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

TABLE INCORPORATING PROPOSALS FROM MEMBER STATES ON THE
DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM, RACIAL
DISCRIMINATION, AND RELATED FORMS OF INTOLERANCE

EXPLANATORY NOTE

This comparative table incorporates all the alternative proposals put forward by the member states concerning Chapter I of the Draft Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance, distributed as document CAJP/GT/RDI-179/11.

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, once both drafts are ready and negotiations begin, 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 PROPOSALS FROM MEMBER STATES ON THE DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM, RACIAL DISCRIMINATION AND RELATED FORMS OF INTOLERANCE

CHAPTER I: Definitions

Article No.	Original articles CAJP/GT/RDI-179/11	Alternative proposals from member states
1.4	<p>Racism is any distinction, exclusion, restriction, or preference pertaining to the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms, in any area of public or private life, based on the establishment of a causal link between the phenotypical or genetic characteristics of certain persons and their intellectual, personality, or cultural traits. This concept includes structural racism, which refers to a system in which public policies, institutional practices, cultural representations, and other standards generally reinforce inequality among different racial groups.</p>	<p>1. Racism consists of any theory, doctrine, ideology, or set of ideas that uphold the [supposed]^{1/} existence of causal link between phenotypical or genetic characteristics of individuals or groups and their intellectual, cultural, or personality traits, including the false concept of racial superiority.</p> <p>2. Racism results in racial inequality as well as the notion that discriminatory relations between groups are morally and scientifically justifiable; AGREED 03/08/12</p> <p>3. Any theory, doctrine, ideology, or set of racist ideas described in this document is scientifically false, morally reprehensible and socially unjust, contrary to the fundamental principles of international law and, consequently, seriously disturbs international peace and security and, as such, is condemned by the States Parties; AGREED 03/08/12</p>
1.6	<p>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, in accordance with the scope of this Convention.</p>	<p>Alternative proposal by the delegation of Mexico: Intolerance is disrespect, rejection, or contempt for the dignity, characteristics, beliefs, or opinion of human beings because they are different [Ven: from or contrary to one's own]. It may take the form of marginalization or exclusion of vulnerable groups from [Ven: social and political participation in any sphere of life, public or private] or violence against them.</p> <p>Alternative proposal from the delegation of Costa Rica: Intolerance is the set of acts or manifestations, in any sphere of life, public or private, that show disrespect, rejection, or contempt for the dignity of human beings [Bra: and the richness and diversity of the world], in accordance with the scope of this Convention.</p>

1. The delegations of Costa Rica and Mexico have to consult regarding the deletion of this word.

CHAPTER II: Protected Rights

Article No.	Original articles CAJP/GT/RDI-179/11	Alternative proposals by 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 domestic law and in international law] [Mex: <i>end here</i>] enshrined [Mex: in their domestic law and] (<i>Peru and Argentina do not support this deletion</i>) in the international instruments applicable to the States Parties.</p> <p><i>Costa Rica suggests deleting Article 3 in both instruments; if it is kept, it prefers the original language. Mexico suggests merging Articles 2 and 3. The delegations of Costa Rica, Mexico, Brazil, Argentina, and Venezuela will propose a merged version of Articles 2 and 3. Uruguay and Venezuela prefer to keep this paragraph but can work on merging 2 and 3.</i></p>

CHAPTER III: Acts and Manifestations of Racism, Racial Discrimination, and Related Forms of Intolerance

Article No.	Original Articles CAJP/GT/RDI-179/11	Alternative proposals from member states
4	[For purposes of this Convention 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:]	<p><u>Alternative proposal by the delegation of Argentina:</u></p> <p>Delete Chapter III and include its component parts in Article 6, which would then read as follows: The States undertake to prevent, eliminate, prohibit, and punish all acts and manifestations of discrimination and intolerance, especially:</p> <ul style="list-style-type: none"> i) All support for activities designed to promote discrimination, racism, and intolerance, including the financing thereof; ii) Publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that: <ul style="list-style-type: none"> (a) Advocate, promote, or incite racism, any form of discrimination, and intolerance;

		<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>iii) Criminal activity in which the victim or the victim's property is chosen intentionally based on any of the criteria set forth in Article 1.1. (proposal by Canada)</p> <p>iv) Any law enforcement action based on any of the criteria set forth [in Article 1.1] is not based on the behavior of an individual or on objective information identifying the individual as having engaged in criminal activity;</p> <p>v) 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];</p> <p>vi) 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;</p> <p>vii) 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 Convention;</p> <p>viii) 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 Convention;</p> <p>ix) Denying access to all social, economic, and cultural rights, including the right to work, to housing, to social security, and to health;</p> <p>x) 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 or cloning that prevails over respect for human rights, fundamental freedoms, and human dignity, generating any form of discrimination based on genetic characteristics.</p> <p><u>Alternative proposal by the delegation of Mexico:</u> Merge articles 5 and 6 to read as follows: The states undertake to codify, prohibit, prevent, eliminate, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of intolerance.</p>
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4	i. Public or private support provided to racially discriminatory and racist activities or that promote intolerance, including the financing thereof;	
	ii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of any [racist or racially 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>* <u>The delegations of Costa Rica, Paraguay, and Panama asked to consult with the IACHR regarding this paragraph.</u></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 crimes against humanity, as defined in international law;	<p>* <u>The delegations of Costa Rica, Paraguay, and Panama asked to consult with the IACHR regarding this paragraph.</u></p> <p>Proposal by the delegation of Ecuador:</p> <p>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;</p>
	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 as defined in Article 1.1, 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 racially 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 racial discrimination;]	

	<p>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 and subject to racial discrimination, in public or private activities;]</p>	<p>[restriction or limitation of the use of the language, traditions, customs, and culture of persons [Par: especially or groups [Mex: who are members of minorities or vulnerable groups] in public or private activities;]</p> <p>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;]</p>
	<p>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 Convention;]</p>	
	<p>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 Convention;</p>	
	<p>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 Convention;</p>	<p>xii) Denying access to [Peru: any all] social, economic, and cultural rights, [Mex: including the right to work, to housing, to social security, and to health] due to any of the factors listed in [Article 1.1] of this <u>Convention</u>;</p>
	<p>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;]</p>	

	xv. Any other racially discriminatory conduct that falls within the definition contained in Article 1 of this Convention.	<i>The Working Group suggested deleting this paragraph (03/29/12) in the “Instrument.”</i>
		xvi) [Mex: State initiatives through the adoption of laws, regulations, and public or security policies designed to combat terrorism that directly or indirectly discriminate against individuals or groups of persons.]
		Proposal by the delegation of Peru: xvii. “Omissions by public authorities or private individuals that permit/give rise to 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

Article No.	Original Articles CAJP/GT/RDI-160/11	Alternative proposals from 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 .	<i>The delegation of Peru suggests adding a prohibition on “...the restricting of access to public places and private places to which the public has access on the grounds referred to in paragraph 1 of Article 1 of this instrument.”</i> 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>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>
	i. All support for activities designed to promote discrimination and intolerance, including the financing thereof;	
	<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 by any means of communication], including the Internet, of any materials that</p>
6	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	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

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.)