



**Human Rights Council**  
**Ad Hoc Committee on the Elaboration of**  
**Complementary Standards**  
**Fifth session**  
**Geneva, 22 July – 2 August 2013**

## **Ad Hoc Committee on the Elaboration of Complementary Standards**

Chairperson-Rapporteur: Abdul Samad Minty (South Africa)

**Summary of the responses received to the questionnaire**  
**pursuant to paragraph 4 of A/HRC/RES/21/30**

## Introduction

1. Resolution A/HRC/RES/21/30 adopted at the twenty-first session of the Human Rights Council entitled “Elaboration of international complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination”, requests the Office of the High Commissioner for Human Rights (OHCHR) in paragraph 4 to “distribute a questionnaire from existing resources, to gather information on the three topics discussed by the Ad Hoc Committee during its fourth session and covered in its report<sup>1</sup> (xenophobia, national mechanisms and procedural gaps), including legal and judicial frameworks and practices, substantive and procedural measures in line with the mandate of the Ad Hoc Committee, and possible recommendations.”
2. Paragraph 5 of that resolution, “invites OHCHR to post the questionnaire on its website and, in consultation with the Chairperson-Rapporteur, to prepare a summary of responses to the questionnaire received during the inter-sessional period for discussion by the Ad Hoc Committee at its fifth session.”
3. By note verbale dated 3 December 2012, Permanent Missions in Geneva and New York were invited to forward their responses to an attached questionnaire by 15 January 2013. The present summary is prepared further to this request and on the basis of the responses received.
4. The Office received 30 replies to the questionnaire in total. The following States forwarded responses: Armenia, Bahrain, Bosnia and Herzegovina, Columbia, Cyprus, Czech Republic, Estonia, Grenada, Japan, Jordan, Kazakhstan, Lebanon, Lithuania, Madagascar, Malta, Mauritius, Montenegro, Norway, Pakistan, South Africa, Sweden, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Ukraine, Uruguay, United States of America. A reply to the questionnaire was also received from the European Union.
5. Bearing in mind the text of resolution A/HRC/RES/21/30, nine questions were posed concerning the topics of xenophobia, national mechanisms and procedural gaps, including legal and judicial frameworks and practices, as well as substantive and procedural measures in line with the mandate of the Ad Hoc Committee, as well as with regard to possible recommendations.<sup>2</sup>

---

<sup>1</sup> A/HRC/21/59

<sup>2</sup> The questionnaire is attached as an annex to this summary.

6. The summary as well as the responses received are made available on the website of the Office of the High Commissioner for Human Rights in advance of the fifth session, and will be used as a basis for discussions during that session.
7. Virtually all of the responses received outlined Constitutions and national legislation as the means by which racism, racial discrimination, xenophobia and related intolerance are addressed. These legal frameworks in many, though not all, cases were noted to provide for equality before the law and/or legal protection against discrimination based on a number of enumerated grounds and/or in a number of sectors.<sup>3</sup> Racial discrimination as well as other forms of discrimination are directly prohibited by these legal frameworks and elements/aspects of such discrimination are often criminalized under criminal law.
8. The responses also generally indicated that the ratification of regional and international legal instruments, with particular references to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) was seen as important for addressing issues of racism, racial discrimination, xenophobia and related intolerance at the national level.
9. In a few cases, responses indicated that their existing legal frameworks also addressed issues related to xenophobia domestically.

#### Question i

10. Some respondents reported that incidents of racist crime continue to occur in their national context.
11. A few of the respondents to the questionnaire noted an increase in the frequency and the intensity of xenophobia and xenophobic violence. Discrimination in sport was also noted as a phenomenon.
12. Respondents noted racist incidents, attacks and violence, as well as racist hate speech. Some indicated a series of racist incidents at the national level. Some also explained that there was

---

<sup>3</sup> For example, on the grounds *inter alia* of 'race', 'colour', 'national origin', 'sex', 'ethnic or social origin', 'community', 'language', 'religion or belief', 'nationality', 'sexual orientation', 'membership of a national minority' and in the spheres or sectors *inter alia* of 'social and economic life', 'employment', 'health', 'education', 'access to goods and services', 'sport', 'judiciary and administration', 'economy', 'culture', 'housing', 'public information' etc.

general public xenophobic sentiment and actions in the national context, while in other States it appeared to be attributed or limited to “extremists” and extremist groups and parties.

