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### Twenty-first session

Agenda item 9

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

## **Report of the Ad Hoc Committee on the elaboration of complementary standards on its fourth session\* \*\***

Chairperson-Rapporteur: Abdul Samad Minty (South Africa)

### *Summary*

The present report is submitted pursuant to Human Rights Council decisions 3/103 and 10/30 and resolution 6/21. The report is a summary of proceedings and the discussions which took place during the fourth session of the Ad Hoc Committee on the elaboration of complementary standards. With the input of several experts in the relevant fields, substantive discussions took place on the topics of “Xenophobia” and “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance” and “Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination.”

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

\*\* Late submission.

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## **I. Introduction**

1. The Ad Hoc Committee on the elaboration of complementary international standards submits the present report pursuant to Human Rights Council decisions 3/103 and 10/30 and resolution 6/21.

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

2. The Ad Hoc Committee held its fourth session from 10 to 20 April 2012. During the session, the Ad Hoc Committee held 16 meetings.

### **A. Attendance**

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

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

4. The first meeting of the fourth session of the Ad Hoc Committee on the elaboration of complementary standards was opened on 10 April 2012 by Yury Boychenko, Chief of the Anti-Discrimination Section, Office of the High Commissioner for Human Rights (OHCHR). He welcomed the delegates, noting that it was hoped that the current session would be as productive as the previous one. He indicated the need to elect the Chairperson-Rapporteur for the Ad Hoc Committee in order to proceed with the substantive work of the fourth session.

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

5. During the first meeting, the Ad Hoc Committee elected Abdul Samad Minty, Permanent Representative of the Republic of South Africa, to the United Nations Office at Geneva as its Chairperson-Rapporteur, by acclamation. In his brief introductory remarks, Mr. Minty thanked the Ad Hoc Committee for the confidence placed in him.

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

6. During the 1st meeting of the session, the Ad-Hoc Committee adopted the agenda for the fourth session (A/HRC/AC.1/4/1).

### **E. Organization of work**

7. The Chairperson-Rapporteur introduced the draft programme of work contained in the agenda at the 1st meeting. He announced that a meeting of regional coordinators would take place prior to the resumption of the session that afternoon, in order to allow for additional consultations on the programme of work.

8. The revised programme of work was adopted, as amended at the 2nd meeting of the Ad Hoc Committee.

9. The Chairperson-Rapporteur made an introductory statement at the 2nd meeting. He thanked participants for their understanding and cooperation and offered apologies on behalf of the former Chairperson-Rapporteur of the Ad Hoc Committee, Jerry Mathews Matjila, who had been unable to be present to chair the Ad Hoc Committee due to his reassignment as Director General of the Department of International Relations and Cooperation of the South African Government. He also regretted that in its capacity as Chair, South Africa had not been able to fulfil its pledge to consult with participants of the Ad hoc Committee on the identified topics prior to the session.

10. The Chairperson-Rapporteur noted that South Africa would still urge that a permanent Chairperson-Rapporteur for the Ad Hoc Committee be elected, whilst its work continued, since the country was inundated with other responsibilities elsewhere, and notwithstanding that racism, racial discrimination, xenophobia and related intolerance were important issues for South Africa.

11. The fourth session promised to be challenging and exciting in view of the experts and presenters participating. He thanked States and the Secretariat for their efforts to prepare the session. He hoped that the contributions and discussions of presenters would provide the Ad Hoc Committee with an opportunity to reflect on and understand the issues raised in the previous reports, together with the link between the Ad Hoc Committee's mandate and paragraph 199 of the Durban Declaration and Programme of Action.

12. He stated that South Africa had taken the responsibility, on behalf of the African Group, to chair the Ad Hoc Committee with the objective of ensuring that as partners, the Ad Hoc Committee worked together to address issues of concern. His objective was to ensure that the Ad Hoc Committee continued working on the three topics, with the understanding that the other topics would still be discussed in the future. He looked forward to working with participants during the forthcoming two weeks.

13. During the 2nd meeting, and following the adoption of the programme of work, Cuba, in its national capacity, expressed its obligation to make public reference to the atmosphere surrounding the preparation and adoption of the programme of work, referring to efforts by certain regional groups and delegations to "boycott and lengthen" the work of the Ad Hoc Committee.

14. The European Union stated that the delay was attributable to "ill preparation and lack of transparency" and the fact that the draft programme of work, in its view, did not reflect the understandings reached at the resumed third session. It reaffirmed its commitment to the fight against racism, racial discrimination, xenophobia and related intolerance and, noting that it was the International Day of Reflection on the 1994 Genocide in Rwanda, suggested that a minute's silence be observed by the Ad Hoc Committee.

15. Switzerland (on behalf of Argentina, Brazil, Chile, Japan, Mexico, Republic of Korea and Uruguay) underscored its flexibility on topics to be discussed and noted its satisfaction with the programme of work of the session, which had been adopted by consensus. It stated that these delegations had always supported substantive input to the Ad Hoc Committee, in the form of experts and presenters, research and data, as this was the best approach for carrying out its work. It regretted the "bad preparation" of the session and that the former Chair's proposals and promises had not been met, particularly since the dates of the session had been postponed from November to the present.

16. Senegal, on behalf of the African Group, renewed its Group's commitment to participate in the Ad Hoc Committee, stating that the programme of work had been adopted, despite the delay imposed by other regional groups. It looked forward to commencing the work of the Ad Hoc Committee, as set out in Human Rights Council decision 3/103, especially since the meeting was taking place in the year following the tenth

anniversary of the adoption of the Durban Declaration and Programme of Action as well as the International Year for People of African Descent.

17. Pakistan, on behalf of the Organisation of Islamic Cooperation, noted that new trends in and manifestations of racism were a threat to peaceful societies around the world. The delegate stated that Muslims were stigmatized and vilified in public and in private in many societies. There were xenophobic attitudes, he said, requiring adequate protection measures, both legal and constitutional.

18. The Chairperson-Rapporteur called for a moment of silence in respect for the International Day of Reflection on the Genocide in Rwanda and in solidarity for all victims of racism, racial discrimination, xenophobia and related intolerance and genocide. The participants of the Ad Hoc Committee duly observed a moment of silence.

### **III. Discussion on the topic of “Xenophobia”**

19. From 10 to 13 April, in accordance with its programme of work, the Ad Hoc Committee on the elaboration of complementary standards heard presentations from several experts on the topic of “Xenophobia”. At the 2nd meeting, on 10 April, Nozipho January-Bardill gave a presentation on the recent experiences of South Africa with xenophobia and its institutional responses. At the 3rd meeting, on 11 April, Patrick Thornberry, a member of the Committee on the Elimination of Racial Discrimination, gave a presentation on “Xenophobia – with particular reference to the International Convention on the Elimination of All Forms of Racial Discrimination”. At its 4th meeting, on the same day, Orest Nowosad, Chief of the Civil and Political Rights Section of the Special Procedures Branch at the Office of the High Commissioner for Human Rights, gave an overview of the work of special procedures mandate holders in relation to the issue of xenophobia. At the 5th meeting, on 12 April, Duncan Breen, Senior Associate at the NGO Human Rights First, gave a presentation entitled “Combating xenophobic violence”. Fanny Dufvenmark and Christine Aghazarm from the International Organization for Migration (IOM) gave presentations at the 6th meeting, on international migration issues, later that afternoon. On 13 April, Miguel Hilario-Manénima of UNICEF gave a presentation at the 7th meeting of the session entitled “Going beyond window dressing: Xenophobia in Latin America: It’s time to count the people of colour”.

20. Due to the word limit for this report, the summaries of these presentations and the respective discussions with the meeting participants which followed them are reflected in annex II to the present report.

21. For the second part of the 7th meeting, the Chairperson-Rapporteur invited the participants to commence a general discussion on xenophobia by referring to what had been addressed or not addressed thus far that week. He noted that, with the exception of the last presenter, a victim-oriented approach seemed to be somewhat lacking from the discussions.

22. He commented on the need to perhaps focus on parliamentarians and political leaders; and specific other groups such as children, refugees and IDPs and other situations such as conflict and post-conflict situations; and the role of class and poverty. He queried about historical factors such as those which existed in South Africa, asking which factors influence what has been inherited and what was the basis of collective historical experience.

23. The delegate of the Bolivarian Republic of Venezuela reiterated the need for complementary standards to address manifestations of xenophobia and underlined the need to have a definition with a view to strengthening the fight against discrimination. It should be in keeping with the mandate of the Ad Hoc Committee, which should focus on the

elaboration of complementary standards, in accordance with Human Rights Council decision 3/103.

24. The European Union pointed out that the various presentations illustrated that xenophobia was multifaceted and must accordingly be dealt with through various means – legislation, mechanisms and other means. It was stated that none of the presenters had stated that there were obvious gaps and none had been able to suggest a legal definition. The definition of IOM was not necessarily helpful or operational with respect to the work of the Ad Hoc Committee. The representative also highlighted that, throughout the presentations, it was noted that xenophobia was a multifaceted phenomenon. The delegate stated that xenophobia can be combated through different anti-discrimination measures with regard to various grounds.

25. The delegate of Norway stated that the session had provided her delegation an opportunity for reflection on what had been transpiring in the national context. She expressed concern with regard to working on a definition because it would likely be too broad or too narrow. The delegate emphasized that xenophobia was a danger to individuals and a challenge to democracy, in grave cases leading to racial discrimination, crimes against humanity and genocide, etc. The attacks in Norway in 2011 were traumatic for the whole Norwegian population. She noted that the attacks were politically fuelled by hate and highlighted the importance of intensifying efforts for more openness, democracy, and inclusiveness. Norway was committed to unconditional respect for human dignity for everyone at all times. With regard to practical issues, she noted that legal protection was not always enough to ensure equality and that combined efforts were required. Norway considered that there was a solid legal basis to fight racism and xenophobia but it was open to take the debate further. The approach should be factual, consensual, and based on real needs and clear manifestations, and demonstrate that progress has been hindered or slowed down by gaps in the legal regime.

26. Japan, on behalf of Argentina, Brazil, Mexico, Republic of Korea, Switzerland and Uruguay, stated that the experts' presentations were useful and informative, providing a clearer and more accurate overview. They highlighted the multifaceted dimension and cross-cutting nature of xenophobia and the presentations showed a practical approach to the issue. The delegate noted that it could not be concluded that there was an explicit need for complementary standards at the international level in the field of xenophobia. Pointing out that the work of the Committee on the Elimination of Racial Discrimination did not appear handicapped by the lack of a definition, Japan recommended that the Committee be invited to present an official opinion on the issue, with the aim of clarifying how provisions in the International Convention on the Elimination of All Forms of Racial Discrimination could be interpreted in relation to xenophobia.

27. The delegate of China noted that xenophobia and economic and cultural conflicts had been increasing. It was emphasized that the current international instruments were somewhat behind the times. Some measures had been undertaken, but they were not sufficient and more international cooperation was needed. The issue of xenophobia needed to be discussed from the international legal perspective with the purpose of eliminating xenophobia and protecting people's rights. She highlighted that what had taken place was only the initial step towards the issue.

28. The United States of America pointed out that while there were many different views expressed by the multiple experts, there was a fair amount of coherence in the concrete policy recommendations made by them. It would be useful if the Office of the High Commissioner for Human Rights (OHCHR) could go through the experts' presentations and compile a simple matrix, containing recommendations on data disaggregation, educational campaigns and other policy recommendations.

29. Egypt stated that while it agreed that there was no conclusive definition of xenophobia emanating from the presentations, all presenters confirmed that it was the role of the Member States to undertake a definitional exercise. It was not the case that experts had noted gaps; rather, they were reluctant to state whether international standards should be drawn up. He asked why, if there was no need for complementary standards, xenophobia was on the rise? The general comments of the Committee on the Elimination of Racial Discrimination were not sufficient as they concerned existing international law, not new phenomena such as xenophobia. The delegate welcomed the preparation of a matrix containing the different definitions of xenophobia as presented by the experts, and as contained in relevant paragraphs of the Durban Declaration and Programme of Action and the Durban Review Conference outcome document.

30. Senegal, speaking on behalf of the African Group, emphasized that Human Rights Council decision 3/103 was clear about the mandate of the Ad Hoc Committee, that the re-opening of the discussion was not valid and that legal instruments should be based on the International Convention on the Elimination of All Forms of Racial Discrimination and the Durban Declaration and Programme of Action. He highlighted the need for definitions from a legal point of view—in this regard he noted that the Durban Declaration and Programme of Action recommended the strengthening of the Convention, which did not contain a reference to xenophobia; therefore there was a need for definition to know what xenophobia was and to ensure consistency. In this way there would be transparency and legal stability for the benefit of the victims. Combating impunity and a victim-centred approach was the only path to be adopted. The Ad Hoc Committee should seek national prevention and punishment, ensuring access to justice by victims; strengthening the mechanisms or equivalent bodies against xenophobia; and organizing awareness-raising campaigns.

31. The delegate of Austria stated that xenophobia was a worldwide problem. He also noted the need for a victim-centred approach. In this regard it was important to know what the needs of the victims were and how they could be assisted in reality. The delegate emphasized that there was a lack of implementation of the existing mechanisms. There were so many recommendations by the special rapporteurs and the question was how to enhance implementation. He was in favour of a broader definition of xenophobia which included other grounds of discrimination.

32. The delegate of Brazil commended the approach used for this session of the Ad Hoc Committee, with experts' presentations, and invited the Chairperson-Rapporteur to use the same approach in future sessions. She outlined some conclusions to serve as the basis for future discussions on xenophobia: a victim-oriented approach was key; governments should be encouraged to ratify international instruments; and use should be made of the 2007 study by the Committee on the Elimination of Racial Discrimination on procedural gaps.

