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

DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM, RACIAL DISCRIMINATION,  
AND RELATED FORMS OF INTOLERANCE

(Presented by the Chair and considered at the meetings held on December 13, 2011 and February 1  
and 9 and March 8, 2012)

## EXPLANATORY NOTE

Resolution AG/RES. 2677 (XLI-O/11), “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance”, instructed the Permanent Council to extend the mandate of the Working Group of the Committee on Juridical and Political Affairs and to entrust it with the preparation of legally binding instruments with due consideration of a convention against racism and racial discrimination, as well as an optional protocol or protocols that would, in addition, address all other forms of discrimination and intolerance, in accordance with the work plan and methodology adopted by the Working Group, taking into account, where possible, the progress set forth in document CAJP/GT/RDI-57/07 rev. 13, “Consolidated Document: Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance,” and to continue the negotiations based on said instruments.

This document was prepared in accordance with the aforementioned resolution AG/RES. 2677 (XLI-O/11) “Draft Inter-American Convention against Racism and All Forms of Discrimination and Intolerance”, as well as pursuant to the “Work Plan for the 2011-2012 Term” (CAJP/GT/RDI-177/11 rev. 2), adopted by the Working Group on its session held on October 17, 2011. The Work Plan requested that two draft documents be prepared, one regarding racism and racial discrimination, and the other one addressing all other forms of discrimination and intolerance.

Furthermore, it was agreed, pursuant to the methodology adopted by the Working Group in its Work Plan, that with a view to simplify 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.

The guidelines for preparing the documents were to delete, in the preparation of the first document dealing with racism and racial discrimination, all references to all other forms of discrimination from the sources that go beyond racism and racial discrimination. Regarding the second document which deals with discrimination and intolerance, the agreed course of action was to delete all references to racism and racial discrimination from the sources.

Member States also suggested, in the preparation of these drafts, that they reflect the advances reached in the past in the negotiation process. Hence, these advances reflected in the “Consolidated Document” (CAJP/GT/RDI-57/07 rev. 13), are included in this document in the following manner:

As stated in the explanatory note of the “Consolidated Document”, words or phrases that the Working Group has not yet approved by consensus, but has examined, are shown as follows: **in bold**.

Phrases or paragraphs on which no consensus has been reached, whether because new proposals have been presented, including proposals to delete them, or because different wording has been requested, are shown as follows: [in square brackets]. Finally, the explanatory note included in the “Consolidated Document” also contained a reference to new proposals, which were to appear in parenthesis. Nevertheless, it should be noted that according to the agreed methodology, from now on new proposals will not be included in this document unless a consensus is previously reached.

DRAFT INTER-AMERICAN CONVENTION AGAINST RACISM,  
RACIAL DISCRIMINATION, AND RELATED FORMS OF INTOLERANCE

(Presented by the Chair)

THE STATES PARTIES TO THIS CONVENTION,

CONSIDERING that the inherent dignity and equality of all members of the human family are basic principles of the Universal Declaration of Human Rights, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights and the International Convention on the Elimination of All Forms of Racial Discrimination;

REAFFIRMING the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of racism, racial discrimination and related forms of intolerance and their conviction that such discriminatory attitudes are a negation of universal values and the inalienable and infrangible rights of the human person and the purposes and principles enshrined in the Charter of the Organization of American States, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Democratic Charter of the Americas, the Universal Declaration of Human Rights, the International Convention on the Elimination of All Forms of Racial Discrimination and the Universal Declaration on the Human Genome and Human Rights;

RECOGNIZING the duty of adopting national and regional measures to promote and encourage observance of the human rights and fundamental freedoms of all individuals and groups subject to their jurisdiction, without regard to race, color, descent, or national or ethnic origin;

CONVINCED that the principles of equality and nondiscrimination among human persons are dynamic democratic concepts that foster the promotion of effective legal equality and presuppose an obligation on the State's part to adopt special measures to protect the rights of individuals or groups that are victims of racial discrimination, in any area of human endeavor, whether public or private, with a view to cultivating equitable conditions for equal opportunity and to combating racial discrimination in all its individual, structural, and institutional manifestations;

