



Human Rights Council
Ad Hoc Committee on the Elaboration of
Complementary Standards
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Ad Hoc Committee on the Elaboration of Complementary Standards

Chairperson-Rapporteur: Abdul Samad Minty (South Africa)

Updated 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 report¹ (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 Office received 30 replies to the questionnaire in total, to this note verbale. 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.
4. The summary as well as the responses received were made available on the website of the Office of the High Commissioner for Human Rights for the 5th session. They were considered during the 5th session of the Ad Hoc Committee, held from 22 July – 2 August 2013². At the session, it was agreed that the Chairperson-Rapporteur would seek additional responses to the

¹ A/HRC/21/59

² A/HRC/25/69

existing questionnaire during the inter-sessional period by recirculating it, and that an updated summary of the responses received would also be issued.

5. In this regard, the note verbale of 21 July 2014 invited Permanent Missions in Geneva and New York which had not forwarded responses to the questionnaire as well as additional detailed information from those Member States which had previously responded to the questionnaire, by 12 September 2014. The deadline for responses was subsequently extended to 19 September 2014. The Office received an additional 13 replies to the recirculated questionnaire from the following States: Bosnia and Herzegovina, Cyprus, Georgia, Guyana, Honduras, Italy, Kazakhstan, Mauritius, Poland, Portugal, Qatar, Russian Federation, and Switzerland. The present updated summary is prepared further to this request and on the basis of the responses received. The updated summary of responses is also available on the website of the Office of the High Commissioner for Human Rights.

6. 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.³

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.⁴ 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.

³ The questionnaire is attached as an annex to this summary.

⁴ 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.

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. A few of the respondents to the questionnaire noted an increase in the frequency and the intensity of xenophobia and xenophobic violence. In some cases, the number of cases of and hate crimes and xenophobic incidents had risen significantly over a period of time. It was noted in some replies that monitoring related to hate crimes, including on incidents based on xenophobia, was taking place.⁵ Discrimination in sport was also noted as a phenomenon.

11. 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 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.

12. A respondent pointed to a radicalization of society and the extremist violence caused by extremist groups, often featuring youth and having a nationalistic character. These groups caused inter-ethnic tensions and committed serious crimes domestically. Due to strong fundamental legal and institutional measures undertaken by different branches of the Government, the level of racist violence had decreased by half in the last two years.

13. Another respondent noted that political arguments advocated by domestic extremist groups had not led to significant electoral gains; rather there was a lack of willingness on the part of the

⁵ i.e. Monitoring of incidents on the basis of national origin, race, ethnicity, religion or lack of religious affiliation and other factors, involving physical attacks, verbal abuse including on the Internet, graffiti, damage to property, threats, desecration of cemeteries and religious sites, and attacks on places of worship.

electorate to support these ideas and there was no influence on the political process and governmental institutions.

14. 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.

15. 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. A respondent noted its system for data collection by the police on offences and incidents of a racial nature or with a racial motive, which included charged, filed as well as court decisions. Police were trained to record this data online following training courses and this recording system was updated on a continual basis, with periodic reviews; and an official review is conducted annually prior to the release of official police statistics.

16. 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.

17. 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. Some respondents noted that there was a high degree of tolerance towards “foreigners” and there were no serious cases of xenophobia reported.

Question ii

18. Responses indicated that 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. Also reported were national laws prohibiting insults and threats to, as well as violence against, adherents of religions, prohibiting vandalism with regard to religious symbols and buildings and the desecration of religious sites. Some laws also 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, in particular by politicians and political parties

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

20. 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.

21. Responses noted the availability of remedies to victims of acts of discrimination, as provided by the Constitution and applicable law. One respondent noted that its national law conferred on immigrant associations a special status in the criminal procedure, allowing them to intervene in victim representation and support when the facts of a case involved criminal liability for racist acts. It was also observed that where criminal cases did not lead to a conviction, it was often due to the difficulty of proving motive in such cases.

22. 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. Specific institutes, bodies and commissions mandated with implementing integration policies also addressed issues of racism and xenophobia at the domestic level.

23. 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. Education and training including (directed at police forces and public officials) with respect to xenophobic crime was noted in some responses as an important measure to increase professional knowledge and competency, especially with respect to the investigation of hate crimes.

24. It was also noted that extremist content on the internet and practices by extremist groups remain problems in some jurisdictions. A respondent noted that a strong criminal response, including the definition of “extremist” with respect to criminal activities, the penalization of incitement to hatred and animosity on several grounds including sex, race, national origin, and religion etc., and also through mass media and information technologies were aimed at preventing and intercepting extremist activities and transnational criminal groups. Similarly, the interior ministry prevented, identified, intercepted and investigated violent crimes on these grounds committed against foreigners.

Question iii

25. From the responses received, national mechanisms are understood as meaning or including a broad of 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, 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.

26. 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.

27. 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.

28. Several responses also highlighted the role of national institutions,⁶ 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. One respondent noted that its national mechanism had a quasi-judicial function to hold oral hearings during which invited parties could agree to settle the case by mutual agreement, followed by the national mechanism ending the proceedings with a recommendation regarding activities to be performed to address the violation. If not satisfied with the outcome, the victim still maintained recourse to initiate judicial proceedings in accordance with the law.

