



人权理事会

第三十四届会议

2017 年 2 月 27 日至 3 月 24 日

议程项目 9

种族主义、种族歧视、仇外心理和相关的不容忍现象：

《德班宣言和行动纲领》的后续行动和执行情况

拟订补充标准特设委员会第八届会议报告***

主席兼报告员：塔翁加·穆沙亚万胡(津巴布韦)

概要

本报告是根据人权理事会第 3/103 号决定和第 6/21 及 10/30 号决议提交的。报告概述了拟定补充标准特设委员会第八届会议的议事情况，以及委员会在会议期间开展的实质性讨论，包括委员会审议根据理事会第 21/30 号决议开展的问卷调查及编写答复概要的情况。

* 本报告附件不译，原文照发。

** 本报告逾期提交，以反映最新动态。



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一. 导言

1. 拟定补充标准特设委员会根据人权理事会第 3/103 号决定和第 6/21 号及第 10/30 号决议提交本报告。

二. 会议的组织安排

2. 特设委员会于 2016 年 10 月 17 日至 28 日召开第八届会议。本届会议期间，特设委员会举行了 17 次会议。

A. 出席情况

3. 出席本届会议的有：联合国会员国、非联合国会员国观察员、政府间组织以及具有经济及社会理事会咨商地位的非政府组织的代表(见附件三)。

B. 会议开幕

4. 拟订补充标准特设委员会秘书宣布特设委员会第八届会开幕。

C. 选举主席兼报告员

5. 在第 1 次会议上，特设委员会以鼓掌方式选举津巴布韦常驻联合国日内瓦办事处代表塔翁加·穆沙亚万胡为会议主席兼报告员。

6. 主席兼报告员就他的当选向特设委员会致谢，并对前任主席、区域协调员和秘书处的贡献表示赞赏。他承认当代形式的种族歧视表现形式日益增多，指出前任联合国人权事务高级专员纳维·皮莱在 2012 年出版物《团结起来，反对种族主义、种族歧视、仇外心理和相关不容忍行为》序言中的话具有重要意义：

种族主义和种族歧视攻击个人尊严的核心，因为它们谋求的是把各国人民和个人共有的人类大家庭分门别类，认为其中一些人比另一些人更加高贵。历史已多次证明，如果允许歧视、种族主义和不容忍生根，它们就会使社会的根基分崩离析，破坏延续几代人。

实现没有种族主义的世界的道路并不平坦。这需要政治意愿和长期承诺。

7. 他回顾特设委员会的任务和《德班宣言和行动纲领》第 199 段中的话，在该段中，反对种族主义、种族歧视、仇外心理和相关不容忍现象世界会议建议，人权委员会应制订补充性国际标准，以充实并更新旨在反对种族主义、种族歧视、仇外心理和相关的不容忍现象的国际文书所有方面的内容。他特别强调人权理事会第 3/103 号决定，其中理事会授权特设委员会“应作为优先和必要任务，以公约或附加议定书的形式拟订补充标准，以弥补该《公约》中的现有缺漏，并提供新的规范标准，打击当代各种形式的种族主义行为，包括煽动种族和宗教仇恨的行为”。他补充说，特设委员会的讨论将继续采用前几届会议通过的逐步扩大成果的方法。考虑到前七届会议已开展了大量工作，他提议收集具体建议，从而在特设委员会已处理的领域建立一个国际监管框架。

D. 通过议程

8. 特设委员会在第 1 次会议上还通过了第八届会议的以下议程：

1. 会议开幕。
2. 选举主席。
3. 通过议程和工作方案。
4. 消除种族歧视委员会介绍和讨论 2007 年关于补充性国际标准的报告中的最新情况。
5. 讨论仇外心理问题。
6. 讨论《消除一切形式种族歧视国际公约》的程序性缺漏问题。
7. 依照《消除一切形式种族歧视国际公约》第六条和《德班宣言和行动纲领》第 165 段，讨论有效适足的补救措施以及有权要求国家主管法庭及其他国家机构向受害者提供公正而适当的赔偿和补偿的问题。
8. 对项目 4 和 6 开展一般性讨论和交流意见。
9. 对项目 5 开展一般性讨论和交流意见。
10. 对体育与种族主义问题开展一般性讨论和交流意见。
11. 对项目 10 开展一般性讨论和交流意见。
12. 问卷。
13. 对项目 7 开展一般性讨论和交流意见。
14. 讨论制定新的议题清单/审议新的议题清单。
15. 通过报告。