33. The delegate of Liechtenstein pointed out the growing consensus within the Ad Hoc Committee on adoption of a victim-centred approach; therefore, it should be ensured that the Committee did not weaken what already existed. He noted a clear risk to the existing framework of the International Convention on the Elimination of All Forms of Racial Discrimination, which might be weakened since the Committee on the Elimination of Racial Discrimination had addressed xenophobia and the respective States had been accepting these recommendations. These recommendations could be undermined by a possible new international definition of xenophobia.

34. Pakistan, on behalf of the Organisation of Islamic Cooperation, emphasized that the Ad Hoc Committee should acknowledge that xenophobic speech and acts were an affront to victims and prompt action by the international community was required. He also asked why xenophobia had been increasing, if there were in fact, no gaps. He pointed out that legal and administrative measures would resolve the problem with greater efficiency. The absence of a definition hampered coordinated efforts at the international level and meant that a series

of interpretations were being used. He stated that there was a need to have a common understanding of xenophobia, in accordance with the grounds in the Convention, the Durban Declaration and Programme of Action and the outcome document of the Durban Review Conference. He stressed that nationality should not be confused with xenophobia since even nationals of the same country were attacked. The delegate noted the need to address negative stereotyping and xenophobic speech. He emphasized the need to elaborate complementary standards on xenophobia.

35. The delegate of South Africa stated that there was a need for legal measures to address behaviour and protect victims. It was clear and known from the very beginning that there was no definition of xenophobia but that it was practised. She noted the positive role of the media and suggested that the role of the media be explored, perhaps in collaboration with the United Nations Alliance of Civilizations. She noted that the adopted optional protocols to some of the United Nations instruments, introducing complaints mechanisms, did not serve to undermine the mechanism or the protection offered.

36. The delegate of France stated that paragraph 199 of the Durban Programme of Action, which recommended that the former Commission on Human Rights prepare complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects was the ground for engagement by his Government. He stated that France had adopted a narrow definition of fear or hatred against non-citizens and non-nationals, which was used in order to have a stronger criminal law. This approach complied perfectly with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. He pointed out that in some cases the Committee on the Elimination of Racial Discrimination had used both the narrow and wide definitions. He questioned the need for such a definition, if articles 2, 4 and 6 of the Convention stated that victims were protected by law. He reiterated that none of the experts had stated that there was a gap in the international framework, but that improved implementation was needed.

37. The delegate of Switzerland pointed out the need to consider whether a definition would be useful or counterproductive for the victims. She said that the matrix on experts' definitions suggested by the delegate of Egypt might be useful, but it would only prove how difficult it was to find a definition.

38. The Chairperson-Rapporteur noted that there was a difference of opinion on the issues of gaps and definitions and he highlighted the need to look empirically into information, and to examine objectively the various issues involved. He noted that even after that was done, differing views could still remain.

#### **IV. Discussion on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”**

39. On 16 and 17 April, in accordance with its programme of work, the Ad Hoc Committee on the elaboration of complementary standards heard presentations from experts on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”. At its 8th meeting, on 13 April, the Ad Hoc Committee heard two presentations on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all



forms and manifestations of racism, racial discrimination, xenophobia and related intolerance” by Vladlen Stefanov, Chief of the National Institutions and Regional Mechanisms Section at OHCHR and Zanofer Ismalebbe, Human Rights Adviser with the United Nations Development Programme (UNDP) Geneva, respectively.

40. At the 9th meeting, on 16 April, Patrick Charlier of the Belgian Centre for Equal Opportunities and Opposition to Racism discussed how to choose a national mechanism, the status of mechanisms and the remit of mechanisms. At the 10th meeting later that day, Jozef DeWitte, Chair of the European Network of Equality Bodies (Equinet) gave his presentation to the Ad Hoc Committee explaining the mandate, role and functions of the Belgian Centre. He also outlined the Network’s mandate and work.

41. At the 11th meeting, on 17 April, Bucio Mujica, President of the Mexican National Council for Prevention of Discrimination (CONAPRED), gave a presentation on national mechanisms against discrimination, with particular emphasis on his own organization. André Castella, Director of the Office for Integration of Foreigners of the Canton of Geneva, addressed participants of the Ad Hoc Committee at its 12th meeting.

42. Due to the word limit for this report, the summaries of all the above presentations and the respective discussions with the meeting participants which followed them are reflected in annex II to the present report.

## **V. Discussion on the topic of “Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination”**

43. At the 13th meeting, on 18 April, Alexey Avtonomov, Chairperson of the Committee on the Elimination of Racial Discrimination, gave a presentation titled “Procedural gaps preventing full and adequate implementation of ICERD”. He said that, at present, the Committee believed that the substantive provisions of the International Convention on the Elimination of All Forms of Racial Discrimination were sufficient for combating racial discrimination in contemporary conditions. The Committee was of the view that in the near future it would be able to address problems without amending the Convention. Nevertheless, the Committee considered that the establishment of certain new procedures might enhance the effectiveness of the Committee’s activities as a monitoring body. The lack of certain procedures was considered by the Committee to constitute the procedural gaps in the Convention. The Committee paid great attention to issues related to xenophobia, noting that there were many different aspects covered by the definition of racial discrimination in the Convention. He cautioned that any other definition might restrict the current one. He said that in the future new wording might be needed for the definition, but this was currently not the case. He said that if there was to be an optional protocol to the Convention, it should focus on additional procedures concerning investigations, inquiries, procedures to evaluate situations or country visits.

44. Mr. Avtonomov explained that as it could sometimes take years before it could act, the Committee was suggesting a standing procedure whereby experts could visit the country of concern and investigate the situation more promptly. For instance one or two experts could visit, collect first-hand information and brief the Committee. In this regard, the Committee on the Elimination of Racial Discrimination had asked that consideration be given to an optional protocol. The suggested wording for the additional procedures varied: some experts suggested calling it an evaluation visit; others referred to it as an investigation or inquiry procedure. He stated that the Committee was aware that any country visits would require additional financial resources; however some treaty monitoring bodies already had

such procedures in place. This proposal was also in line with the ongoing process for harmonization of treaty monitoring bodies.

45. Mr. Avtonomov stated that a second procedure called evaluation visits/follow-up visits would be very helpful both with regard to concluding observations that had already been made but also in a case where a periodic report was lacking. An expert from the Committee on the Elimination of Racial Discrimination, who would be the country rapporteur for the State in question, could be charged with carrying out the suggested follow-up visit, which would also be helpful to the preparation of periodic reports.

46. The delegate of Senegal, on behalf of the African group, said that Mr. Thornberry had also stated that there were no shortcomings in the International Convention on the Elimination of All Forms of Racial Discrimination, which was contrary to the opinion of the African Group. He emphasized again the issue of legal insecurity and the fact that xenophobia was not within the Convention, and suggested that perhaps the phenomenon of migration of people was not well known at the time of the adoption of the Convention. He emphasized that many years had passed since the adoption of the Convention and it was worth reconsidering. The phenomenon of xenophobia was much more visible today. He asked for a more substantive explanation of the suggested inquiry procedure, stating that early warning and urgent procedures already existed. He noted the role of the Security Council with regard to peacekeeping and security and also highlighted the competencies of the International Criminal Court. In this regard he queried whether there was a possible duplication of efforts.

47. The representative of the United States of America highlighted that it was not only unnecessary to change the definition of racial discrimination in the Convention but it was also dangerous to do so, as understood from Mr. Avtonomov's presentation. He pointed out that it had been said several times that xenophobia was a new phenomenon, which was not correct – xenophobia might be a new word to describe an old problem, but it had been present for a long time. With regard to the suggested new procedures he asked how the Committee on the Elimination of Racial Discrimination would avoid duplication of activities carried out by the Human Rights Council or OHCHR. He also asked about the costs associated with the proposed new procedures.

48. The delegate of the European Union emphasized that it was extremely important to implement the existing standards and procedures. With regard to procedures, the delegate highlighted the need to make optimal use of those existing, in terms of compliance with reporting procedures and follow-up to the concluding observations/recommendations of the Committee on the Elimination of Racial Discrimination. The delegate asked for Mr. Avtonomov's view on how this could be done. The delegate also asked about what criteria could trigger the suggested evaluation visit: would this be decided by the Committee or carried out at the request of the country?

49. With regard to the value added of the proposed inquiry procedure, Mr. Avtonomov noted that in this way the Committee on the Elimination of Racial Discrimination would be able to make preventive recommendations. The country visits were to collect information. The fact that an enquiry was taking place meant that there was a possibility for violation. There was no duplication with the work of the Security Council or the International Criminal Court. He explained that there were a limited number of individual complaints submitted to the Committee. He suggested that more awareness-raising on this proposal was needed.

50. Brazil asked how gaps could be addressed in the context of the ongoing process for enhancement of treaty monitoring bodies.

51. The delegate of Cuba emphasized that his Government could not agree with the suggested procedures and comments made, noting that many of these proposals were not

new and had not been formulated by Member States, but by academic experts, investigators etc. Cuba could not agree with proposals intended to increase the monitoring of States and also questioned the availability of resources for such new procedures.

52. The delegate of the Russian Federation asked what kind of stakeholders would be involved in the proposed evaluation visits: would they be limited to State authorities or would there be interaction with other stakeholders such as NGOs and victims? The same question was raised about the proposed follow-up visits. He asked if this would change the procedure whereby States were required to answer requests within one year.

53. With regard to country visits, Mr. Avtonomov stated that they could not be similar to the individual complaints procedure as they were different in nature. The country visits might be akin to fact-finding missions to collect information and for this purpose the meetings should be held with a variety of stakeholders including State authorities, NGOs and victims. The follow-up visits would be based on the recommendations of the Committee on the Elimination of Racial Discrimination and therefore the focus would be on State institutions, as they were charged with implementation. However, there might also be the possibility of meetings with some NGOs.

54. Pakistan, on behalf of the Organisation of Islamic Cooperation, emphasized the need for a definition of xenophobia, as State parties had a series of interpretations. The Committee on the Elimination of Racial Discrimination would also have a problem taking a universal and consistent approach as it might take into consideration xenophobia for one periodic report but not for another one.

55. The delegate of South Africa inquired about how the suggested follow-up visits might build the capacities of States to produce periodic reports. She asked whether the proposed inquiry procedure would replace the reporting obligation, about complementarity with special procedures, and about the criteria for such visits.

56. Italy said that the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination was extremely important. He questioned the envisaged six-month time period and also asked for clarification on whether the summary account from the State Party would be included in the report to the General Assembly.

57. In response to a question from Pakistan on behalf of the Organisation of Islamic Cooperation, Mr. Avtonomov said that the Committee on the Elimination of Racial Discrimination had been addressing the issues of profiling and stereotyping – often condemning both of these in the concluding observations. If the definitions of xenophobia, profiling, stereotyping were included in the Convention, the Committee would work with these definitions and respond to new challenges. In his opinion, the members of the Committee were not absolutely against the introduction of a new definition; but rather, considered that the focus should be on procedural gaps to strengthen their work. He added that he could not recall a case of xenophobia which had not been addressed by the Committee, as it always included one or more grounds under article 1 of the Convention.

58. At the 14th meeting, on 18 April, the Chairperson-Rapporteur invited the participants to commence a general discussion and exchange of views on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”.

59. The European Union stated that national mechanisms were important in ensuring a victim-centred approach and in focusing on remedies as well as on prevention of discrimination. National mechanisms could help ensure effective protection and remedies to victims of discrimination by providing legal assistance to victims during judicial proceedings, and where they were vested with quasi-judicial functions they could

complement the at times lengthy, inaccessible and expensive court proceedings. It added that providing remedies was a necessary but not sufficient means of combating discrimination. It was of equal importance that national mechanisms prevent discrimination by conducting awareness-raising campaigns, educational activities, training of journalists, etc.

60. The choice or combination of mechanism(s) should depend on the local context. It also welcomed cooperation and exchange of good practices between different national mechanisms and between national mechanisms and United Nations agencies. There was a need to further explore the potential of national mechanisms to improve implementation of existing international standards – thereby ensuring their effectiveness. It could be useful for the Committee at a later session to look further into guidelines for setting up national mechanisms.

61. On behalf of the African Group, Senegal urged the establishment of national mechanisms where countries had yet to establish them. These mechanisms should include issues of racism, racial discrimination, xenophobia and related intolerance in their mandates. They should be victim-centred in approach and the access of victims to the mechanisms should be assured. Where there were national institutions and a specialized body, there should be coordination to ensure greater efficiency. Senegal added that OHCHR should provide appropriate technical assistance to enable States to establish national human rights institutions.

62. France noted that conciliation at the national level and networking at the regional level were effective ways to support direct impacts for victims on the ground.

63. The Chairperson-Rapporteur agreed that mechanisms should take account of local context and added that the Committee may wish to consider at some point the role, nature and benefits of regional mechanisms in addressing racism, racial discrimination, xenophobia and related intolerance as well as how national mechanisms assist in developing a regional approach to issues. He gave the African Peer Review Mechanism and its success on common governance issues as an example and also highlighted the role of religious faith organizations.

64. The United States of America appreciated the Chairperson-Rapporteur's intervention with respect to regional mechanisms, noting that the Organization of American States and Organization for Security and Co-operation in Europe were also examples of regional initiatives which, via country assessments, were mechanisms for individual complaints and initiatives concerning discrimination on the basis of religion and belief. These regional approaches merited future consideration by the Committee.

65. Egypt stated that it would be useful to have presentations on regional standards in future sessions. It reiterated the mandate of the Ad Hoc Committee, stating that while steps should be taken on the ground at domestic level, this must be rooted in international standards and mechanisms.

66. Cuba emphasized that while national mechanisms were important they must be linked to the sovereign and individual culture and characteristics of a given country. A sharing of best practices and information was very much needed.

