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**COMPLEMENTARY INTERNATIONAL STANDARDS: EXAMINATION
OF SUBMISSIONS FROM THE COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION AND OTHER UNITED NATIONS
BODIES AND SPECIALIZED AGENCIES**

**Contribution by United Nations bodies, specialized agencies
and international and regional organizations**

Introduction

1. In its resolution 2002/68, approved by Economic and Social Council decision 2002/270, the Commission on Human Rights established the Intergovernmental Working Group (IGWG) with the following mandate: (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 (para. 7). The Commission resolution also invited all relevant organs, organizations and bodies of the United Nations system to become involved in the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, and requested specialized agencies and related organizations of the United Nations system to strengthen and adjust, within their respective mandates, their activities, programmes and medium-term strategies to implement and follow-up the Durban Declaration and Programme of Action (para. 3).

2. It is pursuant to this resolution that IGWG, in the report on its second session (E/CN.4/2004/20) 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. In the same report, IGWG stated that it would remain seized of this issue and intended to undertake, at its future sessions, a constructive dialogue on all the substantive issues that such additional instrument(s) may address, and bridge gaps and weaknesses in the existing instruments and their implementation. In this regard, the Working Group requested the Office of the High Commissioner for Human Rights (OHCHR) to facilitate the compilation of the views submitted by interested institutions and organizations and to ensure their timely circulation to all members of IGWG with a view to enriching the debate on the preparation of complementary standards.

3. Consistent with this request, in July 2004, OHCHR sent letters to international organizations and institutions requesting their views on the issue of complementary standards in order to facilitate a thorough assessment and evaluation by IGWG of the existing international standards and instruments to combat racism, racial discrimination, xenophobia and related intolerance. Two responses were received: one from the Council of Europe and the other from the International Labour Office. The two contributions are summarized below.

Council of Europe

4. In its reply, the Council of Europe informed OHCHR that it had established international legal instruments and an independent human rights monitoring body to provide protection against racism, racial discrimination, xenophobia and related intolerance. The monitoring body is the European Committee against Racism and Intolerance and the international legal instruments consist of the European Convention on Human Rights (ECHR), which provides a catalogue of rights and freedoms and sets up a system of enforcement by the European Court of Human Rights (the Court), the final judgements of which are binding.

5. In its comments, the Council of Europe referred specifically to article 14 of ECHR as it is the provision of the Convention that deals specifically with anti-discrimination. Article 14 contains a list of prohibited grounds of discrimination which is similar to the one established under article 26 of the International Covenant on Civil and Political Rights (ICCPR). The

open-ended nature of the list of prohibited grounds of discrimination in article 14 of ECHR offers to the Court the possibility of extending the list to grounds of discrimination not specifically mentioned, such as discrimination on grounds of sexual orientation and nationality.

6. Although ECHR itself does not define discrimination, the jurisprudence of the Court describes discrimination as differential treatment that has no objective and reasonable justification. The Court considers that discrimination also arises where States, without an objective and reasonable justification, fail to treat differently persons whose situations are significantly different. Furthermore, ECHR does not explicitly differentiate between direct and indirect discrimination. The Court has ruled that both types are prohibited by ECHR. In this regard, the Court has held that measures the object or result of which is to discriminate are prohibited. Therefore, even an apparently neutral measure would be considered discriminatory if it resulted in discrimination.

7. Contrary to ICCPR article 26, ECHR article 14 only prohibits discrimination regarding rights and freedoms set forth in the Convention and not with respect to all rights. The Council of Europe recognises that the Court has adopted a far-reaching approach in its interpretation of ECHR article 14 to include certain social rights not provided for under the Convention, despite the lacunae existing in ECHR as regards a general prohibition of discrimination. In an effort to remedy this situation, Protocol No. 12 was opened for signature in November 2000. It provides for a general prohibition of discrimination. However, this protocol has yet to enter into force.

8. Concerning the right to freedom of expression and freedom of assembly and association under ECHR articles 10 and 11 respectively, the fight against racism is not explicitly mentioned, although both articles include certain aims that may justify restrictions to these freedoms. One of these aims is the protection of the reputation or rights of others. The Court expressed the view that freedom of expression did not cover racially derogatory statements or public justification for or denial of crimes against humanity, based on the content of ECHR article 17 and the Convention's underlying values of justice and peace.

9. In furtherance to efforts deployed at the European level to combat racism, racial discrimination, xenophobia and related intolerance, the Council of Europe referred to the Convention on Cybercrime which deals in particular with infringements of copyright, computer-related fraud, child pornography and violations of network security, and the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist or xenophobic nature committed through computer systems.

10. Although most European States already criminalize specific instances of racist expressions, the Council of Europe found it necessary to adopt an approach that deals with the dissemination of racial material through computer networks. In this connection, the Contracting Parties to the Additional Protocol undertake to adopt such measures as may be necessary to establish as criminal offences under their domestic laws the following conduct:

- Dissemination of racist or xenophobic material to the public through a computer system;
- Racially or xenophobically motivated threats performed through a computer system;

- Racially or xenophobic motivated insults through a computer system;
- Disseminating through a computer system material that denies, grossly minimizes, approves or justifies acts constituting genocide or crimes against humanity;
- Aiding and abetting the commission of any of the offences mentioned above.