13. Migration and related issues such as the current economic climate, poverty, inequality, and issues with unemployment and the labour market were identified by some respondents as important contributing factors in the national context.

14. A regional organization noted that there are gaps in data collection in the Member States of that regional grouping and that they were taking steps to improve this situation.

15. Some responses noted increased attention and vigilance by Government and police/security forces domestically. In addition to security responses primarily directed at extremists sectors and extremist political actors, preventative tools of education and awareness-raising are being used. Some respondents noted that vigilance and a strong Government response were proving effective against extremist groups.

16. Some other respondents, however, indicated that they do not experience significant manifestations of xenophobia or that it was uncommon or relatively unknown in their national context often due to their diversity and multicultural/multiracial society.

#### Question ii

17. Where respondents answered the question, xenophobia was primarily addressed in the country through legal and judicial frameworks and practices. It was reported that xenophobia was rarely defined and that there were no specific legislation related to xenophobia *per se*, however respondents explained that these acts were addressed through regional directives and laws as well as domestic criminal and civil laws against racism and discrimination. Racial discrimination was prohibited in a number of sectors such as employment, labour and workforce, and public incitement to racist or xenophobic violence. Content inciting hatred on grounds of race, sex, religion or nationality was also prohibited in some regions or States. Some laws allowed for motivation as an aggravating factor in sentencing and in the application of certain laws. A few responses noted laws prohibiting racial discrimination and xenophobia as well as incitement to hatred by politicians and political parties.

18. Several responses pointed to constitutional guarantees and the enactment and application of criminal laws as the means for confronting xenophobia domestically.

19. The judiciary was indicated by several respondents as an important institution or framework for addressing issues of xenophobia, as it interpreted and applied existing law or issued important decisions. The judiciary also interpreted constitutional protections and guarantees, in some cases resulting in decisions which required the amendment or application of the Constitution in order to protect 'national minorities', 'ethnic or racial groups', or affected communities or to prohibit incitement to racial hatred in a notable national case.

20. It was observed that where criminal cases did not lead to a conviction, it was often due to the difficulty of proving motive in such cases.

21. There are also some parliamentary and presidential initiatives taking place in order to address issues of xenophobia at the national level. These include advisory councils, working groups, drafting committees, training and capacity-building programmes, and economic and development plans.

22. Respondents highlighted some other measures and initiatives to address xenophobia, such as: police and security responses; awareness-raising campaigns, social cohesion initiatives; data collection; exchange of information; funding opportunities and programmes available to national authorities; and the representation of affected groups in legislative, executive and judicial bodies. Ombudspersons were also sometimes empowered to investigate administrative actions taken by or on behalf of the Government.

23. It was also noted that extremist content on the internet and practices by extremist groups remain problems in some jurisdictions.

### Question iii

24. From the responses received, national mechanisms are understood as meaning or including a broad range of components such as a national strategy, national laws, national human institutions, advisory councils, the judiciary, police and/or security forces, ministries of the interior, inter-religious councils, human rights organs of the Ministry of Justice, etc. Essentially, any institution or practice at the national level which in some way or another addresses racism, racism,

racial discrimination, xenophobia and related intolerance in some form or another was indicated as (a) national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

25. In many countries, there is not a single national mechanism but rather a comprehensive approach taken to addressing issues of racism, racial discrimination, xenophobia and related intolerance.

26. Some responses highlighted the specificity of national mechanisms present at the national level with mandates to deal with specific groups, such as “minorities” “Roma” “Afro-descendants”, etc; while it appeared that other national practices consisted of a broad spectrum of national mechanisms covering a number of focus groups or subjects of racism, racial discrimination, xenophobia and related intolerance. Different groups (minorities, national minorities, “ethnic minorities”, indigenous, religious groups, “linguistic minorities” etc) are covered under these mechanisms.

27. Several responses also highlighted the role of national institutions,<sup>4</sup> particularly national human rights institutions. The mandates of these national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance varied from country to country. Only a few responses noted that the national institutions had the mandate to receive individual complaints.

