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**COMPLEMENTARY STANDARDS: EXAMINATION OF THE REPORTS  
PREPARED FOR THE SESSION AND RECOMMENDATIONS FOR  
FUTURE WORK**

**Report of the High Commissioner on Human Rights**

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### **Summary**

This report is prepared in response to the request made by the Commission on Human Rights in its resolution 2003/30 requesting the Office of the High Commissioner for Human Rights to submit an analytical report to the Working Group on the Effective Implementation of the Durban Declaration and Programme of Action assessing the effectiveness of current regional and international standards and instruments to combat racism, racial discrimination, xenophobia and related intolerance and identifying possible areas where complementary international standards might be needed.

It provides a list of the principal international and regional instruments to combat racism, racial discrimination, xenophobia and related intolerance. It also outlines the scope of protection against racism, racial discrimination, xenophobia and related intolerance provided by the main international human rights instruments. Finally, it provides an initial basis for the discussions of the Working Group regarding the preparation of complementary standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance.

## **Introduction**

1. In its resolution 2003/30, the Commission on Human Rights requested the Office of the High Commissioner for Human Rights (OHCHR) to submit an analytical report to the next session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, assessing the effectiveness of current regional and international standards and instruments to combat racism, racial discrimination, xenophobia and related intolerance and identifying possible areas where complementary international standards might be needed (para. 19).

2. The present report has been submitted pursuant to that request. It provides a list of the principal international and regional instruments to combat racism, racial discrimination, xenophobia and related intolerance and outlines the scope of protection against racism, racial discrimination, xenophobia and related intolerance provided by those instruments as elaborated upon by the human rights treaty bodies through their general comments and recommendations, the case law that stems from the examination of individual complaints and the concluding observations adopted following the consideration of States parties' reports.

3. This information, which will be supplemented in due course by further information on current regional standards and international instruments other than those mentioned in section III of the present report, is put forth to assist the Working Group in its discussions regarding the preparation of complementary standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. The elaboration of further international standards to combat racial discrimination could be achieved through various ways, including: (a) the adoption of a new international declaration; (b) the adoption of a new international convention; (c) the adoption of a protocol to an existing convention; and (d) the adoption of an amendment to an existing convention.

### **I. INTERNATIONAL AND REGIONAL STANDARDS PROVIDING PROTECTION AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

4. A list of the main international and regional instruments to combat racism, racial discrimination, xenophobia and related intolerance is annexed to this report.

### **II. SCOPE OF PROTECTION AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE PROVIDED BY INTERNATIONAL STANDARDS**

5. The seven main international human rights instruments together constitute the international legal framework for the promotion and protection of human rights. Whereas the International Convention on the Elimination of All Forms of Racial Discrimination is entirely devoted to the issue of racial discrimination, the other instruments also play an important role in the protection against such discrimination.

### **A. International Convention on the Elimination of All Forms of Racial Discrimination**

6. This Convention, which has been ratified by 169 States parties as at 10 December 2003, defines racial discrimination as “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin” (art. 1, para. 1). The Convention does not expressly identify which groups fall under its protection. The Committee on the Elimination of Racial Discrimination has, however, adopted several general recommendations in which it elaborates upon the scope of protection of the Convention for specific groups including:

(a) Refugees and displaced persons: general recommendation XXII (1996) emphasizes the right to return on a voluntary basis of all refugees and displaced persons and, *inter alia*, their right to restored property or to appropriate compensation, as well as their right to receive rehabilitation assistance;

(b) Indigenous peoples: general recommendation XXIII (1997) reaffirms that discrimination against indigenous peoples falls under the scope of the Convention and calls upon States parties to recognize, respect and protect the human rights of indigenous peoples and, in particular, their land rights and their rights to practise and revitalize their cultural traditions and languages;

(c) Roma: general recommendation XXVII (2000) recommends that States parties take measures, including through the enactment or amendment of legislation, to eliminate all forms of racial discrimination against Roma. These should include in particular measures for the protection of Roma against racial violence, in the field of education, to improve their living conditions, for their participation in public life and to ensure the elimination of incitement to racial hatred and violence in the media;

(d) Persons discriminated against on the ground of descent: general recommendation XXIX (2002) reaffirms the condemnation of discrimination against persons of Asian or African descent and indigenous and other forms of descent found in the Durban Declaration and Programme of Action. It also reaffirms that discrimination based on descent includes discrimination against members of communities based on social stratification such as caste. The Committee recommends that States parties take measures to ensure that members of caste-based communities enjoy on an equal basis all civil, political, economic, social and cultural rights. It also emphasizes the need to eradicate segregation of descent-based communities and to pay specific attention to discrimination in the administration of justice. Furthermore, it recommends measures to combat dissemination of hate speech including through the mass media and the Internet.

