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**CONCEPT NOTE**

**ENHANCING COOPERATION BETWEEN UNITED NATIONS AND REGIONAL MECHANISMS  
FOR THE PROTECTION OF HUMAN RIGHTS**

**ON THE CONSULTATION OF REGIONAL HUMAN RIGHTS MECHANISMS IN THE AMERICAS  
AND UN HUMAN RIGHTS MECHANISMS ON COMBATING RACISM, RACIAL  
DISCRIMINATION, XENOPHOBIA AND OTHER RELATED INTOLERANCE**

<b>OBJECTIVE</b>	The overarching objective of this regional consultation is to enhance cooperation between Inter-American human rights mechanisms and international human rights mechanisms with the aim of developing concrete proposals of cooperation between International and regional human rights mechanisms in combating racism, racial discrimination, xenophobia and related intolerance
<b>PARTICIPANTS</b>	Experts from the region including current and former members of human rights treaty bodies and, special procedure mandate holders, representatives of regional and sub-regional human rights mechanisms, national human rights institutions, civil society organisations and the academia
<b>VENUE</b>	Washington DC
<b>DATE</b>	8 December 2018

**1. BACKGROUND**

In recognition of the vital role played by regional and sub-regional human rights mechanisms, the Human Rights Council (HRC) since 2007 has requested OHCHR to bring together International and regional human rights mechanisms to exchange views on good practices and lessons learned with a view to enhancing cooperation between them<sup>1</sup>.

Subsequent to these resolutions, the previous workshops dealt with:

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<sup>1</sup> See the following UN Resolution and Decisions; (A/HRC/RES/6/20 of 2007; A/HRC/RES/12/15 of 2009; A/HRC/RES/18/14 of 29 September 2011; A/HRC/RES/24/19 of 8 October 2013.

- I. Good practices, added value and challenges for RHRMs (2008);
- II. Strengthening cooperation between the UN and regional arrangements to overcome obstacles to human rights promotion and protection at the regional level (2010);
- III. Strengthening cooperation on information sharing, joint activities and follow up to recommendations from United Nations and regional human rights mechanisms with special focus on prevention of torture, women's rights and children's rights (2012);
- IV. Strengthening cooperation on economic social and cultural rights (2014); and
- V. Enhancing cooperation between United Nations and regional human rights mechanisms, human rights defenders and civil society organisations (2016).

In 2017, the HRC<sup>2</sup> requested OHCHR to hold workshop in 2019 to take stock of developments since the workshop of 2016, including a thematic discussion on the role of regional arrangements in combating racism, racial discrimination, xenophobia and related intolerance and in the implementation and commitment in the Durban Declaration and Program of Action<sup>3</sup>.

In view of the preparation for and prior to this workshop, OHCHR, in cooperation with respective regional human rights mechanisms will hold regional consultations. The regional consultations will focus on concrete and practical experience of regional mechanisms to share information on best practices, lessons learned and possible new venues of cooperation between regional mechanisms and the United Nations human rights mechanisms.

## **2. RATIONALE**

In preparation of the 2019 Workshop, OHCHR will organize, in cooperation with IACHR, a regional consultation for the Americas on 8 December 2018.

The regional consultation will generate discussion on good practices, challenges and lessons learnt in combating racism, racial discrimination, xenophobia and related intolerance in Americas and measures to be taken to enhance the effectiveness of the Inter-American human rights mechanisms in following up on the Durban Declaration and Programme of Action, including through strengthened cooperation with other regional and UN human rights mechanisms

The regional consultation, will allow participants, who may not be able to attend the international conference to provide input into the discussion and will also allow deeper insights into specificities from the region in addressing racism, racial discrimination, xenophobia and related intolerance.

