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Working Group to Prepare a Draft Inter-American
Convention against Racism and All Forms of
Discrimination and Intolerance

TABLE INCORPORATING THE PROPOSALS OF MEMBER STATES ON THE
“DRAFT OF A LEGALLY BINDING ‘INSTRUMENT’ AGAINST
ALL FORMS OF DISCRIMINATION AND INTOLERANCE”

EXPLANATORY NOTE

This document incorporates all the alternative wordings put forward by member states for Chapter I of the “Draft of a Legally Binding ‘Instrument’ against All Forms of Discrimination and Intolerance (*Presented by the Chair*)” distributed as document CAJP/GT/RDI-180/11.

Furthermore, it was agreed, pursuant to the methodology adopted by the Working Group in its Work Plan, that with a view to simplifying the negotiation process, all alternative proposals and/or comments by delegations to any of the instruments under negotiation thereafter be included in two separate documents with proposals and comments corresponding to each of the instruments under negotiation. Text will only be included in the draft under negotiation if a consensus is reached on a specific language. In accordance with this proposal, the Working Group agreed that the elaboration of the drafts be based on the document “Informational Document for Discussion and Negotiation. Draft Inter-American Convention Against Racism and all Forms of Discrimination And Intolerance” (CAJP/GT/RDI-148/10), presented last year to the Working Group by the Chair, which both reflects the main contents of the consolidated document (CAJP/GT/RDI-57/07 rev. 13), but at the same time simplifies it by not including alternative proposals and/or comments made previously under the different articles.

TABLE INCORPORATING THE PROPOSALS OF MEMBER STATES ON THE “DRAFT OF A LEGALLY BINDING ‘INSTRUMENT’ AGAINST ALL FORMS OF DISCRIMINATION AND INTOLERANCE”

CHAPTER I: Definitions

No. of article	Original articles CAJP/GT/RDI-180/11	Alternative proposals by the Member States
1.5	Intolerance is the set of acts or manifestations that convey disrespect, rejection, or contempt for human dignity and the richness and diversity of the world’s cultures, religions, ideologies, traditions, and human forms of expression, quality, and ways of being.	<p><u>Alternative proposal of the delegation of Mexico:</u></p> <p>Intolerance is disrespect, rejection, or contempt for the dignity, characteristics, beliefs, or opinion of human beings because they are different or contrary [Ven: to one’s own]. It may manifest itself in the marginalization or exclusion of vulnerable groups from [Ven: social and political] participation [Ven: in any sphere of public or private life], or in violence against them.</p> <p><u>Alternative proposal of the delegation of Costa Rica:</u></p> <p>Intolerance is the set of acts or manifestations that, in any public or private sphere, convey disrespect, rejection, or contempt for human dignity [Bra: and the richness and diversity of the world], in accordance with the scope of this Convention. <i>(CR requested the opinion of the IACHR on this paragraph)</i></p>

CHAPTER II: Protected Rights

No. of article	Original articles CAJP/GT/RDI-180/11	Alternative proposals by the Member States
3	Every human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual and collective levels, of all human rights and fundamental freedoms enshrined in their domestic law and in the international instruments applicable to the States Parties.	<p>Every human being has the right to the equal recognition, enjoyment, exercise, and protection, at both the individual and collective levels, of all human rights and fundamental freedoms [Ven: enshrined in their domestic law and established by the international law] [Mex: <i>end the sentence here</i>] enshrined [Mex: in the domestic law and] (<i>Peru and Argentina do not support this deletion</i>) in the international instruments applicable to the States Parties. [<i>Costa Rica supports the original Article</i>]</p> <p><i>Costa Rica suggests deleting Article 3 from both instruments; ; if it is kept, it prefers the original language</i></p> <p><i>Mexico suggests merging Articles 2 and 3</i></p> <p><i>The delegations of Costa Rica, Mexico, Brazil, Argentina, and Venezuela will propose a merged version of</i></p>

		<p>Articles 2 and 3.</p> <p>Uruguay and Venezuela prefer to keep this paragraph but can work on merging 2 and 3.</p>
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CHAPTER III: Acts and Manifestations of Discrimination and Intolerance [Mex: Duties of the State]