7. No general recommendation has been adopted by the Committee on the rights of persons belonging to minorities under the Convention. The Committee has, however, consistently reviewed the situation of minorities in the States parties to the Convention and issued conclusions and recommendations concerning the need to ensure that members of ethnic or national minorities enjoy all human rights without discrimination.

8. Article 1, paragraph 2, of the Convention provides that the Convention shall not apply to distinctions made by States parties between citizens and non-citizens. In 1993, the Committee adopted general recommendation XI on non-citizens, stating that notwithstanding paragraph 2 of article 1 of the Convention, States parties are under an obligation to report fully on legislation on foreigners and its implementation. It also reminded States parties of the content of paragraph 3 of article 1 that, among non-citizens, States parties may not discriminate against any particular nationality, and underlined that article 1, paragraph 2, must not be interpreted to detract in any way from the rights and freedoms set forth in other international human rights instruments. During its sixty-fourth session (23 February-12 March 2004), the Committee will hold a thematic discussion on this issue.

9. Although the issue of the gender-related dimensions of racial discrimination is not expressly mentioned in the Convention, this matter was addressed by the Committee in its general recommendation XXV (2000). The Committee recognizes that certain forms of racial discrimination have a unique and specific impact on women, and decides that it will endeavour in its work to take into account gender factors and issues that may be interlinked with racial discrimination. The Committee also stressed that its practice in this regard would benefit from developing, in conjunction with the States parties, a more systematic and consistent approach to evaluating and monitoring racial discrimination against women, as well as the disadvantages, obstacles and difficulties women face in the full exercise and enjoyment of their human rights on grounds of race, colour, descent, or national or ethnic origin.

10. Article 2 of the Convention requires from States that they refrain from, and put an end to, racial discrimination, and that they pursue policies aiming at the elimination of such discrimination and at the improvement of interracial relationships. Article 2 (2) provides for the adoption of special and concrete measures to further the equal enjoyment of human rights among various parts of the population. Under article 1 (4), such special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary shall not be deemed racial discrimination, provided, however, that they do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved.

11. Article 3, read in conjunction with general recommendation XIX (1995), creates an obligation on States parties to monitor all trends which can give rise to racial segregation, to work for the eradication of any negative consequences that ensue, and to describe any such action in periodic reports.

12. Article 4 contains provisions obliging States parties to adopt legislation to criminalize and punish the dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, acts of violence against any race or groups of persons of another colour or ethnic origin, and incitement to such acts. It also penalizes the financing of racist activities and places States under an obligation to declare illegal racist organizations and to declare as an offence punishable by law any participation in such organizations or activities. Article 6 complements the provisions of article 4 by requesting from States parties that they ensure to everyone within their jurisdiction effective protection and remedies against acts of racial discrimination as well as just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.

13. The Committee has stated that the enactment of law making racial discrimination a criminal act is not in itself sufficient in order to give full effect to the Convention. The Committee stressed that “when threats of racial violence are made, and especially when they are made in public and by a group, it is incumbent upon the State to investigate with due diligence and expedition.”<sup>1</sup>

14. In its general recommendation XV (1993), the Committee emphasized that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression, as embodied in article 19 of the Universal Declaration.<sup>2</sup> Furthermore, the Committee has considered that article 4 of the Convention is applicable to the phenomenon of racism on the Internet, which emerged long after the elaboration of the Convention and therefore is not specifically dealt with in this instrument. For example, the Committee expressed concern about the increase of racist propaganda on the Internet in one State party, and encouraged this State party, in its concluding observations, to seek further solutions in order to tackle this problem.<sup>3</sup> In another instance, the Committee welcomed the establishment by a State party of a reporting centre for discrimination on the Internet aimed at combating racism on Internet sites, and considered this initiative a major step forward in the fight against contemporary forms of racism.<sup>4</sup>

