



**General Assembly**

Distr.  
GENERAL

A/HRC/AC.1/1/2  
7 February 2008

Original: ENGLISH

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HUMAN RIGHTS COUNCIL  
Ad Hoc Committee  
on the Elaboration of Complementary International Standards  
First session  
Geneva, 11-22 February 2008

**Note by the Secretariat**

**Information on the elaboration of complementary international standards as  
part of the follow-up to the Durban Declaration and Programme of Action**

## **Introduction**

1. This note is intended to provide some background information pertaining to the issue of complementary international standards as part of the follow-up to the Durban Declaration and Programme of Action.

### **I. THE INTERGOVERNMENTAL WORKING GROUP ON THE EFFECTIVE IMPLEMENTATION OF THE DURBAN DECLARATION AND PROGRAMME OF ACTION, AND COMPLEMENTARY INTERNATIONAL STANDARDS**

#### **A. The sessions of the Intergovernmental Working Group**

2. The Durban Declaration and Programme of Action, in its paragraph 199, “recommends that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects”. This task was entrusted to the Intergovernmental Working Group to follow up on the Durban Declaration and Programme of Action.

3. The Commission on Human Rights, in its resolution 2002/68, created the Intergovernmental Working Group to follow up on the implementation of the Durban Declaration and Programme of Action adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in South Africa in 2001. The mandate of the Intergovernmental Working Group, as set out in the above resolution, is: “(a) to make recommendations with a view to the effective implementation of the Durban Declaration and Programme of Action”; and “(b) to prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects”.

4. At its first session, held from 21 to 31 January 2003, the Intergovernmental Working Group decided to organize its work on a thematic basis and had a preliminary exchange of views with two members of the Committee on the Elimination of Racial Discrimination (CERD) on the issue of complementary international standards.<sup>1</sup>

5. The second session of the Intergovernmental Working Group, held from 26 January to 6 February 2004, brought together experts as panellists to discuss, inter alia, the theme of complementary international standards.<sup>2</sup> Two experts from CERD participated in the discussions. In its recommendation 19, the Working Group reaffirmed “its mandate to prepare complementary standards to update and strengthen the existing instruments dealing with the elimination of racism, racial discrimination, xenophobia and other related intolerance. To this end, the Working Group decides to remain seized of this issue and to undertake, in its future

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<sup>1</sup> E/CN.4/2003/20, para. 26.

<sup>2</sup> E/CN.4/2004/20, para. 81.

sessions, a constructive dialogue on all the substantive issues, which such additional instrument(s) may address and bridge gaps and weaknesses in the existing instruments and their implementation”.

6. The third session of the Intergovernmental Working Group took place from 11 to 22 October 2004 and discussed, inter alia, the theme of complementary international standards. In this regard it adopted several recommendations<sup>3</sup> including the following:

(a) The Working Group reaffirmed its mandate to prepare complementary standards to update and strengthen the existing instruments dealing with the elimination of racism, racial discrimination, xenophobia and related intolerance;

(b) It also requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to organize a four- to five-day high-level seminar within the fourth session of the Working Group to address the work identified in its recommendations 22 and 35.

7. The Working Group, in its recommendations 22 and 25, added that:

(a) OHCHR should organize a high-level seminar within the next session of the Working Group on the Internet and racism, racial discrimination, xenophobia and related intolerance. The purpose of the seminar would be to consider progress made in the implementation of relevant provisions of the Durban Declaration and Programme of Action; to assess the possibilities of and challenges posed by the use of the Internet to propagate or to counter material which incites racial hatred and acts of violence and propose concrete measures to be taken at the international and national levels to combat the abuse of the Internet for all forms of racist manifestations; and to examine the contribution that the Internet can make in the fostering of social harmony and the fight against racism. OHCHR should endeavour to ensure the participation of all stakeholders, inter alia States, the World Summit on the Information Society, international and regional organizations, NGOs, the private sector and the media;

(b) The Working Group should focus its efforts on strengthening the implementation of existing instruments by identifying gaps in international human rights law, with a view to preparing complementary standards to address them. In contributing to these efforts, the Working Group should further conduct an in-depth assessment and evaluation of the implementation of existing international instruments, including suggestions to enhance the effectiveness of the fight against racism, racial discrimination, xenophobia and related intolerance. Complementary standards should strengthen the existing norms and bring added value.