## **3. SPECIFIC OBJECTIVES**

The specific objectives of the regional consultations are to:

- I. Analyse the added value of the Enhance cooperation between the regional mechanisms ; UN human rights mechanisms and the OHCHR ; and enhance such cooperation in the area of racism, racial discrimination, xenophobia and related intolerance; ;
- II. Review progress and assess implementation of ICERD, the Durban Declaration and Programme of Action and the Inter-American Convention against Racism, Racial Discrimination and Related Forms of Intolerance;
- III. Exchange of good practices at the national level;

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<sup>2</sup> HRC/RES/34/17

<sup>3</sup> See Resolutions, <http://www.un.org/en/durbanreview2009/resolutions.shtml>

- IV. Identify new and emerging forms of racism, racial discrimination, xenophobia and related intolerance in the region;

## **4. METHODOLOGY**

### **I. Participants**

The regional consultation will bring together approximately 35 participants, from regional and sub-regional human rights mechanisms including representatives from the United Nations human rights system, NHRIs, civil society and academia as well as government/parliament representatives

### **II. Format**

Three Panel discussions will be held in one day followed by interactive discussions.

A moderator will facilitate the discussions assisted by Rapporteurs. Experts from international and regional human rights mechanisms will lead the wrap up session and suggest specific issues that will highlight the key recommendations for discussion at the international workshop.

## **5. ISSUES FOR DISCUSSION AND AGENDA**

### **1. PROGRAM**

The objectives of the workshop are to enhance cooperation between Inter-American human rights mechanisms and international human rights mechanisms with the aim of developing concrete proposals of cooperation between International and regional human rights mechanisms in combating racism, racial, tackling therefore:

- I. **Meaning and scope of right to freedom from racism, racial discrimination, xenophobia and other related intolerance and the roles of Judicial and Legal interventions**

- **Indirect discrimination generated by neutral laws and state failure to act**

Indirect racial 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 based on race, colour, lineage, or national or ethnic origin, 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.

Despite efforts undertaken at international and national levels, people of African descent continue to face marginalisation, both de facto and de jure discrimination, intolerance and violence, as well as obstacles to access their civil and political rights as well as economic and social rights. The existing international legal instruments and standards are not sufficiently incorporated into the domestic legal systems, national policies and national protection frameworks have fallen short of their intended aim. Specialised mechanisms, where they exist, are not strong enough to counter all forms of discrimination. In fact, face neutral laws and practices combined with states' failure to take necessary actions to address structural discrimination often perpetuate indirect discrimination.

The debate will tackle definitions and examples of such practices, identifying strategies and mechanisms to hold states accountable for both direct and indirect discriminatory practices as well as states' failure to take action and promoting access to rights of people of African descent.

- **Racial discrimination in the administration of justice and policing**

Various forms of racial discrimination and violence persist against people of African descent, indigenous peoples, migrants and other minority groups resulting in violations of their rights to non-discrimination and to equality before the law. Institutional racism is still entrenched in States' institutions and bodies. This is much observed in domestic policing and the administration of justice including in criminal systems.

Although the Inter-American Court on Human Rights has developed a great range of jurisprudence regarding the right to equality and non-discrimination, the Court has not touched upon many issues related to racial discrimination, particularly on racial bias in policing and criminal justice systems.

This panel will touch upon the lack of knowledge in the identification of racial discrimination cases, as well as the re-victimization that the procedures of investigation and trial may result in.

## **II. Implementation of Durban Declaration and Program of Action:**

- **Political Participation**

One of the states' commitments under the Durban Declaration and Program of Actions is to facilitate the participation of people of African descent in all political aspects of society, which would result in the advancement and economic development of their countries, and to promote a greater knowledge of and respect for their heritage and culture.

However, the under-representation and low participation of both women and men of African descent in politics demonstrates the evident barriers faced in gaining access to political power structures and playing active roles in the design of public policies to reduce discrimination.

In this regard, special measures play a key role in increasing the participation of people of African descent in politics. They can take a variety of forms. Firstly, there can be special quotas for people of African descent candidacies that parties must respect when presenting their slate of candidates. These can be party-specific quotas, in which the rules are laid out by internal statutes and the parties themselves ensure compliance. Quotas can also be established in legal instruments that regulate the electoral process, such as the constitution, electoral code, or political party law, among others.