No. of article	Original articles CAJP/GT/RDI-180/11	Alternative proposals by the Member States
4	[For purposes of this “instrument” and based on the definitions in the preceding articles and the criteria set forth in Article 1.1, the following are among the measures or practices that must be classified as discriminatory and prohibited by the State:]	
	<ul style="list-style-type: none"> i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof; ii. 	
	ii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of any [discriminatory] materials, understood as being any image or depiction of ideas or theories that advocate, promote, or incite hatred or violence against individuals or groups by reason of any of the criteria set forth in [Article 1.1];	<p><i>* The delegations of Costa Rica, Paraguay, and Panama requested that the IACHR be consulted on this paragraph</i></p> <p>ii) Proposal by the delegation of Ecuador: Publication, circulation, or dissemination [by any means and/or medium by any means of communication], including the Internet, of any [discriminatory] materials, understood as being any image or depiction of ideas or theories that advocate, promote, or incite hatred or violence against individuals or groups by reason of any of the criteria set forth in [Article 1.1];</p>
	iii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of materials that condone or justify acts that constitute, or have constituted, genocide or	<p><i>* The delegations of Costa Rica, Paraguay, and Panama requested that the IACHR be consulted on this paragraph</i></p>

	crimes against humanity, as defined in international law;	Proposal by the delegation of Ecuador: iii) Publication, circulation, or dissemination [by any means and/or medium of communication by any means of communication], including the Internet, of materials that condone or justify acts that constitute, or have constituted, genocide or crimes against humanity, as defined in international law;
	iv. Violence motivated by any of the criteria set forth in Article 1.1;	
	v. [Criminal activity instigated by hate, in which the victim or the victim's property is chosen intentionally on the basis of any of the criteria set forth in [Article 1.1];]	
	vi. [Any law enforcement action based on any of the criteria set forth in [Article 1.1] rather than on the person's behavior or on objective information identifying the individual as having engaged in criminal activity;]	
	vii. Restricting, in an undue or unreasonable manner, the exercise of the individual rights of ownership, administration, and disposition of property of any kind based on any of the criteria set forth in [Article 1.1];]	
	viii. [Any distinction, exclusion, restriction, or preference applied to persons, because of their multiple or aggravated victim status, the purpose or result of which is to deny or impair the equal recognition, enjoyment, exercise, or protection of rights and fundamental freedoms;]	
	ix. [Any discriminatory restriction on the enjoyment of the human rights enshrined in applicable international and regional instruments and in the jurisprudence of international and regional human rights courts, particularly those applicable to minorities or groups that are in	

	vulnerable situations and subject to discrimination;]	
	x. [Any restriction or limitation of the use of the language, traditions, customs, and culture of persons or groups who are members of minorities or vulnerable groups, in public or private activities;]	[the restriction or limitation of the use of the language, traditions, customs, and culture of persons [Par: and in particular of or] groups [Mex: who are members of minorities or vulnerable groups], in public or private activities;] Proposal by the delegation of Ecuador: [Any restriction or limitation of the use of the language, traditions, customs, and culture of persons or groups who are members of minorities or vulnerable groups in conditions of vulnerability]in public or private activities;]
	xi. [Preparing and introducing teaching materials, methods, or tools that portray stereotypes or preconceptions based on any of the criteria set forth in [Article 1.1] of this “instrument”;	
	xii. Denying access to public or private education, to fellowships, or to educational loan programs, based on any of the criteria set forth in [Article 1.1] of this “instrument”;	
	xiii. Denying access to all social, economic, and cultural rights, including the right to work, to housing, to social security, and to health [Article 1.1] of this “instrument”;	xii. Denying access to [Per: any of the all] social, economic, and cultural rights, [Mex: including the right to work, to housing, to social security, and to health] based on any of the criteria set forth in [Article 1.1] of this “instrument”;
	xiv. [Conducting research or applying the findings of research into the human genome, particularly in the fields of biology, genetics and medicine, aimed at human selection, cloning, and any other method disrespectful of human rights, fundamental freedoms, and the dignity of individuals and groups of persons;]	

