Statement by
Chairperson-Rapporteur of the Ad Hoc Committee on the Elaboration of Complementary Standards,
Ambassador Taonga Mushayavanhu

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Third Committee

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Your Excellency, President of the General Assembly,

Excellencies,

Distinguished delegations,

Ladies and Gentlemen.

I am honoured to be connected to you virtually today to deliver my third progress report on the work of the Ad Hoc Committee on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), as requested by the General Assembly in paragraph 7 of its resolution 74/137.

As you are all aware, the Ad Hoc Committee was established by the Human Rights Council in its decision 3/103 of 8 December 2006, “to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the International Convention on the Elimination of All Forms of Racial Discrimination, filling the existing gaps in the Convention and also providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred”.
The General Assembly has in several resolutions expressed its concern at the lack of progress in the elaboration of complementary standards to the Convention to fill existing gaps through the development of new normative standards aimed at combating all forms of contemporary and resurgent scourges of racism, most recently in paragraph 5 of resolution 74/137.

Indeed, between 2006 and 2017, there appeared to be a lack of political will to move forward and work on fulfilling the mandate of the Committee, despite ten sessions and the input of over sixty substantive experts from different disciplines, from all regions of the world.

Since 2017, the Committee has been working under an updated mandate. In December 2016 and March 2017, the General Assembly, in resolution 71/181, and the Human Rights Council in resolution 34/36, respectively, requested the Chair-Rapporteur of the Ad Hoc Committee, “to ensure the commencement of the negotiations on the draft additional protocol criminalizing acts of a racist and xenophobic nature”. The General Assembly has since adopted three further related resolutions, namely, 72/157, 73/262 and 74/137 in December 2017, 2018 and 2019, respectively.
When I was in New York last year for the 74th General Assembly session, I reported that the tenth session of the Ad Hoc Committee on the Elaboration of Complementary Standards, which took place from 8 to 18 April 2019, had made some progress, thus, advancing the work of the Committee.

During the session, the Committee spent a considerable amount of time on the initial negotiations on the elements that would constitute an additional protocol to the Convention as per General Assembly resolution 73/262 and Human Rights Council resolution 34/36. To enrich the discussions, the Committee considered a number of national contexts and regional experiences, among other resource materials. In the end, the Committee was able to adopt by consensus a document entitled: “Summary of issues and possible elements discussed pertaining to the implementation of General Assembly resolution 73/262 and Human Rights Council resolution 34/36 on the commencement of the negotiations on the draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature.”

Following my presentation of the tenth session report of the Ad Hoc Committee, the Human Rights Council in resolution 42/29 “request[ed] the Office of the United Nations High Commissioner for Human Rights to organise, before the eleventh session of the Ad Hoc Committee, a two-day
expert seminar, with two legal experts from each region in the relevant areas of law, a member of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, in order to consider the elements of a draft additional protocol to the Convention prepared by the Ad Hoc Committee at its tenth session pursuant to General Assembly resolution 73/262 and Human Rights Council resolution 34/36, and to prepare a report on the deliberations and recommendations thereon and submit it to the Ad Hoc Committee at its eleventh session.”

Like many other UN meetings impacted by the COVID-19 pandemic, both the legal expert consultation (originally scheduled to take place from 30-31 March 2020) and the 11th session of the Ad Hoc Committee on the Elaboration of Complementary Standards (originally scheduled to take place from 20 April-1 May 2020), were postponed due to the pandemic.

The legal expert consultation finally took place on 21 and 22 October 2020 as a virtual hybrid meeting at the Palais des Nations in Geneva.

Over the two days, the group of legal experts from each region, including the Special Rapporteur on Contemporary Forms of Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as a
member of the Committee on the Elimination of Racial Discrimination, considered the issues and possible elements to be included in a draft additional protocol to the Convention that were prepared by the Ad Hoc Committee at its tenth session. These issues and elements can be found at pages 18 and 19 of the report, A/HRC/42/58.

The experts deliberated on four discussion modules informed by the elements document, namely:

- Dissemination of hate speech;
- Racial cybercrime;
- All contemporary forms of discrimination based on religion or belief; and
- Preventive measures to combat racist and xenophobic discrimination.

Despite the technical challenges that were experienced, especially related to virtual connections, there was generally good discussion and exchange of views amongst the experts. I will just outline a few general themes and issues here.

On module 1, concerning the paragraphs on the dissemination of hate speech, the experts discussed the scope and meaning of the proposed elements. They noted the necessity of the use of precise language and
concepts for purposes of criminalisation and raised some concerns with regards to overbreadth and phrasing. There was also a discussion about the undefined nature of the term ‘hate speech’ and the fact that there was no reference to ‘incitement to hatred’. The differences in impact between online and offline speech was also discussed on a preliminary basis. Of course, as a fundamental question, the experts also started a discussion on how to strike the correct balance between upholding freedom of expression and limiting hate speech.