E. 工作安排

9. 同次会议上，主席兼报告员提出了本届会议工作方案草案，由会议通过。工作方案随后经过修订，载于附件二。主席兼报告员邀请与会者作一般性发言。

10. 各代表团热烈祝贺主席兼报告员当选这一职务。

11. 多米尼加共和国代表代表拉丁美洲和加勒比国家共同体(拉共体)发言，重申拉共体支持特设委员会第七届会议通过的关于体育运动中的种族主义问题的相关建议和结论。拉共体强调，打击体育运动中的种族主义非常重要，尤其可利用足球运动扩大反对歧视的信息面，为各国政府和民间社会的相关努力提供支持。2015 年 12 月，拉共体通过了一份关于非洲人后裔国际十年的声明，其中认识到尽管取得了某些进步，但种族主义、种族歧视、仇外心理和相关不容忍行为持续存在并继续对拉丁美洲和加勒比地区的非洲人后裔享有各项权利造成影响。拉共体重申致力于制定国家战略和协调区域及国际政策，从而全面消除种族主义和一切形式的歧视，特别注重非洲人后裔的权利问题。

12. 南非代表代表非洲集团发言，突出了种族主义、种族歧视、仇外心理和相关不容忍行为受害者的苦难，指出 2001 年通过《德班宣言和行动纲领》后，时

间已经过去了 15 年。受害者迫切需要保护，而不是是否存在缺漏展开学术辩论。非洲集团欢迎为了履行特设委员会的任务和拟定补充标准而开展建设性、有意义的讨论。

13. 巴基斯坦大使代表伊斯兰合作组织发言，她回顾说，2007 年，人权理事会第 6/21 号决议设立了特设委员会，其任务是：特设委员会应作为优先必要任务，以公约或《公约》附加议定书的形式制订补充标准，以填补《公约》的现有缺漏并提供新的规范性标准，打击当代各种形式的种族主义行为，包括煽动种族和宗教仇恨的行为。在前七届会议上，特设委员会已就若干专题领域开展了审议工作。巴基斯坦代表对履行这一机制的任务进展有限表示关切。她指出，一些新的歧视形式不在《公约》涵盖范围内，导致近期尤其影响土著人民、移徙工人、难民和宗教及民族群体的罪行增多。她强调，各国机制缺乏一致性和普遍性，因而亟需加强国际法律框架。她呼吁主席把特设委员会的讨论引向相互同意的要素，从而形成一份附加议定书草案。

14. 欧洲联盟代表重申坚定致力于促进和保护所有人的人权，表示一切形式和表现的种族主义和仇外心理都与欧盟的基本价值即尊重人的尊严、自由、民主、平等、法治和尊重人权等格格不入。欧盟呼吁所有尚未批准《公约》的国家批准《公约》，加快努力实现全面、有效执行现有的国际人权法。欧洲联盟始终全面致力于履行世界反对种族歧视会议上提出的主要目标和承诺，并与非洲人后裔问题专家工作组、特设委员会及有效落实《德班宣言和行动纲领》政府间工作组保持合作。欧盟受益于欧盟基本权利署和欧洲反对种族主义和不容忍委员会的监督 and 咨询意见。欧盟愿意分享处理这些问题的经验，期待听到来自世界各地的真知灼见并参与特设委员会的建设性讨论。

15. 纳米比亚代表同意南非代表代表非洲集团所作的发言。她说，与种族主义、种族歧视、仇外心理和相关不容忍行为作斗争是一场人人都应参加的战斗，从而确保不同人群和平共处。她指出，种族脸谱化是侵犯人权的行为，是纳米比亚人长期关切的问题。这位代表提醒人们注意，执法官员和移民官员仅仅出于对移徙者族裔或宗教上的直观感觉就对他们进行歧视性刻画和侵害，有时却不受惩罚，达到令人无法接受的程度。她呼吁国际社会合作解决现有规范框架中已经明确的实质性缺漏，并解决《公约》某些缔约国一直坚持的保留问题。

16. 委内瑞拉玻利瓦尔共和国代表同意多米尼加共和国代表代表拉共体所作的发言，委内瑞拉一直致力于打击种族主义、歧视和相关不容忍行为。他再次肯定，应该拟定补充标准和更新国际法律框架，从而解决种族歧视和相关不容忍行为的新表现，保护受害者。委内瑞拉代表团对一些国家这些年来未对这项重要任务提供支持表示遗憾，再次呼吁会员国有效执行《德班宣言和行动纲领》，特别是《行动纲领》第 199 段。为了查明《公约》方面的缺漏和其他相关问题，委内瑞拉重视与尊敬的专家们开展的重要互动。

17. 墨西哥代表不同意多米尼加共和国代表代表拉共体关于形式问题的发言，但重申墨西哥致力于特设委员会的工作。

18. 巴西代表同意多米尼加共和国代表代表拉共体所作的发言。全面有效地执行《德班宣言和行动纲领》对巴西来说是一个关键优先事项。巴西代表理解，特设委员会将进一步讨论《公约》的程序性缺漏和体育运动中的种族主义问题。他认识到体育运动作为一种通用语言的潜力，可以促进多样性、宽容和公正等价值

