

---

# Advance edited version

Distr.: General  
15 February 2017

Original: English

---

## Human Rights Council

### Thirty-fourth session

27 February-24 March 2017

Agenda item 9

**Racism, racial discrimination, xenophobia and related forms of intolerance: follow-up to and implementation of the Durban Declaration and Programme of Action**

## **Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its eighth session\* \*\***

*Chair-Rapporteur: Taonga Mushayavanhu (Zimbabwe)*

### *Summary*

The present report is submitted pursuant to Human Rights Council decision 3/103 and Council resolutions 6/21 and 10/30. The report is a summary of the proceedings of the eighth session of the Ad Hoc Committee on the Elaboration of Complementary Standards and the substantive discussions that took place during the session, including the consideration by the Ad Hoc Committee of the questionnaire and summary of responses conducted pursuant to Council resolution 21/30.

---

\* The annexes to the present report are circulated as received in the language of submission only.

\*\* The present report was submitted late to reflect the most recent developments.

## Contents

	<i>Page</i>
I. Introduction .....	3
II. Organization of the session .....	3
A. Attendance .....	3
B. Opening of the session.....	3
C. Election of the Chair-Rapporteur.....	3
D. Adoption of the agenda.....	4
E. Organization of work .....	5
III. General and topical discussions .....	7
A. Presentation and discussion on the update by the Committee on the Elimination of Racial Discrimination of its 2007 report on complementary international standards .....	7
B. Discussion on xenophobia .....	7
C. Discussion on procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination .....	7
D. Presentations and discussion on effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction of victims, consistent with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and paragraph 165 of the Durban Programme of Action.....	8
E. General discussion and exchange of views, 9th meeting .....	8
F. Presentation and discussion on sport and racism .....	11
G. General discussion and exchange of views, 13th meeting .....	11
H. General discussion and exchange of views, 16th meeting .....	14
IV. Adoption of the report .....	15
<b>Annexes</b>	
I. Summaries of the expert presentations and initial discussions on the agenda topics .....	18
II. Programme of work.....	45
III. List of attendance .....	47

## **I. Introduction**

1. The Ad Hoc Committee on the Elaboration of Complementary Standards submits the present report pursuant to Human Rights Council decision 3/103 and resolutions 6/21 and 10/30.

## **II. Organization of the session**

2. The Ad Hoc Committee held its eighth session from 17 to 28 October 2016. During the session, the Ad Hoc Committee held 17 meetings.

### **A. Attendance**

3. The session was attended by representatives of Member States, non-Member States represented by observers, intergovernmental organizations and non-governmental organizations (NGOs) in consultative status with the Economic and Social Council (see annex III).

### **B. Opening of the session**

4. The eighth session of the Ad Hoc Committee on the Elaboration of Complementary Standards was opened by the secretary of the Ad Hoc Committee.

### **C. Election of the Chair-Rapporteur**

5. At its 1st meeting, the Ad Hoc Committee elected Taonga Mushayavanhu, Permanent Representative of Zimbabwe to the United Nations Office at Geneva, as its Chair-Rapporteur, by acclamation.

6. The Chair-Rapporteur thanked the Ad Hoc Committee for his election and expressed appreciation for the contribution of previous Chairs, the Regional Coordinators and the Secretariat. He acknowledged the rising manifestations of contemporary forms of racial discrimination and noted the relevancy of the words of the former United Nations High Commissioner for Human Rights, Navi Pillay, in her foreword to the 2012 publication *United against Racism, Racial Discrimination, Xenophobia and Related Intolerance*:

Racism and racial discrimination attack the core of a person's dignity, for they seek to divide the human family, to which all people and individuals belong, into categories, some of which are considered more worthy than others. History has proved time and again that, when allowed to take root, discrimination, racism and intolerance, shatter the very foundations of societies and damage them for generations.

The road to a world free from racism is not an easy one. It requires political will and long-term commitments.

7. The Chair-Rapporteur recalled the mandate of the Ad Hoc Committee as well as the words of paragraph 199 of the Durban Programme of Action, in which the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance recommended that the Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial

discrimination, xenophobia and related intolerance in all their aspects. He specifically highlighted Human Rights Council decision 3/103 in which the Council mandated the Ad Hoc Committee to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocols 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. He added that the Ad Hoc Committee would continue its discussions using the incremental approach adopted at previous sessions. In view of the large body of work undertaken during the seven prior sessions, he suggested that concrete recommendations for the establishment of an international regulatory framework on the areas that the Ad Hoc Committee had covered be assembled.

#### **D. Adoption of the agenda**

8. Also at the 1st meeting, the Ad Hoc Committee adopted the following agenda for its eighth session:

1. Opening of the session.
2. Election of the Chair.
3. Adoption of the agenda and programme of work.
4. Presentation and discussion on the update by the Committee on the Elimination of Racial Discrimination of its 2007 report on complementary international standards.
5. Discussion on xenophobia.
6. Discussion on procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination.
7. Presentations and discussion on effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for victims, consistent with article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and paragraph 165 of the Durban Programme of Action.
8. General discussion and exchange of views on items 4 and 6.
9. General discussion and exchange of views on item 5.
10. General discussion and exchange of views on sport and racism.
11. General discussion and exchange of views on item 10.
12. Questionnaire.
13. General discussion and exchange of views on item 7.
14. Discussion on the introduction of new list topics/consideration of new list topics.
15. Adoption of the report.

## E. Organization of work

9. At the same meeting, the Chair-Rapporteur introduced a draft programme of work for the session, which was adopted. The programme of work, as subsequently revised, is contained in annex II. The Chair-Rapporteur invited general comments from participants.

10. Delegations warmly congratulated the Chair-Rapporteur on his election.

11. The representative of the Dominican Republic, speaking on behalf of the Community of Latin American and Caribbean States (CELAC), reiterated the Community's support for the recommendations and conclusions on racism in sport adopted by the Ad Hoc Committee at its seventh session. The Community underscored the importance of the fight against racism in sport and that football, in particular, could be used to broaden anti-discrimination messages and support the efforts of Governments and civil society. In December 2015, CELAC had adopted a statement on the International Decade for People of African Descent and recognized that despite some progress, racism, racial discrimination, xenophobia and related intolerance persisted and continued to have an impact on the enjoyment of the rights of people of African descent in Latin America and the Caribbean. CELAC reaffirmed its commitment to the development of national strategies and the coordination of regional and international policies for the total elimination of racism and all forms of discrimination, with particular attention to the rights of Afrodescendants.

12. The representative of South Africa, on behalf of the African Group, highlighted the plight of victims of racism, racial discrimination, xenophobia and related intolerance, and pointed out that 15 years had passed since the adoption of the Durban Declaration and Programme of Action in 2001. Victims needed urgent protection, not an academic debate on the existence of gaps. The African Group welcomed constructive and meaningful discussions with a view to fulfilling the mandate of the Ad Hoc Committee and elaborating complementary standards.

13. The representative of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC), recalled that, in 2007, The Human Rights Council, in resolution 6/21, had established the Ad Hoc Committee with a mandate to elaborate, as a matter of priority and necessity, complementary standards in the form of either a convention or additional protocol(s) to the Convention, filling the existing gaps in the Convention, and providing new normative standards aimed at combating all forms of contemporary racism, including incitement to racial and religious hatred. Over the previous seven sessions, the Ad Hoc Committee had held deliberations on several thematic areas. The representative expressed concern over the limited progress made towards fulfilling the mandate of the mechanism. She pointed to new forms of discrimination not covered by the Convention, resulting in a rise in hate crimes that had a particular impact on indigenous populations, migrant workers, refugees and religious and ethnic groups. She emphasized that national mechanisms lacked uniformity and universality, and therefore the international legal framework urgently needed to be strengthened. She called on the Chair to steer the discussions of the Ad Hoc Committee towards mutually agreeable elements that would form a draft additional protocol.

14. The representative of the European Union reaffirmed its strong commitment to the promotion and protection of human rights for all, stating that all forms and manifestations of racism and xenophobia were incompatible with the founding values of the Union, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights. The European Union called on all States that had not yet done so to ratify the Convention and to step up efforts to achieve full and effective implementation of existing international human rights law. The European Union remained fully committed to the primary objectives and commitments undertaken at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and to engaging with

the Working Group of Experts on People of African Descent, the Ad Hoc Committee and the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action. The European Union benefited from the scrutiny of and advice from its Agency for Fundamental Rights and the European Commission against Racism and Intolerance. It was willing to share experiences in dealing with those issues, and looked forward to hearing contributions from all parts of the world and to engaging in constructive discussions in the Ad Hoc Committee.

15. The representative of Namibia associated her delegation with the statement made by the representative of South Africa on behalf of the African Group. She stated that the fight against racism, racial discrimination, xenophobia and related intolerance was a fight in which everyone should participate to ensure peaceful coexistence among different groups of people. She identified racial profiling as a violation of human rights and as a long-standing issue of concern for Namibians. The representative drew attention to the discriminatory profiling and victimization of migrants by law enforcement and immigration officials solely on the basis of their perceived ethnic or religious affiliations, sometimes with unacceptable levels of impunity. She called on the international community to cooperate and address the substantive gaps identified in the existing normative framework and the reservations maintained by some parties to the Convention.

16. The representative of the Bolivarian Republic of Venezuela associated his delegation with the statement made by the representative of the Dominican Republic on behalf of CELAC, stating that Venezuela remained committed to the fight against racism, discrimination and related intolerance. He reaffirmed the need for the elaboration of complementary standards to bolster and update the international legal framework, to deal with the new expressions of racial discrimination and related intolerance and to protect victims. The delegation regretted the lack of support of some countries for this crucial mandate over the years and reiterated its call to Member States to undertake effective implementation of the Durban Declaration and Programme of Action, and of paragraph 199 of the Programme of Action in particular. It valued the important interaction with distinguished experts in identifying gaps and other relevant issues with regard to the Convention.

17. The representative of Mexico disassociated her delegation from the statement made by the representative of the Dominican Republic on behalf of CELAC on matters of form, and reiterated Mexico's commitment to the work of the Ad Hoc Committee.

18. The representative of Brazil associated his delegation with the statement made by the representative of the Dominican Republic on behalf of CELAC. The full and effective implementation of the Durban Declaration and Programme of Action was a key priority for Brazil. The representative understood that the Ad Hoc Committee would discuss further procedural gaps in the Convention and the issue of racism in sport. He recognized the potential of sports as a universal language that could contribute to educating people on the value of diversity, tolerance and fairness as well as a means to combat racism, racial discrimination, xenophobia and related intolerance. As the recent host of two major sporting events, namely the football World Cup and the Olympics, as well as the Paralympics, Brazil knew from experience the role sports could play in fostering inclusion and promoting diversity, and was aware of the challenges in eliminating racism from sports. It was crucial for national courts to grant victims effective and adequate remedies and reparations. In Brazil, legislation provided firm penalties and remedies for racial discrimination, and the courts had played an increasingly important role in changing perceptions and had provided the necessary remedies. Finally, the representative reiterated Brazil's commitment to the work of the Ad Hoc Committee.

19. The representative of the United States of America recognized that combating racial discrimination was not just a domestic issue, but a challenge that every nation faced. She

underlined that the United States was strongly committed to the Convention as the core international legal framework for combating racial discrimination, and echoed the views of Ad Hoc Committee members, expressed at prior sessions, that the Convention was flexible enough to respond to contemporary challenges and did not require substantive protocols. The procedural additions that had been proposed so far would duplicate existing mechanisms or represent a poor use of limited resources. The Ad Hoc Committee should focus its work on addressing implementation gaps and on action-oriented practical approaches to combating racial discrimination in all its forms. The United States had engaged with the Intergovernmental Working Group the previous week on efforts to commemorate the International Decade for People of African Descent and recent domestic initiatives to combat racial discrimination. Lastly, the representative noted her delegation's support for the discussion of the topic of racism in sport, and welcomed the development by the Ad Hoc Committee of a practical action plan or set of guidelines that would address the intersection of racism and sport.

20. The representative of Libya stated that Libya associated itself with the statements made on behalf of the African Group and on behalf of OIC. Libya attached importance to the work of the Ad Hoc Committee. The representative underscored the need to redouble efforts to limit the forms of contemporary forms of racism that were on the rise, particularly those targeting people of African descent, Muslims, immigrants and other groups. He urged Member States to work together at all levels to combat the growing trend of xenophobia and racial profiling.

### **III. General and topical discussions**

#### **A. Presentation and discussion on the update by the Committee on the Elimination of Racial Discrimination of its 2007 report on complementary international standards**

21. At the 2nd meeting, the Ad Hoc Committee considered agenda item 4. The Chair of the Committee on the Elimination of Racial Discrimination, Anastasia Crickley, gave a presentation on the issue of procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination. A summary of her presentation and the discussion with the participants that followed is provided in annex I to the present report.

#### **B. Discussion on xenophobia**

22. At the 3rd meeting, the Ad Hoc Committee considered agenda item 5. A summary of the discussion on xenophobia is provided in annex I to the present report.

#### **C. Discussion on procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination**

23. At the 4th meeting, the Ad Hoc Committee considered agenda item 6. A summary of the discussion is provided in annex I to the present report.

**D. Presentations and discussion on effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction of victims, consistent with article 6 of the International Convention on the Elimination of All Forms of Racial and Discrimination and paragraph 165 of the Durban Programme of Action**

24. At the 5th meeting, the Ad Hoc Committee considered agenda item 7. Isabel Obadiaru, a specialist in human rights, gender and migration, gave a presentation.

25. At the 6th meeting, the Ad Hoc Committee considered the topic of the provision of free legal aid to victims of racism, racial discrimination, xenophobia and related intolerance. Klara Kalibová, Director and Legal Adviser to In Iustitia, and Sharmaine Hall, Executive Director at the Human Rights Legal Support Centre of Ontario, Canada, gave presentations.

26. At the 7th meeting, the Ad Hoc Committee heard a presentation from Jamil Dakwar, Director of the Human Rights Programme at the American Civil Liberties Union.

27. At the 8th meeting, the Ad Hoc Committee heard presentations on national, regional and international perspectives on this agenda item from Jerald Joseph, Commissioner, National Human Rights Commission of Malaysia, and Lilla Farkas, Senior Legal Policy Analyst, Migration Policy Group, Brussels.

28. A summary of these presentations and the discussion with the participants that followed is provided in annex I to the present report.

29. At the 7th meeting, the Chair-Rapporteur announced that he had agreed to the proposal made by the members of the Ad Hoc Committee to move the agenda items originally scheduled for the meetings to be held on 21 October to 24 October and to reallocate the remaining agenda items, in order to accommodate delegates who would be attending the twenty-fifth special session of the Human Rights Council on the human rights situation in the Syrian Arab Republic. As there were no objections, the programme of work was revised accordingly.

**E. General discussion and exchange of views, 9th meeting**

30. At the 9th meeting, the Chair-Rapporteur proposed to begin with general discussions and an exchange of views on item 6. The Ad Hoc Committee would then meet in the afternoon to discuss item 5. The Chair-Rapporteur called on the Ad Hoc Committee to try to identify common ground, and invited general comments.

