

**Resumed 3rd Session  
Ad Hoc Committee on the Elaboration of Complementary Standards**

**Preliminary Discussion Note on Xenophobia**

1. Background

The Durban Declaration of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance states, in relevant parts, that “xenophobia, in its different manifestations, is one of the main contemporary sources and forms of discrimination [...] which requires urgent attention and prompt action by States, as well as by the international community”.<sup>1</sup> It further stresses that “xenophobia against non-nationals, particularly migrants, refugees and asylum-seekers, constitutes one of the main sources of contemporary racism and that human rights violations against members of such groups occur widely in the context of discriminatory, xenophobic and racist practices”.<sup>2</sup> The Durban Declaration underlines the need for states to “put an end to impunity for violations of the human rights and fundamental freedoms of individuals and groups of individuals who are victimized by xenophobia”<sup>3</sup> The 2009 Outcome Document of the Durban Review Conference reiterates this message.<sup>4</sup>

2. What is “xenophobia”?

There appears to be no one, unequivocal definition of xenophobia though the word has been used in a number of documents, including legal instruments. The Oxford Dictionary defines xenophobia as a “morbid dislike of foreigners”. Scholars have conceptualized and characterized it in many ways, including a “fear of difference embodied in persons or groups”, an “intense dislike, hatred or fear of others”, “hostility towards strangers and all that is foreign”.<sup>5</sup> A variety of other terms to describe xenophobia have been developed including “nativism”, “ethnocentrism”, and “xeno-racism.”<sup>6</sup>

In a joint discussion paper prepared for the 2001 Durban Conference, the ILO, IOM and OHCHR, in consultation with UNHCR, state that “xenophobia describes attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity”.<sup>7</sup>

*There is a debate concerning the need to define xenophobia.*

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<sup>1</sup> Declaration, p. 10.

<sup>2</sup> Ibid., para. 16.

<sup>3</sup> Ibid., para. 26.

<sup>4</sup> See e.g. paras 9, 12, 60, 76, 98.

<sup>5</sup> See UNDP, Human Development Research Paper 2009/47, “Xenophobia, International Migration and Human Development”, p. 4-5.

<sup>6</sup> Ibid., p. 5-6.

<sup>7</sup> International Migration, Racism, Discrimination and Xenophobia, p. 2. See [http://www.ilo.org/public/libdoc/ilo/2001/101B09\\_218\\_engl.pdf](http://www.ilo.org/public/libdoc/ilo/2001/101B09_218_engl.pdf)

### 3. Measures to Combat (Certain) Xenophobic Behaviour

Certain pieces of legislation, at the international and regional levels, address xenophobia or criminalize behaviour similar to or associated with certain xenophobic behaviour e.g. the Convention on the Prevention and Punishment of the Crime of Genocide,<sup>8</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”),<sup>9</sup> and the Convention on the Suppression and Punishment of the Crime of Apartheid.<sup>10</sup> The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families protects non-national migrant workers.<sup>11</sup>

At the regional level, the EU and the Council of Europe have a number of legal instruments which refer to and address to varying degrees, the prevention and combating of xenophobia, e.g. Directive 2000/43/EC, Directive 2000/78/EC, the EU Framework Council Decision 2008/913/JHA, Protocol No. 12 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms and the Council of Europe Convention on Cybercrime and its Additional Protocol concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

Meanwhile, a number of regional and national bodies already monitor the occurrence of certain xenophobic behaviour. These include the European Commission against Racism and Intolerance (ECRI), the European Union Agency for Fundamental Rights (FRA) and the European Information Network on Racism and Xenophobia (RAXEN). The Coalition of Latin American and Caribbean Cities against Racism, Discrimination and Xenophobia, who in 2006, drew up a Ten-Point Plan of Action and a Declaration.<sup>12</sup>

Independent national human rights institutions can also play a vital role in combating xenophobia and related xenophobic violence. For example, in 2010, the South African Human Rights Commission issued a report and made recommendations following the “Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals.”<sup>13</sup>

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<sup>8</sup> Article 3(c) on the mode of liability of “direct and public incitement to commit genocide.”

<sup>9</sup> Article 4: “States Parties condemn all propaganda and all organizations which are based on ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form, and undertake to adopt immediate and positive measures designed to eradicate all incitement to, or acts of, such discrimination and, to this end, with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention, inter alia: (a) Shall declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, as well as all acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin, and also the provision of any assistance to racist activities, including the financing thereof; (b) Shall declare illegal and prohibit organizations, and also organized and all other propaganda activities, which promote and incite racial discrimination, and shall recognize participation in such organizations or activities as an offence punishable by law; (c) Shall not permit public authorities or public institutions, national or local, to promote or incite racial discrimination”.

<sup>10</sup> Article III: “International criminal responsibility shall apply, irrespective of the motive involved, to individuals, members of organizations and institutions and representatives of the State, whether residing in the territory of the State in which the acts are perpetrated or in some other State, whenever they: (a) Commit, participate in, directly incite or conspire in the commission of the acts mentioned in article II of the present Convention; (b) Directly abet, encourage or co-operate in the commission of the crime of apartheid.”

<sup>11</sup> Article 2.

<sup>12</sup> SHS/2008/PI/H/3. See <http://unesdoc.unesco.org/images/0016/001631/163117e.pdf>

<sup>13</sup> Report of the SAHRC Investigation into Issues of Rule of Law, Justice and Impunity arising out of the 2008 Public Violence against Non-Nationals, 2010.