67. Liechtenstein stated that national mechanisms were closest to victims and were well-placed to address issues of racism, racial discrimination, xenophobia and related intolerance at the domestic level. The delegate noted that reference to the obligation of States Parties to establish national mechanisms could be included in any work addressing the procedural gaps in the International Convention on the Elimination of All Forms of Racial Discrimination.

68. The delegate of the United States of America added that the Committee had yet to hear a concrete case or situation where the lack of a definition limited the capacity response of the Committee on the Elimination of Racial Discrimination to consider the issue or where a national mechanism had been unable to address an issue due to a substantive gap in international law.

69. South Africa stressed that the topic of national mechanisms was cross-cutting and noted their importance in enforcing implementation at the national level. The delegate recalled that while these mechanisms were national, the Paris Principles had been elaborated and endorsed at the level of the General Assembly. With regard to the “narrow” and “wide” interpretations of xenophobia, there was indeed an inconsistency which suggested that methodologically it would be important to rule out what xenophobia was not.

70. Tunisia underscored the importance of political leaders and highlighted a role to be played by the International Parliamentary Union (IPU). The delegate noted that the great number of States’ reservations to article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination was a significant obstacle to effective implementation.

71. During this meeting, there was also a general discussion and exchange of views on the topic of “Procedural Gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination.”

72. The delegate of Switzerland (on behalf of Argentina, Brazil, Chile, Japan, Mexico, Republic of Korea and Uruguay) underscored the continued relevance of the Convention and its monitoring procedures, adding that Mr. Avtonomov had demonstrated the concrete impact of addressing its procedural gaps. With respect to the topic of xenophobia, it stated that further discussion and consideration were required.

73. Liechtenstein commented on the proposal to establish an inquiry and an on-site evaluation procedure, emphasizing that they were purely intended as procedural instruments and that no new substantive ground or rights would be created. It was worthwhile considering an evaluation procedure which allowed the Committee’s expert to look at the national situation.

74. Senegal, on behalf of the African Group, stated that with regard to the evaluation (submission of reports) procedure, it would be useful to consider the reason for the delay in the submission of States reports and the value-added of the follow-up visits would also have to be considered given that there were other relevant missions, including those of mandate-holders.

75. Cuba stated that the mandate of the Committee was to elaborate complementary standards, not procedures. It stated that the Committee’s mechanisms and procedures were sufficient and that the Committee had difficulty managing its current workload.

76. South Africa disagreed with the argument of some delegations that focusing on a narrow or wide interpretation of xenophobia was counterproductive and with the contention that such a consideration might undermine the Committee’s decisions and gains already made. A new definition did not pose a risk, since it was counterintuitive for Member States to agree to a standard which would undermine previous decisions or standards. Egypt agreed with South Africa and with the intervention of Senegal on behalf of the African Group, that the Committee was tasked to look at substantive gaps and stated that a discussion of procedural gaps was out of context.

77. France stated that the topic of national mechanisms should still be on the table for future discussion, acknowledging that there were different interpretations amongst Committee members. The delegate recalled that paragraph 199 of the Durban Declaration

and Programme of Action and the outcome document of the Durban Review Conference did not limit the issue to procedural or substantive gaps. The importance of strengthening treaty bodies was noted and it appreciated the proposals put forward by the Committee on the Elimination of Racial Discrimination to address procedural gaps.

## **VI. Adoption of the report**

78. The Chairperson-Rapporteur opened the 15th meeting, on 20 April, and announced that the draft of the report of the session had been circulated to participants. He invited them to consider the draft with a view to ensuring the accuracy of the session report and to make solely factual or technical revisions to it.

79. He also informed the meeting that, under his own responsibility, he had undertaken to prepare a Chair's conclusions and recommendations, which he had shared with regional coordinators the evening before and which he would introduce to the Committee as a whole. After this oral intervention on the document, copies would be made available to the meeting. The meeting was adjourned by the Chair, further to the request of delegations, to allow for continued consultations amongst them on an agreed concluding document for the session.

80. At the resumption of the 15th meeting, the Chairperson-Rapporteur read out his Chair's conclusions and recommendations, entitled "Summary by the Chairperson-Rapporteur: H.E. Mr. Minty, Permanent Representative of the Republic of South Africa" (see annex I of this report).

81. Liechtenstein pointed out that the Chairperson-Rapporteur's summary of the session was his responsibility and at his prerogative. The delegate stated that his understanding of the summary of the debates differed. He formally expressed his disagreement with paragraph 15 of the Chairperson-Rapporteur's summary, pointing out that the statement contained therein undermined the protection provided for victims of xenophobia under the framework of the International Convention on the Elimination of All Forms of Racial Discrimination.

82. The European Union also reiterated that the summary was that of the Chairperson-Rapporteur and not that of the Ad Hoc Committee. The European Union disagreed with some of the Chairperson-Rapporteur's summary, particularly with regard to the existence of gaps. It emphasized that it had not been established in the session that there were substantive gaps in the Convention, in particular in relation to xenophobia, which required filling. It understood that the Chairperson-Rapporteur's document would be annexed to the report of the fourth session.

83. Senegal, on behalf of the African Group, took the floor and suggested a number of precisions and redrafting proposals to for the Chairperson-Rapporteur's summary. Pakistan, on behalf of the Organisation of Islamic Cooperation, supported the intervention of the Africa Group and expressed appreciation to the Chairperson-Rapporteur for sharing his thoughts, noting that the summary required further study.

84. The United States of America did not make detailed comments on the Chairperson-Rapporteur's summary but stated that it understood that the document contained the personal observations of the Chairperson-Rapporteur. The delegate then made some general observations, reiterating that efforts or proposals to arrive at new definitions to replace or supplement those in the Convention were not only unnecessary, but dangerous. He recalled that with regard to violence and discrimination based on religion or belief, the United States had proposed international action in previous Ad Hoc Committee sessions and was supportive of moving ahead with the implementation of Human Rights Council resolution

16/18. The delegate noted bipartisan support in the United States for freedom of expression and opinion, and that the United States reservation to article 4 of the Convention was based on principle, not politics.

85. Switzerland (on behalf of Argentina, Brazil, Chile, Japan, Mexico, Republic of Korea and Uruguay) also stated that it understood the document represented the personal views of the Chairperson-Rapporteur. It underscored the importance of inter-sessional preparations in order to properly prepare the fifth session.

86. Cuba expressed support for the Chairperson-Rapporteur's summary, particularly since it noted that developing norms and standards to address xenophobia was both a need and a priority.

87. China thanked the Chairperson-Rapporteur for his summary and expressed its full support, stating that he had mapped out the right direction in which to build further momentum.

88. The Chairperson-Rapporteur replied that his summary was solely a Chair's conclusions and recommendations and its contents would be reflected in the annex of the final report of the fourth session. It was not a negotiated text, therefore no suggestions or amendments to it would be considered. It was drawn up in a very general manner. Nevertheless, it was now the property of the Ad Hoc Committee to utilize or not, as it saw fit. He looked forward to the session's conclusions on the way forward.

89. At the 16th meeting, the report of the fourth session was adopted ad referendum, with the understanding that delegations would receive a revised version of the draft report by 4 May 2012, with regard to which they would forward technical corrections to their interventions, in writing, to the Secretariat by 18 May 2012.

90. At this meeting, the delegation of Senegal, on behalf of the African Group, also presented an agreed text entitled "Draft Conclusions of the Ad Hoc Committee on the elaboration of complementary standards on its fourth session". Following oral technical corrections by the European Union and Egypt, the text was adopted by consensus, as follows:

"The Ad Hoc Committee with the objective to fulfill its mandate, decided to invite the Chair of the Ad Hoc Committee to hold informal consultations, within existing resources, with regional and political coordinators during the inter-sessional period between the fourth and fifth sessions of the Ad Hoc Committee, with the aim to prepare the fifth session and collect concrete proposals for discussion on the topics of xenophobia; establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance; and procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination, in accordance with its mandate.

Request OHCHR to send out a questionnaire, within existing resources, to gather information regarding the three topics discussed during the fourth session of the Ad Hoc Committee and in its report (xenophobia, national mechanisms and procedural gaps), including legal and judicial frameworks and practices, substantive and procedural measures in line with the mandate of the Ad Hoc Committee, and possible recommendations.

Invite OHCHR to post the responses to the questionnaire on its website and, in consultation with the Chair, prepare a summary of responses to the questionnaire received during the inter-sessional period for discussion during the fifth session.

Recommend that the fifth session of the Ad Hoc Committee discuss new topic(s) as contained in the report (A/HRC/18/36) of the third session of the Ad Hoc Committee or additional topic(s) submitted during the inter-sessional period.”

91. A number of delegations (European Union; Pakistan, on behalf of the Organisation of Islamic Cooperation; Senegal, on behalf of the African Group; South Africa; United States of America; Cuba, on behalf of the Latin American and Caribbean Group (GRULAC); and Switzerland, on behalf of Argentina, Brazil, Chile, Japan, Mexico, Republic of Korea and Uruguay) took the floor to express their appreciation, in particular to the Chairperson-Rapporteur, of the manner in which he had conducted the session.

92. In closing the meeting, the Chairperson-Rapporteur thanked all participants for their valuable efforts, noting with satisfaction that the fourth session had adopted its programme of work and session conclusions by consensus. While there was still work to be done, the Ad Hoc Committee had succeeded in charting some kind of course for its future.



## Annexes

### Annex I

*[English only]*

#### **Summary of the Chairperson-Rapporteur: H.E. Abdul Samad Minty, Permanent Representative of the Republic of South Africa**

##### **A. Introductory/opening remarks**

1. The meeting was opened by the Chairperson-Rapporteur in which he expressed an apology for being unable to fulfil the pledge to consult on the two topics before the Committee, and for being unable to avail South Africa's input on the issue of Xenophobia in a timely manner, where after he submitted a programme of work.
2. In the meeting, concerns were expressed by some delegations about the failure to meet commitments undertaken during the Third Session of the Ad Hoc Committee, and the resulting inadequate preparations for the 4<sup>th</sup> Session, including the lack of transparency in preparing the programme of work, which in their view, was unbalanced.
3. Other delegations expressed concern at the manner in which agreement on the programme of work was delayed, which according to them also included threats to delay the proceedings in the Ad Hoc Committee.
4. The Chairperson-Rapporteur reminded the Committee that South Africa had accepted to chair the Ad Hoc Committee on an interim basis as indicated in the report of the Third Session, and urged that a permanent chair be found as South Africa is inundated with other responsibilities elsewhere. He also informed that Ambassador January-Bardill would be presenting a paper on the South African experience on Xenophobia.
5. Furthermore, the Chairperson-Rapporteur thanked Member States and the UN Secretariat for ensuring that panellists were available for the current session, which would afford the Committee an opportunity to reflect on and understand the issues raised in previous reports, as well as the link between the mandate of the Committee and paragraph 199 of the Durban Declaration and Programme of Action. The Chairperson-Rapporteur also reminded that other topics would still be considered by the Committee.
6. On the substantive issues, it was already apparent that there were divergent views on the need to elaborate Complementary Standards to address the emerging/contemporary forms/manifestations of racism and racial discrimination such as xenophobia.
7. There was a perspective that argued for the need to focus on addressing contemporary forms and manifestations of racism, such as xenophobia, which have not been provided for in existing international human rights law instruments, in particular, the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). In this regard, a need to elaborate an international legal and conceptual framework was expressed.
8. There was also, a contrasting perspective that sought proof of the ineffectiveness of the non-discrimination provisions within the existing international human rights instruments, as a basis to determine the need to elaborate Complementary International

Standards to address the contemporary forms and manifestation of racism and racial discrimination such as Xenophobia.

9. The third perspective maintained that the ICERD was sufficient to address the existing gaps.

## **B. Issues emanating from the thematic discussion on xenophobia**

10. It was apparent that in the case of racism and racial discrimination, these pertain to discrimination expressed against settled groups of persons who live in the same country and constitute a racial group, a community of Indigenous people, minorities and others who over a considerable period of time, have become settled communities subjected to discrimination emanating from established structures, systems and patterns of treatment that becomes virtually self-perpetuating in many forms, including structural discrimination. These groups fall squarely within the categories of the victims as outlined in the DDPA.

11. There is no normative definition of xenophobia in international human rights instruments. However, Xenophobia is manifested as hostility, aggressiveness and even hatred that is mainly directed at strangers and non-citizens who are usually newcomers and who experience/are subjected to severe discrimination which arises from a latent or active predisposition to racism which becomes a much harsher expression of attitudes and behaviour, and even violence. It does have some factors or components that if not common to, have features of racism but involve greater hostility, while some acts amount to virtual intimidation with a message that those persons are not wanted in the host community and that they should leave or face greater hostility and hatred. Thus in some of the acts they actually convey a strong message of deep threat which is reinforced by actual actions including violence. This amounts to a total behaviour pattern that emphasises the virtual exclusion of those persons, who are subjected to abuse, discrimination and hatred targeted at a specific group, including violence.

12. It also emerged that there are underlying socio-economic factors, especially conditions where there is relative deprivation, extreme poverty and unemployment, which usually accompany the manifestation of Xenophobia, resulting in the violation of human rights, in particular, the right to non-discrimination.

13. There are various views about the definition of Xenophobia and some were of the view that it required definition in order to allow for legal remedies for the victims, while others were of the view that it should be dealt with within the broader context of racial discrimination given its multifaceted nature, which requires a comprehensive response.

14. There was agreement that whilst there is no definition of Xenophobia, the practice by the Committee on the Elimination of Racial Discrimination (CERD) was to interpret Xenophobia in both its narrow and wider meanings. It also emerged that while there were different views on the definition of Xenophobia, the existence of the concept was generally understood, and there is recognition that Xenophobia is on the increase and needed to be counteracted with firm and effective measures, given its pervasiveness across the national, regional and international levels.

