

**Resumed 3rd Session  
Ad Hoc Committee on the Elaboration of Complementary Standards**

**Preliminary Discussion Note**

**“Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”**

1. Background

During the second session of the Ad Hoc Committee, this theme was discussed and certain States had made proposals.<sup>1</sup>

The “Study of the Committee on the Elimination of Racial Discrimination on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures” suggests the inclusion “in an optional protocol of provisions of States to establish, designate or maintain national mechanisms working towards the prevention of racial discrimination and the promotion of equality that will operate in cooperation with the Committee so as to strengthen effectiveness of its monitoring role.”<sup>2</sup>

2. International and National Legal Regimes

Article 14(2) of the “International Convention on the Elimination of All Forms of Racial Discrimination” (“ICERD”) provides that “Any State Party which makes a declaration [to receive and consider communications from individuals or groups of individuals] [...] may establish or indicate a *body* within its national legal order which shall be competent *to receive and consider petitions from individuals and groups of individuals* within its jurisdiction who claim to be victims of a violation of any of the rights set forth in this Convention and who have exhausted other available local remedies.”<sup>3</sup>

At an international level, the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment may prove instructive. In Part IV it lays down the powers and functions of “national preventive mechanisms” which States are obliged to maintain, designate or establish. Guidelines on National Preventive Mechanisms have since been drawn up.<sup>4</sup>

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<sup>1</sup> A/HRC/13/CRP.1, paras. 54-62.

<sup>2</sup> A/HRC/4/WG.3/7, p. 3 and paras. 92-106.

<sup>3</sup> See also Article 6 of ICERD: “States Parties shall assure [...] effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination [...] as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.” Article 7 of ICERD: “States Parties undertake to adopt immediate and effective measures [...] with a view to combating prejudices which lead to racial discrimination and to promoting understanding, tolerance and friendship among nations and racial or ethnical groups”.

<sup>4</sup> See CAT/OP/12/5.

Similarly, the “Principles relating to the status of national institutions for the promotion and protection of human rights”, the “Paris Principles”, may also be of assistance.

At a regional level, the EU Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin ("Racial Equality Directive") requires that member states “designate a body or bodies for the promotion of equal treatment of all persons without discrimination on the grounds of racial or ethnic origin” (“National Equality Bodies”).<sup>5</sup> Under EU law, the National Equality Bodies’ powers include:

1. “providing independent assistance to victims of discrimination in pursuing their complaints about discrimination,
2. conducting independent surveys concerning discrimination,
3. publishing independent reports and making recommendations on any issue relating to such discrimination.”<sup>6</sup>

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<sup>5</sup> Racial Equality Directive, Article 13.

<sup>6</sup> Ibid.