On module 2, on racial cybercrime, the themes of the discussion included prevention and accountability, the powerful role of technology companies in relation to States, and the balance to be struck between an optional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination and articles 19 and 20 of the International Covenant on Civil and Political Rights. The experts noted that the notion of hate crime was not a legal category in many countries and therefore there was a need to harmonize language so that it was broadly understood in every State. They considered the matter of defining ‘media’ and the question of addressing conduct perpetrated by bots.

On module 3, the experts considered the issue of “all contemporary forms of discrimination on the basis of religion or belief”, which is in contention in the elements document itself. The experts discussed whether
the additional protocol should address religion and belief, whether there is a protection gap for discrimination on the grounds of religion or belief, and whether the issue would be best addressed in a separate Convention rather than in an additional protocol to the ICERD. There was much discussion about whether and how religion or belief were distinct from race, and whether discrimination on the grounds of religion or belief was encapsulated by the term ‘xenophobia’.

On module 4, the experts discussed the various preventive measures to combat racist and xenophobic discrimination. They considered whether all the preventive measures indicated in the elements document applied only to States as some of the measures referred to activities of corporate entities. The experts looked closely at language, framing and terminology of the proposed preventative measures. They also considered whether some of the measures were already covered by the ICERD.

During the discussions on all the four modules, the experts identified and considered some national and regional good practices.

I am very pleased that the legal expert consultation produced some useful questions, suggestions and pieces of advice to help the Committee refine its thinking and consider more adroitly substantive and practical challenges associated with the draft additional protocol to the Convention
criminalising acts of a racist and xenophobic nature. A more detailed report on pertinent legal arguments and issues raised by the experts during the consultation will be prepared for submission to the Ad Hoc Committee at its 11th session, which is tentatively scheduled to take place in April 2021.

I am also heartened to note again that the Committee has been working by consensus with a view to delivering on its mandate. In my view, delegations must continue on this path as the negotiations on the draft additional protocol to the Convention criminalising acts of a racist and xenophobic nature move forward. I hope that the Committee will continue to demonstrate the political will to move forward and work on fulfilling the mandate of the Committee.

As I have mentioned on previous occasions, it is my belief that the work of the Ad Hoc Committee on the Elaboration of Complementary Standards is not merely to agree on new standards, but ultimately to think of ways to strengthen the protection of all persons from the scourges of racism, racial discrimination, xenophobia and related intolerance, as was articulated in the Durban Declaration and Programme of Action.

The Committee’s work is more pertinent in view of the sad reality that many people around the world continue to be victims of racism, racial
discrimination, xenophobia and related intolerance, including in particular their contemporary forms and manifestations, many of which are increasingly present or disseminated online, and some of which are of a violent nature. This year has witnessed protests and movements against racial discrimination in many countries across the globe, following the killing of an unarmed African-American, Mr. George Floyd, at the hands of the police. The year has also been beset by an unprecedented global pandemic, which has spawned particularly devastating health consequences for many racial communities and groups, including people of African descent, and provoked acts of discrimination against people of Asian descent.

In light of these contemporary manifestations, the Committee must continue to assume its responsibility to strengthen the protection of the increasing numbers of victims of these scourges. Laws are needed to effectively fight discrimination, xenophobia and other related intolerance. And although criminalisation is the objective, the Committee should also remain open to continue considering preventive measures that would complement criminalisation.

I wish to conclude by informing the General Assembly that this is my last progress report as Chairperson-Rapporteur of the Ad Hoc Committee on the Elaboration of Complementary Standards. I will soon
be taking up new duties with my Government as Ambassador and Permanent Representative to the African Union as well as Ambassador to Ethiopia in Addis Ababa, Ethiopia. My last official order of business will be the finalization and submission of the report of the legal expert consultation, in readiness for the 11th session of the Ad Hoc Committee.

I am certain that once appointed, the incoming Chairperson-Rapporteur will be able to take this important work forward, and will be able to count on your support to fulfil the task of elaborating complementary standards to update the ICERD. I will, of course, continue to support the work of the Committee, at least in spirit, and I look forward to reading about its continued progress.

Finally, I wish to thank all the delegations in Geneva and New York for the commitment, cooperation and support shown to me in my role as Chairperson-Rapporteur these past 4 years. I would also like to express my appreciation to the High Commissioner for Human Rights and her staff for her support to the mandate of the Ad Hoc Committee, which is one of the key follow-up mechanisms to the Durban Declaration and Programme of Action. The fact that we will commemorate the DDPA’s 20th anniversary in 2021 should spur the international community to work collectively to realise its aspirations. My thanks also go to the colleagues who directly support the Committee, including the Secretary of the Ad
Hoc Committee, the Anti-Racial Discrimination Section and Conference Services.

I wish you all the best and continued good health.

I thank you.