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AG/RES. 2804 (XLIII-O/13)

INTER-AMERICAN CONVENTION AGAINST ALL FORMS OF DISCRIMINATION AND
INTOLERANCE^{1/ 2/ 3/ 4/ 5}

(Adopted at the second plenary session, held on June 5, 2013)

THE GENERAL ASSEMBLY,

HAVING SEEN the Annual Report of the Permanent Council to the General Assembly (...);

RECALLING the content of resolution AG/RES. 2718 (XLII-O/12), “Draft Legally Binding Inter-American Instruments against Racism and Racial Discrimination and against All Forms of Discrimination and Intolerance,” and all previous resolutions on the subject;

REAFFIRMING the principles of equality and nondiscrimination and recognizing that human diversity is a cherished asset for the advancement and welfare of humanity at large;

FIRMLY REITERATING the most resolute commitment of the Organization of American States (OAS) to the eradication of all forms of discrimination and intolerance and their conviction that such discriminatory attitudes are a negation of such universal values as the inalienable and infrangible rights of the human person and the purposes, principles, and guarantees enshrined in the Charter of the OAS, the American Declaration of the Rights and Duties of Man, the American Convention on Human Rights, the Universal Declaration of Human Rights, the Social Charter of the Americas, the Inter-American Democratic Charter, the International Convention on the Elimination of All Forms of Racial Discrimination, and the Universal Declaration on the Human Genome and Human Rights;

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1. The United States has consistently objected to the negotiation of new legally binding instruments against racism, racial discrimination and other forms of discrimination or intolerance and ...
 2. Canada has consistently raised concerns about the negotiation of an inter-American convention against all forms of discrimination and intolerance, and is not endorsing the resulting text....
 3. El Salvador believes that in order for the country to extend a judgment on the Draft Convention contained in this resolution, it must obtain the opinion of the competent national institutions ...
 4. The Government of Nicaragua is mindful that the State bears the primary responsibility and obligation to promote and protect full enjoyment of human rights lies with the State. ...
 - ⁵ Given that the internal legal consultation procedures have not yet been completed with respect to the Draft Convention contained in this resolution, Chile supports its adoption but reserves...

OBSERVING WITH CONCERN that even today a considerable number of human beings in our Hemisphere are still victims of historical and contemporary manifestations of discrimination, and intolerance;

ACKNOWLEDGING the significant contributions made by member states, OAS organs, agencies, and entities, other agencies of the United Nations, civil society organizations, and other social actors and other organizations, in regard to the ongoing process of negotiations; and

HAVING PARTICULAR REGARD to the report of the Chair of the Working Group to Prepare the Draft Legally-Binding Inter-American Instruments against Racism and Racial Discrimination and against All Forms of Discrimination and Intolerance, "Activities of the Working Group during the 2012-2013 Term" (CAJP/GT/RDI-229/13 rev. 1), presented to the Committee on Juridical and Political Affairs, which completes the preparation and negotiation of the Draft Legally Binding Inter-American Instruments against Racism and Racial Discrimination and against All Forms of Discrimination and Intolerance,

RESOLVES:

1. To adopt the following Inter-American Convention against All Forms of Discrimination and Intolerance:

INTER-AMERICAN CONVENTION
AGAINST ALL FORMS OF DISCRIMINATION AND INTOLERANCE

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, and the American Convention on Human Rights;

REAFFIRMING the resolute commitment of the member states of the Organization of American States to the complete and unconditional eradication of all forms of discrimination and 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 Social Charter of the Americas, the Inter-American Democratic Charter, the Universal Declaration of Human Rights, and the Universal Declaration on the Human Genome and Human Rights;

RECOGNIZING the duty of adopting national and regional measures to promote and encourage respect for and observance of the human rights and fundamental freedoms of all individuals and groups subject to their jurisdiction, without regard to gender; age; sexual orientation; language; religion; political or other opinion; social origin; economic status; migrant, refugee or displaced status; birth, stigmatized infectious-contagious condition; genetic trait; disability, debilitating psychological distress; or other social condition;

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 discrimination and intolerance, in any area of human endeavor, whether public or private, with a view to cultivating equitable conditions for equal opportunity and to combating discrimination and intolerance in all their individual, structural, and institutional manifestations;

TAKING INTO ACCOUNT that the victims of discrimination and intolerance in the Americas are, *inter alia*, migrants, refugees, and displaced persons and their families, as well as other sexual, cultural, religious and linguistic groups or minorities that are affected by such manifestations;

CONVINCED that certain persons and groups experience multiple or extreme forms of discrimination and intolerance, driven by a combination of factors such as gender; age; sexual orientation; language; religion; political or other opinion; social origin; economic status; migrant, refugee or displaced status; birth, stigmatized infectious-contagious condition; genetic trait; disability; debilitating psychological distress; or other social condition; as well as others recognized in international instruments;

