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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**

**Report of the Intergovernmental Working Group on the  
Effective Implementation of the Durban Declaration and  
Programme of Action on its fifth session\***

**Chairman-Rapporteur: Juan Martabit (Chile)**

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\* The fifth session of the Intergovernmental Working Group was held in two parts: the first from 5 to 9 March 2007, the second from 3 to 7 September 2007. The annexes are reproduced in the language of submission only.

## Summary

The Intergovernmental Working Group on the effective implementation of the Durban Declaration and Programme of Action held the first part of its fifth session in Geneva from 5 to 9 March 2007, and the second part from 3 to 7 September 2007.

At the first part of its session, the Working Group examined two thematic areas: the role of national action plans in combating racism, racial discrimination, xenophobia and related intolerance, with presentations by panellists and a presentation by the Secretariat; and complementary international standards, with the preliminary exchange of views with the five experts selected to conduct a study on gaps in existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance.

The panellists on the role of national action plans in combating racism, racial discrimination, xenophobia and related intolerance explored the effectiveness of national action plans and the obstacles to their implementation. They also highlighted specific national experiences, provided comparative analyses of national action plans, and drew attention to points that should be taken into account when preparing and drafting national action plans against racism.

On the thematic issue of complementary international standards, the experts discussed the methodology that they had adopted for the study. The Working Group flagged combating xenophobia, standards of protection in the media and the protection of indigenous peoples, migrants, asylum-seekers and refugees as areas that would probably require particular consideration by the experts. Much of the debate also revolved around the questions of religious intolerance and discrimination based on multiple grounds.

At the second part of its session, the Working Group examined the study submitted by the Committee on the Elimination of All Forms of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures (A/HRC/4/WG.3/7), and a report submitted by the experts on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance (A/HRC/4/WG.3/6).

The Working Group adopted by consensus several recommendations on each of the themes discussed during the two parts of the session.

## CONTENTS

	<i>Paragraphs</i>	<i>Page</i>
I. INTRODUCTION .....	1	5
II. ORGANIZATION OF THE SESSION .....	2 - 11	5
A. Attendance .....	3 - 7	5
B. Opening of the session .....	8	5
C. Election of the Chairman-Rapporteur .....	9	6
D. Adoption of the agenda .....	10	6
E. Organization of work .....	11	6
III. GENERAL STATEMENTS .....	12 - 17	6
IV. THEMATIC ANALYSIS: THE ROLE OF NATIONAL ACTION PLANS .....	18 - 32	7
A. Presentations by panellists .....	18 - 29	7
B. Presentation by the Secretariat .....	30 - 32	9
V. THEMATIC ANALYSIS: COMPLEMENTARY INTERNATIONAL STANDARDS .....	33 - 45	10
VI. STUDY ON COMPLEMENTARY INTERNATIONAL STANDARDS .....	46 - 79	12
A. Presentation by the Committee on the Elimination of Racial Discrimination .....	46 - 54	12
B. Presentation by the experts .....	55 - 79	13
VII. CONCLUSIONS AND RECOMMENDATIONS .....	80 - 109	17
A. First part of the session .....	80 - 105	17
B. Second part of the session .....	106 - 109	20
VIII. ADOPTION OF THE REPORT .....	110	20

**CONTENTS (*continued*)**

*Page*

**Annexes**

I.	List of attendance .....	21
II.	Agenda (first part) .....	22
III.	Agenda (second part) .....	23
IV.	List of documents prepared for the Working Group .....	24

## I. INTRODUCTION

1. The present report is submitted by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action pursuant to Human Rights Council resolution 1/5 and decision 3/103. While the recommendations contained in section VII were adopted by consensus by the Working Group, the other sections of the present report are the sole responsibility of the Chairman-Rapporteur.

## II. ORGANIZATION OF THE SESSION

2. The Working Group held the first part of its fifth session from 5 to 9 March 2007 and the second part from 3 to 7 September 2007, in Geneva. During the first part, the Working Group held a total of nine meetings. During the second part, it held seven meetings.

### A. Attendance

3. Both parts of the session were attended by representatives of States Members, international coordinating committees and regional groups of national institutions, specialized agencies, and intergovernmental and non-governmental organizations (see annex I).

4. During the first part of the session, presentations on the theme of national action plans to combat racism, racial discrimination, xenophobia and related intolerance were made by the following panellists: Anita Danka, staff attorney of the European Roma Rights Centre in Budapest; Mark Lattimer, Executive Director of Minority Rights Group International; Joseph Rajkumar of Pax Romana; Alejandro Gelover, Director of Institution Relations and International Affairs of the National Council for the Prevention of Discrimination of Mexico; and Bart Mondelaers of the Belgian Centre for Equal Opportunities and Opposition to Racism.

5. The five experts engaged with the Working Group in a preliminary exchange of views and vision on complementary standards as a provisional measure pending the completion of their report. The experts were: Professor Jenny Goldschmidt (Netherlands); Professor Dimitrina Petrova (Bulgaria); Syafi'i Anwar (Indonesia); Professor Tiyanjana Maluwa (Malawi and South Africa); and Waldo Luis Villalpando (Argentina).

6. During the second part of the session, a member of the Committee on the Elimination of All Forms of Racial Discrimination, Professor Alexei Avtonomov, presented a study by the Committee on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures (A/HRC/4/WG.3/7).