15. Under article 5, States have the obligation to prohibit and eliminate racial discrimination in the enjoyment of all human rights. When examining individual complaints, the Committee has had the opportunity to elaborate upon the meaning of article 5, including the obligation for States parties to ensure equal enjoyment of the right to housing,<sup>5</sup> the right to equal treatment by tribunals<sup>6</sup> and the right to freedom of movement and residence<sup>7</sup> without distinction as to race, colour, descent, national or ethnic origin. It should be stressed that the rights and freedoms mentioned in article 5 do not constitute an exhaustive list.

16. Article 7 of the Convention stresses the importance of adopting measures in the fields of teaching, education, culture and information with a view to combating prejudices which lead to racial discrimination.

17. In its general recommendation XXVIII (2002), the Committee recommended to States parties to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order. Periodic reports should include information on action plans or other measures they have taken to implement the Durban Declaration and Programme of Action at the national level.<sup>8</sup>

## **B. International Covenant on Economic, Social and Cultural Rights**

18. The International Covenant on Economic, Social and Cultural Rights had been ratified by 148 States parties as at 10 December 2003. It contains a general provision in article 2 (2), which is near-identical to the general non-discrimination provision in article 2 (1) of its sibling Covenant, the International Covenant on Civil and Political Rights, stating that “[t]he States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

19. The Committee on Economic, Social and Cultural Rights has not yet adopted a general comment on article 2 (2), containing an elaboration of the general principle of non-discrimination in relation to economic, social and cultural rights. Nonetheless, numerous references to non-discrimination can be found in a number of general comments of the Committee.<sup>9</sup> For example, the Committee has made statements on non-discrimination and equal treatment in the context of specific substantive rights, such as housing, food, education and housing, in its general comments Nos. 4, 7, 11, 12, 13 and 14. General comment No. 14 reflects an evolutionary trend in the Committee's understanding of the principle of non-discrimination, by adding additional grounds of discrimination that are to be prohibited, namely: physical or mental disability, health status (including HIV/AIDS), and sexual orientation.<sup>10</sup>

20. In addition, the Committee has stressed that "while the Covenant provides for progressive realization and acknowledges the constraints due to the limits of available resources, it also imposes various obligations which are of immediate effect. Of these, two are of particular importance in understanding the precise nature of States parties' obligations." One of these, "is the 'undertaking to guarantee' that relevant rights 'will be exercised without discrimination ...'".<sup>11</sup>

21. The contribution submitted by the Committee to the preparatory process of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance consisted of the Committee's general comments Nos. 11 and 13 on the right to education, as it is the Committee's view that education has a pivotal role to play in the struggle against racism and related intolerance. The Committee states that "[t]here is a close relationship between, on the one hand, racism, racial discrimination, xenophobia and related intolerance and, on the other hand, the marginalization and social exclusion of disadvantaged and vulnerable groups" (A/CONF.189/PC.1/14, para. 2). According to the Committee, the imperative of eliminating social exclusion and marginalization is central in the Covenant, as well as in its evolving jurisprudence. The Covenant and the developing practice of the Committee are tools for tackling social exclusion and racism. Efforts to realize in full the substantive rights enumerated in the Covenant, including the rights to education, housing, food and work - could go hand in hand with those efforts to combat racism, racial discrimination, xenophobia and related intolerance.

### **C. International Covenant on Civil and Political Rights**

22. The International Covenant on Civil and Political Rights, which had been ratified by 151 States parties as at 10 December 2003, prohibits racial discrimination in its articles 2 (1) and 26 and, with regard to specific rights, in articles 24 (1) and 25. Article 26 constitutes in itself an autonomous right to equal and effective protection against discrimination in law, or in fact in any field regulated and protected by public authorities.<sup>12</sup> The application of the principle of non-discrimination contained in article 26 is therefore not limited to the rights protected in the Covenant.<sup>13</sup> Thus, when a State party adopts legislation in any field, it must comply with the requirement of article 26 that its content, as well as its application, may not discriminate on any ground, including race.<sup>14</sup>