11. At present, neither the Convention nor the Protocol has entered into force.

12. At the European level, other international legal instruments not specifically elaborated to combat racial discrimination contain provisions against racism. They are:

- Framework Convention for the Protection of National Minorities. This convention is the first legally binding multilateral instrument concerned with the protection of national minorities in general. Its implementation is monitored by the Committee of Ministers of the Council of Europe and by the Advisory Committee (composed of independent experts);
- European Charter for Regional and Minority Languages. The Charter has two objectives: (i) maintenance and development of Europe's cultural traditions and heritage; and (ii) respect of the inalienable right to use a regional or minority language. Enforcement of the Charter is entrusted to a Committee of Experts which examines reports submitted by the parties;
- European Social Charter. This document guarantees various social and economic rights. The Revised Social Charter embraces developments that have occurred since the adoption of the original Charter in 1961. The Revised Charter strengthens the principle of non-discrimination; its implementation is monitored by the Committee of Ministers of the Council of Europe and a Committee of Independent Experts;
- European Convention on the Legal Status of Migrant Workers. This convention is concerned with the principal aspects of the legal situation of migrant workers. Its implementation is monitored by a Consultative Committee;
- Convention on the Participation of Foreigners in Public Life at Local Level, which aims at improving the integration of foreign residents into the life of the community;
- European Convention on Nationality, which covers various issues dealing with the issue of nationality and seeks to ensure fairness in the regulation of situations involving nationality.

13. In order to monitor protection against racism, racial discrimination, xenophobia and related intolerance, the Council of Europe established the European Commission against Racism and Intolerance (ECRI). ECRI has developed its own programme of activities, which includes the following three main aspects: (i) country-by-country monitoring (covering all States members of the Council of Europe on an equal footing); (ii) elaboration of general policy recommendations and other practical guidelines; (iii) activities aimed at spreading its antiracist message to the general public.

14. The Commission's proposals have formed a corpus of standards. This empirical approach adopted by ECRI has enabled it to develop and advocate its own distinctive views on important issues such as positive measures and integration policies and practices to combat discrimination, which are in some cases reflected in general policy recommendations. Such recommendations provide, for instance, very detailed guidance in the formulation of effective national legislation against racism and racial discrimination.

15. In conclusion, the Council of Europe submitted that the international instruments and mechanisms necessary for effective protection against racism, racial discrimination and xenophobia and related intolerance are in place. However, urgent action is needed to increase ratification of existing instruments and support implementation at the domestic level. Unless effort is deployed toward this end, the contents of the standards, in addition to the findings and recommendations of monitoring mechanisms, will have limited effect.

International Labour Office

16. In reply to the request from OHCHR, the International Labour Office (ILO) referred to the main ILO conventions relevant to the issue of racism, racial discrimination, xenophobia and related intolerance. They are: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Indigenous and Tribal Peoples Convention 1989 (No. 169), the Migration for Employment Convention (Revised), 1949 (No. 97) and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143). ILO calls attention to the fact that other ILO conventions are generally designed to protect all workers, and that many of them contain specific non-discrimination clauses.

17. ILO expressed the view that the body of existing international labour standards are generally considered to provide an appropriate international legal framework to address racism, racial discrimination, xenophobia and related intolerance within the context of work. There is currently no plan for further standard-setting in this particular area. Moreover there is broad consensus among the ILO constituents - Governments, as well as workers' and employers' organizations - that the focus should be on assisting Governments in better implementing ratified conventions and to promote the ratification of the relevant conventions, as appropriate.

18. In this connection, the ILO drew attention to the report on the general discussion on migrant workers held at the ninety-second session of the International Labour Conference in June 2004. The conclusions adopted by the Conference highlight that national law and practice with regard to the protection of migrant workers should be based on the rule of law and international law, and that a broad array of existing international legal instruments contain rights and principles to guide this process. The Conference recommended, inter alia, that ILO should increase its efforts to promote better implementation of all relevant standards.

19. More generally, various participants at the Conference called attention, within the context of the work of the Committee on Migrant Workers, to the situation of migrant workers, whether of regular or irregular status, and the numerous forms of discrimination they frequently face, including abusive and exploitative working conditions directly resulting from discrimination and xenophobia.

20. Many participants were of the opinion that the solution for these abuses had to be based on recognition of migrant workers' rights to equality of treatment and opportunity, and that the situation of migrant workers calls for action at the national, bilateral and regional levels.

21. The report of the Committee reveals convergence on a number of issues, including the importance of not losing sight of the need to combat racism and xenophobia. In conclusion, the Committee held that despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of discrimination and xenophobia. Moreover, comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour are necessary and should be promoted. Important measures may include explicitly addressing discrimination and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