7. The experts presented their study on the content and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance (A/HRC/4/WG.3/6).

### B. Opening of the session

8. During the first part, the Director of the Division of Human Rights Procedures opened the session on behalf of the United Nations High Commissioner for Human Rights. During the second part, the Deputy High Commissioner for Human Rights opened the session on behalf of the High Commissioner.

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

9. During the first part of the fifth session, Juan Martabit (Chile) was re-elected Chairman-Rapporteur by acclamation. During the second part, at the first meeting, on 3 September, Juan Eduardo Eguiguren, the Deputy Permanent Representative at the Permanent Mission of Chile to the United Nations in Geneva was elected interim Chairman-Rapporteur by acclamation, in the absence of Mr. Martabit, the Permanent Representative of Chile who assumed the chairmanship of the Working Group on 5 September.

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

10. During the first meeting of the first part, the Working Group adopted the agenda for the first part of its fifth session (A/HRC/4/WG.3/1) (annex II). At the first meeting of the second part, the Working Group adopted the agenda for the second part of its fifth session (A/HRC/4/WG.3/3) (annex III).

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

11. During the first part of its fifth session, the Working Group approved its programme of work (A/HRC/4/WG.3/2). During the second part, the Working Group approved its programme of work (A/HRC/4/WG.3/4).

## **III. GENERAL STATEMENTS**

12. During the first part, delegates speaking on behalf of regional groups and as representatives of their own countries reiterated their commitment to combating racism, racial discrimination, xenophobia and related intolerance and highlighted the importance of following up the Durban Declaration and Programme of Action.

13. Several delegates provided overviews of their countries' national initiatives to follow up the Durban Declaration and Programme of Action. National action plans, new legislation, budgetary resources, updates to school textbooks, the establishment of a special tribunal and employment, housing and health-care programmes were some of the initiatives flagged in this regard.

14. Several delegates commented on the development of new standards to combat racism. While some delegates welcomed the creation of new standards, one delegate representing a regional group expressed the view that new standards might only be useful if they strengthened the fight against racism at the national level.

15. During the second part of the fifth session, delegates speaking on behalf of regional groups and as representatives of their own countries informed the Working Group on their implementation of the Durban Programme of Action. Several delegates reiterated their commitment to combating racism, racial discrimination, xenophobia and related intolerance and highlighted the importance of following up on the Durban Declaration and Programme of Action.

16. Several delegates provided overviews of their countries' national initiatives. In particular, they discussed the development of national action plans to promote diversity, constitutional and legislative measures to protect the collective rights of people of African descent and indigenous peoples and the establishment of independent specialized national human rights institutions to combat racism and racial discrimination.

17. A representative also made a presentation, on behalf of a regional group, on the implementation of the Durban Declaration and Programme of Action at the regional level, outlining the work done on the strengthening of regional anti-discrimination legislation; the development of anti-racism strategies, and the enactment of laws criminalizing acts of a racist and xenophobic nature. Observers also took the floor to inform the Working Group on their implementation activities in recent months.

#### **IV. THEMATIC ANALYSIS: THE ROLE OF NATIONAL ACTION PLANS**

##### **A. Presentations by panellists**

18. During the first part of its fifth session, the Working Group began its thematic analysis on national action plans. The Director of Institution Relations and International Affairs of the National Council for Prevention of Discrimination of Mexico analysed the problem of discrimination in his country. He highlighted the initiatives of the Government of Mexico to implement the Durban Declaration and Programme of Action. He drew attention to the multi-dimensional nature of discrimination and pointed out that there was no single strategy to combat discrimination. He also stressed that often discrimination was not strictly a legal issue: the real problem lay in the translation of standards into practice.

19. The attorney from the European Roma Rights Centre in Budapest focused her presentation on the Roma people and the essential components which should be included in an effective national action plan. She explained that there were two effective avenues for addressing racial discrimination: legislative frameworks and governmental policies. She explained that countries needed to review and reassess all relevant policies and their impact, instead of simply synthesizing existing policies. She also stressed the importance of mainstreaming social inclusion into all laws and policies, setting clear and specific implementation objectives, determining indicators for monitoring and ensuring funding for implementation. Public independent bodies were essential for investigating, prosecuting and monitoring acts of discrimination. She noted the necessity of transparency, information-sharing and cooperation among concerned Government ministries.

20. The human rights consultant to Forum Asia, provided a comparative analysis of national action plans. He pointed out that the Durban Declaration and Programme of Action provided important guidelines for combating racism. In the Asia Pacific region, 12 countries had adopted national action plans on human rights which addressed the need to protect vulnerable groups, even if they did not use the word "discrimination". He flagged the importance of the grounds of "descent" when examining discrimination, and referred to the system of protection of women against violence adopted by India as an example of how soft law could become hard law. While he acknowledged that there was a need for new norms in a few areas, the main issue was the proper implementation of existing standards.

21. The representative of the Belgian Centre for Equal Opportunities and Opposition to Racism presented the national action plan against racism of Belgium which was currently being drafted and included references, targets and contents of provisions from the Durban Declaration and Programme of Action. He spoke about the advantages of having an independent public institution draft the national action plan, and detailed the working methods used by the Centre. He also highlighted the importance of including all stakeholders in the process; establishing a national follow-up commission; and making the national action plan a structural element to ensure continuity over time. He commented that the Durban Declaration and Programme of Action was a declaration of intent and that it would be very useful to have some minimum standards of a binding nature.