23. Differentiation of treatment does not necessarily amount to discrimination contrary to articles 2 (1) and 26, if the criteria for such differentiation are reasonable and objective and if the aim is to achieve a purpose, which is legitimate under the Covenant.<sup>15</sup> However, direct racial



discrimination can never be considered to be based on reasonable and objective criteria and to serve a legitimate purpose under the Covenant. This is reflected in article 4 (1) of the Covenant, which allows for measures derogating from the Covenant in time of public emergency, which threatens the life of the nation and the existence of which is officially proclaimed.<sup>16</sup> Article 4 (1) explicitly requires that such measures “do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin”.<sup>17</sup> The Human Rights Committee has indicated that this provision of article 4 (1) must be complied with, if any distinction between persons is made when resorting to measures that derogate from the Covenant.<sup>18</sup>

24. The principle of non-discrimination contained in articles 2 (1) and 26 of the Covenant also extends to the private sphere, since the Committee has made clear that the Covenant requires States parties not only to respect, but also to ensure to all persons within their territory and subject to their jurisdiction, the rights recognized in the Covenant without distinction of any kind, such as race, colour et cetera.<sup>19</sup> States parties are therefore required to adopt positive measures directed at diminishing or eliminating racial discrimination not only in law, but also in fact, including when such discrimination is practised by private persons or bodies.<sup>20</sup>

25. Moreover, article 20 (2) of the Covenant imposes a specific obligation on States parties to enact laws, which prohibit the advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. In several decisions relating to individual complaints submitted under the Optional Protocol to the Covenant, the Human Rights Committee has referred to article 20 (2) as an element justifying limitations to freedom of expression,<sup>21</sup> and has emphasized the obligation of States parties under article 20 (2) to prohibit and criminalize the advocacy of racial or religious hatred.<sup>22</sup>

26. Although the Covenant does not expressly require the adoption of affirmative action measures, the Committee has stated that the principle of equality may require States parties to take such measures in order to diminish or eliminate conditions, which cause or help to perpetuate discrimination prohibited by the Covenant.<sup>23</sup> Although affirmative action may involve the temporary grant of preferential treatment in specific matters to the part of the population concerned as compared to the rest of the population, such action constitutes a legitimate differentiation under the Covenant, as long as it is necessary to correct discrimination in fact and provided that it is based on reasonable and objective criteria.<sup>24</sup>

27. Article 27 of the Covenant specifically protects the rights of individuals belonging to ethnic, religious or linguistic minorities to enjoy their own culture, to profess and practice their own religion, or to use their own language, in community with the other members of their group. The Committee has underlined that persons belonging to indigenous peoples were also protected under this provision.<sup>25</sup> In its decision on an individual communication, in which members of an Indian tribe complained that the authorization of private oil and gas exploration activities threatened their way of life, the Committee found that “[h]istorical inequities [...] and certain more recent developments threaten the way of life and culture of the Lubicon Lake Band, and constitute a violation of article 27 so long as they continue.”<sup>26</sup> Moreover, in concluding observations on States parties reports submitted under article 40 of the Covenant, the Human Rights Committee has expressed its concern about “the existence of racial and other discrimination against black and indigenous persons” (CCPR/C/79/Add.66, para. 15).

28. The Committee has elaborated upon the content and meaning of article 27 of the Covenant, and has stated, in particular, that the enjoyment of the rights guaranteed may require positive measures of protection, such as affirmative action<sup>27</sup> or measures to protect these rights against infringement by third persons,<sup>28</sup> as well as measures to ensure the effective participation of members of minority communities in decisions affecting them.<sup>29</sup>

#### **D. Convention on the Rights of the Child**

29. As at 10 December 2003, 192 States were parties to the Convention on the Rights of the Child. The right to non-discrimination is to be found in article 2 of the Convention and has been identified as one of the four general principles of the Convention by the Committee on the Rights of the Child.<sup>30</sup> Article 2 of the Convention indicates that the child is to be protected against discrimination stemming from his or her own as well as from his or her parent's or legal guardian's race, and ethnic origin among others. In that regard, it is to be noted that the grounds for discrimination specifically listed in article 2 (1) of the Convention are largely the same as those contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights however, among others, "ethnic origin". In that regard, article 30 of the Convention on the Rights of the Child is another key provision as it relates to the specific rights of children belonging to ethnic, religious or linguistic minorities and of children of indigenous origin. According to article 2 (1) of the Convention, all children have the right to be protected from discrimination irrespective of citizenship or residence status.