31. The representative of South Africa noted that Ms. Crickley had indicated in her presentation that the 2007 report by the Committee on the Elimination of Racial Discrimination and the recommendations therein were still relevant. The procedural gaps identified by the Committee itself could be a useful starting point.

32. The representative of the United Kingdom of Great Britain and Northern Ireland reiterated the long-standing position of his Government that no complementary standards were necessary and that it would not take part in discussions on the elaboration thereof.

33. The representative of the United States shared the view of the representative of the United Kingdom. She stated that while the discussions were very interesting and useful, they also showed that the main issues were related to the implementation of the Convention and not to any gaps in it. She reiterated that the focus should be on implementation. The definition of racial discrimination was broad and encompassed xenophobia and



contemporary forms of racism. She also stated that the Ad Hoc Committee did not need to produce a paper.

34. The representative of South Africa, acknowledging the statements by the representatives of the United Kingdom and the United States, argued that implementation needed to be made more effective. Currently, it was not possible for the Committee on the Elimination of Racial Discrimination to conduct follow-up visits, a gap that the Committee had identified in its 2007 report. She restated the view of her delegation that experts were needed on the ground to help States fully implement the Convention and that the introduction of follow-up visits was a good way to help eliminate racism.

35. The Chair-Rapporteur called on those who were of the view that there was no need to elaborate complementary standards but who recognized that there were implementation issues to propose practical solutions in order to find common ground. He briefly adjourned the meeting to allow for informal consultations.

36. The meeting resumed after informal consultations among the Member States. The Chair-Rapporteur reminded the Ad Hoc Committee of its mandate, set out by the Human Rights Council, 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 Chair-Rapporteur noted that some States were of the view that the mandate did not preclude the Ad Hoc Committee from proposing something less formal than an additional protocol. However, the mandate did refer to the priority and necessity of a complementary standard; it also mentioned filling existing gaps, meaning that those gaps were acknowledged. The Chair-Rapporteur encouraged the Ad Hoc Committee to discuss the mandate in a holistic way and to avoid an all-or-nothing approach.

37. The representative of the European Union reiterated the position of his delegation that there were no gaps in the Convention to fill. The European Union was willing to work on guidelines and action plans, but could not commit to work towards a convention or an optional protocol.

38. The Chair-Rapporteur recognized that one of the challenges of the Ad Hoc Committee was to identify its end product. Member States needed to decide whether the Ad Hoc Committee was working towards a convention or not. He adjourned the meeting to allow for further informal consultations.

39. At the 11th meeting, a revised programme of work reflecting the cancellation of the 9th and 10th meetings and reallocating the remaining agenda items over the second week of the session was distributed to the Ad Hoc Committee.

40. The Chair-Rapporteur referred to the draft text on agenda items 4 and 6, which had been circulated to members of the Ad Hoc Committee through the Regional Coordinators. He noted issues of timelines related to the request of the Committee on the Elimination of Racial Discrimination and the timing of the ninth session of the Ad Hoc Committee. He underlined the need to make further progress on xenophobia, sport and racism, and effective and adequate remedies.

41. Concerning xenophobia, the Chair-Rapporteur summarized the issues discussed, including the definition of xenophobia; the existence of xenophobia and its apparent increase in recent years; the question of whether article 1 of the Convention covered xenophobia, given that it was neither explicitly referred to nor could be inferred from or implied in the definition; the benefits of elaborating a complementary standard on xenophobia; and the “do no harm” principle. With respect to the last, the Chair-Rapporteur

asked what harm would ensue from nations adopting laws against xenophobia on the basis of an international standard. He invited comments from the participants.

42. The representative of Pakistan, on behalf of OIC, stated that the Ad Hoc Committee was meeting to fulfil a mandate conferred by the Human Rights Council, and based on a consensus universally agreed in paragraph 199 of the Durban Programme of Action. The Committee itself also recognized that the Convention did not cover xenophobia, and suggested that general recommendation No. 30 (2004) on discrimination against non-citizens adopted by the Committee on the Elimination of Racial Discrimination be used as a starting point for consideration. She added that it could not be claimed that xenophobia and related intolerance were unrelated to the Convention and the Committee.

43. The representative of Zimbabwe stated that defining the scope of the phenomenon could assist in arriving at a definition and elaborating complementary standards to regulate it.

44. The representative of the United States stated that in the view of her delegation there were no substantive gaps with regard to xenophobia and that the United States did not see the need for complementary standards. The representative of the European Union agreed, adding that the summary of the questionnaire showed that Member States addressed xenophobia at the national level even though it was rarely defined in domestic legislation. The European Union was not ready to engage in a definition or to discuss the concept of xenophobia.

45. The representative of South Africa, on behalf of the African Group, recalled that in a preambular paragraph of the Durban Declaration, States acknowledged “that xenophobia, in its different manifestations, is one of the main contemporary sources and forms of discrimination and conflict, combating which requires urgent attention and prompt action by States, as well as by the international community”. Xenophobia was identified as both a “source” and “form” of racism. She therefore queried whether the seeming resistance to paragraph 199 of the Durban Programme of Action was a negation of the wishes of Heads of State and Government or evidence that the problem of xenophobia had been solved since 2001. She recalled that, as referenced in the report of the Ad Hoc Committee on its fourth session, States were under no obligation to implement general recommendations of the Committee. She urged the Ad Hoc Committee to keep an open mind and not to backtrack on international agreements and to make a start on the subject under discussion.

46. The representative of Pakistan, on behalf of OIC, noted that xenophobia and related intolerance were connected and that they should be included in any protocol or instrument that would be prepared. She recalled that an expert invited to attend the sixth session of the Ad Hoc Committee, Iannos Dimitrikopolous, of the European Union Fundamental Rights Agency, had noted that there was a need to identify elements of xenophobia, pointing out that data published by law enforcement agencies and criminal justice systems in the member States of the European Union had shown great fluctuations between 2011 and 2012 in officially recorded crimes in the Union with racist, xenophobic, anti-Roma, anti-Semitic or Islamophobic/anti-Muslim motives. Some countries had seen a decrease in officially recorded racist crimes while in other countries there had been an increase. He had highlighted the fact that the results of large-scale surveys carried out by his Agency, which targeted specific population groups, had shown that hate crime and discrimination remained a problem for a sizeable proportion of respondents. The representative asked the Ad Hoc Committee to show flexibility and recognize what was apparent.

47. The Chair-Rapporteur encouraged the members of the Ad Hoc Committee to endeavour to find common ground, as it was acknowledged that xenophobia existed and that it was not well defined; there was therefore a need to agree on what the phenomenon was.

48. The representative of Mexico stated that xenophobia had increased, but that a deeper discussion was required on the issue. Laws on xenophobia already existed in many countries. It was important to assess the impact of a specific definition of xenophobia at the international level on a national situation.

49. The remainder of the 11th meeting was dedicated to informal consultations on item 5.

## **F. Presentation and discussion on sport and racism**

50. At the 12th meeting, the Committee considered agenda item 10. A summary of the presentation and the discussion on sports and racism with the meeting participants that followed is provided in annex I to the present report.

## **G. General discussion and exchange of views, 13th meeting**

51. At its 13th meeting, the Ad Hoc Committee continued its informal discussions on the draft document on the items considered during its present session, in particular with regard to item 10.

52. At the same meeting, the Ad Hoc Committee held a discussion on the questionnaire circulated in 2013 and again in 2014 further to the outcomes of the its fourth and fifth sessions.

53. At the request of the Chair-Rapporteur, the Secretariat recalled the history of the questionnaire and outlined the content of the updated summary by the Committee on the Elimination of Racial Discrimination of the responses received to the questionnaire pursuant to paragraph 4 of Human Rights Council resolution 21/30. In paragraph 4 of the resolution, the Council had requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to distribute a questionnaire, from within existing resources, to gather information on the three topics discussed by the Ad Hoc Committee during its fourth session and covered in its report (xenophobia, national mechanisms and procedural gaps), including legal and judicial frameworks and practices, substantive and procedural measures in line with the mandate of the Ad Hoc Committee, and possible recommendations. The Council invited OHCHR to post the responses to the questionnaire on its website and, in consultation with the Chair-Rapporteur, to prepare a summary of the responses received during the inter-sessional period for discussion by the Ad Hoc Committee at its fifth session.

54. By a note verbale dated 3 December 2012, OHCHR invited permanent missions in Geneva and New York to forward their responses to an attached questionnaire by 15 January 2013. The Office received 30 replies. The summary, as well as the full text of the responses received, were made available on the OHCHR website for the fifth session of the Ad Hoc Committee in 2013. At that session, it was agreed that the Chair-Rapporteur would seek additional responses to the questionnaire during the intersessional period by recirculating it, and that an updated summary of the responses received would also be issued.

55. In this regard, by a note verbale dated 21 July 2014, OHCHR invited permanent missions in Geneva and New York that had not forwarded responses to the questionnaire to do so, and Member States that had already responded to send additional or more detailed information by 12 September 2014. (The deadline was subsequently extended to 19 September.) The Office received an additional 13 replies to the recirculated questionnaire and an updated summary was prepared, which was also posted on the website.

56. It was recalled that, bearing in mind the text of resolution 21/30, nine questions were posed concerning the topics of xenophobia, national mechanisms and procedural gaps, including legal and judicial frameworks and practices, as well as substantive and procedural measures in line with the mandate of the Ad Hoc Committee, as well as with regard to possible recommendations.

57. The Secretariat provided a recapitulation of the content of the summary document, and noted that the summary document, the questionnaire itself and the individual responses received from Member States and a regional organization were available on the website of the Ad Hoc Committee on the pages for the fifth and sixth sessions. The Chair-Rapporteur invited comments and recommendations on the way forward.

58. The representative of Pakistan, on behalf of OIC, acknowledged the contribution of States that had responded to the questionnaire, commenting that the lack of responses was as significant as the responses. She stated that the summary had elicited some very substantive comments from Member States and suggested that it be circulated to all countries, encouraging States to add or share more information. She added that the content of the summary document on the questionnaire was a good basis for discussion and moving forward.

59. The Chair-Rapporteur invited the Ad Hoc Committee to provide its analysis and assessment of the questionnaire, and asked what it wished to draw from the summary and what to do with the updated summary document.

60. The representative of South Africa, on behalf of the African Group, stated that it was not necessary to recirculate the questionnaire, as no more Member States were likely to participate and any further responses would not substantially change the summary. She suggested replicating the approach that the Ad Hoc Committee had used for the 2007 study by the Committee on the Elimination of Racial Discrimination to identify areas of convergence.

61. The representative of Pakistan, on behalf of OIC, clarified that its suggestion was to forward the updated summary to Member States with a view to sharing best practices, and agreed to proceed as suggested by the representative of South Africa.

62. The representative of the European Union noted that the questionnaire essentially reflected the different positions expressed in the Ad Hoc Committee in years past. The representative of Brazil asked for clarification and guidance from the Chair-Rapporteur on how to proceed.

63. Following an explanation from the Secretariat, the Chair-Rapporteur clarified that the Ad Hoc Committee could decide to submit the updated summary as an official document of the Human Rights Council, which would be translated and issued under a United Nations document symbol, or to maintain it as an in-session document, part of the accumulated knowledge of the Ad Hoc Committee. He asked the Ad Hoc Committee to reflect on the way forward.

64. The representative of Pakistan, on behalf of OIC, underlined the need to somehow recognize the document, as it represented the submissions of the States and the organization that had responded. The representative of South Africa, on behalf of the African Group, suggested that the Ad Hoc Committee endeavour to draft text regarding the questionnaire. Following suggestions by the Chair-Rapporteur, the Ad Hoc Committee developed language with regard to item 12 of the agenda.

65. At its 14th meeting, the Ad Hoc Committee considered agenda item 13.

66. Referring to the International Covenant on Civil and Political Rights and article 6 of the Convention, the representative of the European Union stated that access to justice and

the right to equal treatment before the tribunals and all other organs administering justice was a fundamental human right, and it was the duty of States to ensure access to effective protection and remedies against racial discrimination. The European Union believed that the normative standards provided by the Convention and other human rights instruments, the commitments made in Durban as well as the institutional set-up of the United Nations human rights system offered a framework for the common fight to eliminate racism, xenophobia and related intolerance, including the promotion and the guarantees at national level of effective and adequate remedies.

67. The European Union Action Plan on Human Rights and Democracy 2015-2019 sought to prevent violations of human rights and ensure that victims had access to justice and redress by targeting support to justice systems, monitoring and promoting compliance with internal obligations in terms of access to justice and fair trial at all levels of the legal process through technical cooperation, and promoting the independence of the judiciary and the facilitation of access to justice at local level. The representative touched upon the victimization of individuals and civil society organizations that spoke out against discrimination and racism, often without access to justice and remedy.

68. Important European Union legislation existed on combating certain forms of racist and xenophobic crime, which set the frame for a common response to hate speech and hate crime, ensuring accountability of perpetrators. European Union legislation also obliged member States to penalize public incitement to violence or hatred against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin; that act was also punishable if committed by public dissemination or distribution of tracts, pictures or other material (hate speech). For any other criminal offences, member States must ensure that racist and xenophobic motivation was considered as an aggravating circumstance.

69. The Victims' Rights Directive, adopted in 2012, gave victims of crime a broad set of rights, including access to justice, compensation and restoration, as well as the right to receive appropriate information, support and protection. It also ensured that all victims of crime benefited from an individual assessment of their protection needs. Particular attention was paid to victims of hate crime.

70. The European Union emphasized that in addition to legislation, capacity-building of all stakeholders, awareness-raising and human rights education were important to ensure effective implementation and enforcement of legislative measures and for the reporting of crimes to relevant authorities. The Union emphasized the important role of national human rights institutions in human rights education, promoting tolerant and just societies free from racism, racial discrimination and xenophobia and the right to access to justice and effective remedy for all, without discrimination.

71. The Chair-Rapporteur welcomed the statement by the representative of the European Union and requested other participants to contribute with a view to finding common ground. With regard to the summary prepared by the Secretariat on the main points of the presentations under item 7, the Chair-Rapporteur highlighted issues such as barriers to access to justice and remedies for victims, racial profiling and the burden of proof on victims. He requested participants to identify best practices and areas of convergence.

72. The representative of South Africa, on behalf of the African Group, stated that item 7 was a very interesting issue and should be considered further. However, the issue would be better followed up by the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action rather than the Ad Hoc Committee.

73. The representative of the European Union agreed, as the issue of access to justice and State obligations was covered by the International Covenant on Civil and Political Rights.

74. The representative of Brazil also agreed that this important topic in the fight against racism should be discussed in an environment where the issue could be decided on substantively.

75. The Chair-Rapporteur concluded that the issue of effective and adequate remedies should be a topic for the Intergovernmental Working Group, and he would proceed on that basis. He adjourned the 14th meeting in order that informal consultations could take place to draft such a recommendation with regard to item 7.