DISTURBED by the fact that various parts of the world have seen a general increase in cases of intolerance and violence motivated by anti-Semitism, Christianophobia, or Islamophobia, and that directed against members of other religious communities, including those with African roots;

RECOGNIZING that peaceful coexistence among religions in pluralistic societies and democratic states is based on respect for equality and nondiscrimination among religions and on a clear separation between the laws of the state and religious tenets;

TAKING INTO ACCOUNT that a pluralistic and democratic society must respect the cultural, linguistic, religious, gender and sexual identity of every person, whether belonging to a minority or not, 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 and intolerance must be taken into account to combat segregation and marginalization based on gender; age; sexual orientation; language; religion; political or other opinion; social origin; economic status; migrant, refugee or dislocated status; birth, stigmatized infectious-contagious condition, genetic trait; disability; debilitating psychological distress; or other social condition; as well as others recognized in international instruments; and to protect the life plan of individuals and communities at risk of such segregation and marginalization;

ALARMED by the surge in hate crimes motivated by gender, religion, sexual orientation, disability, and other social conditions; and

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

AGREE upon the following:

CHAPTER I

Definitions

Article 1

For purposes of this Convention:

1. 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 one or more human rights and fundamental freedoms enshrined in the international instruments applicable to the States Parties.

Discrimination may be based on nationality; age; sex; sexual orientation; gender identity and expression; language; religion; cultural identity; political opinions or opinions of any kind; social origin; socioeconomic status; educational level; migrant, refugee, repatriate, stateless or internally displaced status; disability; genetic trait; mental or physical health condition, including infectious-contagious condition and debilitating psychological condition; or any other condition.

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.
3. Multiple or aggravated discrimination is any preference, distinction, exclusion, or restriction based simultaneously on two or more of the criteria set forth in Article 1.1, or others recognized in international instruments, the objective 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.
4. Special measures or affirmative action 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 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.
5. Intolerance is an action or set of actions or expressions that denote disrespect, rejection, or contempt for the dignity, characteristics, convictions, or opinions of persons for being different or contrary. It may manifest itself as marginalization and exclusion of groups in conditions of vulnerability from participation in any sphere of public or private life or violence against them.

CHAPTER II Protected Rights

Article 2

Every human being is equal under the law and has a right to equal protection against any form of discrimination and intolerance in any sphere of life, public or private.

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.

CHAPTER III Duties of the State

Article 4

The states undertake to prevent, eliminate, prohibit, and punish, in accordance with their constitutional norms and the provisions of this Convention, all acts and manifestations of discrimination and intolerance, including:

- i. Public or private support provided to discriminatory activities or that promote intolerance, including the financing thereof;
- ii. Publication, circulation or dissemination, by any form and/or means of communication, including the Internet, of any materials that:
 - a) advocate, promote, or incite hatred, discrimination, and intolerance;
 - b) condone, justify, or defend acts that constitute or have constituted genocide or crimes against humanity as defined in international law, or promote or incite the commission of such acts;
- iii. Violence motivated by any of the criteria set forth in Article 1.1;
- iv. Criminal activity in which the victim's property is chosen intentionally based on any of the criteria set forth in Article 1.1;
- v. Any repressive 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 been engaged in criminal activity;
- vi. Restricting, in an undue or unreasonable manner, the exercise of the individual rights of ownership, administration, and disposal of property of any kind based on any of the criteria set forth in Article 1.1;

- vii. Any distinction, exclusion, restriction, or preference applied to persons, because of their status as victims of multiple or aggravated discrimination, the purpose or result of which is to deny or impair the equal recognition, enjoyment, exercise, or protection of rights and fundamental freedoms;
- viii. 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;
- ix. Any restriction or limitation on the use of the language, traditions, customs, and culture of persons in public or private activities;
- x. 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;
- xi. 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;
- xii. Denying access to any social, economic, and cultural rights, based on any of the criteria set forth in Article 1.1 of this Convention;
- xiii. 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;
- xiv. The restriction or limitation, based on any of the criteria set forth in Article 1.1 of this Convention, of the right of every person to access and sustainably use water, natural resources, ecosystems, biodiversity, and ecological services that are part of each state's natural heritage, protected by the relevant international instruments and their own national laws;
- xv. 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 Convention.

Article 5

The States Parties 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 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 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 6

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 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.

Article 7

The States Parties undertake to adopt legislation that clearly defines and prohibits discrimination and intolerance, applicable to all public authorities as well as to all individuals or natural and 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 discrimination and intolerance.

Article 8

The States Parties undertake to ensure that the adoption of measures of any kind, including those on security matters, does not discriminate directly or indirectly against persons or groups on the basis of any of the criteria mentioned in Article 1.1 of this Convention.

Article 9

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 10

The States Parties undertake to ensure that the victims of discrimination and intolerance receive equitable and non-discriminatory treatment, equal access to the justice system, expeditious and effective proceedings, and fair compensation in the civil or criminal sphere, as applicable.