22. The Executive Director of Minority Rights Group International explored a range of experience in national action plans. He flagged six crucial points to be taken into account in developing national action plans. The first point was recognition: in many States, recognition of certain groups was a controversial subject. It was, however, exceptionally difficult to assist or protect a group without first recognizing that group. The second point was disaggregated data: while they were essential for understanding the extent of marginalization, the gathering of data needed to be undertaken in consultation with the communities concerned. Third, participation: consulting and involving the concerned community was essential for States in order to take focused and effective action. Fourth, measures to prevent discrimination and special measures to address it; there was a need for a legal regime to address equality of opportunity and a set of programmes for positive action. Fifth, targets: it was important to establish some form of target in order to monitor progress over time. The sixth point was institutional implementation mechanisms: each national plan of action required a budget adequate for the actions envisaged by it. Institutional mechanisms, such as ministers, parliamentary committees and committees involving members of the group targeted in the plan were also needed to move the actions identified in the national action plan forward.

23. During the discussion and debate which followed the presentations, State representatives presented overviews of the national action plans developed in their own countries. Some delegates addressed issues regarding racial profiling, national security, migration and discrimination. One delegate expressed the view that national security should be used as an argument to promote the implementation of the Durban Declaration and Programme of Action. A panellist noted that the topic of undocumented migrants presented a whole separate series of difficult issues, and that the issue of migration was addressed by another agency of the United Nations.

24. The themes of urbanization and spatial segregation were also examined during the discussion. One panellist noted that, in countries where communities were highly segregated, it was always the result of exclusion rather than voluntary segregation.

25. The need to involve non-State actors in developing anti-discrimination policy was mentioned by a panellist, as was the importance of putting human rights education at the centre of such a policy. Issues surrounding the use of mother-tongue languages and integration versus assimilation were also addressed.



26. One State representative commented that the understanding of the concept of minority and the historical experience surrounding minorities were not the same around the world. The representative maintained that, while minorities in some parts of the world were marginalized and excluded, minorities in other parts of the world had historically been the oppressors. The representative also noted that minority was a concept and not always a question of numbers.

27. Several panellists and State representatives also addressed the issues of data collection, monitoring and disaggregated data. One representative raised questions about data collection in relation to patterns of shifting identities, while a panellist reiterated the importance of data-collection and storage methods and emphasized that data should never be personally identifiable. One panellist also spoke on the need to develop international standards for data collection.

28. One delegate expressed the view that the lack of reference to the 1992 Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities in the Durban Declaration and Programme of Action<sup>1</sup> constituted a gap. The same delegate also mentioned that article 27 of the International Covenant on Civil and Political Rights needed to be better implemented.

29. The Chairman noted that the first part of the session had underscored the need for more work on disaggregated data and reliable indicators, as well as the need to update the information on the websites of the Office of the United Nations High Commissioner for Human Rights (OHCHR) and those dedicated to the Durban follow-up.

#### **B. Presentation by the Secretariat**

30. The coordinator of the Anti-Discrimination Unit presented an overview on the assistance that OHCHR could provide with regard to developing and implementing national action plans. The coordinator explained that such assistance originated from a request made by the concerned State and was implemented on the basis of an agreement reached with the particular Government.

31. The national action plan of Argentina was highlighted as an example that could be useful in the development of further technical assistance projects by OHCHR with States. The development of the action plan included three phases: methodology, guidelines and the identification of groups requiring attention.

32. In the course of the discussion, several delegations raised the point concerning the capacity of OHCHR to assist Member States in the development of action plans. They stressed that the High Commissioner needed to strengthen the capacity of the Anti-Discrimination Unit in this regard.

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<sup>1</sup> General Assembly resolution 47/135, annex.

## V. THEMATIC ANALYSIS: COMPLEMENTARY INTERNATIONAL STANDARDS

33. On 8 March 2007, the Working Group benefited from an exchange of views with the five experts selected to conduct the study on gaps in existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance and to make concrete recommendations on the avenues and means to bridge those gaps.

34. The experts were Professor Jenny Goldschmidt (Group of Western European and other States); Professor Dimitrina Petrova (Group of Eastern European States); Syafi'i Anwar (Group of Asian States); Professor Tiyanjana Maluwa (Group of African States); and Waldo Luis Villalpando (Group of Caribbean and Latin American States).

35. Mr. Villalpando, the Chairman of the group of experts recalled that they met for the first time in Geneva on 21 and 22 January 2007. He informed delegates that the next meeting of the experts was scheduled for April and that a third meeting would be held in May. He submitted that, despite the limited time allocated to the study, the experts would try their best to produce a report by the end of June.

36. Mr. Villalpando stated that the experts would examine the following categories, as formulated by the Chairman of the Working Group at its fourth session: (a) religious groups; (b) refugees; (c) asylum-seekers; (d) stateless persons; (e) migrant workers; (f) internally displaced persons; (g) descent-based communities; (h) indigenous peoples; (i) minorities; and (j) people under foreign occupation. He added that they would also consider the following phenomena, as formulated by the Chairman of the Working Group: (a) multiple discrimination or aggravated forms of racial discrimination; (b) ethnic cleansing; (c) genocide; (d) religious intolerance and defamation of religious symbols; (e) racial discrimination in the private sphere; and (f) incitement to racial hatred and dissemination of hate speech and xenophobic and caricatural pictures, through traditional mass media and information technology, including the Internet.