30. The Committee has consistently paid attention to the implementation of the right to non-discrimination, as set out in article 2 of the Convention on the Rights of the Child, when reviewing and discussing States parties' reports, particularly as it relates to the most vulnerable groups of children (A/CONF.189/PC.3/3). In that regard, following the Durban Conference, it has systematically asked each State party whose report was considered to provide it with information related to the implementation of the Durban Declaration and Plan of Action relevant to the Convention on the Rights of the Child in its next periodic report. In addition, the principle of non-discrimination is duly taken into consideration in all general comments issued by the Committee as well as in its days of general discussion. In that regard, the last day of general discussion on the rights of indigenous children devoted a large part of the debates to that principle (CRC/C/133). Among the recommendations adopted by the Committee following this day of discussion, States parties are called on to take effective measures "to ensure that indigenous children enjoy all of their rights equally and without discrimination, including equal access to culturally appropriate services including health, education, social services, housing, potable water and sanitation". The Committee also requested States parties to provide specific and detailed information on the situation of indigenous children when updating the Committee on measures and programmes undertaken to follow-up on the Durban Declaration and Programme of Action.

31. The Committee's general comment No. 1 on the aims of education (article 29 of the Convention) represented the formal Committee's contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. This general comment highlights the links between article 29 (1) and the struggle against racism, racial discrimination, xenophobia and related intolerance. "Racism and related phenomena thrive where there is ignorance, unfounded fears of racial, ethnic, religious, cultural and linguistic or other forms of

difference, the exploitation of prejudices, or the teaching or dissemination of distorted values. A reliable and enduring antidote to all of these failings is the provision of education which promotes an understanding and appreciation of the values reflected in article 29 (1), including respect for differences, and challenges all aspects of discrimination and prejudice. Education should thus be accorded one of the highest priorities in all campaigns against the evils of racism and related phenomena.” (CRC/GC/2001/1).

### **E. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**

32. As at 10 December 2003, the Convention against Torture had been ratified by 134 States. Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment stipulates, in its definition of torture, that discrimination is one of the prohibited purposes of an act of torture. The Convention states: “the term ‘torture’ means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person ... for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity”.

33. In the course of its review of State party reports on compliance with the provisions of the Convention, its confidential inquiries under article 20 and its decisions on individual complaints under article 22 of the Convention, the Committee against Torture has repeatedly dealt with issues concerning the use of torture and other cruel, inhuman or degrading treatment or punishment against vulnerable groups, including national and ethnic minorities, asylum-seekers, refugees and non-citizens and addressed recommendations to the States parties in that regard. Thus, in a decision on an individual complaint submitted by 65 Roma, whose houses had been torched and destroyed by non-Roma co-citizens, the Committee found violations of articles 12, 13 and 16 of the Convention, since the State party had failed to take appropriate steps to protect the complainants and to prosecute the offenders.<sup>31</sup> The Committee considered that the failure by the police to provide adequate protection against these racially motivated acts amounted to “acquiescence” within the meaning of article 16 of the Convention.<sup>32</sup>

34. In its contribution to the preparatory process of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance the Committee recommended, inter alia, that all States: (1) Ratify the Convention; (2) Incorporate the crime of torture, as defined in article 1 of the Convention, as a specific offence in their domestic penal legislation; (3) Take all necessary steps to ensure that public officials, including law enforcement officers, do not apply discriminatory practices and do not manifest contempt, racial hatred or xenophobia which may lead them to commit acts amounting to torture or ill-treatment against the above-mentioned vulnerable groups; (4) Explicitly address the implications of the purpose contained in the definition of torture (“discrimination of any kind”) found in article 1 when taking educational measures about the prohibition of torture in accordance to article 10 of the Convention; (5) Ensure that the domestic institutions dealing with complaints address the element of discrimination when examining allegations of torture or ill-treatment, pursuant to articles 12 and 13 of the Convention; (6) With regard to non-citizens and asylum-seekers, States should give special consideration, pursuant to article 3 of the Convention, to the real risk of torture that may be faced on the basis of an individual’s membership in a group that is subject to discriminatory treatment in a State to which he or she may be returned (A/CONF.189/PC.2/17).

