

Letter from Amb. Idriss Jazairy
President of the ad hoc Committee on complementary
standards



Subject: Non Paper on complementary international
standards to strengthen and update international
instruments against racism, racial discrimination,
xenophobia and related intolerance in all their aspects



Téléfax: (41-22) 928 9050
Télégrammes: UNATIONS, GENEVE
Téléx: 41 29 62
Téléphone: (41-22) 928 9873
Internet www.ohchr.ch
E-mail: emburu@hchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

RE: 531/CM/mns

5 décembre 2008

Excellences,

J'ai l'honneur de soumettre à la considération des Etats membres des Nations Unies, dans le cadre l'accomplissement du mandat du Comité ad hoc sur les normes complémentaires, le « non papier » ci-joint, sur des normes internationales complémentaires destinées à renforcer et actualiser la législation internationale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, sous toutes leurs formes.

L'objectif de ce « non papier » est de stimuler un débat constructif sur le contenu et le cadre des domaines importants de vulnérabilité qui pour des motifs de fond et /ou de procédure, présentent des lacunes de protection. Certains de ces domaines relèvent des manifestations contemporaines de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée. L'objectif de ce « non papier » est aussi de solliciter des réactions et des propositions concrètes sur la base de son contenu.

I. Le « non papier » annexé se fonde sur les termes de référence suivants :

- Le paragraphe 199 de la Déclaration et du Programme d'Action de Durban qui recommande à la Commission des droits de l'homme, aujourd'hui remplacée par le Conseil des droits de l'homme, d'élaborer des normes internationales complémentaires destinées à renforcer et à actualiser la législation internationale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, sous toutes leurs formes;
- La décision 3/103 du Conseil des droits de l'homme qui décide comme suite à la décision et la directive émanant de la Conférence mondiale de 2001 contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, d'établir un comité spécial du Conseil des droits de l'homme ayant pour mandat d'élaborer, à titre prioritaire et pour répondre à une nécessité, des normes complémentaires qui, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, combleront les lacunes actuelles de la Convention et proposeront également de nouveaux textes normatifs visant à combattre toutes les formes du racisme contemporain, notamment l'incitation à la haine raciale et religieuse ;

Missions permanentes
auprès de l'Office des Nations Unies
et des institutions spécialisées
ayant leur siège en Suisse

- La résolution 6/21 du Conseil des droits de l'homme sur l'élaboration de normes internationales complémentaires à la Convention internationale sur l'élimination de toutes les formes de discrimination raciale;

II. Nous devons garder présents à l'esprit tous les points de vue exprimés et les contributions faites dans le cadre des mécanismes de suivi de la Déclaration et du Programme d'action de Durban, notamment :

- L'étude des cinq experts sur les normes complémentaires sur la nature et l'étendue des lacunes que présentent, sur les questions de fond, les instruments internationaux existants de lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée » (A/HRC/4/WG.3/6);
- L'étude du Comité contre la discrimination raciale sur les mesures susceptibles de renforcer l'application de ses observations finales en adoptant de nouvelles recommandations ou en actualisant ses procédures de surveillance (A/HRC/4/WG.3/7);
- Les réponses présentées par le Comité contre la discrimination raciale au questionnaire du Haut Commissariat aux droits de l'homme en application de la décision PC.1/10 du Comité préparatoire de la Conférence d'examen de Durban (A/CONF.211/PC.2/CRP.5) ainsi que les autres points de vue pertinents exprimés par les membres du Comité, au nom de celui-ci ;
- Le rapport de la cinquième session du Groupe de travail intergouvernemental sur l'application effective de la Déclaration et du Programme d'action de Durban (A/HRC/6/10) et de l'ensemble des recommandations et des conclusions pertinentes adoptés par ce Groupe depuis sa création, notamment celles figurant dans le document A/HRC/AC.1/1/CRP.2 ;
- Les débats qui ont eu lieu au cours de la première partie de la première session du Comité ad hoc sur les normes complémentaires, tenue du 18 au 21 février 2008.