观教育，并可作为打击种族主义、种族歧视、仇外心理和相关不容忍行为的一种手段，作为近期两项重大体育赛事的东道国，也就是足球世界杯和奥运会(以及残奥会)的东道国，巴西从经验中了解了体育运动可对促进包容和推动多样性发挥的作用，并且知道消除体育运动中的种族主义工作中的挑战。国家法院应给予受害者有效、适足的补救和补偿，这一点至关重要。在巴西，立法对种族歧视规定了切实的刑罚和补救措施，法院在改变观念方面发挥日益重要的作用并提供必要的补救措施。最后，该国代表重申巴西致力于特设委员会的工作。

19. 美利坚合众国代表承认，打击种族歧视不仅是一个国内问题，也是各国都面临的一个挑战。她强调，美国坚定支持把《公约》作为打击种族歧视的国际法核心框架，并且赞同特设委员会委员们在前几届会议上表达的意见，《公约》的灵活度足以应对当代挑战，无需制订实质性议定书。目前提议的程序性补充将重复现有的机制，或者是对有限资源的不良利用。特设委员会应将工作重心放在解决执行差距上，以及用行动相关的实践办法打击各种形式的种族歧视上。美国此前一周与政府间工作组合作，共同努力纪念非洲人后裔国际十年，并且近期采取打击种族歧视的国内举措。最后，美国代表指出，美国代表团支持讨论体育运动中的种族主义专题，欢迎特设委员会制定解决种族主义与体育运动相互作用的一份实际行动计划或一套指导意见。

20. 利比亚代表说，利比亚支持代表非洲集团和伊斯兰合作组织所作的发言。利比亚重视特设委员会的工作。该国代表强调应加倍努力，限制日益增多的当代形式的种族主义，特别是针对非洲人后裔、穆斯林、移民及其他群体的种族主义。他敦促各会员国在各个层面通力合作，打击仇外心理和种族脸谱化日益增多的趋势。

三. 一般性讨论和主题讨论

A. 消除种族歧视委员会介绍和讨论 2007 年关于补充性国际标准的报告中的最新情况

21. 在第 2 次会议上，特设委员会审议了议程项目 4。消除种族歧视委员会主席阿纳斯塔西娅·克里克莱就“《消除一切形式种族歧视国际公约》的程序性缺漏”作了发言。她的发言及随后与与会者的讨论内容概要载于本报告附件一。

B. 讨论仇外心理问题

22. 在第 3 次会议上，特设委员会审议了议程项目 5。有关该主题讨论的概要载于本报告附件一。

C. 讨论《消除一切形式种族歧视国际公约》的程序性缺漏问题

23. 在第 4 次会议上，特设委员会审议了议程项目 6。讨论概要载于本报告附件一。

D. 依照《消除一切形式种族歧视国际公约》第六条和《德班宣言和行动纲领》第 165 段，讨论有效和充分的补救措施以及有权要求国家主管法庭及其他国家机构向受害者提供公正而适当的赔偿和补偿的问题

24. 在第 5 次会议上，特设委员会审议了议程项目 7。人权、性别和移徙问题专家 Isabel Obadiaru 作了发言。

25. 在第 6 次会议上，特设委员会审议了向种族主义、种族歧视、仇外心理和相关不容忍行为的受害者提供免费法律援助的议题。In Iustitia 组织主任兼法律顾问 Klara Kalibová 和加拿大安大略省人权法律支持中心执行主任 Sharmaine Hall 作了发言。

26. 在第 7 次会议上，特设委员会听取了美国公民自由联盟人权方案主任 Jamil Dakwar 的发言。

27. 在第 8 次会议上，特设委员会听取了马来西亚国家人权委员会主任 Jerald Joseph 和布鲁塞尔移徙政策小组高级法律政策分析师 Lilla Farkas 从国家、区域和国际角度就这一议程项目所作的发言。

28. 这几个发言及随后与与会者的讨论内容概要载于本报告附件一。

29. 在第 7 次会议上，主席兼报告员宣布，他同意特设委员会委员的提议，将原定于 10 月 21 日会议讨论的议程项目移到 10 月 24 日，并重新安排其余议程项目，从而方便代表们参加人权理事会关于叙利亚阿拉伯共和国人权状况的第二十五届特别会议。由于没有反对意见，工作方案照此修订。

E. 一般性讨论和交流意见，第 9 次会议

30. 在第 9 次会议上，主席兼报告员提议首先进行关于项目 6 的一般性讨论和交流意见。特设委员会随后将于下午开会讨论项目 5。主席兼报告员呼吁特设委员会尝试明确共同基础，并邀请与会者作一般性发言。