AWARE that racism has a dynamic of its own that enables it to transform itself and find new ways to propagate itself and news vehicles of political, social, cultural and linguistic expression;

TAKING INTO ACCOUNT that the victims of racism, racial discrimination, and related forms of intolerance in the Americas are, *inter alia*, Afro-descendants, indigenous peoples, as well as other racial, ethnic, descent-based, national or ethnic origin and other groups or minorities that are affected by such manifestations;

CONVINCED that certain persons and groups experience multiple or extreme forms of racism, discrimination and intolerance, driven by a combination of factors such as race, color, descent, national or ethnic origin, or others recognized in international instruments;

TAKING INTO ACCOUNT that a pluralistic and democratic society must respect the race, color, descent, or national or ethnic origin of every person who belongs to a minority, and create the conditions that will enable that person to express, preserve, and develop his or her identity;

CONSIDERING that the individual and collective experience of discrimination must be taken into account to combat the segregation and marginalization of racial, ethnic, descent-based, national or ethnic origin of these groups of minorities and to protect the life plan of individuals in general and of minority communities;

ALARMED by the surge in hate crimes motivated by race, color, descent, or national or ethnic origin;

EMPHASIZING the basic role that education plays in promoting respect for human rights, equality, nondiscrimination and tolerance; and

BEARING IN MIND that while the fight against racism and racial discrimination is the priority of an earlier international instrument, namely the 1965 International Convention on the Elimination of All Forms of Racial Discrimination, it is imperative that the rights therein recognized be reaffirmed, developed, perfected and protected, in order to consolidate within the Americas the democratic meaning of the principles of legal equality and nondiscrimination,

AGREE upon the following:

**CHAPTER I**  
**Definitions**

**Article 1**

For purposes of this Convention:

1. Racial discrimination shall mean any distinction, exclusion, restriction, or preference, in any area of public or private life, the purpose or effect of which is to nullify or curtail the equal recognition, enjoyment, or exercise of any of the human rights or fundamental freedoms enshrined in international instruments applicable to the States Parties. **AGREED 12/13/11**

Racial discrimination may be based on race, color, descent, or national or ethnic origin. **AGREED 12/13/11**

2. Indirect discrimination shall be taken to occur, in any realm of public and private life, when a seemingly neutral provision, criterion, or practice has the capacity to entail a particular disadvantage for persons belonging to a specific group, or puts them at a disadvantage, unless said provision, criterion, or practice has some reasonable and legitimate objective or justification under international human rights law. **AGREED 2/09/12**
3. Multiple or aggravated discrimination is any preference, distinction, exclusion, or restriction, based simultaneously on two or more of the objectives referred to in paragraph 1 of this article or other recognized international instruments, the purpose or result of which is to nullify or curtail the equal recognition, enjoyment, or exercise of one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties, in any area of public or private life. **AGREED 2/09/12**
4. **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.**
5. Special measures or affirmative action adopted to ensure equal enjoyment or exercise of one or more human rights and fundamental freedoms by groups that so require do not constitute racial discrimination provided that such measures do not involve the maintenance of separate rights for different groups and are not continued once their objectives have been achieved. **AGREED AD REFERENDUM OF VENEZUELA 03/08/12**

6. 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.

## **CHAPTER II** **Protected Rights**

### **Article 2**

Every human being is equal before the law and has the right to equal protection against racism, racial discrimination, and related forms of intolerance in any sphere of life, public or private.  
**AGREED AD REFERENDUM OF VENEZUELA 03/08/12**

### **Article 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.

### **Article 4**

**The States Parties to this Convention recognize the collective rights of indigenous peoples and of persons of African descent that are indispensable for their existence, well-being, and integral development as peoples, *inter alia*, the right to their collective action; to their social, political, and economic organization; to their legal systems; to their own cultures; to profess and practice their spiritual beliefs; to use their languages; and to administer, make use of, and control their habitats and natural resources.**

## **CHAPTER III**

### **Acts and Manifestations of Racism, Racial Discrimination, and Related Forms of Intolerance**

### **Article 5**

[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 acts and manifestations of racism, racial discrimination, or related forms of intolerance, and therefore, prohibited by the State:]

- ii) Public or private support provided to racially discriminatory and racist activities or that promote intolerance, including the financing thereof;
- iii) 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];
- iv) 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;
  - v) Violence motivated by any of the criteria set forth in Article 1.1;
  - vi) [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]];
  - vii) [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;]
  - viii) 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];
  - ix) [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.]
  - x) [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;]
  - xi) [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;]
  - xii) [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;]
  - xiii) 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;
  - xiv) 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;



- xv) [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;]
- xvi) Any other racially discriminatory conduct that falls within the definition contained in Article 1 of this Convention.