76. At its 15th meeting, the Ad Hoc Committee held a discussion on the introduction of new topics, and considered a document entitled "List of topics discussed at the second session". With regard to the list of topics, the Chair-Rapporteur suggested concluding the current topics prior to commencing consideration of new topics.

77. The Committee discussed referring two topics, procedural gaps and xenophobia, to the Committee on the Elimination of Racial Discrimination and the fact that it would carry on with the discussion on those subjects once a response had been received from the Committee. The topics that were still on the agenda needed to be added to and concluded.

78. The representative of South Africa, on behalf of the African Group, proposed that the Committee consider topic 14 on the list, "Protection of migrants against racist, discriminatory, and xenophobic practices", and topic 16, "Protection of refugees, returnees, and internally displaced persons against racism and discriminatory practices".

79. The representative of the European Union proposed topic 2, "Comprehensive anti-discriminatory legislation". His delegation had taken note of the proposal by the representative of South Africa.

80. The representative of the United States expressed appreciation for the proposals on the topics, and stated that she would seek instructions from her capital and revert to the Committee with comments. The Chair-Rapporteur expressed the hope that a decision on the topics for future sessions would be taken by the following day, noting that the topics covered by the questionnaire and the item on effective and adequate remedies had already been discussed at the current and past sessions, and therefore did not need to be considered again. He added that xenophobia, racism and sport, and procedural gaps with regard to the Convention were still topics of discussion in the Ad Hoc Committee and would be considered further at future sessions.

81. The Chair-Rapporteur encouraged the members of the Ad Hoc Committee to consult expeditiously with their Governments and regional groups on the three newly proposed topics, and emphasized that confirmation was needed as soon as possible prior to the end of the current session. The Regional Coordinators would then determine how to schedule those topics during the next session.

82. The Ad Hoc Committee then continued its informal discussions on the draft document on the topics/items considered during current session.

## **H. General discussion and exchange of views, 16th meeting**

83. At its 16th meeting, the Ad Hoc Committee held another general discussion and exchange of views. It reviewed and made changes to the in-session draft document on which it had been working with a view to its adoption at the final meeting of the session. The Chair-Rapporteur recalled that the draft in-session document would be updated at the

final meeting of the session to include the suggested topics for consideration at the next session.

84. The representative of Pakistan, on behalf of OIC, requested that it be recorded that the list of topics was not conclusive and that it remained open until a final programme of work had been adopted for the ninth session of the Ad Hoc Committee.

85. The 16th meeting was adjourned to allow additional time for informal discussions, with a view to arriving at an agreement.

#### **IV. Adoption of the report**

86. At the 17th meeting, the Chair-Rapporteur invited general statements from participants. Delegations expressed appreciation to the Chair-Rapporteur and all the members of the Ad Hoc Committee and satisfaction with the work and outcomes of the eighth session, and looked forward to future engagement in the Ad Hoc Committee.

87. The Chair-Rapporteur, in his concluding remarks, thanked the representatives to the Ad Hoc Committee for their cooperation and contributions to the discussions during the session. He expressed appreciation for the constructive approach demonstrated during the session and the vast experience, knowledge and views presented by the invited experts.

88. While acknowledging that some recommendations had not met with agreement, he noted that his foremost duty as Chair was to discharge the mandate of the Ad Hoc Committee, which was to elaborate 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. By any standard, the Ad Hoc Committee had failed to deliver. No participant in the session could say that it had advanced the mandate or the human dignity that those whose rights were violated daily deserved. There was no question about the legality of the mandate and that it had to be discharged unless the Human Rights Council issued contrary instructions.

89. At a time when the world was experiencing increasing cases of racially motivated crimes, racism, racial discrimination and xenophobic attacks, the Ad Hoc Committee should have seized the moment to make real advances in the discharge of its mandate. Instead, it appeared that participants remained largely wedded to the positions that their Governments had held since the establishment of the Ad Hoc Committee. He noted, while fully appreciating that diplomacy, by its nature, was a painstaking and slow process, eight years was nevertheless a long time, and a change of approach was clearly called for. The Chair-Rapporteur called upon all delegates to use the intersessional period to think of new ways of tackling the Ad Hoc Committee's mandate. He welcomed an exploratory discussion ahead of the ninth session, and offered his availability for such a discussion. He would also reflect and put forward his thoughts to the Human Rights Council, in his capacity as Chair-Rapporteur, when he presented the report of the eighth session of the Ad Hoc Committee to the Council at its thirty-fourth session.

90. He welcomed a meeting of minds in the discharge of the Ad Hoc Committee's mandate, and remained hopeful that at future sessions it would be able to arrive at common landing zones and make real progress in the discharge of its mandate. The whole point of the Committee's mandate was to seek nothing more than to accord greater protection to those who, from time to time, unfortunately found themselves victims of acts of racism, racial discrimination, xenophobia and related intolerance, and the Ad Hoc Committee should not fail them.

91. At same meeting, resulting from the informal discussions, the Ad Hoc Committee agreed that the following recommendations, outcomes and list of topics would be discussed at the ninth session of the Committee:

- (a) Recommendations and outcomes:
  - (i) The Ad Hoc Committee recommends that the Human Rights Council consider adopting a resolution inviting the Committee on the Elimination of Racial Discrimination to further elaborate on its 2007 study on possible measures to strengthen implementation through optional recommendations or the update of its monitoring procedures (A/HRC/4/WG.3/7) with respect to the following:
    - a. The suggestion that an optional protocol to the Convention be established to provide for an evaluation visit/inquiry procedure, in terms of:
      - i. The purpose of the visit/inquiry procedure;
      - ii. The format of the visit/inquiry procedure;
      - iii. Expected outcomes and/or anticipated benefits of the visit/inquiry procedure;
      - iv. Differences and similarities between such visits and the ones performed by existing special procedures;
    - b. The challenges and best practices with regard to the national mechanisms that have been observed by the Committee;
  - (ii) The Ad Hoc Committee invites States parties to consider making the declaration under article 14 of the Convention providing for the possibility for individuals and groups of individuals to submit communications to the Committee;
  - (iii) The Ad Hoc Committee notes that discussions on xenophobia remain difficult and resolves to continue consideration of this topic in its future sessions;
  - (iv) The Ad Hoc Committee encourages the Human Rights Council to invite the Office of the United Nations High Commissioner for Human Rights, in particular, the Anti-Racial Discrimination Section, to continue to address issues of racism in sport, including by encouraging the exchange of best practices among States, sports governing bodies and other relevant stakeholders as appropriate, in its work. In this regard, the Ad Hoc Committee believes that resources should be made available within the Office to carry out activities pertaining to racism and sport;
  - (v) The Ad Hoc Committee invites States, as appropriate, to address the fight against racism and racial discrimination in sports in their national action plans against racism. The Ad Hoc Committee also invites States that have not yet adopted national action plans against racism to consider doing so, and to include measures against racism and racial discrimination in sports therein;
  - (vi) Having considered the updated summary of the responses received to the questionnaire pursuant to paragraph 4 of Human Rights Council resolution 21/30, the Ad Hoc Committee:
    - a. Expresses its gratitude to the countries and the regional organization that responded to the questionnaire;
    - b. Takes note of the summary of the responses;
    - c. Decides to use it as resource material for future discussions;
  - (vii) The Ad Hoc Committee recommends that the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme



of Action consider including in its programme of work discussions on effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Programme of Action;

(b) List of topics for the ninth session:

(i) Comprehensive anti-discrimination legislation;

(ii) Protection of migrants against racist, discriminatory and xenophobic practices;

(iii) Protection of refugees, returnees and internally displaced persons against racism and discriminatory practices.

92. At the same meeting, the report of the eighth session was adopted ad referendum, with the understanding that delegations would send any technical corrections to their statements in writing to the secretariat by 11 November 2016.

## Annex I

### **Summaries of the expert presentations and initial discussions on the agenda topics**

#### **A. CERD update of its 2007 report on complementary international standards**

1. On 17 October at the 2nd meeting of the Ad Hoc Committee, Anastasia Crickley, Chairperson of CERD, gave a presentation on the issue of procedural gaps to the ICERD. Ms. Crickley stated that it was the UN Day for the Eradication of Poverty and reminded the Committee of the insidious intersectionality between poverty and racial discrimination. She noted the valuable insights made by other CERD members to the discussions of the Committee on procedural gaps in previous sessions. Ms. Crickley recalled the 2007 study by CERD (A/HRC/4/WG.3/7) which outlines possible measures to strengthen the implementation of the Convention, including the proposal to adopt an optional protocol to the Convention to provide for an inquiry procedure. She continued that Mr. Avtonomov, in his capacity as CERD's Chairperson at the time, had emphasized the fact that the Committee believes that the substantive provisions of the ICERD are sufficient to combat racial discrimination in contemporary conditions and that in the near future it would be able to address problems without amending the Convention. Ms. Crickley added that Article 1 of the ICERD provides the widest definition of racial discrimination. She also reaffirmed that the primary responsibility for the elimination of racism and racial discrimination lies with States.

2. The possibility of an optional protocol to the Convention was also suggested by CERD, incorporating additional procedures to make it possible for Committee Members to undertake visits to selected countries for the purposes of investigating or evaluating situations. Ms. Crickley concurred that implementation of the Convention could be strengthened if supplemented by an optional protocol to establish an inquiry procedure, such as those which already exist for some of the other treaty body Committees. She noted that the ICERD, adopted almost 50 years ago, remained relevant to the challenges faced today and provided guidance on relevant and applicable standards due to its flexible working methods including through days of discussion, adoption of general recommendations, responding to urgent situations through the Early Warning and Urgent Action Procedure.

3. Ms. Crickley discussed the Dublin process of Treaty Body Strengthening which culminated in the adoption of General Assembly resolution 68/268 in 2014, and which has instituted changes aimed at enhancing the capacity of treaty bodies to better protect the human rights of vulnerable populations on the ground. She further reiterated the important role that general recommendations continue to play in assisting States parties in interpreting the articles of the Convention and effectively implementing their obligations. CERD had adopted 35 general recommendations, including the general recommendation on combatting racist hate speech adopted in 2013. Additional CERD general recommendations include those on special measures, non-citizens, discrimination against Roma, gender-related dimensions of racial discrimination, indigenous peoples, and refugees and displaced persons. Through then, the Committee is able to contribute to the implementation of the ICERD by clarifying the scope and nature of State party obligations under the Convention. Through concluding observations, the Committee provides detailed guidance to States parties on concrete measures to eradicate discrimination. Ms. Crickley nevertheless stated

that there continue to be challenges in the implementation of the Committee's recommendations.

4. One of the biggest obstacles to CERD's effectiveness is that some States submit their periodic reports very late or do not submit them at all. In response to this and in compliance with General Assembly resolution 68/268, CERD adopted the simplified reporting procedure and offered it to States parties whose periodic reports were overdue by more than 5 years. The second obstacle identified by Ms. Crickley was the non-implementation of the Committee's concluding observations. Lastly, reservations expressed by some States parties, especially under article 4, were identified as an impediment to CERD's effectiveness. In addition to the withdrawal of reservations by States parties, Ms. Crickley expressed hope that there would be universal ratification of the ICERD.

5. Ms. Crickley discussed some positive initiatives that have helped CERD in improving its effectiveness such as collaboration with other Treaty Bodies, with Special Rapporteurs and with NGOs. In particular, she noted CERD's interaction with members of other Committees such as the Committee against Torture and the Committee on the Rights of Persons with Disabilities to explore the intersectionality of racism with other areas. She expressed regret that more NGOs from developing countries could not participate in consultative meetings in Geneva due to resource constraints but expressed hope that this would improve with technological advances.

6. CERD was also active when it came to early warning and urgent action, Ms. Crickley noted. For example, in August 2016, the Committee adopted a decision on Burundi, expressing alarm over reported killings and disappearances as well as torture, arbitrary arrests and genocidal rhetoric which have targeted former members of the Burundese Armed Forces. The decision called on the Government of Burundi to respect its obligations under international law, and on the High Commissioner for Human Rights to draw attention to the human rights situation in Burundi to the international community. Similarly, CERD adopted Decision 1(85) under its Early Warning and Urgent Action Procedure in August 2014 in response to the current turmoil in Iraq. In that decision, CERD denounced massacres and other human rights abuses by extremist terrorist groups that called themselves the "Islamic State (IS)".

7. Ms. Crickley related that in May 2015, CERD adopted a Statement on the current migrant crisis, and at the UN Summit on Refugees and Migrants convened by the General Assembly on 19 September 2016, the Committee called on Member States and international inter-governmental organizations to ensure that the discussions during the Summit on large movements of refugees and migrants as well any solutions and follow up processes were grounded in international human rights law, including the ICERD and its General Recommendation No. 30 on discrimination against non-citizens.

8. The representative of South Africa, on behalf of the African Group, requested Ms. Crickley to provide further details about the 2007 CERD report and the procedural gaps identified therein, with particular attention to paragraphs 97 to 106. On the topic of substantive gaps in article 1 of the ICERD and on contemporary forms of racial discrimination, the representative noted that while CERD's general comments are appreciated and valuable, the function of the Committee is to monitor States parties on the basis of law and not on the basis of general comments. She underlined that general comments are not binding and therefore cannot be seen as a way of filling gaps. South Africa identified racist hate speech as one example of a gap where general comments by CERD could not substitute a protocol.

9. The representative of Zimbabwe inquired about the protection gap in the ICERD with respect to xenophobia. He stated that definitions or references to xenophobia are missing from most international legal texts and instruments including article 1 of the

ICERD. He explained that this lack of explicit legal recognition made it difficult to regulate the phenomenon and bred denial as perpetrators do not view xenophobia as a crime. The representative asked Ms. Crickley whether it would be advantageous to broaden the ICERD to include the issue of xenophobia.

10. The representative of the European Union stated that the substantive provisions of the ICERD are sufficient, and underlined the importance of the effective use of existing procedures under ICERD, such as the reporting procedure, the review procedure, the follow-up procedure, the early warning and urgent action procedure and the individual complaints procedure. He also highlighted the need to optimize the existing monitoring mechanisms of the CERD. More focus should be put on the effectiveness of the existing procedures under ICERD and the EU is open to exploring ways of enhancing implementation of existing procedures.

11. The representative of Mozambique asked whether Ms. Crickley considered that an additional protocol to the CERD would be useful.

12. The representative of Pakistan, speaking on behalf of OIC, reiterated Zimbabwe's point that the definition of racism should be understood more broadly to include xenophobia and in particular Islamophobia and asked Ms. Crickley to comment on this. She requested Ms. Crickley to elaborate on disaggregated data collection by States and specifically how this would help to eliminate racism.