Secondly, one should observe the existence of placement mandates. In the case of blocked lists, such mandates require political parties to place minority candidates in specific places within the list, in order to promote their election.

Finally, observation must consider the existence of reserved seats, which are intended to guarantee a minimum representation of people of African descent within public decision-making spaces.

This panel will touch upon the special measures and affirmative actions taken by states of the region, as well as the challenge that states have faced under their domestic electoral systems, particularly in guaranteeing the permanence and effective participation of candidates who benefit from these mechanisms. Finally, the panel will discuss how regional mechanisms could assist states in improving the participation of people of African descent in politics.

### **III. Framework for effective combatting and eradication of Racism, Racial Discrimination, Xenophobia and Related Intolerance:**

- **Special Measures and Affirmative Actions**

Special measures or affirmative actions may be adopted for the purpose of ensuring equal enjoyment or exercise of one or more human rights and fundamental freedoms of groups requiring such protection shall not be deemed racial discrimination provided that such measures do not lead to the maintenance of separate rights for different groups and are not continued once their objectives have been achieved.

Governments must undertake to adopt the special policies and affirmative actions needed to ensure the enjoyment or exercise of rights and fundamental freedoms of persons or groups that are subject to racism, racial discrimination, and related forms of intolerance for the purpose of promoting equitable conditions for equal opportunity, their inclusion, and progress.

This panel will examine the adoption of the following measures, while participants will exchange good practices on the existing legislation, public policies and programs adopted that can boost and improve the living conditions of people of African-descent particularly regarding social, economic and cultural rights. It will look into initiatives adopted throughout the last decades such as cash transfer programs, quotas in employment and education, as well as improved access to healthcare and measures against poverty. It may result in guidelines on the development of public policies by states, based on the identified good practices.

- **Cooperation with International mechanisms to combat racism (TBC)**

This panel will discuss how RHRMs in Americas can cooperate effectively with international human rights system, in particular, the universal periodic review system to combat racism, racial discrimination, xenophobia and related intolerance. Specific areas of focus could include RHRMs providing information to stakeholder reports, and cooperation between the OHCHR and RHRMs on member states implementation of relevant recommendations.

The meeting will be organised around each participant's arguments (15'), followed by a discussion (30') and intermediary conclusions (15'). In light of the above objectives and background information, the consultation will tackle:

#### **6. EXPECTED OUTCOME**

Decisions and recommendations of the regional consultation will form part and basis of the discussions at the international conference to be held in 2019 by the OHCHR. In addition, the outcome will be included in the report of the OHCHR to the Human Right Council, at its forty-third session.

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## Program of Work

	<b>Topic</b>
<b>9:00 - 9:15</b>	Opening and registration
<b>9:15 - 10:45</b>	Meaning and scope of right to freedom from racism, racial discrimination, xenophobia and other related intolerance and the roles of Judicial and Legal interventions: <i>Indirect discrimination generated by face neutral laws and state failure to act on racial bias in the policing and criminal justice systems</i>
<b>10:45 - 11:00</b>	Coffee Break
<b>11:00 - 12:30</b>	Under-representation and low participation of both women and men of African descent in politics
<b>12:30 - 13:30</b>	Lunch
<b>13:30 - 15:00</b>	Framework for effective combatting and eradication of Racism, Racial Discrimination, Xenophobia and Related Intolerance: <i>Special Measures and Affirmative Actions (cash transfer programs, racial quotas in employment and education, access to healthcare)</i>
<b>15:00 - 16:00</b>	Cooperation with International mechanisms to combat racism
<b>16:00 - 16:30</b>	Coffee break
<b>16:30 - 17:45</b>	Conclusions and identifying priority themes for Workshop on Regional Arrangements (Geneva, 2019)
<b>17:45 -18:00</b>	Closing