#### **CHAPTER IV** **Duties of the States**

##### **Article 6**

The States undertake to prevent, eliminate, and punish, in accordance with their domestic legislation and the provisions of this Convention, all acts and manifestations of racism, racial discrimination, and related forms of **intolerance**.

- i. All support for activities designed to promote racism, racial discrimination, and related forms of intolerance, including the financing thereof;
- ii. Publication, circulation, or dissemination, by any means of communication, including the Internet, of any materials that:
  - (a) Advocate, promote, or incite racism, any form of racial discrimination, and related forms of intolerance;
  - (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;
- 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.
- 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;
- 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];
- 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 and subject to racial discrimination, in public or private activities;

- 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;
- 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;
- ix. Denying access to all social, economic, and cultural rights, including the right to work, to housing, to social security, and to health;
- 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.

#### **Article 7**

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 racism, racial discrimination, or related forms of 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 as racial discrimination or incompatible with the purpose or intent of this Convention, 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.

#### **Article 8**

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 in accordance with the scope of this Convention, including educational and promotional policies and the dissemination of legislation on the subject by all possible means, including the mass media and the Internet.

#### **Article 9**

The States Parties undertake to adopt legislation that clearly defines and prohibits racism, racial discrimination, and related forms of **intolerance**, applicable to all public authorities as well as to all natural or legal persons, both in the public and in the private sectors, particularly in the areas of employment; participation in professional organizations; education; training; housing; health; social protection; exercise of economic activity; access to public services and other areas; and to repeal or amend any legislation that constitutes or produces racism, racial discrimination or related forms of intolerance.

#### **Article 10**

The States Parties undertake to ensure that their political and legal systems appropriately reflect the diversity within their societies in order meet the legitimate special needs of each sector of the population in accordance with the scope of this convention.

#### **Article 11**

The States Parties undertake to ensure that the victims of racism, racial discrimination, and related forms of 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.

#### **Article 12**

The States Parties undertake to consider as aggravating those acts that lead to compounded discrimination **or acts of intolerance**, i.e., any distinction, exclusion, or restriction based on two or more of the criteria set forth in [Article 1.3] of this Convention.

#### **Article 13**

[The States Parties undertake to conduct research on the nature, causes, and manifestations of racism, racial discrimination or related forms of intolerance in their respective countries, at the local, regional, and national levels, and to collect, compile, and disseminate data on the situation of groups or individuals that are victims of racism, racial discrimination and related forms of intolerance.]

#### **Article 14**

The States Parties undertake, in accordance with their internal legislation, to establish **or designate** a national institution that shall be responsible for monitoring compliance with this Convention, and shall inform the OAS General Secretariat of this institution. The representative of that national institution shall be that State's representative on the Inter-American Committee for the Prevention, Elimination, and Punishment of All Forms of Discrimination and Intolerance.

#### **Article 15**

The States Parties undertake to promote international cooperation to exchange ideas and experiences and to execute programs aimed at achieving the objectives of this Convention.

**CHAPTER V**  
**Protective Mechanisms and Monitoring of the Convention**

**Article 16**

In order to monitor the implementation of the **commitments** assumed by the States Parties to this Convention:

- i. Any person or group of persons, or non-governmental entity legally recognized in one or more Member States of the Organization of American States may submit to the Inter-American Commission on Human Rights petitions containing reports or complaints of violations of this Convention by a State Party. In addition, any State Party, when depositing its instrument of ratification of **or accession to** this Convention, or at any time thereafter, may declare that it recognizes the competence of the Commission to receive and examine communications in which a State Party alleges that another State Party has committed violations of the human rights established in this Convention. In such case, all the relevant procedural rules contained in the American Convention on Human Rights as well as the Statutes and the Rules of Procedure of the Commission shall be applicable.
- ii. The States Parties may consult the Commission on questions related to the effective application of this Convention. They may also request the Commission's advisory assistance and technical cooperation to ensure effective application of any provision of this Convention. The Commission will, to the extent that it is able, provide the States Parties with the requested advisory services and assistance.
- iii. Any State Party may, when depositing its instrument of ratification of **or accession to** this Convention, or at any time thereafter, declare that it recognizes as binding, as a matter of law and without any special agreement, the jurisdiction of the **Inter-American Court of Human Rights** on all matters relating to the interpretation or application of this Convention. In such case, all relevant procedural rules contained in the American Convention on Human Rights as well as the Statutes and Rules of Procedure of the Court shall be applicable.
- iv. An Inter-American Committee for the Prevention, Elimination, and Punishment of All Forms of Discrimination and Intolerance shall be established and shall be comprised of independent experts from each of the States Parties. The first meeting of the Committee shall be convened by the Secretary General of the OAS as soon as the tenth instrument of ratification has been received, and the first meeting shall be held at the headquarters of the Organization three months later for the purpose of declaring its establishment, approving its Rules of Procedure and its Working Method, and electing its officials. That meeting shall be presided over by the representative of the country that deposits the first instrument of ratification of this Convention.
- v. The Committee shall be the forum for the exchange of ideas and experience, as well as for examining progress made by the States Parties in implementing this

Convention and any circumstance or difficulty affecting the extent of compliance therewith. Said Committee may recommend to the States Parties that they adopt the appropriate measures. For this purpose, the States Parties undertake to submit a report to the Committee, within one year of its first meeting, with respect to performance of the obligations contained in this Convention. The reports that the States Parties submit to the Committee shall also contain disaggregated data and statistics on vulnerable groups. Thereafter, the States Parties shall submit reports every four years. The General Secretariat of the OAS shall give the Committee any support it requires for the performance of its functions.

## **CHAPTER VI**

### **General Provisions**

#### **Article 17. Interpretation**

1. No provision of this Convention shall be interpreted as restricting or limiting a domestic law of any State Party that affords protections and guarantees equal to or greater than those established in this Convention.

2. Nothing in this Convention shall be interpreted as restricting or limiting the American Convention on Human Rights or any other international convention on the subject that affords equal or greater protections in this regard.

#### **Article 18. Depository**

The original instrument of this Convention, whose English, French, Portuguese, and Spanish texts are equally authentic, shall be deposited with the General Secretariat of the Organization of American States.

#### **Article 19. Signature and Ratification**

1. This Convention is open to signature by all Member States of the Organization of American States.

2. This Convention is subject to ratification by the signatory States in accordance with the procedures set forth in their constitutions. The instruments of ratification shall be deposited with the General Secretariat of the Organization of American States.

#### **Article 20. Reservations**

The States Parties may enter reservations to this Convention when signing or ratifying it, provided that such reservations are not incompatible with the aim and purpose of the Convention and relate to one or more specific provisions thereof.

**Article 21. Entry into Force**

1. This Convention shall enter into force on the thirtieth day following the date on which the second instrument of ratification of the Convention is deposited with the General Secretariat of the Organization of American States.

2. For each State that ratifies the Convention after the second instrument of ratification has been deposited, the Convention shall enter into force on the thirtieth day following deposit by that State of the corresponding instrument.

**Article 22. Denunciation**

This Convention shall remain in force indefinitely, but any State Party may denounce it through written notification addressed to the Secretary General of the Organization of American States. The Convention shall cease to have force and effect for the denouncing State one year after the date of deposit of the instrument of denunciation, and shall remain in force for the other States Parties. Such denunciation shall not exempt the State Party from the obligations imposed upon it under this Convention in respect of any action or omission prior to the date on which the denunciation takes effect.

**Article 23. Additional Protocols**

Any State Party may submit for the consideration of the States Parties gathered during the General Assembly draft protocols in addition to this Convention, with a view to gradually including other rights within its system of protection. Each protocol shall determine the manner of its entry into force and shall be applied only among the States Parties to it.