31. 南非代表指出，克里克莱女士在发言中指出消除种族歧视委员会 2007 年的报告及其中提出的建议仍有意义。可以把委员会明确的程序性缺漏作为一个有用的出发点。

32. 大不列颠及北爱尔兰联合王国代表重申了该国政府的长期立场，即没有必要制定补充标准，英国不会参加拟定补充标准的讨论。

33. 美国代表同意英国代表的观点。她说，尽管相关讨论非常有意思和有用，但也显示出主要问题涉及《公约》的执行情况，而非其中的任何缺漏。她重申，重点应该放在执行上。种族歧视的定义十分广泛，包含仇外心理及当代形式的种族主义。她还说，特设委员会无需产生一份文件。

34. 南非代表感谢英国代表和美国代表所作的发言，主张应改善执行工作的效力。目前，消除种族歧视委员会无法开展后续访问，这是委员会 2007 年报告中明确的一个空白。她再次表达了南非代表团的意见，需要实地派遣专家帮助各国充分执行《公约》，实施后续访问是有助于消除种族主义的好办法。

35. 主席兼报告员呼吁，认为无需拟定补充标准但承认存在执行问题的代表应提出可行的解决方案，从而找到共同基础。他宣布休会片刻，以便开展非正式磋商。

36. 会员国非正式磋商后，会议复会。主席兼报告员重申人权理事会为特设委员会规定的任务，即“应作为优先和必要任务，以公约或附加议定书的形式拟订补充标准，以弥补该《公约》中的现有缺漏，并提供新的规范标准，打击当代各种形式的种族主义行为，包括煽动种族和宗教仇恨的行为”。主席兼报告员指出，一些国家认为，这一任务不排除特设委员会提出正式性低于附加议定书的东西。然而，该任务确实提到补充标准的优先性和必要性，还提到弥补现有缺漏，这意味着这些缺漏得到了承认。主席兼报告员鼓励特设委员会把这一任务作为整体来讨论，避免采用“有则全有，无则全无”的做法。

37. 欧洲联盟代表重申欧盟代表团的立场，《公约》中不存在需要填补的缺漏。欧洲联盟愿意开展指导意见和行动计划方面的工作，但无法保证朝公约或附加议定书努力。

38. 主席兼报告员承认，特设委员会面临的一个挑战是明确其最终产物。各会员国需决定的是，特设委员会是否正在朝一项公约努力。他宣布休会，以便进一步开展非正式磋商。

39. 在第 11 次会议上，一份经修订的工作方案被分发给特设委员会，从而反映第 9 和第 10 次会议被取消的情况，并对本届会议第二周重新分配了其余的议程项目。

40. 主席兼报告员提到议程项目 4 和 6 的草拟案文，案文已通过区域协调员分发给特设委员会各位委员。他指出了涉及消除种族歧视委员会请求的时间表问题，以及特设委员会第九届会议的时间安排问题。他强调，应在仇外心理、体育与种族主义、有效和适足补救方面进一步取得进展。

41. 关于仇外心理问题，主席兼报告员归纳了讨论的问题，包括：仇外心理的定义；仇外心理的存在及近年明显增多的情况；鉴于《公约》第一条既没有明确提到仇外心理，也无法从定义中作出推论或得出暗示，需确定《公约》第一条是否涵盖仇外心理的问题；拟定关于仇外心理的补充标准的好处；以及“不损害”原则。对于最后一个问题，主席兼报告员问及国家如根据国际标准通过遏制仇外心理的法律将造成何种损害的问题。他请与会者作出评论。

42. 巴基斯坦代表代表伊斯兰合作组织发言，特设委员会是为了履行人权理事会赋予的任务，并且基于《德班宣言和行动纲领》第 199 段中全体协商一致的意见召开会议。委员会自身也承认《公约》未涵盖仇外心理，并建议把消除种族歧视委员会通过的关于对非公民的歧视的第 30(2004)号一般性意见作为审议的出发点。她补充说，不能说仇外心理和相关的不容忍行为与《公约》和委员会无关。