Article 11

The States Parties undertake to consider as aggravating those acts that lead to multiple discrimination or acts of intolerance, i.e., any distinction, exclusion, or restriction based on two or more of the criteria set forth in Articles 1.1 and 1.3 of this Convention.

Article 12

The States Parties undertake to conduct research on the nature, causes, and manifestations of discrimination or 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 discrimination and intolerance.

Article 13

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.

Article 14

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 IV Protective Mechanisms and Monitoring of the Convention

Article 15^{6/}

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. 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.

6. The Bolivarian Republic of Venezuela reiterates its firm commitment toward the promotion, protection, and defense of human rights, and toward its decision to denounce ...

- iv. An Inter-American Committee for the Prevention and Elimination of Racism, Racial Discrimination, and All Forms of Discrimination and Intolerance shall be established and shall be comprised of one expert appointed by each of the States Parties who shall execute his or her functions in an independent manner and shall monitor the commitments undertaken in this Convention. The Committee shall also be responsible for monitoring the commitments undertaken in the Inter-American Convention Against Racism, Racial Discrimination, and Related Forms of Intolerance with respect to the states that are parties thereto.

The Committee shall be established when the first of the Conventions comes into force and its first meeting shall be convened by the General Secretariat of the OAS as soon as the tenth instrument of ratification of either Convention has been received. The first meeting of the Committee shall be held at the headquarters of the Organization three months after its convocation 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 the Convention which establishes the Committee.

- 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 fulfillment 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 groups in situations of vulnerability. 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 V

General Provisions

Article 16. 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 international human rights conventions that afford equal or greater protections in this regard.

Article 17. Depository

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

Article 18. Signature and Ratification

1. This Convention is open to signature and ratification by all member states of the Organization of American States. After its entry into force, this Convention shall be open to accession by all states that have not signed it.

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 or accession shall be deposited with the General Secretariat of the Organization of American States.

Article 19. Reservations

The States Parties may enter reservations to this Convention when signing, ratifying, or acceding to 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 20. 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, or accession to, this Convention is deposited with the General Secretariat of the Organization of American States.

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

Article 21. 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 22. 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.

FOOTNOTES

1. reiterates our longstanding reservations and concerns with this and prior resolutions on the topic and does not endorse the texts that have resulted from these negotiations. The United States believes that what is needed in this area are enhanced measures and efforts to implement existing human rights instruments, not the adoption of new instruments. Additionally, we are concerned that some provisions of the draft conventions could undermine or are incompatible with international human rights law protections including those related to freedoms of expression and association. The International Convention on the Elimination of All Forms of Racial Discrimination, to which 175 countries are States Parties, including 33 members of this organization, prohibits discrimination on the basis of race, color, descent, or national or ethnic origin, and obliges States Parties to “undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms.” As this robust global treaty regime already provides comprehensive protections in this area, a regional instrument is not necessary and runs the risk of creating inconsistencies with this global regime. As early as 2002, the Inter-American Juridical Committee articulated similar concerns, concluding that it was not advisable to negotiate a new convention in this area. The United States believes that the resources of the OAS and of its member states would be better utilized by identifying practical steps that governments in the Americas might adopt to combat racism, racial discrimination and other forms of discrimination and intolerance, including best practices in the form of national legislation and enhanced implementation of existing international instruments. Such efforts should be aimed at bringing immediate and real-world protection against discrimination.

2. ... that is being adopted in this resolution. Canada is concerned that a new instrument in this area could confuse or weaken already existing international standards, as well as overburden the inter-American human rights system. Canada will, nonetheless, continue to work in practical ways with the OAS and its member states towards addressing racism and promoting tolerance and non-discrimination in the Hemisphere.

3. ...including the Ministry of Foreign Affairs, in its capacity as the lead agency for Salvadoran foreign policy—in order to ensure consensus on the national position regarding the contents of the Convention.

4. ... Article 27 “Equality before the Law” of the Political Constitution of the Republic of Argentina therefore establishes that “All persons are equal before the law and have the right to equal protection. There shall be no discrimination by reason of birth, nationality, political creed, race, sex, language, religion, opinion, origin, economic position, or social condition.”

At the international level, Nicaragua is a signatory to several international conventions that have been elevated to constitutional rank as an expression of the commitment to the promotion and protection of the human rights of Nicaraguans, particularly the elimination of racism, discrimination, and intolerance in all their forms. However, with regard to this Inter-American Convention against All Forms of Discrimination and Intolerance, Nicaragua will only agree to those provisions contained herein that do not oppose or contravene its domestic legal order.

its position thereon until it has the relevant analyses and reports.

5. ... its position thereon until it has the relevant analyses and reports.

6. ... the American Convention on Human Rights due to the observed deterioration in the actions of the agencies of the inter-American human rights system. In its opinion, the IACHR and the I/A Court H. R. must be overhauled on account of the bias, politicization, and discriminatory and selective attitude they have assumed against progressive governments. These characteristics have destroyed the credibility of those institutions, which were once based on ethical values and on a commitment to the protection of human rights.