8. The fourth session of the Intergovernmental Working Group took place from 16 to 27 January 2006 and included the high-level seminar on racism and the Internet and on complementary international standards. Tshepo Madlingozi (South Africa), who was mandated by OHCHR to produce a study on the theme, submitted his study to the Working Group

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<sup>3</sup> E/CN.4/2005/20, para. 73.

entitled: “Taking stock of the debates on complementary international standards to strengthen and update international legal instruments against racism, racial discrimination, xenophobia and related intolerance”.<sup>4</sup>

9. The Working Group in its report<sup>5</sup> recommended, inter alia, the following:

(a) For the procedural gaps: the Working Group requested CERD to conduct a further study on possible measures to strengthen the implementation through additional recommendations or the update of its monitoring procedures;

(b) For the substantive gaps: it recommended that OHCHR select, in close consultation with regional groups, five highly qualified experts to study the content and scope of the substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance, including but being not limited to the areas identified in the conclusions of the Chair of the high-level seminar that took place during the fourth session of the Working Group. The group of experts, in consultation with human rights treaty bodies, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and other relevant mandate-holders, should produce a base document that contains concrete recommendations on the means or avenues to bridge these gaps, including but not limited to the drafting of a new protocol to the International Convention on the Elimination of All Forms of Racial Discrimination or the adoption of new instruments (conventions, declarations);

(c) Both documents should be presented to the Working Group for analysis during its fifth session.

10. The Intergovernmental Working Group devoted an important part of its agenda to discussions on the questions as to whether: (a) there are gaps in the legal framework for countering racism and xenophobia (b) if so, how they are to be filled. Answers to these questions should contribute to strengthening, updating and, if needed, supplementing relevant international instruments.

## **II. THE PREPARATION OF STUDIES ON COMPLEMENTARY INTERNATIONAL STANDARDS BY THE FIVE EXPERTS AND THE COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION**

11. In its resolution 1/5 of 30 June 2006, the Human Rights Council requested the group of experts, in consultation with human rights treaty bodies, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and other relevant mandate-holders, to “produce a base document that contains concrete recommendations on the

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<sup>4</sup> See E/CN.4/2006/WG.21/BP.2.

<sup>5</sup> E/CN.4/2006/18, para. 108.

means or avenues to bridge these gaps, including but not limited to, the drafting of a new optional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination or the adoption of new instruments such as conventions or declarations”.

12. In its decision 3/103 of 8 December 2006, the Human Rights Council requested that the Intergovernmental Working Group divide its fifth annual session in two parts. In the light of this decision, the Intergovernmental Working Group held the first part of its fifth session from 5 to 9 March 2007. During this part, it examined the role of national action plans in strengthening national programmes for eradicating racism and maximizing the benefits of diversity. It also held a preliminary exchange of views with the five experts selected to conduct the study on complementary international standards. During the second part of the fifth session, held from 3 to 7 September 2007, the Intergovernmental Working Group considered the study on complementary international standards prepared by the CERD and the study by the five experts.

#### **A. The study by the five experts on complementary standards**

13. Pursuant to the above resolution, OHCHR selected five experts to conduct the study. The experts held three meetings, and finalized their study, entitled “Report on 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”.<sup>6</sup> The study comprises three sections: a first section examining complementary international standards with regard to positive obligations of States parties; the second examining complementary international standards with regard to groups requiring special protection against racism, racial discrimination, xenophobia and related intolerance; and a third section, on complementary international standards with regard to manifestations of racism, racial discrimination, xenophobia and related intolerance.

#### **B. The study by the Committee on the Elimination of Racial Discrimination**

14. The “Study by the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures”<sup>7</sup> is divided into two parts: a first part concerning current procedures and obstacles to the effectiveness of the monitoring role of the Committee; and the second relating to recommendations to States and proposals for increased effectiveness of the CERD monitoring procedures.

15. During the second part of the fifth session, following the presentation of each study, the Intergovernmental Working Group held an interactive dialogue on the contents of the studies and issued recommendations which were adopted by consensus.<sup>8</sup>

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<sup>6</sup> See A/HRC/4/WG.3/6.

<sup>7</sup> See A/HRC/4/WG.3/7.

<sup>8</sup> See A/HRC/6/10.

### **III. END OF THE MANDATE OF THE INTERGOVERNMENTAL WORKING GROUP TO PREPARE COMPLEMENTARY INTERNATIONAL STANDARDS**

16. The fifth session of the Intergovernmental Working Group marked the conclusion and closure of the Working Group's debates and deliberations on the question of complementary standards, as the Human Rights Council in its decision 3/103 entrusted this task to the Ad Hoc Committee on the Elaboration of Complementary International Standards. In the same decision, the Council also decided "to request that the Ad Hoc Committee ... use all the documents presented to it as background material for commencing its process of elaborating complementary standards, and that one of its main priorities be to ensure that the draft instrument(s) is/are produced for negotiations". In resolution 6/21 of 28 September 2007, the Human Rights Council recalled its decision 3/103, which established the Ad Hoc Committee.

### **IV. THE MANDATE OF THE AD HOC COMMITTEE**

17. Human Rights Council resolution 6/21 of 28 September 2007 provides further clarity to the mandate of the Ad Hoc Committee, by recalling "its decision 3/103 of 8 December 2006, by which, heeding the decision and instruction of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, it decided to establish the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards, with the mandate to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) 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".

18. It is expected that, on 11 February 2008, at its first session, the Ad Hoc Committee will elect a Chairperson, adopt its agenda and develop its programme of work.

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