43. 津巴布韦代表说，确定该现象的范围可有助于得出定义，拟订规范这一问题的补充标准。

44. 美国代表说，美国代表团认为，仇外心理方面不存在实质缺漏，美国不认为有制定补充标准的必要。欧洲联盟代表表示同意，补充说，问卷概要表明，即

便国内立法极少对于仇外心理作出定义，会员国仍在国家层面解决这一问题。欧洲联盟不准备参与制定定义，也不讨论仇外心理的概念。

45. 南非代表代表非洲集团回顾说，各国在《德班宣言》的一段话中承认“各种表现形式的仇外心理是歧视和冲突的主要当代来源和形式之一，各国和国际社会迫切需要重视反对仇外心理并迅速采取行动”。仇外心理被明确为既是种族主义的“来源”，又是其“形式”。因此，她询问，《德班行动纲领》第 199 段表面上受到的阻力是对各国元首和政府首脑愿望的否定，还是仇外心理问题自 2001 年以来已被解决的证据。她回顾说，特设委员会第四届会议报告提到，各国没有义务执行委员会的一般性建议。她敦促特设委员会持开放的态度，不对国际协议开倒车，给当下的议题开个头。

46. 巴基斯坦代表代表伊斯兰合作组织指出，仇外心理和相关的不容忍行为是相互联系的，应该把它们纳入拟制定的任何议定书或文书。她回顾说，应邀出席特设委员会第六届会议的专家、欧洲联盟基本权利署的 Iannos Dimitrikopolous 指出，欧盟成员国执法机关和刑事司法系统公布的数据显示，2011 年至 2012 年间在欧盟内部，官方记录下来的具有种族主义、仇外心理、反罗姆人、反犹太、仇恨伊斯兰或反对穆斯林动机的犯罪出现巨大波动。一些国家官方记录下的种族主义犯罪数量减少，另一些国家却有增加。他强调，欧盟基本权利署以特定人群为目标的大型调查的结果表明，仇恨犯罪和歧视依然是一大部分受访者面临的问题。巴基斯坦代表请特设委员会展现出灵活性，承认明显的事实。

47. 主席兼报告员鼓励特设委员会各位委员努力找到共同基础，因为人们承认仇外心理是存在的，但不甚明确；因而有必要就该现象的含义达成一致。

48. 墨西哥代表说，仇外心理已经增多，有必要更深入的讨论这一问题。关于仇外心理的法律在许多国家已经存在。应该评估在国际层面制定仇外心理的具体定义对各国情况的影响。

49. 第 11 次会议其余时间用于就项目 5 进行非正式磋商。

F. 介绍和讨论体育与种族主义问题

50. 在第 12 次会议上，特设委员会审议了议程项目 10。发言及随后与会者就体育与种族主义问题开展的讨论的概要载于本报告附件一。

G. 一般性讨论和交流意见，第 13 次会议

51. 在第 13 次会议上，特设委员会继续就本届会议期间审议项目(特别是关于项目 10)的文件草案进行非正式磋商。

52. 同次会议上，特设委员会讨论了为贯彻第四和第五届会议成果、于 2013 年分发并于 2014 年再次分发的问卷。

53. 应主席兼报告员的请求，秘书处回顾了问卷的来龙去脉，并简要介绍了消除种族歧视委员会对按照人权理事会第 21/30 号决议第 4 段开展的问卷调查所收到的答复编写的最新概要的内容。在该决议第 4 段中，理事会请人权高专办利用现有资源发出问卷调查表，以便收集关于在特设委员会第四届会议期间讨论的和会议报告中的三个议题(仇外心理、国家机制以及程序性空白)的信息，其中包括

法律和司法框架与做法、符合特设委员会任务的实质性和程序性措施以及可能的建议。理事会请人权高专办将问卷调查的答复在其网站上公布，并且同主席协商编写关于在届会期间所收到的对于问卷调查表的答复的概要，供第五届会议讨论。

54. 人权高专办于 2012 年 12 月 3 日发出普通照会，请各国常驻日内瓦和纽约的代表团在 2013 年 1 月 15 日前作出对所附问卷的答复。人权高专办收到 30 份答复。收到答复的全文及其概要在人权高专办网站上公布，供特设委员会 2013 年第五届会议使用。该届会议商定，主席兼报告员将重新分发问卷，从而在届会期间寻求更多答复，所收到的答复的概要更新后也将公布。

55. 为此，人权高专办于 2014 年 7 月 21 日发出普通照会，请尚未对问卷作出答复的常驻日内瓦和纽约的代表团在 2014 年 9 月 12 日前作出答复(最后期限随后延长至 9 月 19 日)，并请已经答复的成员提交补充或更为详细的资料。人权高专办又收到 13 份对重新分发的问卷的答复，编写了更新后的概要，也张贴在其网站上。

56. 会议回顾，问卷铭记第 21/30 号决议案文，共提出 9 个问题，涉及：仇外心理，国家机制和程序性缺漏(包括法律和司法框架及做法)，符合特设委员会任务的实质性和程序性措施，以及可能提出的建议等议题。

57. 秘书处对概要文件的内容作了简要概述，指出概要文件、问卷以及成员国和一个区域性组织各自的答复公布在特设委员会网站第五和第六届会议的网页上。主席兼报告员请与会者就前进道路发表评论和建议。