13. The representative of Namibia echoed the views of South Africa on behalf of African Group, Pakistan on behalf of OIC and Zimbabwe regarding the comprehensiveness of the existing framework of the Convention. She pointed to the gaps created by reservations under articles 2, 4, and 14 of the Convention, and asked Ms. Crickley how States could move forward to overcome such gaps. The representative also asked whether the number of general comments produced by CERD is itself an indicator of existing gaps and the need to further elaborate on the existing framework. Regarding the issue of reporting on disaggregated data, Namibia noted that this type of data collection is extremely challenging and even impossible in some cases. The representative asked for guidance or assistance on how States can go about collecting such statistics, especially States such as Namibia where there has been a history of apartheid and where it would be difficult to ask citizens to revisit this segregation.

14. Ms. Crickley explained that she had no concern about explicitly naming issues such as Islamophobia, and considered it important that they should be named where appropriate. In response to the concerns expressed on disaggregated data collection, Ms. Crickley stated that although the preamble of ICERD clearly recognizes the existence of one human race without distinction, attempts need to be made to clarify the extent of certain issues in order to address them. She stated that most countries do have some idea about the composition of their populations and that this information should be used to address the needs of groups and to have the rights of vulnerable groups realized. She continued that to address issues of superiority and inferiority and of racial discrimination, disaggregated data collection is essential to have an idea of the extent of the issue and who experiences them.

15. Ms. Crickley responded on the issue of efficient use of existing procedures and expressed her wish for CERD to engage more with regional mechanisms across the different regions which are doing very good work to promote human rights. In response to issues raised about the reservations expressed by some States, Ms. Crickley informed that progress is being made and that some countries are beginning to reconsider these reservations. With regard to general recommendations, she acknowledged that they cannot substitute articles of ICERD, but they can be a very useful mechanism in explaining and clarifying issues without going beyond the boundaries of the Convention. She cited as an example was Roma people, who were ignored by States for a long time in their reports to

CERD. The existence of a general recommendation ensured States recognized this group in their reporting. In response to concerns raised about xenophobia not being covered in ICERD, Ms. Crickley stated that, in her view, the definition of racial discrimination covers xenophobia.

16. Regarding the paragraphs highlighted by South Africa in the 2007 report by CERD, the expert replied that CERD is willing to produce an addendum to the report, but that resources are required and certain protocols needed to be put in place first. She also noted that there is a specific focus on NHRIs in the paragraphs mentioned, which CERD actively supports; CERD has put in place a procedure to interact directly with NHRIs. Additionally, Ms. Crickley reflected that CERD recommended an optional protocol to create a mechanism for the Committee to make country visits and that the coordination of follow-up visits should be further developed to create a framework for such visits.

17. The representative of South Africa asked for clarification from the Secretariat regarding the protocol to be followed regarding the requested addendum to the 2007 report. At the request of the Chair-Rapporteur, the Secretary of the Committee provided additional information on the protocols to be followed to issue a new report or an addendum to the report. It was recalled that an outcome of the 7th session that “the Committee recommends that the Committee on the Elimination of Racial Discrimination update, either in the form of an addendum or a new report, its 2007 report on complementary international standards (A/HRC/4/WG.3/7)”. This request was communicated to the Human Rights Council at its 31st session and to the members of the CERD at its 89th session and also through a letter. While a decision had not as yet been taken by CERD on this request, it did not preclude a future update or addendum and the Secretariat stood ready to facilitate the technical requirements in that regard.

18. The representative of Zimbabwe acknowledged Ms. Crickley’s explanation that many xenophobic incidents are due to racial discrimination, but he noted that some incidents go beyond that. After Brexit there were reports of hate crime which could not be attributed to racial discrimination only. The representative also raised the previous unfortunate incidents in South Africa where Africans were attacking other Africans. As such, Zimbabwe maintained that basing xenophobia purely on racial discrimination is too restrictive.

19. The representative of Pakistan appreciated the consideration that there is a need for national mechanisms to fight racism. However, she asked Ms. Crickley about the merit and importance of an international framework since national mechanisms may lack universality, uniformity, coherence and adherence to international standards.

20. The Chair-Rapporteur asked the expert if there was a way to overcome the reservations made by countries to the ICERD, such as with an addendum or another way of addressing these reservations through an international framework.

21. The representative of South Africa on behalf of African Group recalled that the years between 1973 and 1982 were declared the First Decade to Combat Racism and Racial discrimination, and referred to the Second and Third Decades that followed. At the end of the Third Decade, however, a decision was taken by the Member States to have another conference, this time on Racism, Racial Discrimination, Xenophobia, and Related Intolerance. At that time, three decades since the adoption of the ICERD, the world had evolved and by that time the situation in southern Africa had changed. The representative stated that the problem faced beyond racial discrimination was the issue of xenophobia. She pointed out that in its wisdom, the UN named the conference “Racism, Racial Discrimination, Xenophobia and Related Intolerance” necessarily because there was a distinction between those phenomena; xenophobia was singled out. The representative

requested Ms. Crickley about such reasoning behind this distinction in the context of Article 1 of ICERD.

22. In response, Ms. Crickley noted that countries often opt out of different pieces of conventions that they have ratified. She also pointed to the new International Decade of African Descent that has been declared and which has been welcomed by CERD. Regarding xenophobia, Ms. Crickley, stated that racial discrimination has standing in international law and that there was no problem covering the hate crime incidents after Brexit because they involved racism and racial discrimination. She clarified that racism does not require a difference in skin colour and mentioned the example of racial discrimination experienced by Eastern European people in Western Europe. On the question about NHRIs, Ms. Crickley stated that NHRIs are linked to each other and that there are international principles, through the Paris Principles. She further highlighted the need to focus more on regional mechanisms within countries, particularly in efforts to eliminate racial discrimination.

## **B. Xenophobia**

23. At the 3rd meeting of the Ad Hoc Committee, on 18 October, the Chair-Rapporteur recalled the dialogue which had taken place on the topic of xenophobia over the past seven sessions and called for a more focused discussion on this topic with a view to weaving together common threads. He asked the Committee to consider the definition and treatment of xenophobia at international law; whether xenophobia and racial discrimination are the same; whether xenophobia fell within the ambit of article 1 of the CERD Convention; and whether there are gaps that need to be elaborated or protection gaps that require filling. Reminding the Committee that these issues have been raised in previous sessions, he invited general statements on the topic of xenophobia.

24. The representative of South Africa, on behalf of the African Group, agreed that focused discussions were needed in light of the extensive information gathered over the past seven sessions. She recalled the presentation made yesterday by the Chair of CERD, who spoke of the important role played by general comments in complementing the ICERD, and by Patrick Thornberry, Former CERD member, in a previous session. The representative suggested that the Committee use these presentations as a starting point for discussion, and in particular, suggested that CERD General Recommendation 30 – Discrimination against non-citizens (CERD/C/64/Misc.11/rev.3) be projected on the screen in the meeting room to prompt pointed discussions.

25. The representative of Pakistan, speaking on behalf of the OIC, echoed the need to have focused discussions, stating that xenophobia is a recognized phenomenon referred to in many consensus documents and as such, it required further understanding and assessment of gaps. The representative added that the OIC supported the proposal made by South Africa, on behalf of the African Group.

26. The Chair-Rapporteur suggested that the Committee proceed on the basis of the proposal of South Africa to use CERD General Recommendation 30 as there were a starting point for discussions. CERD General Recommendation 30 was projected in the meeting room and copies were distributed for review.

27. The representative of South Africa reminded the Committee of its mandate and that the instruction of paragraph 199 was not just to discuss but to produce complementary standards, suggesting that the Committee consider what could be relevant in the CERD General Recommendation 30 producing complementary standards on xenophobia. In particular, she pointed to the language contained in the first two paragraphs of the general recommendation as a potential starting point to draft complementary standards.

28. The representative of Mexico asked for a clarification as to whether there is an assumption being made that there is agreement on the need for complementary standards on xenophobia. The representative of Slovakia also questioned whether there is a general agreement on the drafting of complementary standards.

29. The Chair-Rapporteur clarified that a more open and structured discussion was needed given the lack of general agreement on this issue. He reminded the Committee of the discussions and information already amassed; having considered whether there are gaps in definition of xenophobia, and whether xenophobia falls with article 1 of the ICERD. He noted that in the EU Cybercrime treaty there is specific reference to xenophobia. He suggested that the Committee consider the issue holistically and determine if there are gaps, and that the Committee proceed on that basis.

30. The Chair-Rapporteur also drew the attention of the Committee to article 1(1) of the Convention: "In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life". He provided dictionary definitions of xenophobia as a fear, dislike or hatred of foreigners and strangers, adding that xenophobia can manifest in diverse ways and can be driven by racist sentiments, religious differences or even economic inequalities, as pointed out by Ms. Crickley. Additionally, xenophobia can emerge amongst the same nationality or the same ethnic group. In this context, the Chair asked whether these facets are covered by the ICERD or whether there was a need to elaborate further on xenophobia. The Chair noted that once an issue is defined clearly and an international standard elaborated, countries are more likely to 'domesticate' the issue.

31. The representative of Pakistan, speaking on behalf of the OIC, agreed to this approach and added that every important dictionary defines xenophobia, and that the concept is recognized in many important world summits and documents. As reflected in HRC agenda item 9 and HRC resolution 16/18 and the discussions of the Committee over the last seven sessions, xenophobia is a very important concept for the OIC.

32. The representative of South Africa clarified that the Africa Group was not making assumptions; rather that in preparation for the session, all the regional coordinators had agreed that there were going to be pointed discussions on the topics contained in the programme of work. In view of this, the representative referred to a document drafted by the Office of the High Commissioner for Human Rights, the International Labour Organization, and the International Organization for Migration in preparation for the 2001 Durban Conference entitled "International Migration, Racism, Discrimination, and Xenophobia". In this document, xenophobia was defined as "attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity". The representative requested that this document be put forward as part of the pointed discussions to help inform the definitional issues surrounding xenophobia.

33. The representative of Zimbabwe stated that a definition of xenophobia should be elaborated as a complementary standard at the international level so that national mechanisms could adequately deal with this contemporary form of discrimination. He explained that it was difficult for NHRIs to protect against xenophobia without legal status or definition, and that this lack of legal recognition contributed to a culture of denial. Lastly, the representative stated that the general definition of racial discrimination contained in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination made it difficult to prove xenophobic crimes.

34. The representative of Cuba stated that the current state of the world reflects the need for something to be done in terms of treaties and standards. Expressions of xenophobia were not just related to the arrival of foreigners, but also within their communities. Cuba expressed concern that certain nationalities and religions were the focus of xenophobia and also over xenophobic parties rising to power in many countries.

35. The representative of the United States stated that the United States is deeply concerned by the global trend of intolerant and xenophobic discourse and that all hate crime and discrimination threatens the security of individuals and societal cohesion. The representative encouraged countries to combat xenophobia and xenophobic violence through the implementation of existing international obligations particularly under the ICERD and through consensus practical action plans. She underlined the presentation by the Chairperson of CERD, that the ICERD covers contemporary forms of racism including xenophobia.

36. The representative of Brazil noted that while the absence of xenophobia terminology from the ICERD is an important issue, it does not mean that there is necessarily a gap, as new issues appear, new ways to address them can be formed. Brazil encouraged the full implementation of all relevant international instruments that address the fight against racism, racial discrimination, xenophobia and related intolerance, including the ICERD.

37. The Chair-Rapporteur asked the Committee whether there were protection gaps, and about how xenophobia is dealt with in the various regions.

38. The representative of Slovakia stated that the term xenophobia is derived from two Greek words: xenos and phobos which means fear. He emphasized the word – fear – and questioned whether an emotion could be regulated by a legally binding document. He suggested that the Committee focus on this element and on manifestations of xenophobia in the form of hate speech and violence.

39. The representative of Namibia referred to the Resolution Condemning the Xenophobic Attacks in the Republic of South Africa adopted by the African Commission on Human and Peoples' Rights in its 56th Ordinary session as a regional response.

40. The representative of Kenya reminded the Committee that its mandate was to elaborate standards and urged it start drafting them. Kenya supported the statements made by South Africa, on behalf of the African Group, that xenophobia is an international problem and that the Committee was created in response to a gap that requires filling.

41. The representative of Pakistan, speaking on behalf of OIC, supported the comments made by Kenya, and stated that the Committee had to start drafting somewhere. The representative agreed with Slovakia on the origins of the word “xenophobia” and that the manifestations of that phobia or fear were very important. She highlighted that manifestations of xenophobia were evident, and that the Committee could not indefinitely discuss the basis of the mandate.

42. The representative from Mexico stated that Mexico supported the inclusion of xenophobia in the agenda and did not oppose discussion on xenophobia and underlined that further clarification was required. In particular, the representative said the Committee would benefit from hearing from representatives of the regional groups on how xenophobia is being addressed regionally. The representative echoed the sentiments of Cuba on the need to address xenophobia.

43. The Chair-Rapporteur recalled that some of these issues had already been tackled by regional experts in previous sessions. He quoted of Joy-Dee Davis Lake at the 5th session, who compared the ICERD to the Inter-American Conventions and said: “...I must point out that the ICERD - the first universal human rights treaty - was adopted in a very concrete and specific political context, in which important historical processes were developing both



in the area of decolonization and in the recognition of equal rights principally in the USA...However, it was recognized that reality had changed drastically and not necessarily in the definitive eradication of racial discrimination. In addition to the migratory phenomena of the present time, there are new forms of intolerance, no longer only concerning race and ethnicity but involving many other human diversities. Intolerance has moved beyond an individual's phenotypical characteristics to encompass other characteristics such as social condition, health, gender identity, national identity and religion. Therefore, the purpose of the Inter American Convention was to improve, strengthen, and enlarge the margins of protection already offered by the ICERD". He urged the Committee to move in the direction of the mandate and to elaborate complementary standards as a matter of priority and necessity. Considering the extensive discussions with regional experts over the years, the Chair-Rapporteur recommended that the Committee zero in on the various issues.

44. The representative of Namibia referred to the resolution dealing with the situation in South Africa and further to some of the provisions from the Kampala Convention for the Protection and Assistance of Internally Displaced Persons in Africa, to highlight measures taken at the regional level in the African context. She suggested that the Kampala Convention be used as a reference point in the discussions.

45. In response to the contribution made by Slovakia on the manifestations of xenophobia, the representative of South Africa stated that xenophobia manifests itself through hate speech or racial violence. As such, the representative proposed that this language be added to the non-paper working document. She also said that the Special Rapporteur has submitted many reports which address the question of the manifestation of xenophobia. She proposed that some language from those reports be used in the in-session document.

46. The Chair-Rapporteur suggested that the Committee consult informally in view of reaching some common ground on the topic.

47. The Chair-Rapporteur invited the participants to work on an in-session draft document and to advance the discussion.

48. The representative of Namibia asked for clarification about the process of compiling regional documents into an in-session draft document of the Committee. She had referred to the resolutions only to reflect what had been done in the African region and to start the discussion on xenophobia. The Chair-Rapporteur reiterated that the point of this exercise was to see what other regions were doing and to find some common ground. The representative of Namibia asked what was being done in other regions and that this should be reflected in the in-session draft document.

49. The representative of Zimbabwe supported the idea of the Committee working on drafting some text during the session in order to focus the discussion.