15. Furthermore, there was agreement that while the CERD may elaborate a General Recommendation on Xenophobia, States Parties are under no obligation to implement such a General Recommendation.

16. The ICERD has also, not provided for permanent residents who do not or cannot assume nationality (for example, States not allowing dual nationality), who continue to be victims of Xenophobia while for all other purposes have assumed the same obligations as nationals.

17. Given the different ways in which Xenophobia manifests itself, it is important that a more holistic approach which is also multi-dimensional be adopted to prevent and combat it, including legislative and administrative measures, public policies, educational campaigns, particularly those promoting understanding of diverse cultures as well as tolerance, at the national, regional and international levels.

18. Migrants and other foreigners contribute to the economies of countries in which they are resident, yet they are often characterised as wrong doers and even criminals. There is a need to involve them in addressing xenophobia, and to consult with the communities within which they are resident.

19. The Ad Hoc Committee took note of the upcoming 80<sup>th</sup> Session of the CERD, which will address the issue of incitement to hatred, which will enrich deliberations in the Committee

### **C. Institutional responses to xenophobia**

20. Recommendations for institutional responses to Xenophobia included the following:

#### **International legal mechanisms**

(a) Some delegations argued that the current International Human Rights Instruments such as ICERD, among others, do not cover the contemporary manifestations of racism such as xenophobia. They argued for and recommended the need to elaborate an international legal, conceptual framework to address the emerging tendencies that violate human rights.

(b) Xenophobia is seen as a global phenomenon that needs to be addressed at the international level. Similar to other phenomenon that needed international action to defeat, such as colonization, slavery, racism, apartheid, etc. so does xenophobia and its manifestations. Similar to these scourges, xenophobia manifests itself including through criminal acts, aggressive attitudes and behavior.

#### **National legal mechanisms**

(a) Some argued that there is a need to support and strengthen existing international and) national mechanisms. They stated that xenophobia should be treated in the same way as other grounds of non-discrimination (thus criminalizing the act, not the attitude). To this end, the existence of national legislation is seen as sufficient, what is required is its implementation or enforcement.

(b) Most importantly, effective national mechanisms are critical to prevent, monitor and combat xenophobia, as well as to provide assistance and support, including access to justice.

#### **Political leadership**

The issue of political leadership was highlighted as an important element to address the issue of xenophobia. Furthermore, it was emphasized that political will is critical in addressing acts of xenophobia, and to influence the issue in a positive manner, particularly from the highest ranking political leaders at the national, regional and international levels.

#### **Media and civil society**

(a) The media and civil society were seen as important players in shaping public opinion and attitudes. Equally, their role could be critical in complementing the work of public officials around issues of negative stereotypes about foreign nationals and their

contribution to host countries. In this regard media needs to be engaged to be more balanced, and to contribute to educational campaigns promoting understanding and tolerance for diversity, including culture and religion.

(b) Other stakeholders such as Non-Governmental Organizations (NGOs), community and religious leaders need to be engaged to promote tolerance and understanding with a view to preventing the occurrence of xenophobic acts and/or violence, to facilitate support and assist the victims.

### **Education**

Education was considered an important tool in the fight against Xenophobia. Education of the society, through various programmes that target host communities, law enforcement agencies, children, etc. was also crucial in changing people's attitudes.

### **Data and/matrix of xenophobia globally**

The issue of data, in particular disaggregated data, or even mapping/developing a matrix on reported xenophobic incidents, was seen as important evidence of the manifestation of Xenophobia as a global phenomenon. It is worth noting that a number of countries where xenophobic attacks and/or incidents had arisen were highlighted, with a view to demonstrating the virulence of xenophobia across all sectors and globally.

### **Social inclusion**

(a) It was highlighted that social exclusion, poverty, inequalities, power relations, history of violence (colonization, slavery, prohibition, racist laws, etc.) and other factors contribute to the rise and prevalence of xenophobia. An appeal was made that efforts should be directed at ensuring social inclusion of foreign nationals into the receiving communities.

(b) Strategies to address xenophobia need to include effective communication and coordination mechanisms to facilitate a rapid response given the increasing xenophobic incidents, as well as training of the police/law enforcement agencies on human rights standards and on evidence collection to prevent re-victimization of victims.

## **D. Recommendations: Xenophobia**

21. The work undertaken in the Ad Hoc Committee needs to continue its focus on the plight of victims, to ensure unconditional respect for human dignity. In this regard I consider that it would be useful to explore possibilities of an international regulatory framework for xenophobia given the more aggressive manifestations of xenophobia, which need stronger measures.

22. While there is no normative definition of Xenophobia, there is a need to distinguish it from ethnocentrism. It may be recalled that Xenophobia is a new form and manifestation of racism and racial discrimination, which emanated from a global white power system and a legacy of the past which we have all inherited. There is huge evidence in this regard, of the importance of dealing with this scourge, irrespective of the availability of legal instruments.

23. I wish to recall that in the case of my own country South Africa, notwithstanding that the ICERD provided for the criminalization and combating of racial discrimination, a phenomenon which occurred in a specific part of the world, there was determination and worldwide condemnation including through United Nations resolutions, and recognition by the international community that Apartheid was a specific manifestation of racial

discrimination that required special measures and an international legal framework to address it, and hence a crime against humanity. That collective determination de-legitimised Apartheid. In 1993 on the eve of the demise of Apartheid as well as during the World Conference on Human Rights there was a clear recognition that Xenophobia constituted a danger. Within that context, there was recognition that Xenophobia was a specific manifestation, hence the focus on it during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, despite the absence of a definition of Xenophobia.

24. While there has been a general approach in dealing with Xenophobia and its manifestation worldwide, it is based on the recognition that it is on the rise and endangers peaceful co-existence in society.

25. I recognize that there are divergent points of view on the need to address Xenophobia specifically, and wish to recall that we have been able to address similar challenges in the past. The pertinent examples in this regard are numerous violations of human rights covered in the International Covenant on Civil and Political Rights (ICCPR), where we recognized the need to elaborate specific conventions dealing with them, such as torture, the rights of the child, and in the case of non-discrimination, the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), and the Convention on the rights of migrant workers and members of their families.

26. Given the foregoing, I recommend that the Ad Hoc Committee adopts a gradual step by step approach and explore possibilities of benefiting from the additional contribution of experts in this regard, to provide more clarity with a view to strengthen the international human rights law protection regime for the victims. In particular, I consider that it may be useful for the Ad Hoc Committee to:

27. Benefit from more information and analysis, in particular on how Xenophobia impacts on victims of Xenophobia as outlined in the Durban Declaration and Programme of Action; and

28. To benefit from a study on the intersectionality between class and poverty and the manifestation of xenophobia needs to be considered by the Committee, including the broader global historical context of racism, colonialism, slavery and apartheid among others.

29. I therefore recommend that a comprehensive and objective study be undertaken to inform discussions in the Committee, including the intersectionality between Xenophobia and race, gender, religion and nationality.

30. Furthermore, I recommend that the Ad Hoc Committee should address a request to the Human Rights Council, for it to convene a seminar for media practitioners, to deliberate on how best to contribute to a culture of understanding and tolerance for diversity, with a view to eliminate stereotypes and hate crimes related to racism, racial discrimination, xenophobia and related intolerance.

31. Finally, it is recommended that the Ad Hoc Committee should continue the consideration of the issue of xenophobia in its future sessions. In this regard, I will develop a framework which encompasses the elements discussed during this session on xenophobia and national mechanisms.

**E. Issues emanating from the discussion on the establishment, designation or maintaining of national mechanisms with competencies to protect against and prevent all forms and manifestation of racism, racial discrimination, xenophobia and related intolerance**

32. It emerged that National Human Rights Institutions, in particular those who comply with the Paris Principles as contained in United Nations General Assembly (UNGA) resolution 48/134 of 20 December 1993, are key partners in monitoring, promotion and protection of human rights. Additionally, it was highlighted that the National human rights institutions (NHRIs) are a mechanism for ensuring conformity of legislation with international obligations, including the implementation of the ICERD and the DDPA.

33. It was also highlighted that these NHRI are independent from Government even though they may be funded through Government resources, however they should be accountable, including to Parliament, civil society and the victims.

34. It was agreed that there is no single ideal model of a national mechanism to promote and protect human rights. In this regard, it was also agreed that Specialised Institutions could be established to promote and protect human rights, taking into consideration the specificities and the national context.

35. It also recognised that these NHRIs or Specialised Institutions should have a broad mandate to cover various categories of victims of racism, xenophobia and incitement, among others and reflect the diversity of society and be accessible to the victims of racism, racial discrimination, xenophobia and related intolerance.

36. It was also emphasised that these NHRIs and Specialised Institutions should be adequately funded in order to execute their mandate effectively, which could also entail the consideration of individual complaints.

37. The mechanisms must also be able to produce proposals and recommendations with a view to contributing to the improvement of legislation. They should also be able to evaluate their activities. Evaluation could also be undertaken nationally, regionally or internationally.

38. It was also acknowledged that the effectiveness or success of these institutions cannot be verified, save to say that they are at a “sensitization stage”.

**F. Recommendations: Establishment, designation or maintaining of national mechanisms with competencies to protect against and prevent all forms and manifestation of racism, racial discrimination, xenophobia and related intolerance**

39. I recommend a study on the impact of the National Human Rights Institutions and Specialised Institutions as appropriate, on the monitoring, promotion and respect of human rights.

40. I recommend the exchange of good practices among National Human Rights Institutions and Specialised Institutions as appropriate, on a national and regional level with a view to contributing to the effectiveness of these institutions.

41. The Office of the United Nations High Commissioner should assist National Human Rights Institutions in developing countries to strengthen their capacity to monitor, promote and protect human rights.

### **G. Procedural gaps preventing full and adequate implementation of the international convention on the elimination of all forms of racial discrimination**

42. A representative of the Committee on the Elimination of Racial Discrimination (CERD) presented a proposal for an additional protocol that would establish a procedure providing for evaluation visits, in addition to the presentation of national reports.

43. Furthermore, the representative of the CERD also proposed follow-up visits with a view to contributing to the full and effective implementation of the ICERD.

44. Various views were expressed in this regard, including that the existing mechanisms should be used more effectively, while others were of the view that the issue of procedural gaps should be pursued within the context of the work of the Committee.

45. The issue of the role of politics as expressed in the many reservations on Article 4 was highlighted in that States in their sovereign right enter reservations on the ICERD which exempt them from implementation thereof. This challenge will remain.

### **H. Procedural gaps preventing full and adequate implementation of the international convention on the elimination of all forms of racial discrimination**

46. I recommend that further discussions be pursued on the issue of procedural gaps during future sessions of the Committee

### **I. Concluding remarks**

47. I wish to express my appreciation to all of you, the Secretariat as well as panellists who contributed to and enriched our discussion. Most importantly, I wish to express my appreciation for the spirit in which these discussions were undertaken. I hope that we will continue to build on it as we continue our work.

48. To focus on Xenophobia and how to effectively counteract it in no way undermines the support for more effective national and other mechanisms. One cannot fight Xenophobia in the absence of appropriate machinery. At the same time, the focus on effective machinery does not mean that one should not focus on the specific need to address Xenophobia as a serious crime. Both are complementary.

49. I hope that what I have proposed will be considered duly, and look forward to your comments and proposals going forward.

## Annex II

*[English only]*

### **Summary of the expert presentations and initial discussions on the topics of “Xenophobia” and “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”**

#### **I. Expert presentations and initial discussion on “Xenophobia”**

1. At the 2nd meeting, on 10 April, the Chairperson-Rapporteur welcomed H.E. Nozipho January-Bardill to make a presentation on South Africa’s recent experiences with xenophobia and its institutional responses.
2. She explained how specific national historical, political economic and social circumstances in South Africa have developed into a situation where violent xenophobia is integral to the nation building project that South Africa embarked on in 1994, ironically to transform the nation and advance the African Renaissance.
3. Xenophobic tendencies against foreign nationals and more specifically African migrants had been documented only since 1994 and the trend is that there has been a steady increase of migrants over the years. She added that the violence which had characterised South African xenophobia was peculiar in that it had been aimed at other African nationals and not against foreigners in general. The violence has been confined to the urban informal settlements in South Africa’s major cities characterised by high levels poverty, relative deprivation, and unemployment and housing shortages.
4. She went on to explain briefly that the possible reasons and explanations were rooted in the past and in the present, including apartheid’s “foreign natives” and inferior aliens policies; negative and exclusionary social attitudes; historically discriminatory immigration policies; and poor service delivery. The rapid rate at which xenophobia has spread among South Africans in the past decade as well as its violent expression against the African population has much to do with aspects of the nation building project and the limitations of the new state in fulfilling the promises made to its struggling citizens.
5. A number of institutional responses to xenophobia were outlined during Ms. January-Bardill’s presentation. The role of the local media in using stereotypes of migrants and foreign nationals as inferior and inherently criminal was presented. Criminalization and discrimination against foreign nationals by political, immigration and law enforcement agencies; the need for government interventions, especially those which condemned all threats of xenophobia at the highest level were explored. Other responses included awareness-raising and education, prevention strategies, crisis management, conflict resolution and prevention strategies, access to justice for victims of xenophobic violence, disaster management during humanitarian crisis and internal displacement; Recourse to justice in the form of more robust laws to promote and protect the rights of migrants was imperative; as well as robust regional development and reparations for past suffering.
6. Ms. January-Bardill concluded that non-citizens enjoyed relatively extensive formal rights under the 1996 Constitution and its Bill of Rights. Only the Government could



address the practical challenges of claiming these rights by creating an enabling environment for people in South Africa to challenge the status quo and by fostering a more inclusive nation-building project. She added that she had made no reference to the issue of complementary standards as it was to be considered by Committee participants in the coming days.