29. 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.

30. 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 national action plans on human rights generally, or with regard to racism, racial discrimination, xenophobia and related intolerance, in particular. A respondent noted that based on an analysis of

⁶ 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, Public Defender, Ethnic Relations Committee, National Human Rights Committee.

current trends, it is adapting its current four year strategy and action plan on tolerance and civic integration, for the next period.

31. 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”.

32. One respondent indicated that a national observatory for security of discriminatory acts, established four years ago in response to victims’ demands for security, which adopts a comprehensive approach including the direct intervention of police forces to prevent and suppress hate crimes. Another respondent noted that state ministries and bodies had undertaken regional targeted programmes aimed at increasing the level of tolerance and inter-ethnic and inter-confessional relations, in order to combat radicalization, especially among youth.

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

34. 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

35. There were 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.

36. 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.

37. 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.

38. A respondent noted that the CERD reporting cycle and national time restrictions and constraints meant that the Committee received the national report document containing information about actions being developed or at early stage of their implementation. Therefore, the consideration of a prolongation of one-year term for a State party to provide information on its follow-up to the recommendation(s) of the Committee was suggested. Similarly, another respondent highlighted limited national capacities and the heavy demands of CERD reporting, faced by small states, in particular.

Question v

39. 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.

40. 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.

41. 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 law⁷ on the exercise of freedom of opinion and expression with respect

⁷ Article 20 of the International Covenant on Civil and Political Rights.

to other rights and that General Recommendation 15 of the Committee is relevant and imperative in terms of interpreting the provisions of Article 4.

42. Another respondent stated that in its view the reservation to the Convention made by its State had not impacted negatively on its citizens, as there were domestic remedies available.

Question vi

43. A 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. A respondent stated that accession to the ICCPR Optional Protocol allowed its citizens to lodge formal complaints to the United Nations Human Rights Committee, including with regard to racial and ethnic discrimination.

Question vii

44. There were a few responses to the question concerning CERD recommendations regarding national mechanisms and xenophobia, including any legal and judicial frameworks and practices, substantive and procedural measures which have been implemented by the given Member State.

45. 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.

46. A reply from another State stated that a national plan of action against racism and xenophobia was being drafted by an ad hoc working group, including input from more than eighty associations. A multi-sectoral comprehensive strategy was being elaborated; comprised of the international and legal framework, a statistical overview concerning potential victims of discrimination, as well as specific indicators.

47. A respondent stated that it had implemented CERD recommendations to establish a legal framework for State compensation of victims of crimes, including victims of racism crimes; to take effective measures to combat racial discrimination in the judicial system; and to train law enforcements officials in human rights.

48. Similarly, another respondent stated that it was implementing recommendations with regard to national mechanisms and xenophobia whereby committing an offense with racist or xenophobic motivations constitutes a punishable offence prohibited by law; and it had established five national commissions or other appropriate bodies, including on Ethnic Relations, Women and Gender Equality, Rights of the Child, Indigenous Peoples, and Human Rights. It had also improved the training of law enforcement officials and pursuant to another recommendation it had undertaken legislative and constitutional measures designed to eradicate all incitement to, or acts of racial discrimination.

49. 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

50. A few responses addressed the question of assistance provided to victims and/or affected communities of racism, racial discrimination, xenophobia and related intolerance at the domestic level. The 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.

51. 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.

52. 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.

53. 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. A respondent stated that it provides financial assistance to non-governmental organizations operating support centres which offer support to victims of crimes, including crimes motivated by racial hatred.

54. 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.

55. A respondent noted that it undertakes actions to encourage victims of racism, racial discrimination, xenophobia and related intolerance to report hate crimes. Through an information campaign project carried out by the interior ministry targeted at immigrants effectively asserting their rights. In response to opinions and needs of foreigners as well as recommendations submitted to it by international organizations, the campaign encourages foreigners to report hate crimes to law

enforcement and calls the attention of the society to the issue of hate crimes. It reported that the number of reported cases has grown significantly.

56. A respondent indicated a victim support unit which provides free of charge support to victims of racial discrimination and to immigrant victims, in general. It remarked that the number of victims of racial discrimination assisted had increased each year since its creation.

57. 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

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

59. 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.'

60. 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.

61. 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.

62. A respondent stated that the 2007 study undertaken by the Committee on the Elimination of Racial Discrimination on measures to strengthen the implementation of the concluding observations by adopting new recommendations or updating its monitoring procedures (A/HRC/4/WG.3/7) is relevant and useful to work of the Ad hoc Committee on the Elaboration of Complementary Standards.

63. A reply highlighted the role of the media and particularly social media in heightening ethnic relations domestically, which it considered a challenge to social cohesion.

64. Another respondent pointed to successful national public awareness raising campaigns against racism and xenophobia, promoted by the national football league and featuring sports personalities. These campaigns which were very successful and had a strong media impact, were recommended to other countries as good practices.

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?

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