50. The representative of South Africa supported working on an in-session draft document or text. She referred to a report by the then-Special Rapporteur on racism, racial discrimination, xenophobia and related intolerance (A/HRC/5/10). She suggested that the language of paragraph 17, which outlined what was being done by the European Commission against Racism and Intolerance and referred to a declaration on the use of racist, anti-Semitic and xenophobic elements in political discourse, could be a useful addition to the non-pain-session draft document.

51. The representative from the United States of America requested clarification on whether the in-session draft document would be the conclusion of the eighth session of the Ad Hoc Committee. The Chair-Rapporteur explained that the non-paper or in session document would not necessarily serve as the end product of the Ad Hoc Committee's

session, but for the time being was a way of moving forward and refining some of the issues.

52. The representative of the European Union reserved his position on the language and the drafting process, and stated that he needed to consult the group. The representative of the United States also reserved her position on the language and the overall product, and stated that she needed further instructions from her Government.

53. The Chair-Rapporteur confirmed that the in-session draft document would be shared with Committee Member as the discussion progresses.

54. The representative of the United States suggested that further discussion on the topic of xenophobia (Item 5) be moved to the afternoon of 21 October. The representative of South Africa on behalf of the African Group, agreed that the discussion on xenophobia should be resumed on that afternoon to enable delegations to consult with their respective capitals and provide for a richer discussion.

55. During the 3rd meeting, the Committee discussed possible elements and draft text on the topic of xenophobia with regard to agenda item 5, which was compiled by the Secretariat in an in-session document and distributed following the meeting to members of the Committee through the Regional Coordinators.

### **C. Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination**

56. On 18 October, the Ad Hoc Committee held a discussion and exchange of views at its 4th meeting. The Chair-Rapporteur asked delegations to consider how to move forward on the topic of procedural gaps to the Convention, under agenda item 6.

57. Slovakia, speaking on behalf of the European Union, reiterated the EU's position that the Convention as well as the work of the CERD offer a flexible framework to eliminate racism, racial discrimination, xenophobia and related intolerance. He noted that a number of challenges remained including the need for universal ratification of the Convention, the need for States parties to lift reservations, in particular under Article 14, and the need for States to honour their reporting obligations. He noted vast gaps in reporting of obligations and overdue reports. Reports from 31 States parties are overdue by at least 10 years, and 22 reports by at least 5 years (A/71/17).

58. The representative of the United States renewed her country's commitment to combating racial discrimination, but noted that the position of her Government on the issue of procedural gaps had not changed. The best approach was to improve implementation of Convention obligations including with respect to reporting, not to adopt an optional protocol. An optional protocol on the substantive provisions was also not needed as this could damage the Convention by diluting the focus of States parties. The representative recalled the CERD's view that xenophobia was already covered by the Convention. The United States welcomed work on practical initiatives such as consensus actions plans.

59. The representative of Brazil reinforced that the CERD continues to lack an official mandate to undertake country visits and follow-up to its recommendations which are key to fully implementing Convention obligations. He stated that additional norms were needed in this area as all the treaty bodies created after the Convention already had this capacity.

60. The representative of the United Kingdom aligned his delegation with the statement made by the European Union. He reiterated his delegation's longstanding position that the Convention provides comprehensive protection on all forms of discrimination and that the emphasis should be on its effective implementation rather than the filling supposed gaps.

61. The representative of South Africa, on behalf of the African Group, referred to Ms. Crickley's presentation yesterday where the Chairperson stated that there were procedural gaps. She pointed to pages 2 and 3, and paragraphs 96-207 of the 2007 report by the CERD and proposed that the Committee focus on the language therein as a starting point for discussions. In particular, the representative noted the CERD's reference to the inquiry procedures that exist under the Convention on the Elimination of Discrimination against Women and the Convention on Discrimination against Persons with Disabilities, and suggested that some language be borrowed from these instruments.

62. The representative of Pakistan, on behalf of OIC, reiterated its position that there are procedural and substantive gaps for which an additional protocol is needed. She added that national mechanisms lack universality, objectivity, impartiality, and coherence with international standards. The representative supported the proposal made by South Africa on how to proceed and urged the Committee to begin formulating elements of a protocol.

63. The representative of Venezuela renewed his country's support for the mandate of the Committee. He stated that there was a need to plug gaps in terms of research. He echoed the calls to strengthen the international legal framework in the fight against racism and to adopt a protocol. The representative outlined that this framework would need to set out equal treatment and opportunities for refugees, asylum seekers and migrants; adequate reparations and compensation for victims of racial discrimination, and sanctions on the spread of hate speech in social media. Lastly, the optional protocol should include measures to ensure that people of African descent, indigenous and immigrants are not excluded or discriminated against in public and private education systems. Venezuela supported the proposal put forward by South Africa.

64. The representative of Namibia aligned with South Africa and called for further strengthening of the mechanisms including through the adoption of an optional protocol to the Convention. She recalled Ms. Crickley's reference to procedural gaps including the timeliness of reports and the need for follow up visits. Measures to address these gaps through the adoption of an optional protocol to the Convention should be explored.

65. During the 4rd meeting, the Committee discussed possible elements and draft text on the topic of procedural gaps to the Convention with regard to agenda item 6, which was compiled by the Secretariat in an in-session document and distributed following the meeting to members of the Committee through the Regional Coordinators.

**D. Effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction of victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action**

66. At the 5th meeting, on 19 October, the Ad Hoc Committee considered the right of victims to seek effective and adequate remedies and reparations from national institutions. Isabel Obadiaru, a specialist in Human Rights, Gender and Migration, presented on this topic.

67. In her presentation, Ms. Obadiaru provided an overview of the general situation of victims of racial discrimination in Switzerland and considered issues of effective and adequate remedies. Ms. Obadiaru noted that those who face discriminations increasingly confront forms of racism that are more complex and linked to wider issues such as gender discrimination, marginalization, and religion, etc. These issues are much more difficult to address precisely because they are intricate and the phenomenon of racism seems less apparent and can be more easily denied. She stated that discrimination is a phenomenon

that unfortunately occurs on a daily basis and remains entrenched in almost all societies. In particular, she noted that racial discrimination does not affect men and women in the same way, and that victims can suffer from dual or multiple forms of discrimination based on race, gender, religion, nationality, migrant status, etc. She said that according to the last report produced by the network of counseling centres for victims of racism (Réseau de centres de conseil pour les victimes du racisme) in 2015, counseling centres were mostly consulted by men, particularly of African origin.

68. She stated that discriminations and racism are quite widespread in Switzerland, a country that is multicultural, with almost 25% of its residents, foreigners. Manifestations of racism are occurring, for instance, in the media and in political speeches and structural discrimination persists most notably in the labour market, workplace, housing, health assistance among other areas.

69. After the ratification of the Convention in 1994, Switzerland established the Federal Commission against Racism and adopted a law, article 261 bis (\*) in the penal code, to criminalize racial discrimination and in particular public incitement to racial hatred. The challenge is that this law only covers public discrimination and it remains difficult to prove discriminatory intent in some of these acts, especially with reference to cases involving discrimination on account of colour, language or nationality. Additionally, there is no specific and comprehensive legal framework for discrimination that occurs in the labour and housing context, where discrimination occurs at a higher rate.

70. Ms. Obadiaru also highlighted the importance of non-legal measures to provide remedies. She emphasized the role of prevention and awareness-raising in the fight against racism. In that regard, an extra-parliamentary commission was created by the Federal Council to implement Convention, raise public awareness, provide recommendations and promote collaboration among national and international organizations, relevant authorities and civil society. She described steps taken in Switzerland to introduce special programmes to foster integration (Programmes d'Intégration Cantonales - PIC) and fight against discrimination at the same time. In 2014 there was the launch of a four-year integration programme that led to the establishment in almost all cantons of advisory services for victims of racial discrimination. This is a national programme and results will be available after the first phase has concluded in 2018.

71. Alongside a rise in xenophobic incidents, Ms. Obadiaru pointed to an increase in racism against people of African descent and against people of the Muslim faith. She also noted the migratory phenomenon resulting in high levels of migrant and asylum seekers arriving in Switzerland, particularly as a result of the conflict in Syria, and the discrimination faced by these groups.

72. Despite this increase in number of incidents, Ms. Obadiaru observed a contradictory reduction in the number of complaints. She explained that this illustrates the difficulty of bringing cases to court, and points to the obstacles faced by victims, in bringing complaints forward. The panellist discussed obstacles faced by victims in accessing effective and adequate remedies such as the lack of awareness of the services and assistance available, language barriers, the marginalization and isolation faced by many victims as well as the scarcity of human and financial resources of counselling services. Furthermore, victims of discrimination arriving from other countries and given their individual histories, may be reluctant to report racial discrimination for fear of inaction. They may also have little trust in organizations or in legal proceedings, or may not report for fear of losing their legal status in the host country.

73. Ms. Obadiaru underscored the complexity of multiple forms of discrimination, particularly as it relates to women, who face higher levels of discrimination, especially in the labour market, workplace, housing, etc. She emphasized the need for a comprehensive

and intersectional approach in developing strategies, and the need for data collection to properly identify the main issues that affect racially disadvantaged groups, the profile of victims, and to develop concrete policies and mechanisms to better protect victims of racism or discriminations. Special attention must be given to those groups affected by the intersection of different dimensions such as gender and racial discrimination (e.g. refugee and migrant women, female domestic workers, marginalized women, etc.).

74. Following the presentation, several delegations expressed their appreciation for Ms. Obadiaru's presentation.

75. The representative of Zimbabwe commented on the current debate in Switzerland regarding cultural integration of migrants and on the focus on immigrants' preparedness to culturally integrate, for instance in the expectation that immigrants speak the language of the canton in which they reside. He asked whether there were safeguards to ensure objectivity and how those who felt victimized could seek recourse.

76. The representative of Namibia shared with the Ad Hoc Committee the experience of Namibia and the challenges faced in racial discrimination cases. She discussed the Office of the Ombudsman which functions as an NHRI. She also noted the low number of racial discrimination cases registered in Namibia and attributed this to a lack of awareness of the available mechanisms or fear of further discrimination or backlash if victims report cases. She added that in legal processes, the burden of proof constitutes a huge challenge for complainants of racial discrimination. She noted that in the European Union, the burden of proof in legal proceedings can be shifted to the defendant once a case of discrimination has been established. However, Namibia has no such system; the Prosecutor-General has the discretion to decline to proceed if there is not enough evidence of prima facie discrimination. In response to the phenomenon of multiple, intersecting forms of discrimination, she added that female domestic workers in Namibia – non-white people in the employ of white people – face serious discrimination and do not complain due to the difficulty of proving it as well as fear of losing their jobs. The delegate asked for recommendations on how to tackle these issues.

77. The representative of Pakistan, speaking on behalf of the OIC, stated that the general acceptance of xenophobia was of great concern to her delegation. She observed that despite States' efforts in their national capacities, there continues to be a lack of effectiveness in combating racism. She asked the delegate to provide insight on this discrepancy. The delegate further requested comments on the current conflicts in areas such as Syria, Afghanistan and Iraq and how these conflicts contribute to xenophobia and racism. The representative asked whether the expert saw a link between racism and xenophobia and the phenomenon of home-grown "jihadis" raised in Western countries. Lastly, she inquired whether hate speech in the name of freedom of expression was spreading.

78. Ms. Obadiaru noted that particularly since 2014, policies have been introduced to foster social integration of migrants, including programs by various organizations to help migrants learn and speak the language. She highlighted the importance of language as a way to promote participation in society, to spread awareness of rights, and to better access employment. With regard to enhancing complaint mechanisms and redress for victims, Ms. Obadiaru encouraged the participation of organizations that are in direct contact with victims and the importance of intercultural dialogue in order to raise awareness and foster trust. She noted how difficult it can be for victims to deal with these issues. On the recent influx of asylum seekers and refugees, the panellist underlined the important role played by the media and the need to avoid stereotyping in the depiction of migrants and asylum seekers. She encouraged the elaboration of policies which promote cross-cultural knowledge, respect for other cultures and coexistence.

79. The representative of Slovakia requested further elaboration on how domestic legislations treat the burden of proof in racial discrimination cases. He discussed the legislation in Slovakia which is based on an EU directive and provides specifically for discrimination in relation to employment. In this system, once an employee complains of discrimination, the employer must prove that there has been no discrimination.

80. The representative of Mexico stated that Mexico has a national council that mandated to prevent and eradicate all forms of discrimination. Through this body, legislative reforms and a wide range of activities are undertaken including the receipt of complaints from victims. The delegate asked the panellist on her view on bodies committed to fighting discrimination at large instead of racial discrimination specifically.

81. The representative of Libya emphasized the role of the media in providing accurate information of migrants and in particular, people of African descent, in reducing xenophobia. The delegate stated that despite various programmes and measures in place, racism continues to increase. He asked the panellist on how this issue will evolve in the future.

82. The representative of Bolivia asked about legal measures and mechanisms to combat racism and xenophobia against not only migrants, but persons in transit generally.

83. The representative of the NGO African Commission of Health and Human Rights Promoters inquired whether the victims of racism and discrimination were undocumented migrants.

84. The representative of South Africa shared several experiences of her country with respect to xenophobia. She highlighted the important role of public education about migrants, refugees, and human rights protection. The delegate referenced the crisis in 2008 in South Africa where xenophobic violence erupted in response to socio-economic challenges. She reflected on the difficulties faced by disempowered racial minorities in bringing these type of cases to court and on how to encourage victims to use legal mechanisms in pursuit of remedies.

85. Ms. Obadiaru spoke of the vital importance of awareness-raising and public education across society in dispelling negative stereotypes. The panellist explained that undocumented victims are even more vulnerable to discrimination and face the added fear of arrested or deportation. She noted the precarious situation of people in transit who find it difficult to come under the protection of national legislations. As pointed out in the Declaration of the UN High-level Dialogue on International Migration and Development, she stated that measures should be strengthened in order to protect the human rights of all people, regardless their migration status and also to address international migration through a comprehensive approach that recognize the role and responsibility of countries of origin, transit and destination. Ms. Obadiaru highlighted the crucial role played by institutions in the fight against racial discrimination, xenophobia and intolerance and stressed the need for strengthening national protection frameworks and mechanisms to protect victims of all forms of discrimination. She reinforced the importance of awareness-raising programs and comprehensive policies that promote the equality of human beings as well as measures that tackle the causes of poverty.

86. Ms. Obadiaru commented on the lack of organizations that deal with multiple forms of discrimination, and encouraged organizations to take into account different dimensions of racism and intersectionality. The panellist stressed the importance of disaggregated data in better identifying the scope of the phenomena and to understand who is being affected by it. She also drew attention to the intersection of racism with age, particularly the effect of racism on children.

87. The representative of Venezuela agreed with the expert on the important role of education and awareness-raising programmes in the fight against racism and discrimination. The delegate noted that despite national institutions and courts, racial discrimination continues to rise. He added that discrimination affects all regions including Venezuela, not only countries in the global North. He asked how the Ad Hoc Committee within its mandate can further contribute to the fight against discrimination.