7. Several delegations took the floor to comment and ask questions about the presentation. Greece noted that it appeared that all phobias could be cured; however, xenophobia appeared to be exempt. He added that while the presentation focussed on containing the violent impact of xenophobia, the interventions suggested included awareness/raising and education and begged the question of whether a person was capable of reform. Ms. January-Bardill noted the power of ideology, acknowledging that a “cure” for social ills was difficult. It was possible to change ideas and that in South Africa this was an on-going exercise; nevertheless, justice for victims was possible.

8. The European Union (EU) noted that the presentation seemed to adopt a narrow definition of xenophobia in respect of “nationality” and “citizenship”. The delegate queried the emphasis on prevention and asked whether xenophobia was in fact a new or old phenomenon.

9. Senegal on behalf of the African Group stated that South Africa was attempting to criminalize the acts that flowed from xenophobia as distinct from others and asked Ms. January-Bardill how international interventions could affect those at the domestic level.

10. Ms. January-Bardill responded that definitions were difficult to crystallize and that perhaps the focus should be on what xenophobia was not rather than what it was. She continued that the more interesting question was why not what and that there was a need to continue working on these definitions. With regard to gaps, she mentioned that she hoped that CERD would one day look into the issue, adding that racism often changed in shape and form and that it was key to “keep an eye” on the instruments to ensure that they still fit or whether there was a need to make room for phenomena. She noted a need to discuss issues of xenophobia in the future with her CERD colleagues.

11. Paraguay questioned whether in defining xenophobia identity or value was truly at the centre and cautioned about placing “nationality” necessarily at the centre of the definition and analysis.

12. Ms. January-Bardill replied that it was true that laws often required amendment, but that it was premature to make such an assessment as it would be important to consider all the issues, including attitudinal factors. She encouraged an “open-mindedness” by all on these complex issues.

13. At the 3rd meeting, on 11 April, Mr. Thornberry, a member of CERD, gave a presentation on “Xenophobia – with particular reference to the International Conventional on the Elimination of All Forms of Racial Discrimination” noting that the views expressed in his brief analytical paper were personal and not those of the Committee.

14. Mr. Thornberry noted that ICERD does not include the term xenophobia but nevertheless the terms “xenophobia” and “xenophobic” are used with regularity by the Committee. Mr. Thornberry pointed out that it was possible to discern wider and narrower meanings grouped under “xenophobia”. The wider meaning would follow that of the Special Rapporteur on contemporary forms of racism in 1994 and amount to a generalized fear of “the Other” the “heterophobia” or fear of strangers. The narrower meaning related to foreigners, people from countries other than one’s own. In CERD jargon, the second might be reduced to hatred of the “non-citizen” or of “aliens”. On the other hand, “non-citizenship”, on the face of it, might seem to be an unlikely target for hatred. Mr. Thornberry stated that while in a conceptual sense the wide meaning may be more

compelling and closer to ordinary usage, addressing xenophobia in the narrow sense might resonate better with legal definitions in ICERD and the practice of CERD. He also added that it might be possible to distinguish xenophobia from ethnocentrism, or other identity-defending strategies or attitudes.

15. With regard to ICERD, Mr. Thornberry recalled that xenophobia does not expressly figure in its text, which is also the case for the term “racism”. The notion of ‘hatred’ appeared in the Convention as hate propaganda and ideas based on racial superiority or hatred, as did discrimination, incitement, and – more positively – the promotion of inter-ethnic toleration to combat hatred. The emphasis in the Convention was on discriminatory actions and hate speech. He pointed out that the grounds of discrimination have been applied in practice to minorities of many kinds: indigenous peoples, caste groups, descent groups including Afro-descendants, non-citizens, as well as those caught in the ‘intersection’ between ethnic identity and other identities – notably gender and religion. Regarding non-citizens – targets of xenophobia whether a wide or a narrow definition was employed – the provisions of article 1(2) may be recalled whereby the Convention ‘shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens.’ In his view, the Committee has not allowed the ostensibly restrictive provisions of article 1(2) to deflect its work on the protection of non-citizens. The Committee adopted the extensive General Recommendation 30 in 2004 which provides that 1(2) “must be construed so as to avoid undermining the basic prohibition of discrimination”, and “should not be interpreted to detract in any way from the rights and freedoms enunciated in particular in the Universal Declaration of Human Rights” and the Covenants. Further, paragraph 11 of the Recommendation requests that steps be taken by States parties “to address xenophobic attitudes and behaviour towards non-citizens, in particular hate speech and racial violence, and to promote a better understanding of the principle of non-discrimination in respect of non-citizens.”

16. In his concluding remarks, Mr. Thornberry noted that while xenophobia was not referred to in the text of ICERD, this has not prevented CERD from addressing it by name. CERD had also addressed other phobias such as Islamophobia. He said that xenophobia may figure as an element underlying racial discrimination and may lead to it and pointed out that general anti-foreigner sentiments may not attract an obligation under ICERD.

17. He pointed out that the Committee’s practice recognised a wide view of xenophobia implicating a range of groups, though the paradigm case of non-citizens – or, *de minimis*, persons of foreign origin or “visible minorities” – appeared to attract the most frequent references. The Convention was primarily concerned with manifestations of hatred and not simply emotions and sentiments. “Xenophobia” might be too general to target a particular race, colour, etc.; if it did not, it would not be caught by the Convention.

18. Mr Thornberry informed the participants that the CERD would have a thematic discussion on racist hate speech at its August 2012 session which would consider article 4, but also the elements in ICERD as a whole that were capable of addressing xenophobia.

19. The European Union also highlighted the dilemma between adopting a wide versus a narrow definition of xenophobia and pointed out the need to make a clear distinction between feelings of fear or rejection versus speech and expression, and welcomed the August CERD discussion. The delegate asked whether acts of xenophobia could be reprimanded on other grounds of discrimination and about the occurrence and references to xenophobic “hate” speech and acts in State reports submitted to the CERD.

20. Brazil also referred to the notion of broad versus narrow definition of xenophobia and asked Mr. Thornberry whether an international definition of xenophobia was necessary, asking if so, what would be the benefit to victims.

21. Senegal, on behalf of the African Group, commented that the presentation did not offer any new analysis concerning the definition of xenophobia and hoped that the approach would have been more audacious so as to discern the meaning of xenophobia. The added value would be found in a legal definition or approach concerning access to justice for victims and remedies, and impunity. He suggested a discussion on the alleged authors and perpetrators of xenophobia, the trends, incidents and regions affected. He noted that autonomy and legal status for xenophobia were required.
22. Liechtenstein stated that Mr. Thornberry's analysis illustrated that a lack of definition did not hinder the Committee in carrying out its role as the monitoring body for the implementation of the ICERD. Austria agreed that the lack of definition was not always a problem, in that minority rights had not been defined in the Declaration on the rights belonging to persons of minorities either. He noted that it was not always a question of laws and regulations and that it was necessary to look at societal aspects too.
23. Mr. Thornberry stated that a proliferation of definitions was not necessarily a desirable outcome and that the question for the Committee was whether it was missing something in not having a definition. The CERD resolutely insisted that legislation countering hate speech be enacted and maintained that racial discrimination was ubiquitous, despite some States claiming no domestic racial discrimination at all.
24. South Africa queried what happened when States excluded non-nationals from a full spectrum of rights, and asked what protection was available for non-citizens where States had made a reservation under article 4.
25. The delegate of France spoke about multiple discrimination and the intersection of motives for discrimination, asking Mr. Thornberry to provide additional details. The delegate of the United States of America asked whether CERD had a list of best practices/standards or indices to be applied by States Parties.
26. The delegate of Senegal, on behalf of the African Group, emphasized the lack of legal definition deprived individuals of their rights and access to justice. He noted that there were optional protocols to ICCPR on capital punishment and to CRC on the sale of children and prostitution which allowed for greater definition in order to protect victims. The African Group was only partially satisfied in that there would be a thematic discussion on racist speech and a likely general recommendation on the issue, but he underscored that general recommendations were not legally binding.
27. Mr. Thornberry said that the Committee's main concern was the applicability of the ICERD at the national level, including the coverage of the national law and how this affected the proper implementation of the Convention. He replied that the Committee did not compile an archive of good practices as such, rather it tried to reflect its general comments in the recommendations to States. He added that CERD would like to be more systematic in its follow-up and that in a future paper it might try to note a few areas in which CERD had expressed particular satisfaction. He noted that CERD was becoming more attentive to intersectionality in its work.
28. Mr. Thornberry noted that if CERD were to receive the report of the fourth session of the Ad Hoc Committee, it might consider the issue of xenophobia and take some of these issues on board in case of a general recommendation on racist speech in August. In reply to a comment from Japan, he stated that it was unlikely that a separate general recommendation on xenophobia would be considered by the CERD.
29. At its 4th meeting, Mr. Orest Nowosad Chief, Civil and Political Rights Section of the Special Procedures Branch at the Office of the High Commissioner for Human Rights gave an overview of the work of special procedures mandate holders in relation to the issue of xenophobia.

30. Xenophobia had been addressed from various aspects by several mandate holders whether in the framework of their thematic and country visits reports, communications sent to Governments or conferences. He referred to the work of Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on the human rights of migrants; the Independent Expert on minority issues; the Special Rapporteur on freedom of religion or belief; the Special Rapporteur on the right to education; the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Special Rapporteur on adequate housing; and, the Working Group on arbitrary detention.

31. In this context the mandate-holders have highlighted important concerns with regard to the manifestations of xenophobia, in particular on some specific groups of individuals. There appeared to be a convergence of views on these issues by the various mandate-holders.

32. Mr. Nowosad concluded by illustrating a few of the key recommendations made by mandate holders, including that States, inter alia: firmly condemn any racist or xenophobic action or discourse, including by political parties; introduce in their criminal law a provision according to which committing an offence with racist or xenophobic motivations or aims constitutes an aggravating circumstance allowing for enhanced penalties; collect ethnically disaggregated data on racist and xenophobic crimes and improve the quality of such data-collection systems; and establish appropriate institutions and adopt legislation to punish those who discriminated, incited or perpetrated acts of violence against foreigners or members of minorities.

33. The overview of the work of special procedures mandates holders in relation to xenophobic acts demonstrated that there has yet to be a comprehensive, clear overview of that which had arisen in relation to xenophobia and also positive measures taken to combat it.

34. The European Union remarked that there was no definition of xenophobia in the overview of mandate-holders work, and queried why the mandate holders had focussed on prevention.

35. The delegate of Greece noted that each mandate holder had a different perspective and approach and that there appeared to be several overlapping concentric conceptual circles with regard to xenophobia including intolerance, hate speech, racism and racial discrimination.

36. Senegal, on behalf of the African Group, noted the variety of mandate-holders addressing xenophobia - albeit some of them doing so only tangentially - and queried why the Working Group of Experts on People of African Descent was not included in the overview. With regard to mandate-holders recommendation on legislation addressing racist/xenophobic discourse, he questioned how this could be undertaken given that there was no definition of xenophobia. He also asked about any evaluation of the work and impact of the mandate-holders on issues of xenophobia and follow-up actions. Senegal added that it would be worthwhile to undertake an assessment of special procedures and treaty bodies with regard to xenophobia and how they might work together.

37. Mr Nowosad stated that the mandate-holders appeared to deal with issues of xenophobia in reference to violations of individual rights in international law. He noted the preventive focus of their work and asked whether norms and standards were sufficient. He noted the question on the protective gap and he highlighted the critical role played by national institutions in fighting xenophobia.

38. The delegate from the United States of America noted that focussing on violations of the rights of individuals avoided the difficult issue of proving psychological harm and

motivation. He added that in December 2011 in Washington had been a follow-up meeting to Human Rights Council resolution 16/18 and that the issue of training exercises for law enforcement officials, including in the context of combating terrorism had been addressed. He noted that good law enforcement and good human rights were not mutually exclusive.

39. The delegate from Egypt stated that the current legal regime was not sufficient for contemporary challenges such as xenophobia. He underlined that the phenomena still persisted despite the comprehensive overview regarding mandate-holders actions regarding xenophobia highlighted by Mr. Nowosad. He stated that the mandate-holders recommendation on national laws implied the need for a protocol or complementary international standard.

40. Pakistan, on behalf of the Organisation of Islamic Cooperation, questioned how a mapping exercise by special procedures and mandate-holder would be of assistance if there was no definition of xenophobia and why other mandates including especially the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action was not reflected in the presentation. South Africa agreed that information on the work of the Working Group of Experts on People of African Descent was relevant for consideration, especially with regard to inter-sectionality of people of African descent and xenophobic violence.

41. Mr. Nowosad replied that the concentric or overlapping nature of the issues might signify that greater follow-up work and coordination amongst mandates was required. He agreed that his paper and presentation were not exhaustive with respect to all the mandates and that a future version could certainly be made so. He noted that the question of gaps was an intergovernmental issue; but that as practitioners the mandates appeared to be doing well with what they had at their disposal. He agreed that a proper “mapping” on all the mandate-holders and xenophobia could be brought into one updated document.

42. At the 5th meeting, on 12 April, Mr. Duncan Breen, Senior Associate at the non-governmental organization Human Rights First, gave a presentation entitled “Combating Xenophobic Violence”. He stated that violence that specifically targets people in whole or part because of their actual or perceived “foreign-ness” is commonly referred to as xenophobic violence. Although xenophobic violence most commonly targets refugees, stateless persons and migrants, it can also target citizens who are seen as being “foreign” to the area or are perceived to be from another country.