58. 巴基斯坦代表代表伊斯兰合作组织感谢对问卷作出答复的国家所做的贡献，同时评论说，不作答复的意义不亚于作出答复的意义。她说概要促使成员国提出了一些非常具有实质性的评论，建议将概要分发给所有国家，鼓励各国补充或分享更多资料。她还说，问卷概要文件的内容是开展讨论和往前迈进的良好基础。

59. 主席兼报告员请特设委员会提供对问卷所作的分析和评估，并询问特设委员会希望从概要中得出何种结论，以及将对更新的概要文件采取何种措施。

60. 南非代表代表非洲集团发言说，问卷无需重新分发，因为不会有更多国家参与，任何其他答复不会大幅度改变概要。她建议再次采用特设委员会对消除种族歧视委员会 2007 年研究所采用的办法，从而找出意见一致的领域。

61. 巴基斯坦代表代表伊斯兰合作组织澄清说，巴基斯坦建议把更新的概要发给成员国，以期分享最佳做法；并且同意按照南非代表的建议行事。

62. 欧洲联盟代表指出，问卷从根本上反映了特设委员会内部表达的不同立场。巴西代表请主席兼报告员就如何行事作出澄清和指导。

63. 按照秘书处的解释，主席兼报告员澄清说，特设委员会可决定将更新的概要作为人权理事会的正式文件，将在联合国文号下得到翻译和发布；或者依然把它作为会期文件，作为特设委员会积累知识的一部分。他请特设委员会考虑前进的道路。

64. 巴基斯坦代表代表伊斯兰合作组织强调，应该以某种方式认可这份文件，因为它是作出答复的国家和组织提交的材料。南非代表代表非洲集团建议特设委

员会努力起草有关问卷的案文。特设委员会按照主席兼报告员的建议，拟定了关于议程项目 12 的语言。

65. 在第 14 次会议上，特设委员会审议了议程项目 13。

66. 欧洲联盟代表提到《公民权利和政治权利国际公约》和《消除一切形式种族歧视国际公约》第六条，诉诸司法的权利和在法庭及其他一切司法裁判机关中受到平等待遇的权利是一项基本人权，国家有责任确保人民获得有效保护和补救，免受种族歧视。欧盟相信，《公约》及其他人权文书规定的规范标准、在德班所做的承诺以及联合国人权系统的制度结构提供了共同争取消除种族主义、种族歧视和相关不容忍行为，包括在国家层面促进和保障有效适足的补救的框架。

67. 《2015 年至 2019 年欧洲人权和民主行动计划》的目的是防止侵犯人权现象，确保受害者有机会诉诸司法和获得补救，向司法系统提供专门支持，通过技术合作监测和促进各级法律程序履行欧盟内部诉诸司法和公平审判相关义务的情况，并且促进各级司法机关的独立性，方便在地方一级诉诸司法。欧盟代表提到发声反对歧视和种族主义的个人和民间组织受到侵害，往往无法诉诸司法、获得补救的情况。

68. 欧盟有打击特定形式种族主义和仇外犯罪的重要立法，确定了共同应对仇恨言论和仇恨犯罪的框架，确保对肇事者问责。欧盟立法还规定，成员国有义务惩处任何以种族、肤色、宗教、血统、民族或出身为由，公开煽动对一个群体或该群体成员的歧视或仇恨的行为；公开散布或传播传单、图片或其他材料(仇恨言论)的，也应受到处罚。对于其他任何刑事犯罪，成员国必须确保将种族主义和仇外动机作为加重处罚的情节。

69. 2012 年通过的《受害者权利令》给予罪行受害者一套广泛的权利，包括诉诸司法、获得赔偿和恢复原状的权利，以及获得适当信息、支持和保护的权力。该法令还确保罪行的所有受害者得到保护需求的个人评估。该法令尤其关注仇恨犯罪的受害者。

70. 欧盟强调，除立法外，所有利益攸关方的能力建设、宣传和人权教育也对有效履行和执行立法措施、向相关当局举报犯罪十分重要。欧盟强调，国家人权机构在人权教育中发挥重要作用，促进没有种族主义、种族歧视和仇外心理的包容和公正社会，促进人人有权不受歧视地诉诸司法、获得有效补救。

71. 主席兼报告员欢迎欧盟代表所作的发言，请其他与会者建言献策，从而找到共同基础。对于秘书处就项目 7 下发言要点编写的概要，主席兼报告员强调受害者诉诸司法和获得补救的障碍、种族脸谱化和受害者的举证责任等问题。他请与会者找出最佳做法和意见一致的领域。

72. 南非代表代表非洲集团说，项目 7 是一个非常有意思的问题，应进一步加以审议。然而，此事最好由有效落实《德班宣言和行动纲领》政府间工作组，而非特设委员会，开展后续工作。