#### **F. Convention on the Elimination of All Forms of Discrimination against Women**

35. The Convention, which had been ratified by 174 States as at 10 December 2003, addresses racial discrimination in its preamble. Although the Convention does not expressly tackle the issue of gender-based dimensions of racial discrimination, the Committee on the Elimination of Discrimination against Women has undertaken important efforts to promote respect and protect the human rights and fundamental freedoms of all women irrespective of race, descent or national or ethnic origin. It has frequently expressed its concern regarding the situation of women during armed conflicts, particularly those conflicts which have their origin in race and ethnicity. It has noted that discrimination against women of diverse ethnic and racial origins is often manifested in extreme forms of gender-based violence. The Committee considers that the realization of equality on the basis of sex and the human rights of women as envisaged in the Convention on the Elimination of All Forms of Discrimination against Women will contribute significantly to eliminating racism, racial discrimination, xenophobia and related intolerance. In particular, general recommendations No. 19 on violence against women and No. 24 on health, provide a holistic range of legal, policy and programmatic interventions. Such interventions will create a supportive environment for protecting women victims of discrimination, provide effective remedies and compensation and eventually eliminate all forms of discrimination (CEDAW/C/2001/1/CRP.3/Add.9).

36. The Committee routinely refers to the outcome of the World Conference in its concluding comments on States parties' reports, requesting States parties to include information on the implementation of aspects of those documents relating to relevant articles of the Convention in subsequent reports.

#### **G. International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**

37. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families came into force on 1 July 2003, and as at 10 December 2003, had been ratified by 24 States. Article 7 of the Convention provides that States parties undertake, "in accordance with the international instruments concerning human rights, to respect and to ensure to all migrant workers and members of their families within their territory or subject to their jurisdiction the rights provided for in the present Convention without distinction of any kind such as to sex, race, colour, language, religion or conviction, political or other opinion, national, ethnic or social origin, nationality, age, economic position, property, marital status, birth or other status". The members of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families were elected on 11 December 2003 and the first meeting will take place from 1 to 5 March 2004.

### **III. PRELIMINARY CONCLUSIONS**

38. The preliminary assessment provided in section II of this report highlights the framework provided by the main international human rights instruments and provides an initial basis for the discussions of the Working Group regarding the preparation of complementary standards to strengthen and update international instruments against racism, racial discrimination, xenophobia

and related intolerance. Through their general comments and recommendations, their views on communications, and concluding observations adopted following the consideration of States parties' periodic reports, the existing supervisory bodies have elaborated upon the content and scope of application of these main instruments. These bodies have adapted the standards contained in these instruments in order to confront contemporary challenges, and have addressed issues not explicitly mentioned in the treaties, such as gender-related dimensions of racial discrimination and incitement to racism, racial discrimination, xenophobia and related intolerance through the Internet.

### Notes

<sup>1</sup> Communication No. 4/1991, *L.K. v. The Netherlands*, *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18)*, annex IV, para. 6.6.

<sup>2</sup> See also on this issue communication No. 27/2002, *Kamal Quereshi v. Denmark*, *ibid.*, *Fifty-eighth Session, Supplement No. 18 (A/58/18)*.

<sup>3</sup> See *ibid.*, *Fifty-sixth Session, Supplement No. 18 (A/56/18)*, para. 114 and *ibid.*, *Fifty-eighth Session, Supplement No. 18 (A/55/18)*, para. 407.

<sup>4</sup> See *ibid.*, *Fifty-fifth Session, Supplement No. 18 (A/55/18)*, para. 311.

<sup>5</sup> See communication No. 18/2000, *F.A. v. Norway*, *ibid.*, *Fifty-sixth Session, Supplement No. 18 (A/56/18)*, annex III.A.

<sup>6</sup> See communication No. 3/1991, *Michel L.N. Narrainen v. Norway*, *ibid.*, *Forty-ninth Session, Supplement No. 18 (A/49/18)*, paras. 578-583.

<sup>7</sup> See communication No. 13/1998, *Anna Koptova v. Slovakia*, *ibid.*, *Fifty-fifth Session, Supplement No. 18 (A/55/18)*, para. 470.