28. In addition to human rights institutions, the judiciary and prosecutors’ offices or “human rights organs of the Ministry of Justice” were considered and noted by some respondents as part of the national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

29. Some respondents identified the importance of discourse and national dialogue and noted the presence of national councils, community fora, inter-religious dialogues, councils etc. as a means to develop social cohesion and tolerance. Some countries have or are in the process of developing

---

<sup>4</sup> Ombudsperson, Observatory, Ombudsman for Human Rights, National Commission for the Promotion of Equality, Equal Opportunities Commission, Human Rights Commission, Human Rights Defender’s Office, Anti-Discrimination Body.

national action plans on human rights generally, or with regard to racism, racial discrimination, xenophobia and related intolerance, in particular.

30. With respect to the mandates and powers of national mechanisms, it was indicated that national mechanisms *inter alia* consider legal texts with respect to groups; provide a discussion forum; organize conferences; and provide “support” and “protection”.

31. There was no information provided about the issues of representation, competency or effectiveness of these national mechanisms.

32. There was one proposal for improvement on the basis of national experience indicated. Noting the absence of definition and prohibition of racism and xenophobia in its national laws, one respondent proposed to address the situation through revision of the Constitution, and provision in national civil and criminal laws including training for authorities and remedies for victims.

#### Question iv

33. There were very few responses to this question. Of the responses received, a few stated that there were no issues with regard to procedural gaps in the International Convention on the Elimination of All Forms of Racial Discrimination. Some responses indicated that the gaps were with respect to the effective implementation of international human rights law, including the ICERD. It was noted that the full implementation of existing CERD procedures was sufficient to address racism, racial discrimination, xenophobia and related intolerance.

34. This gap in implementation could be addressed through practical actions, reporting, as well as civil society engagement. It was noted by a respondent that such implementation would assist in addressing the challenges of racial discrimination and xenophobia, without infringing on the freedom of expression and opinion.

35. A few responses noted that there are procedural gaps to the International Convention on the Elimination of All Forms of Racial Discrimination. As such, there is a need for its Committee to undertake country visits and there is a need to formalize the follow up procedure to CERD recommendations in its concluding observations as well as its opinions to communications issued under Article 14 of the Convention.

Question v

36. There were very few comments received on the impact of reservations on the implementation to the International Convention on the Elimination of All Forms of Racial Discrimination and whether there is a need for reservations.

37. Some reservations were deemed useful by those who responded as they assisted in clarifying certain provisions of the Convention. A respondent explained that its reservation to Article 4 on incitement to hatred clarified that it interpreted this article as requiring States to fulfil their positive obligations to enact further legislation to complement existing legislative frameworks and practice.

38. Another respondent noted that it will be important to ascertain whether a reservation made by a State is compatible or not with the object and purpose of a given Convention. It added that with respect to the ICERD, a number of States have entered into reservations on Article 4 with respect to “promotion or incitement to racial hatred.” It added that there are permissible limitations under international human rights law<sup>5</sup> on the exercise of freedom of opinion and expression with respect to other rights and that General Recommendation 15 of the Committee is relevant and imperative in terms of interpreting the provisions of Article 4.

Question vi

39. Very few respondents had comments concerning or indicated that they had made the declaration by a State Party recognizing the competency of the Committee to receive/consider individual complaints (Article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination). A State Party noted in its response that it was undertaking the process to do so.

Question vii

40. There were generally very few responses to the question concerning CERD recommendations regarding national mechanisms and xenophobia, including any legal and judicial frameworks and

---

<sup>5</sup> Article 20 of the International Covenant on Civil and Political Rights.



practices, substantive and procedural measures which have been implemented by the given Member State.

41. A respondent stated that further to CERD recommendations, it was addressing several areas including: disaggregated data and regularization of illegal migrants; the role of traditional leadership and the status of customary law; land reform, social assistance, access to health and social services; poverty reduction; gender-related acts of violence against women; the situation of indigenous people; the backlog of refugees and asylum seekers cases; access to justice; information on cases related to racial discrimination. It was in the process of implementing these recommendations through the amendment of national legislation, application in courts of law, introduction of the regularization of illegal migrants, and bilateral agreements with neighbouring countries to address migrant issues.

42. Another respondent stated that it was establishing an ombudsman office, further to CERD recommendations. Another State indicated that it was experiencing challenges in implementing a specific Committee recommendation about incitement and discrimination domestically.

