mechanisms and no norms or where there were norms without the benefit of mechanisms. Noting the need for practical discussions, it was all that States had some national body or mechanisms charged with dealing with discrimination issues. The United States of America endorsed the suggestion of a survey on how Member States had applied Article 6 of the ICERD. The United States of America shared an overview of interventions taken following 9 September 2001 to deal with "discriminatory backlash" at the national level, noting the success of these measures and mechanisms. It was also suggested that all States undertake a critical assessment to ascertain which types of mechanisms were in place and submit these assessments to the Ad Hoc Committee or the OHCHR. It was important to identify the specific nature of the problem before a consideration of filling gaps.

68. The African Union supported the intervention of the United States of America but noted that sequencing was the issue. Institutions and mechanisms must operate in a logical legal framework. Thus substance and procedure were required first and only then could implementation mechanism be established on the basis of this substance. It was cautioned that establishing strict criteria regarding mechanisms might curtail the diversity and sovereignty of States.

69. The delegate from Greece noted the importance of a “multi-stakeholder” approach.
70. Algeria agreed that national mechanisms had a major role to play but that sequencing was very important since mechanisms from 1965 may be limited in their ability to deal with contemporary forms of racial discrimination. It was asked whether the mechanisms were intended to replace Courts and whether they would constitute an appropriate response to new manifestations of racism. The sharing of best practices was appreciated but it was stated that this was not the mandate of the Ad Hoc Committee on the Elaboration of Complementary Standards. It was reminded that best practices would be considered during the upcoming 17th session of the Human Rights Council. It was not advisable to limit the scope of the Ad Hoc Committee as the IGWG was the mechanism charged with implementation.
71. Pakistan on behalf of the Organization of the Islamic Conference stated that national mechanisms were sufficiently addressed by Article 6 of the ICERD. It was also understood that new gaps required the elaboration of new standards and only then could mechanisms be considered.
72. Nigeria on behalf of the African Group supported the position of Algeria and reiterated that while appreciative about sharing of best practices, the Ad Hoc Committee was not the appropriate forum. National mechanisms alone could not fill gaps and that it was only logical to set norms first and that national mechanisms to implement those norms would follow.
73. The Chairperson reiterated the fundamental questions being raised by participants. Were there indeed gaps or not? The issue of sequencing: did norms precede the identification of gaps or could gaps be addressed before or without the elaboration of norms? It was noted that emergency situations might call for a simultaneous consideration of gaps and norms.
74. The European Union regretted that other Regional Groups or participants were not ready to engage substantively on the issue of national mechanisms, and that the discussion seemed to focus on norms and not on the proposed topic of mechanisms. The European Union stated that it rejected the notion that there was a legal vacuum to be filled and invited participants to identify which international standard had been identified and explain how it should be elaborated.
75. The United States of America supported the position of the European Union stating that it was an assumption that there were large gaps in the normative standards and that it would be very useful to hear of a situation or case not covered by the ICERD. It was noted that mechanisms were also part of ICERD and that the problem was really implementation.
76. Brazil stated that 2001 World Conference against Racism was a turning point for the country and ushered in a period of self-reflection regarding “racial equality” domestically. It noted that national contexts were different, that it perceived no gaps which required filling and that it was not in a position to tell other Member States what action to take concerning their respective national circumstances.
77. Egypt stated that gaps in protection and promotion must be addressed but that progress in this regard had been blocked by the issue of topic identification. It was stated that the DDPA

cited the contemporary forms of racism and that the discussion on national mechanisms must be framed with this in mind. It must be asked whether a new cycle of victimization was created by contemporary forms of racism or whether the current framework was inadequate to address the contemporary forms. It was added that national mechanisms was a cross-cutting issue which should be discussed under each identified topic.

78. Nigeria speaking on behalf of the African Group stated that the mandate of the Ad Hoc Committee was clear and in that complementary standards should be elaborated. It recalled a paper prepared by the African Union in 2009 and noted that perhaps it could be submitted to the next session of the Ad Hoc Committee.

79. Algeria added to its earlier position in that the Ad Hoc Committee should not be working exclusively on best practices however the essence of those practices could be transposed to norm-setting, if appropriate. It would be useful to identify a practice which could be set as a norm. In reference to the "road map" document, it was recalled that States had already been asked to identify gaps and areas in writing.

80. Switzerland noted that mechanisms evolved over time and in so doing could also respond to changes. It was not necessary that standard-setting always take place first as there were some mechanisms or responses which could prove useful outside of a lengthy norm-setting process. It was not yet proven that complementary standards were necessary.

81. The African Union stated its commitment to standard-setting and in reference to the African Union non-paper of 2009, stated that it had been prevented from presenting this paper. It underscored the need to present information and positions with regard to gaps adding that the rights of victims and individuals could only be based on a legal framework.

82. Morocco stated that the debate was essentially the same exchange of views from the last session of the Ad Hoc Committee and that participants and Regional Groups appeared to be "listening, but not hearing". Recalling Human Rights decision 3/103 it was asked why this meeting of the Committee was being held if there were indeed no gaps and added that there was indeed a void which needed to be bridged. It was suggested that the Committee leave aside questions of format for the time being and focus on matters of substance. It was further suggested that participants submit specific proposal about gaps and suggestions for drafting and they be compiled in a document for the forthcoming session. The earlier exchanges on best practices were appreciated but it was also noted that these were particular to a given State.