37. The Chairman of the group of experts also explained that the identification of gaps should be conducted with the participation of all relevant stakeholders. In that regard, the experts held meetings with members of the Committee on the Elimination of Racial Discrimination, members of other treaty bodies, and representatives of non-governmental organizations. At those meetings, the parties stressed that, while the identification of gaps should be conducted with the participation of all relevant stakeholders, States would remain primarily responsible for fulfilling their obligations.

38. Following the introduction by the Chairman, each of the experts expressed their view of the study. One expert asserted that additional standards could be required in those areas specified under the Durban Declaration and Programme of Action but not contained in the International Convention on the Elimination of All Forms of Racial Discrimination. The experts highlighted combating xenophobia as one such area and the use of new information technologies, such as the Internet, for purposes contrary to the respect for human values, equality and non-discrimination, such as for propagating racism, racial discrimination, racial hatred, xenophobia and related intolerance.

39. Another expert referred to the current work by the Organization of American States on the draft convention against racism and all forms of discrimination and intolerance as evidence that substantive gaps existed with regard to the protection of vulnerable groups. One expert considered vital the need to direct particular attention to the issue of multiple or aggravated forms of discrimination. The view that only a cross-cutting approach would provide for an effective system of protection was also expressed. The need to clarify and reach a better understanding of the contents of article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination was highlighted.

40. Views were expressed on how to strike a fair balance between freedom of religion and of expression. One delegate stressed the need to preserve the fundamental right to freedom of expression. On the issue of religious intolerance, one expert stated that increasing trends of incitement to religious hatred and defamation of religions showed how religious intolerance as a whole had become one of the most dangerous threats to international peace and security. Another representative considered erroneous the opinion that defaming a religion per se was different from inciting hatred against people who identify themselves on the basis of a particular religion. Another stated that criminalizing defamation of religions would be inconsistent with the fundamental principle that human rights reside in the individual rather than in group association, race, culture or religion. It was also suggested that the Working Group should avoid theoretical discussions and rather focus on practical issues. The view that the Working Group should take into consideration the recent reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and the Special Rapporteur on freedom of religion or belief was also submitted.

41. One participant emphasized that the interest of the victims should guide the examination being undertaken by the experts. The participant also recommended that the experts should consult with members of the former Sub-Commission on the Promotion and Protection of Human Rights as well as with relevant non-State actors.

42. Throughout the discussions, the experts considered that, while they remained cognizant of the increase in ethnic and/or religious tensions globally, they believed that the following areas would benefit from their examination: the concept of responsibility to protect; the identification of protection gaps in situations involving natural disasters; discrimination in the private sphere; and different protection options offered by soft law mechanisms.

43. Several of the participants underscored the main gap as the discrepancy between the existing obligations and their effective implementation and follow-up. Reference was made to the lack of implementation of the right to individual petition under various international human rights instruments.

44. Some delegates stated that, as a matter of ensuring the coherence and effectiveness of the current system of protection, the process of exploring new standards should be conducted with a holistic approach. The process should take into consideration all currently existing mechanisms in order to avoid possible duplications with provisions already set forth in other international instruments. Specific references were made to the International Covenant on Civil and Political Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

45. Some delegates expressed the view that the setting of complementary international standards should result neither in weakening existing mechanisms nor in creating new platforms which may justify human rights violations. Once identified, gaps could be filled either by strengthening existing instruments with, for example, additional protocols, or by drafting new instruments. The desire that possible new instruments should be universally ratified was expressed, though there was also the recognition that no international instrument had been universally ratified to date.

## **VI. STUDY ON COMPLEMENTARY INTERNATIONAL STANDARDS**

### **A. Presentation by the Committee on the Elimination of Racial Discrimination**

46. On the second day of the second part of its session, the Working Group began its discussions on complementary international standards. A member of the Committee on the Elimination of Racial Discrimination introduced a study on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures.

47. The member provided a summary of the study on behalf of the Committee. He began by speaking on the various procedures at the disposal of the Committee, highlighting recent developments, such as the new follow-up procedures developed by the Committee for both its concluding observations and its opinions adopted on individual and group communications. He stressed the Committee's satisfaction at the success of the follow-up procedure, as established by the initial assessment of the follow-up procedure. He referred to a country visit conducted in 2006 by the coordinator on follow-up at the invitation of the State party in question.

48. The member went on to discuss the various obstacles, as presented in the study, to the effectiveness of the monitoring role with which the Committee had been entrusted. He highlighted the non-compliance of States parties with their reporting obligations as a major obstacle to the Committee's work and the effective implementation of the Convention. Regarding individual complaints, he stated that the potential of the procedure remained to be fully exploited.

49. During the interactive dialogue which followed the presentation, several questions were put to the Committee member. One delegate referred to the proposal relating to treaty body reforms on the submission of consolidated reports. He stated that the consolidated report approach was an interesting proposal and expressed his concern at the large number of reports States had to submit to various human rights treaty bodies and mechanisms.

50. Another delegate queried how to evaluate the inputs for the review procedure of state reports. He also asked whether it would be possible to draft general guidelines for the early warning and urgent procedures. He also enquired about cooperation between the Committee and the Special Adviser on the Prevention of Genocide and Mass Atrocities.