88. Ms. Obadiaru stated that the current legal framework including the Convention should be better implemented and enhanced, favouring the adoption of additional measures combating racism, xenophobia and different manifestations of discrimination and intolerance.

89. At the 6th meeting, on 19 October, the Ad Hoc Committee considered the topic of the provision of free legal aid to victims of racism, racial discrimination, xenophobia and related intolerance. Klara Kalibová, Director and Legal Adviser of In Iustitia, and Sharmaine Hall, Executive Director at Ontario's Human Rights Legal Support Centre, presented on this topic.

90. Ms. Kalibová's presentation focused on the general practice of criminal procedure in Czechia and Europe, the needs of victims, and how legislation and procedures can be influenced by international conventions and the international community. She explained that In Iustitia is the only NGO in the region focusing on hate crimes. As a 'frontline' NGO, its mission is to improve the status of victims by providing legal representation and counselling. This work should be seen in the framework of Article 6 of the Convention, which binds all States to provide effective protection and remedies for victims. The Durban Declaration and Programme of Action also states that all persons who have experienced racial discrimination should have access to effective remedies, which should be widely known, easily accessible, expeditious, and not unduly complicated.

91. The expert explained that bias violence is not known in academia, the international community or at the national level. The huge underreporting of bias violence has meant a reliance on ad hoc studies and imprecise reporting mechanisms by States and NGOs for data. She discussed the non-violent form bias violence can take, for instance, cyber-attacks and hate speech. Ms. Kalibová mentioned the recent increase in speech crime, triggered by, among other things, domestic presidential campaigns in other countries. She spoke of the difficulties of fighting bias crime in environments where racism and xenophobia are part of political discourse, as seen in Czechia and the United States. She added that bias and hate crime affect not only individuals but entire communities and societies.

92. Ms. Kalibová emphasised that legal frameworks dealing with this type of crime need to consider victims' needs. Free legal aid for victims is often unavailable due to a lack of resources and strong social networks in marginalised groups. Systemic discrimination also makes it difficult to access police protection and service providers as victims often do not believe that these institutions will help them or result in satisfactory outcomes. Language barriers, cultural barriers and legal status barriers further prevent victims from seeking assistance.

93. Ms. Kalibová talked about the impact of bias crime on individuals, explaining that bias crime creates identity damage. Additionally, the loss of dignity experienced during the crime can be reinforced by interactions with investigators, police, judges, and even social workers. Bias crime can cause severe health issues, both physically and psychologically, and even trauma. Furthermore, some victims lose their job due to the effects of a bias crime, and can also lose housing or encounter difficulties in finding a place to live which is the case for the Roma community in Czechia. Ms. Kalibová stated that ideally, physical and psychological harm, material loss, loss of dignity, privacy or family life, should be compensated by effective remedies. Effective remedies should recognise white bias and

white privilege present in all institutions, which could discourage victims from seeking help. Care must be taken not to cause secondary victimisation.

94. The panellist acknowledged that due to pressure from the European Union and the international community, Czechia has increased its attention to these issues. However, problems with awareness of available remedies continue. Ms. Kalibová underscored that available remedies for victims should be widely known. Czechia has a Victims Act that requires the first organization in contact with the victim to inform the victim of his or her rights and refer them to social and victim services. Since 2013, when this law came into force, no victims have been referred to In Iustitia by State institutions, which is an indication that the NGOs are not seen as a complementary body. As a result, service providers without a state partner have difficulty making themselves visible.

95. Ms. Kalibová also discussed the procedural obstacles faced by victims when trying to claim remedies including the need for legal aid, expenses like expert reports, administrative fees and travel, as well as the length of legal proceedings, all of which can be prohibitive for victims.

96. Ms. Kalibová explained that in a legal aid system, first, the victim should be provided basic advice and information on rights by a counsellor. Second legal assistance should be provided to explore possibilities to negotiate a claim against the perpetrator. Third, the claimant should have representation in court. She emphasized that the State has an obligation to support those who provide legal aid. In Czechia, to be eligible for free legal aid, victims need to pass several tests. There is a financial threshold that excludes those who have the resources to pay for their own legal assistance. The merit of the case is also examined. Czech nationals and EU citizens are eligible, but illegal migrants cannot benefit.

97. The EU Victims' Directive states that States should provide victims with free legal aid, but it also defers to national law, which means that if a State does not have enough resources to provide it to everybody, it can decide to pick only a certain group of victims for free legal aid. She said that Czechia has implemented a national law which fulfils the standards of the EU directive, but it has not been fully implemented. The free legal aid procedure in Czechia is a difficult one. Victims who wish to report a crime to the police need to fill and sign a legal document that is descriptive and difficult to understand. Victims don't get any information on their rights. Those who are eligible need to apply by providing the Court with many forms and documents, fulfil tests to meet the criteria for free legal aid, and wait for a long time. Additionally, while attorneys may have legal expertise, they lack specific training on victim needs, are not sensitive and do not offer translation services. Victim services which are better suited to these cases are not fully trusted by the State or by clients, as they may be seeking systemic change. As a result, they provide less services. Ms. Kalibová reinforced that legal aid should be provided by trained professionals and at reasonable prices for the State and for victims, and States should create a legal environment that respects bias crime victims and is accessible in terms of language and cultural barriers.

98. The Chair-Rapporteur pointed to the significance of international pressure in improving national legislation as a relevant point to be considered by the Ad Hoc Committee.

99. The representative of Pakistan, on behalf of OIC, agreed that hate crime attacks the dignity of a person which is against the Durban Declaration and Programme of Action, and expressed her deep appreciation for Ms. Kalibová's in depth analysis.

100. The representative of the Plurinational State of Bolivia asked Ms. Kalibová to comment on the fact that in many cases, it is the victim of the hate crime who has the burden of proof, leading to re-victimisation.



101. The representative of Slovakia shared some of Slovakia's national legislation and best practices in the area of free legal aid in the context of racial discrimination. He stated that the Slovak Anti-discrimination Act goes beyond the EU directives to provide protection for a much wider range of grounds, adding that the inclusion of "other opinion" and "other status" in the protected grounds makes it possible to flexibly respond to new facets of discrimination which could not be predicted by legislators. The Slovak National Centre for Human Rights is an equality body that assists victims of discrimination, monitors and reports discrimination and promotes equality. It is required to provide independent assistance to victims of discrimination. Subject to merit and financial criteria, victims may be entitled to free legal aid by the Centre for Legal Aid.

102. The representative of Namibia expressed interest in the difficulties posed by the burden of proof placed on victims which limit access to remedies. The Legal Aid Act in Namibia provides for legal practitioners to assist and represent victims who would otherwise not have the means, although it depends on the financial resources of the State. The Namibian directory of legal aid sometimes makes use of private practitioners who practice under the law society and government lawyers. The delegate added that article 12 of this Legal Aid Act provides that a court may issue a special aid certificate to any person in a civil proceeding when the State is of the opinion that it is in the interest of justice that the person should be represented by a practitioner and that person has insufficient means. The representative observed that legal practitioners are often not involved in the pre-trial stage and may not be aware of the burden of proof upon the victim. She requested Ms. Kalibová's insight on best practices such as training or awareness-raising amongst legal fraternity in relation to victims of hate speech, racism and xenophobia.

103. Ms. Kalibová explained that in Czechia, the burden of proof lies with the State in the criminal procedure. However, in practice, the State would rather sue a perpetrator for a general crime rather than for a bias crime because the procedure is easier and has a better chance of success. As a result, victims are forced to pursue their claim through the civil procedure where the court may bar them from contributing evidence of discrimination. She agreed that the burden of proof on victims is very heavy, even without the discrimination component. As a result, she suggested that it was imperative that States properly investigate the motivations behind hate crimes. She responded that to her knowledge, the EU Victims' Directive had yet to be implemented in Slovakia. In response to Namibia, Ms. Kalibová recommended the International Network on Hate Studies, a website with the contact information of practitioners and criminology trainers.

104. The representative of South Africa stated that South Africa is strongly committed to the elimination of hate crime. The delegate referenced the South African constitution which expressly criminalizes hate speech as well as new legislation called the Prevention and Combatting of Hate Crimes and Hate Speech Bill. In discussing South Africa's legal aid system, she mentioned that South Africa has pushed the legal aid mechanism as a means to advance access to justice at the level of the UN, with a view to having a universal standard for legal aid. Access to justice is provided through Legal Aid South Africa, an autonomous statutory body established by the Legal Aid Act. However, since South Africa is a developing country with a limited tax base, some areas in service delivery are prioritised.

105. The representative of Zimbabwe requested further clarification on whether bias or hate crimes should be dealt with via criminal litigation or civil procedure. Ms. Kalibová explained that her clients can claim to get remedies in both criminal and civil procedure. However, judges have often argued that the criminal procedure is too lengthy and therefore refer victims to the civil procedure. Civil procedure in Czechia lacks certain protections that the complainant would have in the criminal procedure such as the opportunity not to be interviewed directly in front of the perpetrator.

106. The Chair-Rapporteur noted the unforeseen overlapping of the 9th and 10th meetings of the Ad Hoc Committee with the recently announced special session of the Human Rights Council on the human rights situation in Syria, and Aleppo, and asked the Committee to consider solutions to this overlap. The representative of Slovakia, on behalf of the European Union, proposed that the discussion scheduled for the 9th and 10th meetings be merged with discussion on item 7, and that the programme of work be shifted to Monday and thereafter. The representatives of Namibia, the United States of America, and South Africa supported this proposal.

107. At the 6th meeting, Sharmaine Hall, Executive Director of the Human Rights Legal Support Centre in Ontario, Canada, discussed human rights legislation in Canada, and specifically, the way in which these claims are handled in Ontario. She explained that in Canada, human rights claims by individuals fall under provincial legislation. If the matter is not resolved, it can be referred to a human rights tribunal. In Ontario individuals can file a claim directly with the Tribunal. The Ontario Human Rights Commission is mandated to provide public education and increase public understanding of the Ontario Human Rights Code. The Commission can intervene on individual applications to the Tribunal. The Commission can also initiate its own applications to the tribunal and conduct public inquiries.

108. Ms. Hall explained that the Human Rights Legal Support Centre (HRLSC) provides legal assistance, including representation at mediations and hearings, to people who have been discriminated against and need legal advice. The HRLSC does no income testing and provides free legal assistance that covers the cost of expert witnesses, medical reports etc., to people across Ontario. Ms. Hall stated that individuals can contact the HRLSC for advice at any stage of the application process. 60% of all applications to the Tribunal are assisted by the HRLSC and 70% of these claims are settled before the hearing stage. She spoke of the racial diversity of the HRLSC staff which is composed of lawyers, paralegals, human rights advisors and representatives, legal case coordinators as well as administrative and management staff.

109. Ms. Hall discussed Ontario's Human Rights Code, which applies to five social areas, namely employment, housing, services, goods and facilities, contracts, and membership of associations. The prohibited grounds of discrimination are race, colour, ancestry, place of origin, citizenship, ethnic origin, creed (religion), receipt of social assistance, gender identity and expression, sexual orientation, marital status, family status, record of offenses, age, disability, sex (includes being pregnant and sexual harassment).

110. The Human Rights Tribunal of Ontario hears cases and issues decisions. It can accept applications from self-represented individuals. Ms. Hall explained that the HRLSC is working with the Tribunal to simplify the application form which is lengthy and can be daunting. Once an application is filed with the Tribunal, it must result in an oral hearing or a decision. Lawyers are not needed, allowing greater access to justice for victims. She explained that the Tribunal process starts when an application or discrimination claim is filed, after which the Tribunal sends it to the person named as responsible, who has 30 days to respond. A mediation session is then scheduled to resolve the claim. If not resolved, there is a hearing. Following the hearing, there is either a settlement agreement or a decision by the Tribunal. She Hall noted that the Tribunal can issue remedies in the form of financial compensation, including for injury to dignity and self-respect, and loss of income. It can also decide to order non-financial remedies such as instituting human rights policies and procedures, changing hiring practices, displaying human rights information in the workplace, and delivering human rights training to staff.

111. Ms. Hall discussed the HRLSC's innovative programmes to increase access to remedies for indigenous communities. For instance, applicants of indigenous origin can choose to receive assistance specifically by indigenous staff members. As a result of such

initiatives, services to indigenous clients rose tenfold within one year after the start of this programme.

112. The expert provided an overview of the type of cases with which the HRLSC has assisted including in the areas of racial profiling (by police and by a pharmacy chain), housing, services and education. She discussed successful cases that involved racialized complainants such as migrant workers and Muslims. Since its inception in 2008, the HRLSC has secured almost \$3 million in financial compensation for victims of discrimination in Ontario.

113. Ms. Hall noted that the HRLSC continues to remind the government and communities of human rights standards and of the Human Rights Code. While progress has been made, there was a need for vigilance and to continue ensuring effective and adequate remedies from Tribunals. She also noted that the province of Ontario has a privileged position within Canada in terms of human rights legislation.

114. The Chair-Rapporteur noted that direct access to tribunals is quite novel and that self-representation, no income testing, and outreach to indigenous communities ostensibly improved access to justice in Ontario.

115. The representative of Cuba asked Ms. Hall whether the Convention is sufficient to address issues such as racial profiling by police or whether complementary standards are needed in the context of racial profiling by police.

116. The representative of Zimbabwe noted that in many successful cases in Ontario, monetary compensation was ordered as well as compulsory human rights training for alleged perpetrators. He asked whether in the cases where the victims were rewarded monetary compensation, anything else had been done to restore their dignity.

117. The Chair-Rapporteur commented that in some cases, such as the case of a woman who had been the victim of discrimination at a pharmacy chain store, victims still need to go back to the place where the discriminatory event took place and may encounter secondary victimization.

118. The expert stated that it is difficult to address the issue of restoring dignity. Individuals who are able to get through the full process of the Tribunal often find vindication through that process, adding that the ability of victims to take their cases forward on their own terms can have a restorative effect. In response to the question posed by Cuba, Ms. Hall stated that it is difficult to say whether additional standards would be successful, but that more standards could only help. With regard to racial profiling, she said underlying biases are at play and, particularly with respect to police, it is persons in positions of authority that are abusing that authority. In Ontario and across Canada, she observed that police forces have different standards. Therefore, a more consistent and unified means of addressing the issue would be welcome.

119. At the 7th meeting on 20 October, the Chair-Rapporteur announced that he had agreed to the proposal from the Committee members to move the agenda items scheduled for the cancelled meetings on 21 October to 24 October, and to adjust the remaining agenda items of the session accordingly in order to accommodate delegates that were required to attend the 25th special session of the Human Rights Council on the human rights situation in Syria. With no objections from the Committee, the Chair-Rapporteur proceeded to adopt the change in the programme of work.

120. At this meeting, the Committee heard a presentation from Mr. Jamil Dakwar, Director of the Human Rights Program at the American Civil Liberties Union, on the agenda topic of "Effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and

satisfaction of victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action”.