#### Question viii

43. There were few responses provided with respect to assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level. The few responses received showed that assistance to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance is primarily provided through a general legal right to claim pecuniary and non-pecuniary damages in legal proceedings. In some countries, national human rights institutions or ombudspersons assist victims with lodging claims and actions. In others, these mechanisms do not have authority to represent victims or affected communities or provide legal aid or assistance.

44. There are very few specific domestic measures targeting victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance.

45. A respondent outlined “human rights organs” comprised of human rights departments and citizen human rights volunteers, who undertake human rights counselling as well as flexible remedy procedures involving investigations and assistance on a case-by-case basis.

46. Legal aid (that is, access to funds with respect to or provision of free legal representation) is available in very few cases. A few respondents are considering the drafting of laws on legal aid as well as general draft laws covering all victims of criminal offences. These new laws would provide compensation, rehabilitation, care, privacy protection and access to relevant information.

47. A new regional directive to be implemented by all Member States of a regional organization by 2015, establishes minimum standards on rights, support and protection of victims of crime, and provides them with access to justice, compensation and restoration. Particular attention is to be paid to the type or nature of the circumstances of the particular crime, such as racist or xenophobic motivation of the crime.

48. Another respondent identified national legislation which provides for a network of victims support centres across country for all victims, focused on maintaining or improving the ability of victims to cope. Discrimination against affected communities in a post-conflict situation was being addressed by yet another respondent through general laws prohibiting discrimination in the education, employment and social security sectors.

49. Few respondents to the questionnaire provided information about how victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms.

#### Question ix

50. The questionnaire invited respondents to indicate any possible recommendations or additional comments or information related to the topics therein. There were very few responses to this general category question.

51. A respondent 'strongly believes that the ICERD requires complementary standards to address contemporary manifestations of racial discrimination, ie. xenophobia, Islamophobia, anti-Semitism, propagation of racist and xenophobia acts through cyberspace(cybercrime), racial profiling, incitement to racial, ethnic and religious hatred.'

52. Another reply explained that since the ICERD does not expressly refer to xenophobia that attacks the dignity of foreigners and puts their lives at risk; it was judicious that the Convention do so explicitly.

53. A regional organization supports and undertakes a variety of external actions in the field of racism and xenophobia such as policy action plans, support to civil society organizations working in

this area, as well as joint initiatives and strategic partnerships with other regional bodies. The ICERD was underscored as the principal foundation for efforts to prevent, combat and eradicate racism.

---

**Annex**

**Ad Hoc Committee on the elaboration of complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination**

**Questionnaire (paragraph 4 of A/HRC/RES/21/30)**

1. Responses should preferably not exceed five pages (supporting documents can be attached).
  
2. Bearing in mind the text of resolution A/HRC/RES/21/30:
  - i. Kindly provide information on the phenomena of xenophobia in your national context, including any general trends.
  
  - ii. How is xenophobia addressed in your country (include any legal and judicial frameworks and practices, substantive and procedural measures)?
  
  - iii. Which national mechanism(s) with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance does your country have in place? Kindly indicate the(ir) mandate(s) and powers, including any proposals for improvement on the basis of national experience.
  
  - iv. Kindly provide information or any comments your country might have on the issue of procedural gaps to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), including any legal and judicial frameworks and practices, substantive and procedural measures.
  
  - v. Would your country have any comments on the issue of the impact of reservations on the implementation to the ICERD? Is there a need for reservations and why?
  
  - vi. Would your country have any comments concerning Article 14 of the ICERD (declaration by State Party recognizing the competency of the Committee to receive/consider individual complaints)?

- vii. Which CERD recommendations has your country implemented with regard to national mechanisms and xenophobia, including any legal and judicial frameworks and practices, substantive and procedural measures? What has been your national experience (including challenges) in this regard?
- viii. How is assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level? How do victims and/or affected communities participate fully and effectively in relevant processes and national mechanisms?
- ix. With regard to the topics of this questionnaire:
  - a) Kindly indicate any possible recommendations your country would wish to provide; and,
  - b) Are there any additional comments or information your country wishes to provide in relation to xenophobia, national mechanisms or procedural gaps?

—