83. The Chairperson welcomed this timely intervention and agreed that it was counter-productive to talk at cross-purposes. He agreed to the suggestion that concrete proposals be submitted in order that they could be discussed at the next session of the Ad Hoc Committee. Switzerland expressed its openness to the proposal from Morocco and stated that it was open to drawing up standards if it was ultimately proven necessary to do so. The United States of America clarified that the 2009 exercise was in fact different and that the current proposal was an invitation to bring forth situations of contemporary cases not covered by the ICERD. The proposal from Morocco was appreciated since it was an opportunity to consider what was covered by the norms and why however, to state that there were in fact gaps, was a conclusion to which had not been arrived.



84. The European Union stated that the Ad Hoc Committee appeared to be at a “standstill” situation again and noted that the problem of methodology remained with regard to the existence of a gap, or lack thereof and that this was impeding progress. There was a clear need to identify the lacunae first. Concerning methodology: first, the phenomenon must be identified; second, consider whether gaps existed or not; third, determine whether standards were necessary; and fourth, determine what type of standard should be elaborated. The European Union was appreciative of the suggestion of the Morocco and added that the Committee was not starting from point zero, as there were previous submissions including the OHCHR report from 2003 which included a discussion of complementary standards, as well as the CERD report and reports of the five experts submitted to the Ad Hoc Committee in the past (citations needed).
85. The Chairperson stated that it was never the intention to enter into deep discussions on the substance during the current session but that this would take place at the next session. The Chairperson noted that seven delegations had shared some concrete best practices, five delegations recommended that norms and standards be tackled first and that four delegations stated that existing mechanisms were sufficient. He noted with satisfaction that participants were looking forward to the next session of the Ad Hoc Committee.
86. Algeria also expressed appreciation at the suggestion of Morocco that proposals be placed on the table however was concerned that this exercise may pose a risk and dealt the process. Algeria recalled again that contributions had been submitted in the past.
87. In reference to the methodology issue, South Africa reminded that the Chairperson had the prerogative to undertake his own initiatives in his role in guiding the work of the Ad Hoc Committee.
88. Morocco clarified that its suggestion was that delegations should come back to the ad Hoc Committee specific answers concerning gaps.
89. Two representatives on non-governmental organizations took the floor. Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine (CRED) commented on the methodology issue reminding participants not to concentrate solely on existing instruments such as the ICERD since other declarations and documents existed and which could prove instructive. The Association of the World Citizens also commented on the existence of gaps in the system.
90. The Chairperson provided a brief summary of issues raised in the discussions. The intention of the discussions was to give a chance for participants to speak to one another and explore issues. It appeared that all participants were saying that there was a need for national mechanisms. The core issue of the existence or lack of gaps was underscored, noting that it must be addressed in the upcoming session of the Ad Hoc Committee. There was the issue of whether existing instruments were sufficient to deal with new phenomenon and contemporary forms of racism, racial discrimination, xenophobia and related intolerance. It was questioned whether in some ways the mandate of the Ad Hoc Committee may well be edging into the mandate of the Intergovernmental Working Group on the Effective Implementation of the DDPA since the need to survey or audit national mechanisms had been raised a few times in

the discussions. It was suggested that enough work was on the table already to draw upon and develop work for the upcoming session. It was also noted that the Chairperson may wish to consult with experts. The importance of recourse for and assistance to victims was underlined. The challenge was for each delegation to look into provisions or lack thereof to assist with the shaping the “way forward.”

## VIII. ADOPTION OF THE REPORT

DRAFT

**ANNEX****List of Attendance as of 20 April 2011****Member States**

Albania , Algeria, Angola, Argentina, Armenia, Austria, Azerbaijan, Bahrain, Bangladesh, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cote d'Ivoire, Cuba, Cyprus , Denmark, Ecuador, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Ghana, Greece, Guatemala, Haiti, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Italy, Japan, Korea (Republic of), Lao People's Democratic Republic , Lesotho, Lichtenstein, Lithuania , Malaysia, Mauritania, Mauritius, Mexico, Moldova (Republic of), Morocco, Namibia, Nepal, Netherlands, Nigeria, Norway, Pakistan, Panama, Poland, Portugal, Qatar, Russian Federation, Rwanda, Saudi Arabia, Senegal, Serbia, Singapore, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Thailand, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zimbabwe,

**Non-Member States represented by observers**

Holy See

**Intergovernmental Organizations**

African Union, European Union

**Non-governmental organizations in consultative status with the Economic and Social Council**

Association of World Citizens , Cercle de Recherche sur les Droits et les Devoirs de la Personne Humaine (CRED), Human Rights Watch, Indian Council of South America (CISA), Indigenous Peoples and Nations Coalition, International Council for Human Rights, International Movement Against All Forms of Discrimination (IMADR), UN Watch

**Non-governmental organizations not in consultative status with the Economic and Social Council**

None

**Revised Agenda**

**Programme of Work**