121. In his presentation, Jamil Dakwar, Director of the Human Rights Program at the American Civil Liberties Union, discussed the United States’ legal system, in particular, the federal system in providing and protecting the right to effective legal remedy for victims of racial discrimination. Mr. Dakwar identified access to justice as integral to the right to effective legal remedy. He stated that under international law, access to justice must be fair, effective, and prompt. Mr. Dakwar added that States also have a duty to provide judicial, civil, and administrative remedies.

122. The expert provided an overview of the legal system in the United States as it relates to racial discrimination. He explained that the United States Constitution and federal laws prohibit discrimination based on race, colour, or national origin in a broad array of areas, including education, employment, public accommodation, transportation, voting, housing and mortgage and credit access, as well as in the military. Many federal government agencies include civil rights mandates as part of their missions, and the Equal Employment Opportunity Commission (EEOC), was specifically established to address issues of discrimination throughout the national workforce. The most comprehensive federal law is the Civil Rights Act of 1964. Title VII of that Act prohibits employment discrimination on the basis of race, colour, religion, sex, or national origin. Title VIII of the Civil Rights Act of 1968 (the Fair Housing Act) prohibits discrimination in housing and housing-related transactions on the basis of race, colour, national origin, religion, sex, disability, and familial status. Nearly all the states have human rights offices and/or commissions, which work to ensure that human rights and civil rights are respected within their jurisdictions. However, these local and state commissions are often under-funded. Many issues related to racial discrimination happen at the local level.

123. Mr. Dakwar stated that despite some progress made over the last several decades, people of African descent continue to face intentional, structural, and de facto forms of discrimination which manifest in unequal access to quality education, housing, health services, employment, electoral disenfranchisement and discrimination in the criminal justice system, among many other issues.

124. Mr. Dakwar stated that while courts are the main vehicle to provide redress and remedies to victims, especially with respect to people of African descent, U.S. Supreme Court decisions have brought about significant changes in procedural requirements that have erected barriers to access to courts and deny justice to plaintiffs. In *Alexander v. Sandoval*, the Supreme Court requires plaintiffs to meet the far more onerous standard of proving discriminatory intent. Given the fact that present-day discrimination is subtle, the law imposes an onerous burden on racial minorities who seek to assert their rights. Mr. Dakwar notes that this burden of proof exceeds the requirements of the Convention and of international law. Two other cases, *Twombly* and *Iqbal*, have substantially raised the pleading requirements so that plaintiffs are, in effect, required to prove their case at the time the case is filed or face dismissal before any adjudication on the merits of the case.

125. The expert talked about the pervasive practice of racial profiling in the United States and explained that there is no comprehensive federal law that prohibits racial profiling; this is not sufficiently addressed through state level legislation either. Mr. Dakwar discussed the significantly high burden of proof faced by victims when bringing criminal charges against law enforcement. As a result, few prosecutions for racially discriminatory law enforcement conduct are successful.

126. Mr. Dakwar stated that due to reservations entered by the United States, ratified human rights treaties have had little or no impact on its domestic policies. In his view, these reservations, together with the inadequate domestic implementation of human rights

treaties, significantly undermines these treaties and renders the significant protection contained therein meaningless.

127. The Chair-Rapporteur thanked Mr. Dakwar for his comprehensive presentation on the experience of access to remedies in the United States. He highlighted the fact that although federal law provides a level playing field, states are free to offer more protection. He noted that the onerous burden of proof presented by the need to prove discriminatory intent of perpetrators can be found in a number of jurisdictions and is not an easy issue to overcome. The Chair-Rapporteur further noted the phenomenon of racial profiling and the erosion of access to remedies in recent years. He reflected on the way reservations to human rights treaties in the United States limit the applicability of international law. The Chair-Rapporteur requested Mr. Dakwar to elaborate on whether, in the context of the situation in the United States, he considered that complementary standards were needed.

128. The representative of Pakistan noted that despite countries' legal frameworks to prevent discrimination, hate crimes are still on the rise which indicates that something is lacking. She asked whether a legally binding instrument would be useful, especially with regard to racial profiling which is not covered by Convention.

129. The representative of Indonesia asked Mr. Dakwar whether Congress or the executive branch of government is hesitant on certain cases related to the Convention like racial profiling. He asked, considering the judiciary should be impartial but still needs to follow decisions by the government, where could victims go for access to justice?

130. The representative of South Africa stated that racial profiling is an issue around the world and it shows the need to work on procedural gaps in the Convention, and demonstrates that national mechanisms have gaps. She said that once national remedies are exhausted, one needs to look further in order to give redress to victims. The delegate described South Africa's hate crime legislation that it is developing, and the role of the South African Human Rights Commission in protecting human rights, investigating violations and securing appropriate redress.

131. In response to the question posed by Pakistan, Mr. Dakwar appreciated the frustration at seeing the well-documented reports on the rise of hate crimes, xenophobia and intolerance in different parts of the world, including in the United States. He stated that national legislation has a central role in providing a comprehensive framework to tackle hate crime. Determination and political will are critical. He stated that international frameworks often do not offer specific guidelines; notably, the Convention does not explicitly name racial profiling as an unlawful practice. However, CERD has repeatedly, at every review, scrutinized the United States on this topic, and has indicated action that the United States needs to take in the area of legislation.

132. Mr. Dakwar agreed that national legislation is not always the only solution as it is often lacking guidance, structure, resources, and political will to enforce the legislation. Anti-racial profiling legislation has not been passed by Congress, but the administration has been active in enforcing other existing laws in civil rights protection to address the issue of racial profiling. The Justice Department's new guidance on the use of race by law enforcement has added insight into how federal agencies should handle racial profiling. However, it also includes inappropriate loopholes, particularly in the area of national security and border enforcement.

133. Mr. Dakwar noted that there is always going to be a gap between the international framework and the national implementation, and that it is debatable to what extent a new instrument would be appropriate as the rise in hate crimes could be because of the gap in Convention, or because States are not actively implementing at the national level. He said that the United States government could do much more to enforce the Convention. However, he worried that the risk of opening up negotiation of the Convention was to lower

the standards that were adopted decades ago. He said that taking a look at how the concluding recommendations and general comments of CERD can be taken more seriously would be beneficial.

134. With regard to the question by Indonesia, Mr. Dakwar explained that there are federal offices that hear cases in each government department. Most federal departments have a civil rights office, although they are very limited in what they can do. The expert noted that victims can also access courts under constitutional law, but the challenge here is accessing evidence to prove cases which is often with the perpetrator. He added that this is not consistent with Convention requirements.

135. The representative of Namibia discussed the ways in which Namibia has attempted to correct some of the wrongs of its colonial past. She explained that the parliament is empowered by the Constitution to promulgate affirmative action legislation aimed at achieving a balanced structure of the public service including the police, the defence force and the prison services. This gave rise to the Affirmative Action Act of 1998 which provides for affirmative action measures to achieve equal opportunity in employment for racially disadvantaged persons. The representative added that racial profiling is a serious issue which has devastating consequences for the protection and promotion of human rights of people. Namibia expressed particular concern about the use of force against minority populations and in particular, against persons of African descent by law enforcement officials. She requested further insight into what can be done by the Ad Hoc Committee to combat these phenomena, and how to deal with State reservations. The delegate asked what the expert would like to see reflected in any complementary standards to the Convention. She further asked if Mr. Dakwar agreed with the recommendation of the Special Rapporteur Mutuma Ruteere that the recruitment of persons of minority backgrounds in law enforcement agencies can contribute to solving these problems.

136. The representative of Slovakia noted that there was room to deal with issues at the national level and existing instruments in national legislative frameworks, which are key in the implementation of the Convention.

137. The representative of Egypt stated that the new Egyptian constitution, adopted in 2014, prohibits discrimination. Discrimination and incitement of hatred in Egypt is a crime punishable by law. Since 2011, the delegate stated that a number of laws and decrees have been issued to fulfil the country's international obligations under human rights instruments. The Egyptian government has also launched a number of programmes to ensure the enjoyment of political, economic, and social rights without discrimination in cooperation with national human rights institutions and civil society organisations. In addition, Equal Opportunity Units have been established within ministries to counter discrimination. At the international level, Egypt expressed concern about the rise of racist and discriminatory trends based on extremist ideologies that promulgate religious intolerance, racial profiling, and incitement to racial and religious hatred. The delegate noted the ongoing refugee crisis and the aggravated forms of discrimination faced by refugees when they arrive in new countries. She asked Mr. Dakwar for insight on how complementary measures introduced to the Convention would combat this phenomenon.

138. The representative of Pakistan, on behalf of the OIC, stated that the issue of political will had been raised about repeatedly and requested further information on how this issue could be addressed. She also noted that in some countries, xenophobia is part of political discourse. She asked for input on how civil society can step in, as well as the international society as a whole.

139. Mr. Dakwar responded to Namibia's question by noting that it is imperative to address history and past wrongs, and how civil society continues to address this. He stated that the historic context should always be kept in mind in order to improve the future. He

remarked that although the United States passed civil rights legislation in the 50s, 60s and 70s, this has not been enough address the deep history of discrimination in the country, and substantive equality is lacking.

140. Mr. Dakwar observed that there has been a militarization of policing that has been a serious concern to the ACLU because it has made law enforcement not an institution that communities could trust and seek protection from, but rather a force that is using militarized weapons to enforce safety. In the area of law enforcement, Mr. Dakwar acknowledged the lack of diversity; the vast majority of police are white, even in predominantly black communities. The administration is encouraging diversity in law enforcement and this is critically important, but this is not enough and can also be used to hide discrimination. He stated that there should be specific laws regarding diversity in policing, but he pointed out that social ills should be addressed in other areas as well. He added that the International Association of Police Chiefs recently made a rare statement in which it acknowledged and apologized for the history of police engagement with African American and black communities in the United States.

141. To address unintentional discrimination, Mr. Dakwar argued that data collection is needed to prove disparity and to show which biases have what kind of impact. In the area of death penalty, for instance, that there is racial disparity: white persons are less likely to receive the death penalty. In response to Egypt's statement, Mr. Dakwar noted that complementary standards relating to migrants is a neglected area, although CERD has done important work in this matter. Even though Convention doesn't elaborate explicitly on discrimination against migrants, CERD published a general comment regarding discrimination against non-citizens. He stated that in the United States, deportation of immigrants happens without taking into account international law.

142. Mr. Dakwar stated, in response to the question by Pakistan, that a lack of political will on acting on recommendations of regional and global human rights bodies is an important issue. In some countries, there is a national action plan. CERD said it would be an important step for the United States to adopt a national programme of action. ACLU has been advocating for a national action plan to implement the Convention, but there has been no answer from the government. With regard to complementary standards, Mr. Dakwar proposed that the existing measures should be first exhausted. He added that political will is needed to implement the Convention. Countries have ratified many treaties but implementation is lacking. He also noted the risk of watering down some of the existing mechanisms if Convention were to be renegotiated. The expert pointed out that the United States does not have a National Human Rights Institution. He would like to see an independent, fully funded Commission that would help in international, federal, state and local implementation of the Convention.

143. In response to a question by the representative of Pakistan about the upcoming United States elections, Mr. Dakwar responded that the ACLU does not take sides, and he commented on the lack of equal access to voting by minorities in the United States. Mr. Dakwar noted that millions of people continue to be disenfranchised. There are 5 million individuals, disproportionately in the African American and Latino communities, who are not allowed to vote due to former convictions, even though they have completed their sentence.

144. The representative of Egypt emphasised that there are new forms of migratory flows from the Middle East and other regions due to violent conflict and climate change. Many of them reside in a grey area, as they are irregular migrants waiting for refugee status. The representative requested further information on discrimination against refugees in the United States and other regions. Mr. Dakwar responded that the main issue in terms of migrants in the United States concerns the U.S.-Mexico border. He stated that protection should be given to all people regardless of their status. The expert also noted the role of

media in negative depictions of migrants and refugees. He also mentioned that the OHCHR published important new guidelines on the protection of migrants at international borders and how to treat individuals in this situation. Mr. Dakwar reiterated the need to address climate change as a reason for migration.

145. At the 8th session on 20 October, the Committee heard presentations on national, regional and international perspectives on effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action, from Mr. Jerald Joseph, Commissioner National Human Rights Commission of Malaysia and Ms. Lilla Farkas, Senior Legal Policy Analyst, Migration Policy Group, in Brussels.

146. Mr. Jerald Joseph of the National Human Rights Commission of Malaysia identified a number of challenges facing the ASEAN region including the racialization of criminality, racism in the business environment, persecution of ethnic and religious minorities, xenophobia, and the use and exploitation of racist sentiments by groups, agencies and individuals, particularly in voting processes and through the internet. Nevertheless, Mr. Joseph noted that some Governments have taken remedial steps to counter racial discrimination. He gave some illustrative examples from the region including the establishment by some governments of a commission on minorities, the promotion of interfaith and inter-religious dialogue, the reform of unfair laws that institutionalize discrimination, and the launch of national peace and reconciliation processes. Mr. Joseph also highlighted the actions taken by Pusat KOMAS, the NHRI of Malaysia, in urging ratification of the Convention.

147. Mr. Joseph noted that to provide for effective remedies, political will for the development of a full human rights framework had to be strengthened and denial politics had to come to an end. He stated that policies of division had to be abolished and that ethnic and religious-based parties should be more inclusive. Furthermore, he said that the exploitation of fears of communities and the promotion of “siege mentality” had to be exposed and curtailed. Mr. Joseph closed his presentation by underscoring the importance of education and awareness-raising programmes on racial discrimination. He noted that despite some progress made to introduce human rights education in schools, this initiatives has only reached 222 schools out of 10,000 over the last five years.

148. The representative of Pakistan, on behalf of OIC, noted the “domino effect” in the world particularly as it relates to discrimination against Muslims and the conflicts around the world. The delegate expressed concern about the lack of disaggregated data collection in some countries. She noted the importance of international standards in combating racism and racial discrimination. The representative expressed concern about the growing acceptability in political spheres of the use of ethnicity and religion in voting processes.

149. Mr. Joseph stated that ratification of the Convention by Malaysia was a challenge as the country wanted to ensure of its compliance first. On the question of data collection, Mr. Joseph agreed that this was a challenge in many States. In response to the question posed by Pakistan, Mr. Joseph said that people should respond to these “domino effects” with greater solidarity with victims.

150. The representative of Mexico noted the importance of human rights education as a means to change societies and to tackle racism and xenophobia, especially in countries that are not yet State parties to the Convention.

151. Ms. Lilla Farkas, Senior Legal Policy Analyst of the Migration Policy Group in Brussels, discussed the remedies available under European Union law for discrimination based on racial or ethnic origin. She stated that the European Union has an enormous pulling effect on European States; however, only with practical will would there be a



practical way of ensuring equality. She highlighted a discrepancy in that while all European Member States had ratified the Convention, the European Union itself had not.