51. Several delegates declared that failure by States to implement the International Convention on the Elimination of All Forms of Racial Discrimination and to meet their reporting obligations

under it remained the obstacles to eliminating racism. Several delegates also declared that implementation of existing standards and the elaboration of new standards to fill in gaps were mutually inclusive and that lack of implementation could not be used as an excuse to move away from complementary standards.

52. The member addressed some of the questions by providing additional information about the work of the Committee and the recommendations issued by it in its study. He explained the various procedures at the disposal of the Committee, highlighting recent developments, such as the new follow-up procedures developed by the Committee for both its concluding observations and its opinions adopted on individual and group communications. The Committee also stressed that the initial assessment of the follow-up procedure was quite positive, including a country visit conducted in 2006 by the coordinator on follow-up at the invitation of the State party in question.

53. The member listed various obstacles to the effectiveness of the monitoring role with which the Committee has been entrusted. In particular, he stressed non-compliance of States parties with their reporting obligations as a major impediment to the Committee's work and the effective implementation of the Convention. Regarding individual complaints, he noted that the potential of the procedure was still to be fully exploited.

54. Regarding the Committee's recommendations to address procedural gaps, the member summarized the list of recommendations and proposals as follows:

(a) The Committee continued to urge States to regard the reporting process as being for their own benefit as well as obligatory, in compliance with article 9 of the Convention;

(b) The Committee suggested that the practice of follow-up visits by the coordinator on follow-up should be further developed and that the framework for such visits be explored, including through the adoption of an optional protocol to the Convention that would further elaborate the conditions and procedures appropriate for such visits, including the financial aspects;

(c) The Committee continued to encourage States to consider making the declaration under article 14 of the Convention providing for the possibility for individuals and groups of individuals to submit communications to the Committee and to give adequate publicity to that mechanism. It also recalled its proposal concerning the establishment of a single body to deal with individual communications to all treaty bodies by the means of an optional protocol to the relevant treaties.

## **B. Presentation by the experts**

55. On the third day of the second part of its session, the Working Group began its discussions 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. The Chairman of the group of experts introduced the study.

56. The Chairman spoke on general matters and provided a brief overview of themes addressed by the study, then discussed the experts' recommendations. He summarized some of the difficulties the experts faced while preparing the study, in particular the time constraints. During the second half of his presentation, the Chairman provided a detailed overview of each theme covered in the study, including key points and recommendations.

57. The Chairman explained that chapter I provided an analysis of the positive obligations of States parties and the finding by the experts of the existence of a normative gap in that area. The experts concluded the chapter with a recommendation for the adoption of a comprehensive binding instrument establishing the duty to promote non-discrimination, tolerance and equality of rights irrespective of race, ethnicity and other related grounds through human rights education.

58. In chapter II, the experts examined possible gaps with regard to groups requiring special protection against racism, racial discrimination, xenophobia and related intolerance. The experts considered the following categories, as formulated by the Chairman of the Working Group at its fourth session: (a) religious groups; (b) refugees; (c) asylum-seekers; (d) stateless persons; (e) migrant workers; (f) internally displaced persons; (g) descent-based communities; (h) indigenous peoples; (i) minorities; and (j) people under foreign occupation.

59. In chapter III, the experts address possible gaps with regard to manifestations of racism, racial discrimination, xenophobia and related intolerance. The experts considered the following phenomena, as formulated by the Chairman of the Working Group: (a) multiple discrimination or aggravated forms of racial discrimination; (b) ethnic cleansing; (c) genocide; (d) religious intolerance and defamation of religious symbols; (e) racial discrimination in the private sphere; and (f) incitement to racial hatred and dissemination of hate speech and xenophobic and caricatural pictures, through traditional mass media and information technology, including the Internet. The experts provided an assessment and recommendations at the end of each thematic section.

60. Following the Chairman's introduction of the study, each one of the experts explained their individual approach to the study which they had to merge in a single effort in order to reach consensus on all of their conclusions and recommendations, except for one. The experts did not reach consensus on the inclusion of any discussion and/or reference to sexual orientation in relation to racism, racial discrimination, xenophobia and related intolerance in the study. Mr. Anwar specifically requested that his dissenting position on this matter be recorded.

61. Furthermore, the experts indicated that areas in the study might be considered unclear because of the drastic reduction of the content of the document in order to meet the required page limit. The experts stressed the crucial role of human rights education in combating racism, racial discrimination, xenophobia and related intolerance.

62. During the interactive dialogue that followed the presentations by the experts, various delegates took the floor to share their views and concerns. Several delegates noted that the study was circulated late and did not allow sufficient time for them to consult with capitals and to prepare well-thought-out comments on the study. Many delegates specified that their comments were of a preliminary nature.