<sup>8</sup> See general recommendation XXVIII (2002) on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

<sup>9</sup> See, for example, CESCR general comment No. 15 on the right to water (para. 12 (c) (iii)): “*Non-discrimination*: Water and water facilities and services must be accessible to all, including the most vulnerable or marginalized sections of the population, in law and in fact, without discrimination on any of the prohibited grounds.”

<sup>10</sup> CESCR, general comment No. 14, para. 18: “By virtue of article 2.2 and article 3, the Covenant proscribes any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health.”

<sup>11</sup> CESCR, general comment No. 3, para. 1.

<sup>12</sup> See Human Rights Committee, general comment No. 18, para. 12. See also, for example, communication No. 172/1984, *Broeks v. The Netherlands*, *Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40)*, paras. 12.3-12.5.

<sup>13</sup> See Human Rights Committee, general comment No. 18, para. 12.

<sup>14</sup> See *ibid.*, general comment No. 18, para. 12.

<sup>15</sup> See *ibid.*, general comment No. 18, para. 13. See also, for example, communication No. 182/1984, *Zwaan-de Vries v. The Netherlands*, *Official Records of the General Assembly, Forty-second Session, Supplement No. 40 (A/42/40)*, para. 13.

<sup>16</sup> On the permissibility of derogations to Covenant rights see Human Rights Committee, general comment No. 29 on states of emergency (art. 4).

<sup>17</sup> The word “solely” in article 4 (1) can be interpreted as implying that only deliberate discrimination on the ground of race, colour, sex, language, religion or social origin is proscribed in times of public emergency.

<sup>18</sup> See Human Rights Committee, general comment No. 29, para. 8.

<sup>19</sup> See *ibid.*, general comment No. 3, para. 1.

<sup>20</sup> See *ibid.*, general comment No. 18, para. 9 and general comment No. 23, para. 6.1.

<sup>21</sup> See communication No. 736/1997, *Ross v. Canada*, Views adopted on 18 October 2000, *Official Records of the General Assembly, Fifty-sixth Session, Supplement No. 40 (A/56/40)*, vol. II, annex X.F, para. 11.5.

<sup>22</sup> See communication No. 104/1981, *J.R.T. and the W.G. Party v. Canada*, decision on admissibility adopted on 6 April 1983, *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 40 (A/38/40)*, para. 8 (b).

<sup>23</sup> Human Rights Committee, general comment No. 18, para. 10.

<sup>24</sup> *Ibid.*, general comment No. 18, para. 10; see also general comment No. 23, para. 6.2.

<sup>25</sup> See *ibid.*, general comment No. 23, para. 7.

<sup>26</sup> See Communication No. 167/1987, *Chief Ominayak and the Lubicon Lake Band v. Canada*, Views adopted on 26 March 1990, *Official Records of the General Assembly, Forty-fifth Session, Supplement No. 40 (A/45/40)*, vol. II, annex IX A, para. 33.

<sup>27</sup> See Human Rights Committee, general comment No. 23, para. 6.2.

<sup>28</sup> See *Ibid.*, para. 6.1.

<sup>29</sup> See *Ibid.*, para. 7.

<sup>30</sup> Along with articles 3, 6 and 12 of the Convention.

<sup>31</sup> Communication No. 161/2000, *Hajrizi Dzemajl et al. v. Yugoslavia*, *Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 44 (A/58/44)*.

<sup>32</sup> *Ibid.*, para. 9.2.