III. Une analyse comparative des deux sections précédentes révèle ce qui suit :

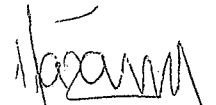
- Il y a un accord et un engagement collectif global, pris lors de la Conférence mondiale contre le racisme de 2001, sur le principe d'élaborer des normes internationales complémentaires destinées à renforcer et actualiser la législation internationale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, sous toutes leurs formes (paragraphe 199 du Programme d'action de Durban);
- Il n'y a cependant, pas eu de consensus quant à la forme spécifique pour /la manière de /concrétiser cet engagement de principe ;
- Nous avons également à l'esprit les débats qui se sont poursuivis dans le cadre de la réunion d'experts des 2 et 3 octobre 2008 sur les liens entre les articles 19 et 20 du Pacte international sur les droits civils et politiques au cours duquel il y a eu une réitération du fait que la fondamentale et impérative liberté d'expression est compatible avec la prohibition de tout appel à la haine nationale, raciale ou religieuse qui constituerait une incitation à la discrimination, à l'hostilité ou à la violence.

- Il s'avère donc impératif, à travers le Comité ad hoc sur les normes complémentaires, d'œuvrer pour atteindre un accord le plus large possible sur les voies concrètes à emprunter pour mettre à exécution l'engagement de principe pris lors de la Conférence mondiale contre le racisme de 2001;
- L'approche suggérée pour arriver à cette fin est de stimuler, dans un esprit positif et inclusif, des propositions concrètes relatives aux domaines et thèmes détaillés dans le « non papier » pour lesquels des dispositions normatives complémentaires ou d'autres mesures destinées à combler les lacunes de protection sont nécessaires.

Dans le but de parvenir à une convergence de vues substantiellement positive, le travail du Comité ad hoc, afin de s'acquitter de son mandat, pourrait bénéficier d'une interaction avec les processus de réflexion actuellement en cours dans les cadres suivants :

- L'état d'avancement du processus d'examen de la Déclaration et du Programme d'Action de Durban ;
- Les réflexions et les contributions des organes des traités.

Mon intention est de faire en sorte que la reprise de la première session du Comité ad hoc qui se tiendra du 15 au 19 décembre 2008 permette de procéder à un tour d'horizon complet pour recueillir les réactions, les commentaires et les propositions concrètes des Etats membres concernant le « non papier » dont ils sont saisis, en tant qu'étape importante pour progresser dans la recherche du consensus et la poursuite de la mission confiée au Comité ad hoc.



Idniss Jazaïry
Président du Comité ad hoc
sur les normes complémentaires



Téléfax: (41-22) 928 9050
Télégrammes: UNATIONS, GENEVE
Télex: 41 29 62
Téléphone: (41-22) 928 9873
Internet www.ohchr.ch
E-mail: cnbun@hchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

RE: 532/CM/mas

5 December 2008

Excellencies,

I have the honour to submit to the attention of the States Members of the United Nations, pursuant to the mandate of the Committee on complementary standards, the attached "Non paper" on complementary international standards with a view to strengthening and updating the international legal instruments against all forms of racism, racial discrimination, xenophobia and related intolerance.

The purpose of this "Non paper" is to stimulate a constructive debate on the content and the framework of major areas of vulnerability which for reasons of substance and/or of procedure suffer from protection gaps. Some of these areas are related to the contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance. The purpose of this "Non-paper" is also to invite concrete responses and recommendations based on its content.

I - The attached "Non-paper" is predicated on the following terms of reference:

- Paragraph 199 of the Durban Declaration and Programme of Action that recommended to the Commission on Human Rights, now replaced by the Human Rights Council, to elaborate complementary international standards aimed at strengthening and updating international instruments against all forms of racism, racial discrimination, xenophobia and related intolerance.
- Decision 3/103 of the Human Rights Council that decides, in pursuance of decision and instruction of the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to establish an Ad Hoc Committee of the Human Rights Council with the mandate to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol (s) to the International Convention on the Elimination of All Forms of Racism, racial Discrimination, Xenophobia and related Intolerance that will fill the existing gaps in the Convention and also provide new normative texts aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred.

To all Permanent Missions
Of the Office of the United Nations and other
International Organizations in Geneva

- Resolution 6/21 of the Human Rights Council on the elaboration of new international complementary standards to the International Convention on the Elimination of All Forms of Racial Discrimination.