63. One delegate expressed his concerns with regards to the section in the study on internally displaced persons. He noted that the guidelines on internally displaced persons mentioned in the text were not binding and the conclusion that an increasing number of States apply them was not convincing; therefore it needed reference. The delegate pointed out that the primary responsibility of the Office of the United Nations High Commissioner for Refugees was refugees, while States should take care of problems related to internally displaced persons. Several delegates expressed their support for a strong emphasis on implementation, while several others highlighted the need for complementary standards.
64. Several delegates requested clarification on the experts' recommendation for a convention on human rights education. The questions raised were about the possible content of such a convention and which body would take the lead in drafting it, and whether the elaboration should be entrusted to the United Nations Educational, Scientific and Cultural Organization (UNESCO) or to the Human Rights Council.
65. Another delegate pointed out that a distinction should be made between racial discrimination and discrimination in general. The same delegate warned that a specific group of countries would not support any reference to sexual orientation, gender and disabilities in Durban follow-up work as they were not considered in the context of racial discrimination and the framework of the Durban Declaration and Programme of Action.
66. One delegate underlined that statements suggesting that there were no substantive gaps and no need for complementary standards were not consistent with the Durban Declaration and Programme of Action, as such a request was made in the document. With regards to the arguments of implementation and application of international norms, the delegate proposed to include the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination as an item in the agenda of the Working Group.
67. One delegate noted that many of the issues analysed in the study were substantive and constituted parts of the mandates of other existing mechanisms within the United Nations system, and that the study should have dealt exclusively with racism and racial discrimination. Discrimination on the basis of descent and issues connected with a caste system were therefore inconsistent with racism and racial discrimination and that they were not contained in the Durban Declaration and Programme of Action.
68. One delegate supported the findings in the study, especially the section on the positive obligations of States, but cautioned that a gradual approach was needed. The delegate also agreed with the finding that human rights and humanitarian law were not mutually exclusive and that the Committee on the Elimination of Racial Discrimination needed to look further into multiple forms of discrimination.
69. One delegate asserted that there was a contradiction in interpretation regarding the scope of protection of existing treaty bodies and that some of the comments and recommendations in the study went beyond the mandate of those treaty bodies. The delegate recommended that there should be new complementary standards, not simply further elaboration of recommendations by treaty bodies.

70. One delegate enquired about the best way to move forward regarding the proposal for a convention on human rights education, which would go beyond article 7 of the International Convention on the Elimination of All Forms of Racial Discrimination. He also agreed with the section in the study relating to multiple forms of racism and the importance of such a section. He enquired about the possibility of identifying tools to help better understand multiple forms of racism.

71. In addressing some of the comments raised by delegates, Professor Goldschmidt explained that, in the study, the experts had tried to address questions on substantive gaps that fell under United Nations human rights treaties while taking into consideration new manifestations of racism and discrimination. With regard to multiple forms of discrimination, she explained that it was a complex area, as it was not always clear which grounds should be taken into consideration when dealing with multiple discrimination.

72. Professor Petrova took the floor to address the concern expressed by some delegates that the study emphasized only the strengthening of the International Convention on the Elimination of All Forms of Racial Discrimination and concluded that there was no need for complementary standards. She stated that the study went beyond answering the question as to whether there were gaps. According to the experts, the problem was not only one of lack of implementation, but of insufficiency of standards, as some of the existing standards could benefit from further development. They were therefore also arguing in favour of more detailed standards.

73. Professor Petrova reiterated the existence of a gap regarding human rights education, as there was no legally binding document establishing the duty to promote non-discrimination, tolerance and equality of rights irrespective of race, ethnicity and other related grounds through human rights education. With regard to definitions of racism and xenophobia, she stated that the experts had been guided by the language in the Durban Declaration and Programme of Action. She also restated the importance of recognizing multiple forms of racism and defining strategies to tackle them.

74. Professor Maluwa addressed the question asked by one delegate as to the extent to which, if any, socio-economic factors and the millennium development goals played a role in the production of the study. He admitted that the study did not reflect those areas, although the experts did have detailed discussions on their impact on racism. One example concerned the various discussions the experts held on environmental degradation and their consequences as related to racism. However, given the exigencies imposed by the scope of their mandate, the experts decided to adhere to the themes outlined in the Chairman's conclusions during the fourth session of the Working Group.

75. In relation to internally displaced persons, Professor Maluwa responded to a delegate's concerns at the lack of reference to the draft African Union convention on the rights of internally displaced persons in Africa. He reminded delegates of paragraph 2 of Human Rights Council resolution 1/5, which created the mandate of the experts and specified that the experts were to study the content and scope of the substantive gaps in international instruments to combat racism, racial discrimination, xenophobia and related intolerance, and that there was no reference to regional instruments therein, which explained the lack of reference to any regional instruments, scholarly reports or studies.



76. Mr. Anwar focused on human rights education and the strong recommendation that religious schools should teach human rights education, which would increase understanding and could help to prevent misunderstanding and hatred.

77. Serguei Lazarev of UNESCO took the floor to comment on the readiness of that body to elaborate and/or to contribute to the elaboration of a human rights instrument on education to combat racism. He also emphasized that the experience accumulated by UNESCO over the years in that particular area put it in a favourable position regarding the elaboration of such an instrument. He also referred to the role of publications on education and human rights, and listed various books published by UNESCO.

78. The Chairman of the group of experts addressed some of the questions from the delegates. In particular, he stated that the recognition by States under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination on the competence of the Committee to receive and consider communications from individuals or groups of individuals within its jurisdiction could improve the implementation of the Convention. He also expressed the view that the development of national action plans would make an important contribution in combating racism. With regard to the impression that the selection of some of the issues examined in the study was arbitrary, he explained that the theme on multiple forms of discrimination was proposed by the Working Group in the conclusions of the Chairman at its fourth session and that the experts had simply followed the guidelines in paragraph 2 of the Durban Declaration and Programme of Action.