	xv. Any other discriminatory conduct that falls within the definition contained in Article 1 of this “instrument.”	<i>The Working Group suggested deleting this paragraph (03/29/12)</i>
		xvi. [Mex: State initiatives, through the adoption of laws, regulations, or public or security policies geared towards combating terrorism, which discriminate directly or indirectly against persons or groups of persons.]
		Proposal by the delegation of Peru: “xvii. Omissions, by public or private authorities, which enable or generate racism.”
		Proposal by the delegation of Ecuador: xviii. Restricting or unjustifiably limiting of the right of all persons, peoples, or nationalities from accessing and using in a sustainable manner water, natural resources, ecosystems, biodiversity, and ecological services that constitute part of each state’s natural heritage, protected by pertinent international instruments and their own domestic laws.

CHAPTER IV: Duties of the States

No. of article	Original articles CAJP/GT/RDI-180/11	Alternative proposals by the Member States
5	The States undertake to prevent, eliminate, and punish, in accordance with their domestic legislation and the provisions of this “instrument”, all acts and manifestations of discrimination and intolerance .	<p><i>The Delegation of Peru suggests adding a subparagraph prohibiting “...the restriction of access to public and private places with access to the public, for the reasons set forth in Article 1.1 of this instrument.</i></p> <p>Proposal by the delegation of Costa Rica: The States undertake to prevent, eliminate, and punish, in accordance with their domestic legislation and the provisions of this “instrument”, all acts and manifestations of discrimination and intolerance.[CR: referred to in Article 5 of this Convention }</p> <p>Proposal by the delegation of Ecuador: The States undertake to prevent, eliminate, and punish, in accordance with their domestic legislation and the provisions of this “instrument”, all acts and manifestations of racism, racial discrimination, and related forms of intolerance.</p>

	<p>i. All support for activities designed to promote discrimination and intolerance, including the financing thereof;</p>	
	<p>ii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:</p> <p>(a) Advocate, promote, or incite any form of discrimination and intolerance;</p> <p>(b) Condone, justify, or defend acts that constitute, or have constituted, genocide or crimes against humanity, or promote or incite the commitment of such acts;</p>	<p>Proposal by the delegation of Ecuador: Publication, circulation, or dissemination [by any means and medium of communication], including the Internet, of any materials that</p>
<p>6</p>	<p>The States Parties undertake to adopt the special differential or preferential measures and policies needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to discrimination or intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups. Such measures or policies shall not be considered discriminatory or incompatible with the purpose or intent of this “instrument”, shall not lead to maintaining separate rights for different groups, and shall not be continued beyond a reasonable period or after their objective has been achieved</p>	<p>The States Parties undertake to adopt the special [Per: differential or preferential] [Per: measures and] policies [Par: and affirmative actions] needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to discrimination or intolerance for the purpose of promoting equitable conditions for equal opportunity, inclusion, and progress for such persons or groups. Such measures or policies shall not be considered discriminatory or incompatible with the purpose or intent of this “instrument”, shall not lead to maintaining separate rights for different groups, and shall not be continued beyond a reasonable period or after their objective has been achieved</p>

7	The States Parties undertake to formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons, including educational and promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the Internet.	The States Parties undertake to formulate and implement policies the purpose of which is to provide equitable treatment and generate equal opportunity for all persons [Par: in accordance with the scope of this “instrument” ,] including [Par: policies of an educational nature, labor or social measures, or any other kind of promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the Internet.
10	The States Parties undertake to ensure that the victims of discrimination and intolerance receive equitable treatment, equal access to the justice system, expeditious and effective proceedings, and fair compensation in the civil or criminal sphere, as applicable. In addition, they shall consider adopting the legislative measures necessary to ensure that the burden of proof will be reversed and the defendants will have to show that procedures and practices have been adopted that ensure equitable and non-discriminatory treatment.	Proposal by the delegation of Ecuador: (One measure to which the states should commit themselves is establishing in their laws and in their authorities’ oversight mechanisms the adoption of precautionary measures that seek to provide effective and timely protection of rights at risk due to discriminatory conduct, without the requirement to produce full proof or scientific certainty of the risk or harm.)