II - We should keep in mind all views expressed and contributions made within the framework of the follow-up mechanisms of the Durban Declaration and Programme of Action, including:

- The survey of the five experts on the nature and the scope of substantive gaps, with regard to issues of content in the existing international instruments to combat racism, racial discrimination, xenophobia and related intolerance (A/HRC/4/WG.3/6);
- The document of the Committee on the Elimination of racial discrimination on possible measures to strengthen the implementation of the final observations by adopting new recommendations or by updating its monitoring procedures (A/HRC/4/WG.3/7);
- The responses provided by the Committee on the Elimination of racial discrimination to the questionnaire by the UN High Commissioner for Human Rights pursuant to decision PC.1/10 of the Preparatory Committee of the Durban Review Conference (A/CONF.211/PC.2/CRP.5) including the relevant points of view made by the Members of the Committee on behalf of the latter;
- The Report of the 5th session of the Intergovernmental Working Group on the Effective Implementation of the Durban Conference and Programme of Action (A/HCR/6/10) and all relevant recommendations and conclusions adopted by this Group since its creation, particularly those contained in document (A/H.CR/AC.1/1/CRP.2);
- The discussions that took place during the first session of the Ad hoc Committee on complementary standards, held from 18 to 21 February 2008.

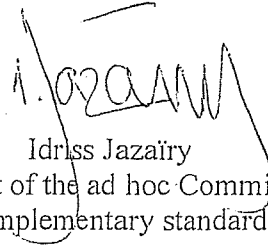
III – A comparative analysis of the two previous sections reveals the following:

- There is global collective agreement and commitment expressed during the 2001 World Conference against racism on the principle of elaborating international complementary standards to strengthen and update the international instruments against all forms of racism, racial discrimination, xenophobia and related intolerance (para 199 of the Durban Programme of Action);
- However, no consensus was reached on how the specific form of/manner of giving concrete expression to this commitment in principle;
- We must also bear in mind the ensuing debate on the links between articles 19 and 20 of the International Covenant on civil and political rights at the expert meeting of 2 and 3 October 2008, whereafter it was reiterated that the fundamental right of freedom of expression is compatible with the prohibition of any call for national, racial or religious hatred which constitutes incitement to discrimination, hostility and violence;
- It is thus imperative to reach the largest possible agreement, through the Ad hoc Committee on complementary standards, on concrete ways and means to implement the commitment in principle made during the 2001 World Conference against Racism.
- The approach suggested to achieve this goal is to stimulate, in a positive and inclusive spirit, concrete proposals on the fields and themes laid out in the “Non paper” for which complementary standardised provisions or other measures designed to fill protection gaps, are necessary.

In order to reach a substantially positive convergence of views, the Ad hoc Committee, within its mandate, may benefit from interaction with the ongoing processes of reflection in the following frameworks:

- The state of progress achieved in the review process of the Durban Declaration and Programme of Action;
- The reflections and contributions of Treaty bodies;

My intention is to work towards a resumed first session of the Ad hoc Committee to be held from 15 to 19 December which will allow a comprehensive overview of the Member States' reactions, comments and proposals on the "Non paper" submitted to them, this exercise being an important step in the search for consensus and to discharge the mandate entrusted to the Ad hoc Committee.



Idriss Jazaïry
President of the ad hoc Committee
on complementary standards

Non paper on complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects

I- Purpose, scope and parameters:

- Implementing paragraph 199 of the Programme of Action of the World Conference against racism, racial discrimination, xenophobia and related intolerance, in which the Conference "Recommends that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects", as well as the relevant Human Rights Council resolutions, in particular decision 3/103 .
- The need to enhance efforts to counter contemporary and emerging forms of manifestations of racism, racial discrimination, xenophobia and related intolerance.
- The need to strengthen the monitoring procedures of the Committee on the Elimination of Racial Discrimination with a view to enable it to undertake the responsibilities entrusted to it in a more effective manner.
- The need to address double or multiple discrimination as a continuing source of concern, as it affects certain individuals and groups, in particular gender-related racial discrimination and double discrimination on the grounds of race and religion.
- The imperative to ensure that measures to combat terrorism respect the fundamental principles and the universally recognized standards of international law, international human rights law and international humanitarian Law.
- The urgency of addressing racial profiling and eliminating it as a pervasive form of discrimination.
- The need for uniform and consistent application of the law at the national and international levels to ensure the effectiveness of international efforts to counter racism and racial discrimination.
- The need to recognize that the prohibition of the dissemination of all ideas based upon racial superiority or hatred and the prohibition of incitement to national, racial or religious hatred are compatible with the freedom of opinion and expression.