79. The Chairman made concluding remarks and thanked the experts for the work performed on an extremely complex subject. He stated that it was important to decide what was to be done in the future. A starting point would be to read through the two studies in more detail, as they were very dense texts. He also stated that, pursuant to Human Rights Council decision 3/103, he would transmit the study to the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination.

## VII. CONCLUSIONS AND RECOMMENDATIONS

### A. First part of the session

#### CONCLUSIONS

##### National action plans

80. **The Working Group urges States, in accordance with paragraph 66 of the Durban Programme of Action, to establish and implement without delay national policies and action plans to combat racism, racial discrimination, xenophobia and related intolerance, including their gender-based manifestations.**

81. **The Working Group emphasizes that it is essential for States to recognize the presence of individuals or groups of individuals who are victims of racism, racial discrimination, xenophobia and related intolerance, including multiple and aggravated forms of discrimination within their jurisdictions.**

82. **The Working Group affirms that the adoption of measures to combat racism, racial discrimination, xenophobia and related intolerance at the international, regional and national levels are likely to remain ineffective if those measures are not accompanied by a comprehensive understanding of racial discrimination and related intolerance and effective implementation measures.**

83. **The Working Group recalls that the importance of implementing national action plans in combating racism, racial discrimination, xenophobia and related intolerance has been emphasized in various recommendations contained in its previous reports.**

#### **Complementary international standards**

84. **The Working Group affirms that the preliminary exchange of view with the highly qualified experts selected to produce a base document outlining substantive gaps in the International Convention on the Elimination of All Forms of Racial Discrimination and make concrete recommendations on the means and avenues to bridge these gaps was very fruitful.**

85. **The Working Group recognizes the independence and competence of the experts and looks forward to the fulfilment of their mandate.**

### **RECOMMENDATIONS**

#### **General recommendations on national action plans**

86. **The Working Group expresses the need for States, as bearers of the primary responsibility for national action plans, to involve all stakeholders, including victims, national human rights institutions, non-governmental organizations and civil society in general in the design, implementation, monitoring and evaluation of national action plans as a tool to combat racism, racial discrimination, xenophobia and related intolerance.**

87. **The Working Group calls upon States to recognize the importance of national action plans and other measures that serve to strengthen efforts to combat and monitor racism, racial discrimination, xenophobia and related intolerance.**

88. **The Working Group encourages States to take adequate measures to ensure appropriate human and financial resources are made available in the consultations leading to the preparation, elaboration, implementation and monitoring of national action plans.**

89. **The Working Group calls on States to analyse, review and update all existing laws and policies which could have a potentially adverse effect on the preparation, implementation and monitoring of national action plans.**

90. **The Working Group calls upon States to ensure that national action plans are consistent with international human rights instruments to which they are parties, and in particular the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action.**

91. **The Working Group calls upon States that have not yet done so to establish mechanisms and to provide for an effective process to oversee the preparation and implementation of their national action plans. States are to ensure that these mechanisms are adequately funded and staffed.**
92. **The Working Group encourages States to recognize the importance of education as an effective tool for combating racism, racial discrimination, xenophobia and related intolerance. Human rights education as a tool must be an integral component of any national plan of action.**
93. **The Working Group invites States to ensure that the contents of national action plans allow for easy understanding by all stakeholders.**
94. **The Working Group encourages States to request technical assistance from OHCHR in the preparation, implementation and monitoring of national action plans.**

#### **Implementation and monitoring of national action plans**

95. **The Working Group calls upon States to involve all stakeholders, and in particular victims of racism, racial discrimination, xenophobia and related intolerance, in the preparation, elaboration, implementation and monitoring of national action plans.**
96. **The Working Group recommends the creation of appropriate channels of communications to be established at the national level by States with non-governmental organizations, the private sector, the mass media and non-State actors to facilitate their involvement in the preparation, implementation and monitoring of national action plans, in order to promote and ensure ownership and transparency.**
97. **The Working Group encourages States to take appropriate measures to ensure the coordination of the contributions of all stakeholders involved in the preparation and implementation of national action plans.**
98. **The Working Group calls upon States to include in their national action plans positive measures to ensure the fulfilment of the principle of equality and non-discrimination.**
99. **The Working Group calls upon States to engage with civil society in the monitoring and evaluation and implementation of their national action plans.**
100. **The Working Group invites States to periodically review and update their national action plans. It encourages States to establish objectives, benchmarks and indicators to monitor the implementation of national action plans.**
101. **The Working Group encourages States to ensure that they establish, update and/or adapt their mechanisms for the collection of disaggregated data in accordance with international standards for the protection of personal information in order to ensure inclusiveness in national action plans of all victims of racism.**

**102. The Working Group calls upon States, as requested in the Durban Programme of Action, to regularly inform OHCHR of the status of the implementation of the Durban Declaration and Programme of Action at the national level, especially regarding the preparation and implementation of national action plans.**

#### **Recommendations to the Office of the United Nations High Commissioner for Human Rights**

**103. The Working Group invites OHCHR to post on the Internet relevant information on Durban follow-up activities, thereby facilitating the exchange of information on the follow-up and implementation of the Durban Declaration and Programme of Action, and contributing to a higher visibility of those activities.**

**104. The Working Group invites OHCHR to increase its collaboration with United Nations agencies and country teams with regard to the follow-up and implementation of the Durban Declaration and Programme of Action.**