152. In her view, the jurisprudence on anti-discrimination from the European Court of Justice is far more sophisticated and has more binding power on States than the European Court of Human Rights. Particularly, Ms. Farkas explained that there is a problem with courts finding racial discrimination in the European Court of Human Rights. She underscored that individual litigation is not efficient. The European Court of Human Rights has only found discrimination in 20% of the more than 70 Roma rights cases it has delivered judgments on even though there was clearly racial discrimination at play.

153. Ms. Farkas observed a lack of horizontal coordination among monitoring bodies in the EU system. In her experience as General Rapporteur for the dialogue on Roma within the Council of Europe, she found that often there is preaching towards Roma organizations without learning. She stated that better streamlining and coordination of monitoring bodies would be highly beneficial for victims.

154. Ms. Farkas discussed the various laws protecting against racial discrimination in the EU system. The EU Racial Equality Directive took Convention as its model because there was no European general model at the time. The Racial Equality Directive provides for the role of NGOs to make interventions and submit *amicus curiae* on behalf of plaintiffs, the reversal of the burden of proof, and the establishment of equality bodies. There is also Article 47 of the EU Charter of Fundamental Rights which represents quite a low standard in terms of remedies and sanctions provided by EU law. Article 47 prescribes the “right to an effective remedy before a tribunal” and that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal” and there is the possibility – not an obligation on Member States – for victims to be advised, defended and represented. The Charter also mentions legal aid which Ms. Farkas is so expensive in reality that it will likely never be available universally. She also spoke of the cutting of legal aid budgets across Europe at the moment which has meant that legal aid is available in far less cases.

155. Article 13 of the EU Racial Equality Directive is relevant to the work of the Ad Hoc Committee because it stipulates the establishment of national mechanisms to promote equal treatment without discrimination on the grounds of racial or ethnic origin. Ms. Farkas underlined the important role played by equality bodies in securing justice in racial or ethnic origin discrimination cases. She stated that the most important judgments rendered by the Court of Justice of the EU in racial and ethnic origin discrimination have been due to the intervention and active participation of equality bodies. In particular, she noted that intervention and representation of victims by equality bodies and NGOs has been the key to bringing cases of Islamophobia before the courts. Without these bodies, Ms. Farkas questioned whether these cases would be litigated at all. However, Ms. Farkas noted that States can and do interfere with the function of equality bodies and impede their effectiveness by cutting their budgets.

156. Ms. Farkas discussed a number of procedural and substantive issues that arise when victims try to access remedies in the EU system. *Actio popularis* standing for NGOs and equality bodies is very important but all too often, resistance is faced from Member States and from courts to allow this standing. Currently, EU legislation does not allow *actio popularis* standing to be provided. Ms. Farkas also spoke of the time limitations on introducing claims and legal fees, both of which can act as prohibitive barriers for victims. Additionally, access to specialized tribunals is sometimes prevented by new legislation. States sometimes limit access to justice by racialized or minority groups. Ms. Farkas gave the example of Irish Travellers who were not allowed to take discrimination cases to specialized tribunals and had to pursue their claims in general civil courts instead. This can have a chilling effect on victims bringing complaints.

157. In the area of sanctions, Ms. Farkas identified substantive issues. She noted that while it is easy to get injunctions from courts, they are not as keen to implement actual change or ask governments to implement change. While a plaintiff may get some money, nothing substantially changes in the end. Furthermore, Ms. Farkas stated that courts are not amenable to imposing a high quantum of damages; the United Kingdom, in particular, had a tendency to impose caps on damages.

158. The representative of Pakistan, on behalf of OIC, asked the expert whether the legal system in the EU considers psychological or other remedies in restoring the victim's dignity in addition to monetary compensation.

159. The representative of South Africa asked whether the 20 per cent discrimination found in Roma rights cases were due to a weak understanding of racial discrimination among individuals and institutions, leading to indirect institutional discrimination.

160. The representative of Mexico noted that while the European legal framework was not effective as victims would expect it to be. She asked the panellist how complementary standards could benefit victims' access to reparations.

161. Ms. Farkas noted that dignity of the victims is extremely important and that every successful case has a symbolic added value. She pointed out that important steps have been taken in Europe in awareness-raising about victimization outside of the courts. She emphasized that courts are not the solution for everything in society. Ms. Farkas stated that the focus on the integration of migrants and Roma means that European policies do not take into account the full scope of the term "racial minorities". In response to South Africa's question, Ms. Farkas clarified that these statistics are in regard to the 47 Member States of the Council of Europe; she stated that there were certainly differences in the Council of Europe and European Union system regarding non-discrimination principles and procedures. Lastly, Ms. Farkas called on Convention States parties to establish an equality bodies network in order to achieve better and coordinated outreach to victims.

## **E. Racism and sport**

162. The 12th meeting on 25 October commenced with brief a discussion of the draft document of the informal meetings held during the 11th meeting. The delegates undertook to take the document back to their capitals for reactions. The Chairperson-Rapporteur encouraged concrete recommendations upon which further discussions could be based.

163. At this meeting, the Ad hoc Committee also considered the topic of "Sport and Racism". The Committee heard a presentation by the Anti-Racial Discrimination Section of the Office of the High Commissioner for Human Rights which noted that sport had the potential to influence policy-making and to carry a powerful human rights message directly to people. Sport's unique ability to transcend the confines of "diplomatic Geneva" and reach millions of fans was underlined. Given that around 70 per cent of the world's population watches sport and a great many people practice sport, there is a huge potential for outreach activities.

164. It was noted that sport and racism had slowly been gaining attention at the Office of the High Commissioner for Human Rights, and that racism and sport were themes and topics of recent sessions of the IGWG, the Ad Hoc Committee and the Human Rights Council. It was pointed out that while focus and activities on sport and racism was gaining increasing attention, there were limited human and financial resources available to provide this support at the Office.

165. It was pointed out that while the majority of sports federations had rules against discrimination, including anti-racial discrimination, there was a general lack of guiding

principles in place. The importance of pursuing a multi-stakeholder approach, adopting and enforcing national action plans and strategies against discrimination in sport; encouraging diversity in sports; considering issues of multiple discrimination; targeting sanctions against individual perpetrators; and long-term prevention strategies focusing on dialogue and empowerment were highlighted. The Chairperson-Rapporteur emphasized that it is importance of considering issues of sport and racism holistically and beyond major football and sporting mega events. He underlined that sport is an important vehicle which has the potential to lift people from poverty and it presented a good vehicle for conveying anti-racism messaging.

166. The delegate of South Africa noted that it is important to take into consideration also other sports, apart from football, as there are some countries where football is not the most integrated or practiced sport, and that sports such as cricket, swimming, gold etc. were less united and still largely unintegrated. She inquired about whether OHCHR had engaged with other sporting associations, and whether issues concerning sport and racism outside Europe, was a focus of the Office.

167. The Chairperson-Rapporteur recalled that sport and racism had been discussed at several prior sessions of the Ad Hoc Committee, most recently at the seventh session. He noted that sport can be a vehicle for peace and human development; and there remain cases of virulent displays of racism in sport. He recalled that paragraphs 86 and 218 of the Durban Declaration and Programme of Action refer to racism sport, and that racism and sport appeared to be an area of possible convergence in the Committee.

168. The representative of South Africa on behalf of the African Group asked the speaker if there is a need for complementary standards on sport and racism, in light of the need for comprehensive follow up to the Durban Declaration and Programme of Action and its paragraph 218 which “urges States, in cooperation with intergovernmental organizations, the International Olympic Committee and international and regional sports federations, to intensify the fight against racism in sport by, among other things, educating the youth of the world through sport practised without discrimination of any kind and in the Olympic spirit, which requires human understanding, tolerance, fair play and solidarity.”

169. The representative of the Anti-Racial Discrimination Section replied that there is a there is a gap, in that federations might be convinced but were uncertain about how to properly implement their policies in line with international standards, or national strategies and action plans. He added that the Office’s approach on sport and racism should be beyond mega-sporting events, as sports provide a chance to effect cultural change. The intention was to apply a global approach to the issue, involving various sports federations and other stakeholders.

170. The representative of the United States of America noted that sports have a unique capacity to inspire humanity and to positively impact the lives of people who participate in them, whether as athletes or spectators. Sports competitions have often served as venues to symbolically bridge barriers and reduce hostility between and among diverse groups of people in the global community. She highlighted the recent Rio Olympics and Paralympics, where a diverse and talented group of athletes represented the United States of America.

171. She informed that the U.S. Department of State manages extensive sport diplomacy programs that engage and develop talented future leaders and convey messages of inclusion and acceptance. Using sports as a vehicle for greater opportunity and inclusion, the Bureau of Educational and Cultural Affairs at the State Department conducts exchange programs for more than 55,000 participants each year, reaching out to youth, educators, athletes, artists, as well as young professionals in government, business, and non-profit sectors.

172. In addition, the Sports Visitors program brings youth athletes and youth influencers to the United States for a short-term sports cultural exchange, including sessions on gender

equity in sport, acceptance and tolerance, sport and disability, and conflict resolution. It provides Americans with an opportunity to interact first-hand with people from every region of the world, which can help prevent and reduce xenophobia and increase inter-cultural understanding.

173. The representative stated that the United States supported the efforts of the Ad Hoc Committee to bring attention to this important issue and to promote the effective implementation of the CERD, including through sports diplomacy and sports programming.

174. The Chairperson-Rapporteur noted that over several prior sessions, the Committee's discussions and the contributions made by the various experts on racism in sport, seemed to indicate some convergence with regard to potential normative and procedural gaps in this area that need to be addressed. He noted a few areas of consensus such as: implementation and enforcement of anti-racism legislation and codes at the national level where they do not exist and improvement where they do exist; encouraging strong anti-racism commitments from sports governing/regulatory bodies and associations; improving the focus on education in addressing racism in sport; sanctioning of racism should be clear and directed at individuals; improved institutional cooperation and partnerships within the United Nations system would also be useful; and the adoption of legislation by sports governing bodies to promote more racially diverse and representative sports and media institutions could also be considered. He recalled that the Convention did not make explicit reference to sport.

175. The representative of the European Union agreed that there may well be a gap and indicated that a multi-stakeholder approach could be valuable, noting the importance of involving sport associations.

176. The delegate of the Republic of South Africa, on behalf of the African Group, stated that while it had no direction from the Group to consider the question of gaps with regard to racism and sport, a good starting point could be for the Committee to look at conscious and recommendations on the topic discussed during the 6th session of the Ad Hoc Committee, as well as the expert presentations and discussions from previous sessions.

177. The Committee continued its 12th meeting by holding informal consultations on the topic of racism and sport.

## Annex II

**Programme of Work** (8th Ad Hoc Committee on the Elaboration of Complementary Standards) (as adopted on 17.10.2016; revised 24.10.16)

<i>1<sup>st</sup> week</i>					
	<b>Monday 17.10</b>	<b>Tuesday 18.10</b>	<b>Wednesday 19.10</b>	<b>Thursday 20.10</b>	<b>Friday 21.10</b>
10:00 – 13:00	<p><b><u>Item 1</u></b> Opening of the Session</p> <p><b><u>Item 2</u></b> Election of the Chair</p> <p><b><u>Item 3</u></b> Adoption of the Agenda and Programme of Work</p> <p>--</p> <p>General statements</p>	<p>Item 5 Update discussion on Xenophobia</p> <p>[Conclusions and recommendations]</p>	<p><b><u>Item 7</u></b> Effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action [<b>Isabel Obadiaru</b>, Specialist in Human Rights, Education and Inter-Cultural Mediation, Switzerland]</p>	<p><b><u>Item 7 continued</u></b> Effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction for victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action [<b>Jamil Dakwar</b>, Director, Human Rights Program, American Civil Liberties Union]</p>	Cancelled meeting HRC Special Session
15:00 – 18:00	<p>Item 4 CERD update, either in the form of an addendum or a new report, its 2007 report on complementary international standards (A/HRC/4/WG.3/7) [Conclusions and recommendations] [Anastasia Crickley, Chairperson, Committee on the Elimination of Racial Discrimination]</p>	<p><b><u>Item 6</u></b> Update discussion on Procedural gaps to the International Convention on the Elimination of All Forms of Racial Discrimination</p> <p>[Conclusions and recommendations]</p>	<p><b><u>Item 7 continued</u></b> Provision of free legal aid to victims of racism, racial discrimination, xenophobia and related intolerance [<b>Sharmaine Hall</b>, Executive Director, Human Rights Legal Support Centre, Ontario, Canada; <b>Klara Kalibová</b>, Director and Legal Adviser, In Iustitia NGO, Czech Republic]</p>	<p><b><u>Item 7 continued</u></b> Presentations on national, regional and international perspectives on the topic  [<b>Jerald Joseph</b>, Commissioner National Human Rights Commission of Malaysia; <b>Lilla Farkas</b>, Senior Legal Policy Analyst, Migration Policy Group, Brussels]</p>	Cancelled meeting HRC Special Session

10:00 – 13:00	<p>Item 8</p> <p>General discussion and exchange of views on items 4 and 6</p>	<p>Item 9</p> <p>General discussion and exchange of views on item 5</p>	<p>Item 11</p> <p>Sport and racism</p> <p>General discussion and exchange of views on item 10</p> <p>--</p> <p>Item 12</p> <p>Questionnaire [Update discussion, conclusions and recommendations]</p>	<p>Item 14</p> <p>Discussion on the introduction of new/list topics...consideration of new/list topics</p> <p>--</p> <p>General discussion and exchange of views</p> <p>--</p> <p>Conclusions and Recommendations</p>	<p>Conclusions and Recommendations</p> <p>--</p> <p>General discussion and exchange of views</p>
15:00 – 18:00	<p>Item 8 continued</p> <p>General discussion and exchange of views on items 4 and 6</p>	<p>Item 10</p> <p>Sport and racism</p> <p>[Update discussion, conclusions and recommendations]</p>	<p>Item 13</p> <p>General discussion and exchange of views on item 7</p>	<p>Compilation of the Report</p>	<p>Item 15</p> <p>Adoption of the report of the 8th session</p>

## Annex III

### List of attendance

#### Member States

Belgium, Bolivia (Plurinational State of), Brazil, Colombia, Costa Rica, Cuba, Czechia, Dominican Republic, Estonia, Greece, Guatemala, Guinea, Indonesia, Iraq, Ireland, Japan, Kenya, Kuwait, Latvia, Libya, Lithuania, Mexico, Morocco, Mozambique, Namibia, Netherlands, Nicaragua, Pakistan, Panama, Qatar, Russian Federation, Slovakia, Slovenia, South Africa, Spain, Tajikistan, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of), Zambia, Zimbabwe.

#### Non-Member States represented by observers

Holy See.

#### Intergovernmental Organizations

African Union, Organization of Islamic Cooperation, European Union.

#### Non-governmental organizations in consultative status with the Economic and Social Council

African Commission of Health and Human Rights Promoters (CAPSDH), Rencontre Africaine pour la Défense des Droits de l'Homme (RADDHO).

#### Non-governmental organizations not in consultative status with the Economic and Social Council

Culture of Afro-Indigenous Solidarity.

---