- The principle of regarding provocative portrayals of objects of religious veneration as a malicious violation of the spirit of tolerance which must also be a feature of democratic society.
- The need to re-emphasize that the prohibition of publication of material with the aim of protecting the rights of others and against seriously or gratuitously offensive attacks on matters regarded as sacred by the followers of any religion is a legitimate State objective.
- The need for national and international law to provide adequate legal responses to propaganda of a racist and xenophobic nature committed through computer systems.
- The need to follow the growing trend in many States to include, in their criminal legislation, offences in which religious motives are an aggravating factor.

II - Specific Themes:

1- Procedural innovations designed to enhance the effectiveness of CERD:

- a- An enquiry procedure covering, inter alia, grave or systematic violations, and providing an opportunity to address structural causes of violations of ICERD.
- b- Follow-up visits by the CERD Coordinator on follow-up.
- c- The obligation for States to establish, designate or maintain national mechanisms working towards the prevention of racial discrimination and the promotion of equality.

2- Double and multiple discrimination:

Double and multiple discrimination, namely gender-related racial discrimination and double discrimination on the grounds of race and religion, taking into account the intersectionality of racial and religious discrimination, must be given due attention in the implementation of the ICERD and any complementary international standards thereto.

3- Terrorism, racial discrimination and racial profiling:

- a- A definition of racial profiling, prioritizing human rights protection, could be elaborated and agreed upon.

- b- States must ensure that measures to combat terrorism do not discriminate, in purpose or effect, on grounds of race, colour, descent, or national or ethnic origin, as well as on religious grounds, bearing in mind in this context the intersectionality between racial and religious discrimination.
- c- Profiling based on stereotypes founded on grounds of discrimination prohibited by international law, including on racial, ethnic and/or religious grounds must be prohibited by law.

4- Xenophobia:

Xenophobia is a contemporary source and form of discrimination included in DDPA but not in ICERD. This protection gap should be addressed to allow xenophobia to be covered under the scope of ICERD.

5- Incitement to racial, national and religious hatred:

- a- There is a need for further clarifying and reinforcing at the international level existing obligations on the eradication of all incitement to hatred and discrimination in any form and to prohibit by law, propaganda for war and advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.
- b- In this context, complementary standards to be developed should observe the following parameters:
 - Article 4 of ICERD shall be extended to the crime of incitement to racial hatred covering offences motivated by religious hatred against immigrant communities.
 - The protection provided shall extend to all individuals and groups within the jurisdiction of the State Party.
 - The prohibitions shall equally cover acts committed by any individual, group or organization, including political and media organizations as well as by national or local public authorities.
 - The provisions shall apply to any act which, in purpose or effect, incites discrimination, hostility or violence.

- In order to achieve consistent and uniform application and maximise protection for actual or potential victims, any doubt as to the existence of a causal link between an act of incitement and the likelihood of a violation, or the threshold required for reaching such a determination, shall be interpreted in a consistent and coherent manner at the national and international levels so as to ensure appropriate protection of the concerned individuals or groups.

- Addressing acts constituting incitement shall apply whether such acts have aims which are internal or external to the State concerned.

- Requisite standards would explicitly not prohibit advocacy of the sovereign right to self-defence or the right of peoples to self-determination and independence in accordance with the Charter of the United Nations.

- Requisite complementary standards shall include the prohibition of publication of material that direct seriously offensive attacks on matters regarded by followers of any religion or belief as sacred or inherent to their dignity as human beings, with the aim of protecting them against such attacks.

c- In line with the above parameters, States' general obligations would include:

- Undertaking to promulgate, where they do not exist, a specific legislation prohibiting any propaganda for war and any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence.

- Asserting, in the relevant specific legislation, that such propaganda and advocacy are contrary to public policy.

- Providing for appropriate sanction, including of a criminal nature, in case of violation.

6- Racism in modern Information and communication technologies:

States would adopt legislative and other measures as may be necessary to criminalize the dissemination of racist and xenophobic material through computer systems, racist and xenophobic motivated threat, racist and xenophobic motivated insults and aiding and abetting any of these acts.

7- Impunity for acts of racism, racial discrimination, xenophobia and related intolerance:

- a- States shall undertake to punish all violations of the provisions of ICERD and of any complementary standard thereto, and to address and combat impunity for such violations.
- b- States are to include, in their criminal legislation, offences in which religious motives are an aggravating factor.

8- Right to a remedy and reparation for victims of racism, racial discrimination, xenophobia and related intolerance:

States shall guarantee the right of every victim of racism, racial discrimination, xenophobia and related intolerance to remedy and to just and adequate reparation for any material or moral damage suffered as a result of such discrimination.