43. Xenophobic violence is one common form of bias-motivated violence, also known as a “hate crime” that could be difficult to distinguish from, and sometimes overlaps with, other forms. For example, some cases of xenophobic violence may also be related to other forms of discrimination such as racism, religious intolerance or persecution on the basis of sexual orientation or gender identity.

44. Mr. Breen highlighted that the causes of xenophobic violence could be complex in that they could often be closely related to other social, economic and political challenges within a country. For example, xenophobic violence is likely to take place in a context where there is a general negative attitude towards foreign nationals, but it should be noted that negative attitudes towards foreign nationals do not always result in violence.

45. With regard to shortcomings in State responses he noted that xenophobic violence, like other forms of bias-motivated violence, tended to be under-reported as very often victims were afraid or unwilling to approach police or other government officials for help. Lengthy and costly procedures also contributed to under-reporting and as a result, perpetrators developed a sense of impunity. Most States had yet to develop monitoring mechanisms. Non-governmental organizations and NHRIs could also play an important role in data collection.

46. He noted that although holistic efforts were necessary to address xenophobia more broadly, there are a number of specific steps that States can take to tackle xenophobic violence. In this regard, Human Rights First has developed the Ten-Point Plan for Combating Hate Crimes which includes the following: 1) senior leaders should speak out against xenophobic violence and should condemn xenophobic attacks; 2) Governments should consider developing domestic laws that either establish offences or provide enhanced penalties for xenophobic and other forms of bias-motivated crimes; 3) Governments should strengthen police and justice responses to xenophobic violence; 4) States should develop effective mechanisms to monitor and report on xenophobic violence; and, 5) Government should reach out and build links with communities affected by xenophobic violence.

47. The delegate of Greece stated that in the additional background paper of Human Rights First entitled “Combating Xenophobic Violence: a Framework for Action” there appeared to be a “creeping tendency” to categorize States as “xenophobic” on the basis of general comments, individual cases and incidents. It was a worrisome trend to profile countries as xenophobic and that there is xenophobic violence there, especially since Mr. Breen stated that it was difficult to disentangle xenophobia from other biases. He noted that the term “bias-motivated” violence was not used at the international level.

48. The European Union noted the emphasis on the issue of monitoring mechanisms and data collection, emphasizing that a country with the very existence of a monitoring system or an improved monitoring system would appear more xenophobic compared to those which did not have such a system, making it difficult to assess country situations objectively. She asked whether existing laws were sufficient to combat xenophobia.

49. Senegal on behalf of the African Group stressed that the framework for action paper included references to concepts which are not defined and agreed to at the international level, raising controversy. A great number of paragraphs in the document were not linked to the issue of xenophobia and that the focus should remain on xenophobia as mandated to the Ad Hoc Committee in Human Rights Council decision 3/103.

50. In his replies, Mr. Breen explained that the information about countries included in Appendix I of the Framework for Action paper provided examples and was not intended to be an exhaustive list. With regard to legislation, he noted that it was better to use the existing legal standards and focus efforts on implementation; however, he recommended a more holistic approach.

51. Ireland stated that it concurred with the comprehensive approach suggested by Mr. Breen, adding that police training could positively impact xenophobic violence. He asked how such practices could be shared, in particular with regard to police trainings.

52. Egypt stated that both the presentation and the framework for action background paper were not in accordance with the mandate of the Ad Hoc Committee and what had been agreed at the third session. He noted that new terms had been included and there was no reference to international standards, emphasizing that good practices were not substitutes for the lack of legal standards. He pointed out the selectivity and accuracy of country examples in Appendix I of the Framework for Action paper. He underlined that the statement that Egypt does not have official data collection on several issues, was incorrect. He pointed out that there was strong cooperation with the UN Special Rapporteur on trafficking, in particular with regard to data collection.

53. The delegate from Italy said that the divergence of opinion in the room signified the complex nature of xenophobia. With regard to the Framework for Action paper, he urged caution with respect to the annex of countries as there was a risk of oversimplifying the situation. It was also very important to include information on responses by political leadership which should come at the highest political level. He added that generally, a

xenophobic atmosphere often resulted from sudden changes in the social fabric of countries: for example, a country of net emigration suddenly becoming one of significant immigration.

54. Morocco noted that victims of discrimination and xenophobia felt a lack of justice and it was important to provide support to them. He noted the need to singularly condemn xenophobia as it was truly an international phenomenon. He underscored the primary roles to be played by leaders such as the heads of State and senior public officials and personalities. Morocco also informed that in July 2011, a new constitution was adopted by referendum, containing provisions protecting human rights and several articles against discrimination. The provisions in the constitution hold everyone responsible and any Government will be obligated to implement it. He said the Government “anticipated” the recommendation about monitoring mechanisms by envisaging such in article 19 of the constitution. Moreover article 23 of the constitution forbids incitement to hatred and violence, which is a punishable crime.

55. Senegal, on behalf the African Group, welcomed the comments of Morocco and the information it shared about its new constitution. He also agreed with some of the comments of the Italian delegate. He noted difficulty in finding the term xenophobia in Mr. Breen’s text, which also did not tackle the definitional issue. He reiterated that access to justice was linked to the problem of legal definition, and was needed in order for victims to have access to reparations.

56. The delegate of South Africa noted that the verification of sources of information used for the countries in Appendix of the Framework for Action paper underlay many of the concerns expressed. She pointed out that sometimes victims and affected communities were unsure whom to turn to as they felt that the police had the same sentiments as the perpetrators. In this regard, she inquired about the role of civil society and human rights defenders.

57. The United States of America explained that disaggregated crime data in the United States were useful in assessing progress; however, he noted the more open and transparent a country was the more problematic its domestic situation might appear as there would be no information from countries that are closed and highly controlled and do not report such information. He asked how reporting could be presented in a way to give incentive to countries to report.

58. The European Union aligned itself with the previous statement of Liechtenstein agreeing with the need for a comprehensive approach, including measures for social inclusion and for combating intolerance. The focus on xenophobic violence was shared by the EU, where it was addressed along with other forms of bias motivated violence. The delegate said that multiple forms of discrimination could also be addressed by the holistic approach. The EU supported Morocco’s intervention with regard to the important role played by political as well as religious and community leaders.

59. The delegate of Switzerland said that Mr. Breen was the only expert to recommend the development of legislation and underlined the need to have a coherent approach to all types of violence and not to be selective. She asked about suggestions with regard to the nature of the legislation that needs to be adopted: with respect to punishment of crimes, implications for third parties, and the classification of hate speech. The delegate noted that no society was immune to discriminatory messages and discourse concerning foreigners, migrants and refugees by political leaders. It was important for society to remain vigilant about these “myths” created about foreigners and the issues of immigration, employment and criminality.

60. Pakistan, on behalf of Organisation of Islamic Cooperation, pointed out that xenophobic violence was a global phenomenon requiring a corresponding international

action, whereas the paper of Human Rights First focused on the national level. It was uncertain whether these national measures suffice the magnitude of the phenomenon. He supported the role of political and religious leaders, but this should be complementary to legal and administrative procedures.

61. Egypt appreciated the practical approach; however, if xenophobia encompassed several types of crimes it would be unclear adding that there was no agreed definition of a bias-based crime. He said that xenophobia was against a foreign individual and not groups and that the minimum agreed definition refers to foreigners.

62. Ms. Fanny Dufvenmark and Ms. Christine Aghazarm from IOM made presentations at the 6th meeting, on international migration issues, later that day. With respect to xenophobia and migrants, Ms. Dufvenmark stated that as a starting point, it was important to understand that, although they often overlap, racism and xenophobia are two distinct phenomena. There is no international definition of what constitutes xenophobia; however, IOM had chosen to use a definition describing the phenomenon 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.”

63. All forms of discrimination could not be classified as xenophobia, but it was apparent that migrants often are directly and indirectly discriminated against because of xenophobic attitudes and as a result they may not be able to enjoy and exercise their human rights. They stated that xenophobic attitudes against migrants were becoming more prevalent and all States are affected by this negative trend to varying degrees. Xenophobic attitudes were often based on misperceptions about migrants and migration. Dispelling several common myths/misunderstandings about migrants and migration is one step in combating negative perception and xenophobia.

64. International migration law extended over various branches of international law and most of migrants' fundamental rights are protected therein. However, the protection of rights for certain groups may require more attention as demonstrated by the implementation of additional human rights treaties such as: Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention on the Rights of the Child (1989); and the Convention on the Rights of Persons with Disabilities (2006). The rights provided by these instruments apply to migrants regardless of migratory status. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families which entered into force in 2003 provided a comprehensive legal framework for the protection of human rights for migrants. It does not create any new rights for migrants, but it ensured that the already existing human rights applied to migrants as well and it protected regular and irregular migrants from xenophobia.

65. Ms. Aghazarm explained that IOM worked directly with its partners to address the challenges posed by xenophobia in four major ways: policy dialogue such as the International Dialogue on Migration (IDM), on the ground programmes, media engagement and engaging directly with migrants. The activities were based on the premise of fostering an informed debate on migration and the challenges of cultural diversity as well as enhancing the knowledge base on migration issues more broadly.

66. On the ground, IOM had been programming, informing and educating policymakers and the wider public about migration and was also facilitating the integration of migrants – both key in combating xenophobia. One good practice example was that through directly working within the educational system in countries of destination on toolkits, teacher trainer manuals, inter-religious dialogues, trainings and curriculum materials. IOM also directly engaged with the media to promote balanced reporting and analysis on migration to combat misperceptions of migrants and xenophobic attitudes. It was also a significant



way to modify the role of migrants in public discussions; giving a voice to migrants to learn from their perspective so that they are not just the subject of debate but active participants in the debate. IOM cooperated with UN Alliance of Civilizations (UNAOC) on a yearly award, Plural +, given to young migrants who produce videos sharing their integration and identity experiences as migrants in their host societies.

67. Senegal on behalf of the African Group asked for more information on migrant contributions to host societies. The delegate noted that the concept and definition of xenophobia needed further refining and that the IOM version had no legal weight. He agreed that the Migrant Workers Convention should be ratified and questioned the added value of the MWC in the context of fighting xenophobia. He asked how IOM was coordinating its activities with other international organizations, such as OHCHR.

68. Pakistan on behalf of the Organisation of Islamic Cooperation, agreed with Senegal's intervention that the IOM definition had no legal effect and queried how it was used for practical purposes. He asked about a monitoring mechanism to monitor xenophobia and whether IOM had any evidence concerning which part of world the situation of migrants was more serious.

69. Egypt questioned whether attitude was the crime or problem or whether it was acts of xenophobia as noted by previous speakers. He asked whether through their work xenophobia affected the human rights of refugees and asylum seekers.

70. Ms. Dufvenmark agreed that the IOM definition was a working definition which offered more of a guidance tool in order to understand what was being encountered and how it could be separated from discrimination and racism. It was not prescriptive and more of a legal definition was required. She agreed with an earlier EU intervention that at issue was not only the protection of migrants from State and nationals but between groups of migrants as well. She reiterated the human rights based approach and noted the apparent effects of xenophobia on migrants in respect of access to services such as housing and health care in that it had a limiting effect on migrants even where it was not an open, hostile, or direct case of xenophobia.

71. Ms. Aghazarm noted the economic and development features of migration and the significant remittances transferred to home countries. She indicated that IOM worked with HCR, OHCHR, UNAOC and NGOs on the many issues affecting migrants and as to measuring impact, she noted that the replication of IOM projects in other contexts illustrated their relevance. She stated that there was no global monitoring mechanism on the issue of xenophobia and migrants.

72. The United States of America welcomed the rights based approach to migrant issues taken by the presenters; noted that media and political leadership were absolutely vital players; and, that speaking out to counter xenophobia was useful. He asked whether IOM found their work hampered by any perceived gaps in the legal framework.

73. Ms. Dufvenmark stated that with respect to gaps, it was difficult to attribute the problem to a lack of instruments or to a lack of implementation; however, IOM was working within the present framework available. With respect to the question from the United States of America concerning whether more speech and advertising the benefits of migration was preferable to definitions or a code of conduct, she explained that IOM had no particular view on this but that it sought a more balanced view of migration. The issues should not be about scapegoating migrants but about the economy, health care, housing or whatever the real domestic issue or problem might be.

74. Mr. Miguel Hilario-Manëñima of the United Nations Children's Fund (UNICEF) gave a presentation at the 7th meeting of the session on 13 April entitled "Going beyond window dressing – Xenophobia in Latin America: It's time to count the people of colour".

He stated that he defined xenophobia as a societal cancer that emanates from the core of the individual being (mind and emotions) which was fed in the families, manifested in societal relations, cultural views, economic policies and political power relations. He also noted that xenophobia concerned conscious and subconscious attitudes and rejection of “the other” that perpetuates all types of violence, inequality, exclusion and poverty. He stressed that the sociological reality of xenophobia warranted the need to have a mechanism towards preventing, protecting and eliminating it from the core, which would take a long transformational process.

75. With regard to the effects and implications of xenophobia in Latin America, Mr. Hilario-Manénima pointed out that there was a lack of political will to thoroughly count indigenous and Afro-descendants in statistics or measurements of social development. There was very little disaggregated information on their socio-economic conditions and official statistics make them invisible.

76. He emphasized that xenophobia affected social, economic issues and policies. Policy makers locally, regionally and nationally, in many cases, based on their dislike of the “other” ignored them in budget allocations, the most vulnerable coincidentally—were persons of colour. It was argued that multicultural and inter-cultural transformation must be carried out through the whole educational process. There was also a need for leadership development opportunities for indigenous and Afro descendent communities at both professional and educational levels. He pointed out that no international or national law would eliminate xenophobia since it was ingrained in the being. Change began inside of people by unmasking their fears and talking about them, in the families where new values and appreciation of the other are instilled, and in communities where collectively people embrace and celebrate cultural differences. This process would complement legislation and mechanisms established to prevent and protect people from xenophobia.