73. 欧盟代表表示赞同，因为诉诸司法和国家义务问题是由《公民权利和政治权利国际公约》涵盖的。

74. 巴西代表也同意，这是与种族主义作斗争的一个重要议题，应放在可就问题作出实质性决定的环境中讨论。

75. 主席兼报告员得出结论，有效和适足补救措施问题应作为政府间工作组的一个议题，他将依此处理该问题。他宣布第 14 次会议休会，从而为起草关于项目 7 的这一建议开展非正式磋商。

76. 在第 15 次会议上，特设委员会讨论了引入新议题的问题，并审议了一份名为“第二届会议审议的问题清单”的文件。对于问题清单，主席兼报告员建议应先结束当前议题，再开始审议新的议题。

77. 特设委员会讨论了将程序性缺漏和仇外心理这两个议题移交给消除种族歧视委员会的问题，并讨论了特设委员会一旦得到消除种族歧视委员会的答复，将继续开展对这两个议题的讨论。仍在议程上的议题应该得到补充，并加以了结。

78. 南非代表代表非洲集团提议，特设委员会应审议清单上的议题 14 “保护移徙者免受种族主义、歧视和仇外行为”和议题 16 “保护难民、返回家园者以及国内流离失所者，使其免遭种族主义和歧视性做法的侵害”。

79. 欧盟代表提议议题 2 “全面禁止歧视的立法”。欧盟代表团注意到南非代表的提议。

80. 美国代表对有关议题的提议表示赞赏，表示将寻求本国政府的指示后重返委员会，再作评论。主席兼报告员表示希望在次日前就今后届会的议题作出决定，指出问卷涵盖的议题和有效和适足补救措施的项目已在当届和往届会议上得到讨论，因而不需重新审议。他还说，仇外心理、种族主义与体育、有关《公约》的程序性缺漏仍是特设委员会的议题，今后的届会将进一步加以审议。

81. 主席兼报告员鼓励特设委员会各位委员从速征求本国政府和区域集团就新提出的三个议题的意见，强调须在本届会议结束前尽快确认。各区域协调员随后将确定下届会议期间如何安排这些议题。

82. 特设委员会随后继续开展非正式磋商，讨论本届会议期间审议的议题/项目的文件草案。

H. 一般性讨论和交流意见，第 16 次会议

83. 在第 16 次会议上，特设委员会又举行了一场一般性讨论并交流了意见。委员会审查并更改了其一直处理的会期文件草案，以期在本届会议最后一次会议上通过。主席兼报告员回顾说，最后一次会议将通过这份会期文件草案，将提议的议题纳入其中，供下届会议审议。

84. 巴基斯坦代表代表伊斯兰合作组织请求在文件中说明，议题清单没有完结，在特设委员会第九届会议最终工作方案通过前仍保持开放。

85. 第 16 次会议休会，以便给委员会更多时间继续非正式讨论，争取达成一致。

四. 通过报告

86. 在第 17 次会议上，主席兼报告员邀请与会者作一般性发言。各代表团对主席兼报告员和特设委员会各位委员表示感谢，对第八届会议的工作和成果表示满意，期待将来参与特设委员会的工作。

87. 主席兼报告员在闭幕发言中感谢出席特设委员会的代表在本届会议期间给予合作并参与讨论。他对本届会议期间表现出的建设性方法，对受邀专家展现出的广泛经验、知识和观点表示赞赏。

88. 主席兼报告员承认某些建议没有未达成一致，但指出，他作为主席的首要职责是履行特设委员会的任务规定，即以公约或附加议定书的形式拟订补充标准，弥补该《公约》中的现有缺漏，并提供新的规范标准，打击当代各种形式的种族主义行为，包括煽动种族和宗教仇恨的行为。依照任何标准，特设委员会都没有完成任务。本届会议没有一个与会者能说委员会推动了任务规定，或推动了权利受到侵犯的人理应得到的做人的尊严。任务规定的合法性不存在任何问题，必须得到履行，除非人权理事会作出与此相反的指示。

89. 世界正在经历越来越多的出于种族动机的犯罪案件、种族主义、种族歧视和仇外攻击，当此之时，特设委员会本应抓住时机，在履行任务方面取得真正的进展。相反，与会者似乎依然在很大程度上抓住各自政府在特设委员会设立时就坚持的立场。他完全承认外交在本质上是一个痛苦、漫长的过程，但指出八年是一段漫长的时间，明显需要改变方法。主席兼报告员呼吁全体代表利用届会期间的这段时间，思考解决特设委员会任务问题的新办法。他欢迎在第九届会前举行一次探索性讨论，并愿意参加这一讨论。他向人权理事会第三十四届会议提交特设委员会第八届会议报告时，还将以主席兼报告员的身份，向人权理事会反映和提出他的想法。