## **Annex**

### **MAIN INTERNATIONAL AND REGIONAL INSTRUMENTS TO COMBAT RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

#### **A. Main universal instruments**

##### **1. United Nations Human Rights Instruments**

- Universal Declaration of Human Rights (1948)
- Convention on the Prevention and Punishment of the Crime of Genocide (1948), entry into force on 12 January 1951, ratified by 135 States
- United Nations Declaration on the Elimination of All Forms of Racial Discrimination (1963)
- International Convention on the Elimination of All Forms of Racial Discrimination (1965), entry into force on 4 January 1969, ratified by 169 States
- International Covenant on Economic, Social and Cultural Rights (1966), entry into force on 3 January 1976, ratified by 148 States
- International Covenant on Civil and Political Rights (1966), entry into force on 23 March 1976, ratified by 151 States
- International Convention on the Suppression and Punishment of the Crime of Apartheid (1973), entry into force on 18 July 1976, ratified by 101 States
- Convention on the Elimination of All Forms of Discrimination against Women (1979), entry into force on 3 September 1981, ratified by 174 States
- Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief (1981)
- International Convention against Apartheid in Sports (1985), entry into force on 3 April 1988, ratified by 58 States
- Declaration on the Human Rights of Individuals who are not Nationals of the Country in which they live (1985)
- Convention on the Rights of the Child (1989), entry into force on 2 September 1990, ratified by 192 States



- International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), entry into force on 1 July 2003, ratified by 23 States
- Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities (1992)

## **ILO**

- Convention (No. 97) concerning Migration for Employment (Revised) (1949), entry into force on 22 January 1952, ratified by 42 States
- Convention (No. 111) concerning Discrimination in Respect of Employment and Occupation (1958), entry into force on 15 June 1960, ratified by 159 States
- Convention (No. 143) concerning Migrations in Abusive Conditions and the promotion of Equality of Opportunity and Treatment of Migrant Workers (Supplementary Provisions) (1975), entry into force on 9 December 1978, ratified by 18 States
- Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries (1989), entry into force on 5 September 1991, ratified by 17 States

## **UNESCO**

- Convention Against Discrimination in Education (1960), entry into force on 22 May 1962, ratified by 90 States
- Protocol Instituting a Conciliation and Good Office Commission to be responsible for seeking a settlement of any disputes which may arise between States parties to the Convention against Discrimination in Education (1962), entry into force on 24 October 1968, ratified by 33 States
- Declaration on Race and Racial Prejudice (1978)
- Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthen Peace and International Understanding, to the Promotion of Human Rights and Countering Racialism, Apartheid and Incitement to War (1978)
- Declaration of Principles on Tolerance (1995)
- Universal Declaration on the Human Genome and Human Rights (1997)

## **UNHCR**

- Convention relating to the Status of Refugees (1951), entry into force on 22 April 1954, ratified by 142 States, as amended by the Protocol of New York (1967), entry into force on 4 October 1967, ratified by 141 States

## **B. Regional instruments**

### **2. African Union**

- African Charter of Human and Peoples' Rights (1981), entry into force on 21 October 1986, ratified by 53 States
- African Charter on the Rights and Welfare of the Child (1990), entry into force on 29 November 1999, ratified by 21 States
- Dar es Salaam Declaration on Academic Freedom and Social Responsibility of Academics (1990)
- Kampala Declaration on Intellectual Freedom and Social Responsibility (1990)
- Declaration on a Code of Conduct for Inter-African Relations (1994)

### **3. Council of Europe**

- Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol No. 11 (1950), entry into force on 3 September 1953, ratified by 44 States
- European Social Charter (1961), entry into force on 26 February 1965, ratified by 26 States
- European Convention on the Legal Status of Migrant Workers (1977), entry into force on 1 May 1983, ratified by 8 States
- Convention on the Participation of Foreigners in Public Life at Local Level (1992), entry into force on 1 May 1997, ratified by 6 States
- European Charter for Regional or Minority Languages (1992), entry into force on 1 March 1998, ratified by 17 States
- Framework Convention for the Protection of National Minorities (1995), entry into force on 1 February 1998, ratified by 35 States
- European Social Charter – Revised (1996), entry into force on 1 July 1999, ratified by 15 States
- European Convention on Nationality (1997), entry into force on 1 March 2000, ratified by 10 States
- Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms (2000), not yet entered into force, ratified by 5 States

- Additional protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (2002), not yet entered into force, ratified by 0 States

**4. European Union**

- Charter of Fundamental Rights of the European Union (2000)
- Joint Action concerning action to combat racism and xenophobia (1996)
- Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, entry into force on 19 July 2000, to be transposed in the domestic legal order of all European Union member States

**5. Organization of American States**

- American Declaration on the Rights and Duties of Man (1948)
- American Convention on Human Rights – Pact of San José (1969), entry into force on 18 July 1978, ratified by 25 States
- Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights – Protocol of San Salvador (1988), entry into force on 16 November 1999, ratified by 13 States.

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