77. The representative of the EU pointed out that there was no reference to the issue of nationality in Mr. Hilario-Manénima’s presentation and that his approach was based on the “foreignness” and “otherness”. The delegate noted that his emphasis on elements that would promote tolerance, social inclusion, more understanding was consistent with the comprehensive approach of the EU. She asked how he viewed the respective role of legislation and public policies for the promotion of social inclusion.

78. The delegate of Liechtenstein asked if it could be helpful to have specialized mechanisms at national and regional levels to initiate the work on education and data collection, and whether there was a need to improve the international framework in respect of protecting children from xenophobia, for example through the Convention on the Rights of the Child.

79. With regard to Mr. Hilario-Manénima’s point that xenophobia spreads like an epidemic, the representative of Pakistan, on behalf of the OIC, asked how this epidemic could be addressed by governments and the civil society. He noted that nationals of their own countries were targeted and the psychological targeting resulted in exclusion. The delegate asked how the issue of xenophobia was addressed in international law and if there were gaps, how they should be addressed.

80. In his reply, Mr. Hilario-Manénima stated that legislation alone would not eliminate and curb xenophobia. He noted that having an international framework was the first step to bridge the gap; there was a need to strengthen the international law and complement it with national mechanisms. Implementation at local, national level and regional level was also important. With regard to education and data gathering he pointed out that there was a need for legal framework and mechanisms, such as national statistical centres in order to understand groups of people and their numbers, in order to design public policies.

81. With regard to the assessment of gaps at international level, Mr. Hilario-Manēnima pointed out the importance of creating incentives for government to eliminate xenophobia at national and local levels. He stated that many states in Latin America had remarkable anti-discrimination legislation but they were yet to be enforced. Member States should collect data on xenophobic incidents at various levels, which would provide information on progress made.

82. The United States of America commended his point on the importance of disaggregated data. He also noted that ICERD contained a very clear definition of racial discrimination and it was pointed out that the laws in the Americas region were also very clear; however, those laws are not implemented by some States. Moreover, a few authorities gathered the data, which was necessary to make changes at the policy level and to determine whether the policies had the desired effect or an unintended effect.

83. On the question of affirmative action asked by Senegal on behalf of the African Group, he noted that different groups of people should have the same educational opportunities in order to access the same university and job opportunities. Equal educational opportunities and equal access to healthcare services contributed to dignified equal competition. He noted that changes also occurred when there was an interest from delegates and commitments to talk to the respective government in order to tackle these issues collectively.

## **II. Expert presentations and initial discussion on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”**

84. At its 8th meeting, on 13 April, the Ad Hoc Committee heard two presentations on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance” by Mr. Vladlen Stefanov, Chief of the National Institutions Section at OHCHR and Mr. Zanofer Ismalebbe, Human Rights Adviser with UNDP Geneva, respectively.

85. Mr. Ismalebbe gave a presentation on the process and contents of the published UNDP-OHCHR toolkit for collaboration with National Human Rights Institutions which was a guidance publication prepared in order to give guidance to UN and UNDP staff around the world.

86. The European Union noted the very good collaboration between the UNDP and OHCHR and asked about the role of national mechanisms and national institutions in implementing the ICERD and the DDPA. The delegate asked about human rights strategy and diversity and composition in staffing, and with reference to the thematic fact sheets asked whether there was one on non-discrimination.

87. Mr. Ismalebbe noted that the toolkit enabled staff to adapt the sample and tools to the local context. The terms of reference in the toolkit were to be used to build capacity and help foster staff diversity at the country level through the employment of sample and tools. He explained that there was no specific fact sheet on non-discrimination and equality since it was deemed a cross-cutting issue during the preparation of the toolkit and was therefore integrated throughout the document.

88. Austria also supported this example of collaboration between UN partners and inquired about links to the Universal Periodic Review and asked whether there was any evaluation of the toolkit and feedback as of yet, as to how it could be improved.

89. Mr. Ismalebbe replied that regional trainings were being carried out with UNDP and OHCHR staff with an outcome to strengthening support to national human rights institutions so that they can more effectively participate in the Universal Periodic Review process. He stated that little feedback had been received so far signifying the effectiveness of the toolkit. There were on-going discussions to provide trainings to UN staff on the toolkit itself.

90. On behalf of the African Group, Senegal asked two questions: (i) whether national institutions took up cases on their own or whether there was a referral process, and (ii) what was the added value and competence of national institutions compared to a traditional court. Mr. Ismalebbe explained that the competency of the national institution with respect to cases depended on the nature of the initial mandate granted to it.

91. Mr. Stefanov gave a presentation on the nature, mandate, and functions of national human rights institutions, as governed by the Paris Principles.

92. In response to a competence question asked by Senegal on behalf of the African Group, he explained that using a national institution could be more beneficial than a domestic court in the sense that to the victim they were likely more accessible, less costly and time-consuming. The national institutions process was faster and a remedy could be received sooner. There was often a complementarity and not a contradiction in the processes.

93. The delegate of the European Union referred to the 2007 CERD study as a starting point and asked whether separate entities and mechanisms, different from or within existing national human rights institutions were required to cover the issues of non-discrimination. There was a question about how national institutions could assist in implementing recommendations and how they handled complaints.

94. France supported the statement of the European Union and recalled that the DDPA specifically mentioned in paragraphs 90 and 91 that all States are called upon to strengthen national institutions with regard to racism, racial discrimination, xenophobia and related intolerance. The delegate also recalled that the CERD in its General Observation 17 spoke of national institutions as mechanisms which could assist ICERD implementation. The delegate asked whether there were specific guidelines to national institutions of how to fight discrimination and establish specialized bodies.

95. Mr. Stefanov stated that specialized bodies and national human rights institutions were not incompatible and could be very complementary. He added that there was no one template and that the decision to have a general or specialized body on discrimination was a reflection of the priorities and needs of a country. He explained that national institutions have quite great access in international fora and are heard by treaty bodies such as the CERD. They could submit reports which could affect the concluding observations. He added that complaints handling was an important source of information.

96. South Africa questioned the level of effectiveness of national human rights institutions especially regarding remedial action to victims. Mr. Stefanov noted that some national institutions such as the South African Human Rights Commission were quite active in this area.

97. The Chairperson-Rapporteur echoed the earlier inquiry of the European Union about the global coverage of national institutions, adding that it would be informative to receive a listing or matrix of institutions referenced with their accreditation criteria, type and number

of complaints, cases settled remedies, timeframes, and cooperation with UN etc. He stated that this idea could be followed up at some point.

98. At the 9th meeting, on 16 April, the Secretariat announced that Mr. Michel Forst of the French National Consultative Commission had informed that he would not be able to attend the meeting as planned, due to unforeseen circumstances. Mr. Patrick Charlier, of the Belgian Centre for Equal Opportunities and the Fight against Racism gave a presentation in which he discussed how to choose a mechanism, the status of mechanisms and the remit of mechanisms.

99. National mechanisms are independent bodies to promote human rights established by the State. Mechanisms could focus on combating discrimination or have a wider mandate. He noted that the outcome of the mechanism rather than its structure should guide decision-makers, adding that each country should make its own choice based on domestic particularities and local specificities such as language, culture, federal structure, and legal tradition. There was an on-going debate between broad thematic mechanisms versus specialized mechanisms. The more general structures had mandates to protect, promote and monitor. This could be advantageous because that one body had a greater capacity to address a broad spectrum of issues and allowed for cross-fertilization with other bodies and structures in government. As a reporting body, this national body could also prove more effective. There were also budgetary issues and economies of scale.

100. Specialized bodies allowed for greater attention to the needs of a specific category or group with specific needs, be they migrants, refugees, etc. A specialized mechanism should ensure diversity in its membership, reflecting the ethnic, linguistic and cultural facets of the country. These types of mechanisms also have a specific expertise and focus and are perhaps more inclined to follow the relevant legislation or process such as the ICERD, UPR and DDPA. Mr. Charlier noted that the CERD, European Commission against Racism and Intolerance (ECRI), Council of Europe and the DDPA specifically call for this type of mechanism.

101. The status of the mechanism was another consideration. It was advisable that mechanisms have so-called “360 degree” independence in that they are able to make recommendations regarding the rules and regulations of the State. It must also be independent from civil society since the mechanism is not a super-NGO either. It was imperative that the organ had its own right to speak. It must be accessible physically and in terms of lodging complaints and it should also have symbolic and cultural proximity to the population.

102. A third consideration was the mandate and the body or mechanism. Both groups and victims of discrimination as well as phenomena should fall under the mandate of the body. He noted that it was very important to publicize the competence and the authority of the body or mechanism to all sectors and all areas of activity where the body might act. A broad mandate was recommended in that the mechanism should have the capacity to protect, promote and monitor. The promotional activities should be taken in the media, through public relations and on international days. Its protection mandate should be complementary to that of national courts. The mechanisms should publicly disseminate its findings, conclusions, studies etc as well as all its annual activities especially in the form of an official annual report. The mechanism can submit amicus curiae briefs, should it wish and take part in strategic litigation and class action lawsuits, where possible. A broad protection mandate would allow the mechanism to follow the situation of certain groups and also receive individual complaints.

103. The monitoring function of the mechanism ensured conformity with international regulations and obligations; allowed for an assessment of the real state of affairs of minorities and groups in the country and their ability to take part in society (opportunities

and chances); and it also allowed for the production of opinions and recommendations in respect of its own opinions, domestic laws and legalisation and general comments opinions and issues.

104. The delegate of the European Union stated that it would be very useful to have a map of listing of Status A accredited national human rights commissions as well as specialized bodies or mechanisms and inquired whether there was a list of specific recommendations which allowed for the tackling issues at hand. She asked about a regional review of actions undertaken by specialized bodies in respect of racial discrimination and asked whether the pursuit of international networking by these mechanisms would be useful in order to ensure coverage and exchange best practices.

105. Senegal on behalf of the African Group asked about the effectiveness of these bodies and whether procedures were in place to ensure that cases were in fact taken up and followed through since it was results that counted. He asked about the timeframe for these cases and whether there was limitation on timeframes. He also questioned the legal status of these institutions and how they maintained their legal integrity and independence from the Government and the court system.

106. Mr. Charlier replied that it was not a simple task to suggest basic guidelines for all countries in the world. Regarding evaluation, this depended to a great extent on to whom the body is ultimately accountable. In principle, these bodies should be answerable to parliaments and their committees and not a government or executive branch. Thus far, most evaluation had been rather informal and the test was the level of credibility of the mechanism, in the eyes of the special procedures, the international coordinating committee for national institutions, regional bodies and the general population.

107. Denmark stated that according to a study by the European Fundamental Human Rights Agency, national legislation and procedures to address and combat discrimination are not adequately known by members of racial minorities. The delegate how best to ensure that information about these mechanisms were disseminated to the whole society including to minorities, groups etc.

108. The delegate from Cuba agreed that there was no single model to address racism, racial discrimination, xenophobia and related intolerance since these must be based on national characteristics, culture and the values of the given country. While generally in support of guidelines, it is the country which must select the model most appropriate to its national context.

109. Pakistan on behalf of the Organisation of Islamic Cooperation asked how national mechanisms could support victims who may be temporarily in a region and fall victim to racism, racial discrimination, xenophobia and related intolerance.

110. South Africa inquired about how mechanisms could practically ensure access and remedies to victims and asked what happened in a case where the national mechanism is found in a State which is not a party to the ICERD or has made reservations to the ICERD and does recognize its competency, especially in light of practicalities on the ground.

111. The United States of America asked Mr. Charlier if he was aware of an evaluation or study on which mechanisms or combination of mechanisms were performing well. In reference to the comment about ICERD not covering gaps, the delegate inquired whether he had encountered any practical gaps in his work.

112. China asked how it was possible to guarantee the impartiality of national mechanisms. In addition, from a legal point of view, how could migrants from other countries be protected in the host country? Due to economic regions and discrimination, how could mechanisms entirely comprised of the local population be free from the political atmosphere in a country and provide protection to foreigners or “aliens”?

113. Mr. Charlier replied that with respect to assessment and appraisal, OHCHR had issued a publication on “assessing the effectiveness of national institutions”. No single mechanism could meet all aspects of the national reality. What was most important was to place victims at the centre because this would end discrimination and ensure the proper outcomes. With reference to gaps, he explained that he did not have enough information in this regard. He stated that it was important to protect the rights of individuals even if that State asserted that racism did not exist in the country.

114. Morocco asked about mediation and ombudspersons and the extent to which they were an alternative to a court process. The delegate also referred to acts of racism and related phenomenon and asked to what extent national mechanisms could tackle these issues without a specific complaint. Mr. Charlier replied that there were two types of ombudspersons – those that mediated or facilitated the relationship between an individual and the State, and those which stressed conciliation and mediation.

115. At the 10th meeting that afternoon, Mr. Jozef DeWitte, Chair of the Equinet - the European Network of Equality Bodies gave a presentation to the Committee. He described the Belgian Centre which was established in 1993, noting that it was one of the last of the European equality bodies to be set up. It was established by Parliament which gives its mission and mandates but has full independence to fulfil that mandate in collaboration with States and civil society. The mandate is broad mandate and looks at issues such as racism, religion and belief, equality, age, disability, sexual orientation but not gender which is assigned to another body and language for cultural reasons specific to the Belgian context.

116. He explained that in Belgium, the anti-discrimination mandate included the fight to promote equality. In addition, migration was a phenomenon very relevant there and it was important to understand its trends now and in the future. The fundamental rights of foreigners were guaranteed in Belgium even where one was not a citizen because they are fundamental human rights. He also noted that the fight against trafficking and sexual and economic exploitation was very present in all sectors of the economy.