**105. The Working Group calls upon OHCHR to take a proactive stance with regards to its capacity to assist States in the preparation and implementation of national action plans.**

#### **B. Second part of the session**

### **CONCLUSIONS AND RECOMMENDATIONS**

**106. The Working Group notes the study submitted 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, and the study submitted by the five experts on the contents and scope of substantive gaps in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance.**

**107. The Working Group held interactive dialogues with the five experts as well as the member of the Committee on the Elimination of Racial Discrimination. During the dialogues, various views were expressed by delegations.**

**108. The Working Group invites States to further consider the recommendations made by the Committee on the Elimination of Racial Discrimination in its study.**

**109. The Working Group transmits to the Human Rights Council the study by the five experts prepared in the context of paragraph 199 of the Durban Programme of Action, and pursuant to Human Rights Council resolution 1/5 and Human Rights Council decision 3/103, paragraph (g).**

### **VIII. ADOPTION OF THE REPORT**

**110. Having adopted its recommendations by consensus and entrusted the Chairman-Rapporteur with the finalization of the other sections, the above report is considered adopted as of 10 October 2007.**

## **Annex I**

### **LIST OF ATTENDANCE**

#### **States**

Algeria, Angola, Argentina, Austria, Bahrain, Bangladesh, Belgium, Bosnia and Herzegovina, Brazil, Burkina Faso, Chile, China, Colombia, Croatia, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Finland, France, Gabon, Germany, Ghana, Greece, Guatemala, Haiti, Hungary, India, Indonesia, Iran (Islamic Republic of), Japan, Jordan, Lesotho, Libyan Arab Jamahiriya, Madagascar, Maldives, Mexico, Montenegro, Morocco, Netherlands, New Zealand, Norway, Philippines, Portugal, Romania, Russian Federation, Rwanda, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, The former Yugoslav Republic of Macedonia, Tunisia, Turkey, Uganda, Ukraine, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, Uruguay, Venezuela (Bolivarian Republic of), Zimbabwe.

#### **National human rights institutions, international coordinating committees and regional groups of national institutions**

International Coordinating Committee of National Human Rights Institutions

#### **Intergovernmental organizations**

African Union

League of Arab States

Council of the European Union

#### **Specialized agencies**

United Nations Educational, Scientific and Cultural Organization

#### **Non-governmental organizations**

##### *Special consultative status*

Asian Indigenous and Tribal Peoples Network

Commission Africaine des Promotions de la Santé et des Droits de l'Homme

##### *Roster status*

Association of World Citizens

*Accredited to the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance*

## **Annex II**

### **AGENDA (FIRST PART)**

1. Opening of the session.
2. Election of the Chairman-Rapporteur.
3. Adoption of the agenda.
4. Organization of work.
5. General statements: exchange of information on participants' implementation activities and debate on issues of general interest for the implementation process.
6. Panel 1: Thematic analysis: on the role of national plans of action in combating racism, racial discrimination, xenophobia and related intolerance:
  - A. Presentations by the panellists;
  - B. Presentation by the Secretariat on experience in providing technical assistance toward elaboration of national plans of action.
7. Panel 2: Complementary international standards: preliminary exchange of views with the five experts to produce a base document and to make concrete recommendations on the means and avenues to bridge these gaps.
8. Follow-up to the recommendations of the fourth session.
9. Recommendations for future work.
10. Adoption of conclusions and recommendations.
11. Adoption of the report.

### **Annex III**

#### **AGENDA (SECOND PART)**

##### **Provisional agenda**

1. Opening of the session.
2. Election of the Chairman-Rapporteur.
3. Adoption of the agenda.
4. Organization of work.
5. General statements: exchange of information on participants' implementation activities and debate on issues of general interest to the implementation process.
6. Thematic analysis: the Study on complementary international standards.
  - A. 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:
    - Current procedures and obstacles to the effectiveness of the monitoring role of the Committee;
    - Recommendations to States and proposals for increased effectiveness of the Committee's monitoring procedures.
  - B. 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:
    - Complementary international standards with regard to positive obligations of States;
    - Complementary international standards with regard to groups requiring special protection against racism, racial discrimination, xenophobia and related intolerance;
    - Complementary international standards with regard to manifestations of racism, racial discrimination, xenophobia and related intolerance.
7. Follow-up to the recommendations of the fourth session.
8. Recommendations for future work.
9. Adoption of conclusions and recommendations.
10. Adoption of the report.

**Annex IV**

**LIST OF DOCUMENTS PREPARED FOR THE WORKING GROUP**

**First part (5-9 March 2007)**

Symbol	E	F	R	S	C	A	Title
A/HRC/4/WG.3/1	X	X	X	X	X	X	Agenda
A/HRC/4/WG.3/2	X	X	X	X	X	X	Programme of work

**Second part (3-7 September 2007)**

Symbol	E	F	R	S	C	A	Title
A/HRC/4/WG.3/3	X	X	X	X	X	X	Agenda
A/HRC/4/WG.3/4	X	X	X	X	X	X	Programme of work
A/HRC/4/WG.3/5	X	X	X	X	X	X	Information note
A/HRC/4/WG.3/6	X	X	X	X	X	X	Study of the experts
A/HRC/4/WG.3/7	X	X	X	X	X	X	Study of the Committee on the Elimination of Racial Discrimination

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