90. 他欢迎各种思想交流碰面，履行特设委员会的任务规定；依然希望特设委员会能在今后的会议上找到共同的落脚点，在履行任务方面取得真正进展。委员会任务规定的全部要点在于寻求对不时不幸沦为种族主义、种族歧视、仇外心理和相关不容忍行为的受害者的人们给予更多保护，特设委员会不应辜负他们。

91. 同次会议上，特设委员会在非正式讨论后同意于委员会第九届会议上讨论下列建议、成果和议题清单：

(a) 建议和成果：

(一) 特设委员会建议人权理事会考虑通过一份决议，请消除种族歧视委员会就以下方面进一步详细研究其 2007 年关于以任择性建议或更新监督程序加强落实工作的研究报告(A/HRC/4/WG.3/7)：

a. 制定一项《公约》任择议定书，从而在以下方面就评估访问/调查程序做出规定：

- 一. 评估访问/调查程序的目的；
- 二. 评估访问/调查程序的形式；
- 三. 评估访问/调查程序的预期成果和(或)预期惠益；
- 四. 此类访问与现有特别程序开展的访问之间的异同；

b. 委员会已观察的国家机制的挑战和最佳做法。

(二) 特设委员会请各缔约国考虑作出《公约》第十四条之下的声明，使个人和团体能够向禁止种族歧视委员会提交来文；

(三) 特设委员会认识到仇外心理方面的讨论依然困难，决心在将来的会议上继续审议该议题；

(四) 特设委员会鼓励人权理事会请联合国人权事务高级专员办事处，特别是反种族歧视科，继续解决体育运动中的种族主义问题，包括通过鼓励各国、体育主管机构和其他利益攸关方在工作中适时交流最佳做法。在此方面，委员会认为，应该向人权高专办提供开展种族主义与体育相关活动的资源；

(五) 特设委员会请各国适时在国家打击种族主义行动计划中解决与体育运动中的种族主义和种族歧视作斗争的问题。特设委员会还请尚未制定国家打击种族主义行动计划的国家考虑制定该计划，并在其中纳入打击体育运动中的种族主义和种族歧视的措施；

(六) 特设委员会审议了根据人权理事会第 21/30 号决议第 4 段开展的问卷收到的答复的更新概要：

- a. 向对问卷作出答复的国家和区域组织表示感谢；
- b. 注意到答复的概要；
- c. 决定将其作为今后讨论的资料；

(七) 特设委员会建议有效落实《德班宣言和行动纲领》政府间工作组考虑在工作方案中纳入相关内容，依照《公约》第六条和《德班宣言和行动纲领》第 165 段，讨论有效适足的补救措施以及有权要求国家主管法庭及其他国家机构向受害者提供公正而适当的赔偿和补偿的问题；

(b) 第九届会议议题清单：

- (一) 全面禁止歧视的法律；
- (二) 保护移徙者免受种族主义、歧视和仇外行为；

(三) 保护难民、返回家园者以及国内流离失所者，使其免遭种族主义和歧视性做法的侵害。

92. 在同次会议上，第八届会议的报告获得通过，但尚待进一步审核，同时有一项谅解：如果各代表团对自己的发言有任何技术性修正，将于 2016 年 11 月 11 日前以书面形式提交给秘书处。

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 as 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'Integration Cantonaux - 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 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>1st week</i>					
	Monday 17.10	Tuesday 18.10	Wednesday 19.10	Thursday 20.10	Friday 21.10
10:00 – 13:00	<p><u>Item 1</u> Opening of the Session</p> <p><u>Item 2</u> Election of the Chair</p> <p><u>Item 3</u> 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><u>Item 7</u> 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 [Isabel Obadiaru, Specialist in Human Rights, Education and Inter-Cultural Mediation, Switzerland]</p>	<p><u>Item 7 continued</u> 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 [Jamil Dakwar, 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><u>Item 6</u> 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><u>Item 7 continued</u> Provision of free legal aid to victims of racism, racial discrimination, xenophobia and related intolerance [Sharmaine Hall, Executive Director, Human Rights Legal Support Centre, Ontario, Canada; Klara Kalibov á Director and Legal Adviser, In Iustitia NGO, Czech Republic]</p>	<p><u>Item 7 continued</u> Presentations on national, regional and international perspectives on the topic [Jerald Joseph, Commissioner National Human Rights Commission of Malaysia; Lilla Farkas, Senior Legal Policy Analyst, Migration Policy Group, Brussels]</p>	Cancelled meeting HRC Special Session

10:31 – 00:01	<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</p> <p>[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>
00:18 – 15:00	<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.