117. He noted three main tasks of the Centre: the first concerned assistance with individual cases. He noted that about 5185 cases came forward of which 4000 concerned discrimination and about 1000 concerned fundamental rights. They focussed on reaching settlements as it was quicker and fully respected the rights of the victim. In 2011, 16 legal cases were initiated on hate crimes because these are non-negotiable. The second task was a proactive role in information-sharing and sensitization and training about how to deal with a multicultural society. The third was the forward-looking task of formulating recommendations to improve regulations. He explained that the Belgian Centre had B status accreditation because its statute was not broad enough and it was perceived to be not independent enough from the State.

118. Mr. DeWitte then described the European Network of Equality Bodies – Equinet. Following an EU directive, it was established in 2008 as the secretariat to help Equinet members fulfil EU directives. It has 37 member mechanisms and they work together in a non-hierarchical way to achieve their full potential at the national level. The mandate from the EU directive provides that equality bodies should: give independent assistance to victims of racism; conduct surveys concerning discrimination; provide independent service; prepare and publish reports on discrimination; it forms recommendations on key issues; and it exchanges information between them and with the Fundamental Rights Agency and the European Court of Justice. It also carries out awareness raising campaigns and promotes good practices. It has a fairly high level of competence on issues concerning race, religion and belief, gender, disability and sexual orientation.

119. Equinet’s activities include equality laws, policy formulation, publications and a number of trainings. Mr. Dewitte reiterated that standards for equality bodies were not “one

size fits all” as the standards, practices and functions have very specific cultural and historical context. In response to questions: How fast should we respond? What tools do we have? How independent should we be? Each mechanism or body must learn from the standards to set their very own.

120. Greece asked whether the structure or type of institution impacted on the outcomes. The EU asked what in his view worked in terms of standards and referred to the usefulness of regional networking.

121. Mr. DeWitte replied to questions that there were many different names, structures and types of equality bodies and explained that States should take into account what existed in their local context. The Paris Principles gave some indications as to independence and the issue of checks and balances. With respect to a question from Senegal about when negotiation was feasible or advisable, he identified five elements which must be satisfied: (i) the facts must be acknowledged; (ii) the blame or responsibility must be accepted; (iii) an apology must be given; (iv) a future occurrence must be precluded; and, (v) the appropriate redress must be given.

122. The 11th meeting was opened on 17 April by the Chairperson- Rapporteur who offered his apologies and announced that he would not be able to chair that morning’s session due to pressing commitments. Following his welcome and introduction of Mr. Bucio-Mujica, President of the Mexican National Council for Prevention of Discrimination (CONAPRED), he informed that Mr. Yannick Minsier of the Permanent Mission of Belgium had kindly agreed to chair the meeting in his absence. Mr. Minsier then invited Mr. Bucio-Mujica to make his presentation on national mechanisms against discrimination, with particular emphasis on his organization CONAPRED.

123. Mr. Bucio-Mujica stated that, established in 2003, CONAPRED was a specialized agency pursuant to the federal law on the prevention and elimination of discrimination and it was mandated to combat and prevent any distinction or exclusion based on ethnic or national origin, sex, age, disability and a wide range of other grounds, and to ensure to equal opportunities for people. He noted that there was also a National Commission on Human Rights which had been created prior to CONAPRED, which was also an autonomous commission.

124. He elaborated on CONAPRED’s eight principal functions: (1) to design tools and prepare studies in order to measure discrimination, understand its characteristics and impact; (2) to measure and suggest programmes and activities for the prevention of discrimination in public and private institutions; (3) to undertake legal studies at the national level to promote the adoption or harmonization of legislation, in accordance with international treaties; (4) to disseminate content to prevent discrimination in the media; (5) to defend individual cases of discrimination committed by individuals or federal authorities (the defence model); (6) to work in coordination with public, federal, local and municipal institutions, as well as with social and private individuals and organizations; (7) to disseminate the commitments undertaken by the Mexican government at the international level and promote compliance with them; and (8) to promote international cooperation in the fight against discrimination, including through networks and international coordination mechanisms.

125. He then outlined some of the advantages of institutions like CONAPRED including: the fact that its coverage of multi-dimensional issues strengthened its capacity to act in terms of its broader approach and the interdependence of rights. There was also a better capacity to defend individual cases of discrimination and there was more credibility and public legitimacy attached to its work. Some disadvantages included the fact that the institutions could not impose public sanctions and provide redress, budgetary restrictions,



and CONAPRED's very broad mandate and geographic coverage which involved a tremendous amount of work.

126. Greece asked about the methodology employed to decide which vulnerable groups would be involved in the CONAPRED survey/study. The delegate of the European Union inquired about how complementarity between the CONAPRED and the National Commission on Human Rights was ensured. She was also interested in more details concerning the individual cases and the "defence model."

127. Ukraine asked about best practices and interesting examples of legislation and policies with regard to preventing discrimination and also requested further details about the "defence model" and its efficiency.

128. Mr. Bucio-Mujica replied that population groups were included in the study based on a previous study commissioned in 2002 with regard to discrimination in Mexico including women, migrants, disabled, elderly, young boys and girls, domestic workers, sexual orientation, religion and others. From 2005 when the CONAPRED's study was issued to 2011, when the second study of the Council was finalized, the study was referred to on a daily basis in the media. In fact, CERD had called for the development of a national policy based on this very study.

129. He elaborated on the "defence model" explaining that anyone anywhere in Mexico had access by phone, internet or in person directly at their offices to get advice and initiate a formal proceeding. There was a clear mechanism in place: catalogue, inventory of the different ways to file complaints of different cases of discrimination; however, greater clarity was needed about what constituted discriminatory behaviour. There was a need to be clear about discrimination and non-discriminatory practices. In this context it would be advantageous to broaden the ICERD definition to include xenophobia. The defence model also involved a conciliation procedure, remedies were considered and measures were suggested in order to avoid the recurrence of the discriminatory practices. He highlighted two cases concerning de facto discrimination in schools in Chiapas region and discrimination against female domestic workers.

130. Mexico pointed out the need to share information between authorities and to have principles and standards. Delegates asked for more information about the mentioned inter-American network and specialized bodies.

131. Austria emphasized that anti-discrimination laws were important but not sufficient to promote cultural change noting that awareness-raising might be a more practical way. He noted with interest the prizes established for intercultural reporting by journalists since a similar award was offered in Austria.

132. The United States of America raised a question with regard to the suggested broadening of the definition of ICERD in order to include xenophobia. In this regard he asked whether a complaint of xenophobia had been brought to CONAPRED and it was unable to assist or was constrained due to the fact that there was no ICERD definition. Mr. Bucio Mujica emphasized that ICERD is much more limited than the UN Convention on the Rights of Persons with Disabilities which had a broader scope, details are greater, yet there are much more direct references to rights of people and it contains references to direct mechanisms. ICERD had a general definition; it was not detailed, making it difficult to prove cases of xenophobia and racism.

133. Mr. Bucio-Mujica also pointed out that the majority of rulings on the individual cases were not binding therefore requiring acceptance on behalf of the person responsible for the act and very often the person did not accept a commission of an act of xenophobia. Moreover, in Mexican law there were many distinctions between citizens: being naturalized Mexicans or Mexican by birth. According to CONAPRED some of these distinctions were

illegal and xenophobic; therefore, it was suggesting an amendment to the constitution, looking at the barriers which might be xenophobic in nature, and having an impact on redress for victims. He noted that international instruments have a very direct impact in Mexico as they had immediate application and constitutional effect upon ratification. He invited delegates to continue this process to consider which additional standards are needed to combat discrimination, emphasizing that the work of the Ad Hoc Committee was essential for combating racism, racial discrimination, xenophobia and related intolerance.

134. The Chairperson-Rapporteur opened the 12th meeting of the session that afternoon, and invited Mr. Andre Castella, Director of the Office for the Integration of Foreigners of the Canton of Geneva to address participants. Mr. Castella commenced by stating that racism was not an opinion but an offence which was unacceptable and reprehensible under Swiss law.

135. In 2010 the Federal Office for Migration created a new mandate in that as of 2014, all 26 cantons would be required to demonstrate what activities they were undertaking at the local level to combat discrimination. He explained that in terms of legislation, Article 8 of the Swiss Constitution prohibits discrimination and that Article 261 of the Penal Code prohibits racism.

136. He underlined the federal nature of Switzerland noting that anti-discrimination policy and action followed a local model specific to the Canton of Geneva. He generally highlighted the situation of discrimination in Switzerland following the examination by international mechanisms such as CERD and European Commission against Racism and Intolerance (ECRI), the United Nations Special Rapporteur against all forms of racism and the Council of Europe. They generally concluded that there were acts of racism, anti-Semitism and discrimination in Switzerland and that it was necessary to take actions (preventative, penal etc.) to address them. In response, the Canton had taken three principal actions: (i) creation of an advice centre to aid victims of racism (orientation, assistance and defence assistance to help people lodge complaints and navigate the court process, if necessary); (ii) awareness-raising of the population (campaigns, debates, exhibitions and education); and, (iii) training of public officials, cantonal authorities and administrators in order to ensure universal access to public services (education, medical assistance and education).

137. In the Canton of Geneva, the advice centre was an independent government body established to “hear, help and accompany victims of racism” and was staffed by a lawyer and social assistant. It was a neutral body dealing with all forms of discrimination brought to its attention. Mr. Castella highlighted the inaugural “Week of actions against racism” which for the first time issued a simultaneous media publicity campaign in all francophone and italophone cantons. Sensitizing the population was fundamental to educating different cultures and religions about each other. He noted that it was reassuring that Geneva Canton had rejected the federal initiative some years ago on banning minarets (which was ultimately successful) and that their efforts were now focussed on education of school children and training of law enforcement officials and police. In the future his Office hoped to considerably increase its efforts because discrimination and racism were scourges and it was the fundamental role of government to combat it.

138. Senegal on behalf of the African Group, in reference to Article 261 of the Penal Code of Switzerland, asked how xenophobia was tackled in the Canton of Geneva. He also inquired about a recent initiative whereby people of North African descent were offered four thousand francs to voluntarily repatriate.

139. On behalf of the Organisation of Islamic Cooperation, Pakistan agreed that racism was a scourge and welcomed Mr. Castella’s ongoing efforts in this regard. He asked how in the future efforts will be better coordinated to defeat federal initiatives such as that banning

minarets? He asked Mr. Castella how “foreigners” and “integration” were defined by the Office for Integration of Foreigners. He inquired about the conceptual challenges to fighting racism.

140. The United States of America in reference to the observatory, asked whether it could be determined if policy measures were having an effect or not.

141. Mr. Castella replied that in Geneva there was evidence of tensions including anti-border xenophobia directed at *frontaliers*, representing the rejection of “the other”. He noted that racism had many forms and that a proper evaluation of current actions against it would be measurable only in the future. Regarding the voluntary repatriation, he explained that it was a pragmatic Council of State solution featuring a “readmission agreement” for those North Africans without nationality and where there was no agreement with the country of return. He stated that Government must tirelessly combat racism and that it even had a duty to enter political processes and confront racist parties. In the past it had been too reticent, but in his opinion, the issues must be addressed head on.

142. Germany asked about what experience or advice could be offered regarding improving accessibility to public services and also how to reach groups which may have challenges in accessing traditional media. The European Union queried which awareness-raising projects were most successful and why. Noting that, as Mr. Castella stated, Geneva was comprised of about 40% foreigners, how could they be engaged in consultation and awareness-raising?

143. Mr. Castella answered that Article 261 of the Penal Code was rarely invoked since victims did not often receive satisfaction under it. The burden of proof made victims and claimants hesitant. He reiterated that it was too early to comment on effectiveness, however there were long term plans to replicate, expand programmes to other audiences and sectors. He agreed that it was necessary to involve foreigners living long-term in Geneva in initiatives against racism.

144. Indonesia remarked upon the historical openness of the city and Canton of Geneva as the seat of international organizations and businesses. While some efforts were appreciated, there was a higher expectation of a more integrated and coordinated approach to combating racism.

145. The representative of the NGO Citizens of the World commented on the observatory, highlighted specific cases of discrimination in the Canton and outlined a number of issues and situations regarding foreigners in Switzerland. She asked what Mr. Castella’s office could do about family reunification.

146. Mr. Castella agreed that recent disturbing media campaigns were unworthy of Geneva’s historical reputation for openness and a threat to that very openness. He noted that there were different histories of cantons in Switzerland and that there was much more to do to combat racism throughout the country. He took good note of the issues and comments raised by the NGO.

147. The United States of America shared an overview of interventions taken following 9 September 2001 to deal with “discriminatory backlash” at the national level, noting the success of these measures and mechanisms.

## **Annex III**

*[English only]*

### **Agenda**

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda and programme of work.
4. Presentations and discussions on the topics.
5. General discussion and exchange of views.
6. Adoption of the report.

## Annex IV

[English only]

### Programme of work

(adopted as amended, 10 April 2012)

#### 1st week

	Monday 9.04	Tuesday 10.04	Wednesday 11.04	Thursday 12.04	Friday 13.04
10.00–13.00		<p><b>Item 1</b> Opening of the Session</p> <p><b>Item 2</b> Election of the Chair</p> <p><b>Item 3</b> Adoption of the Agenda and Programme of Work</p>	<p>Xenophobia <i>[Patrick Thornberry, CERD]</i></p>	<p>Xenophobia <i>[Duncan Breen, Human Rights First]</i></p>	<p>Xenophobia <i>[Miguel Hilario, UNICEF]</i></p> <p>---</p> <p>General discussion and exchange of views on xenophobia</p>
15.00–18.00	<p>UN holiday</p>	<p><b>Item 4a</b> Xenophobia <i>[Nozipho January-Bardill, South Africa]</i></p>	<p>Xenophobia <i>[Orest Nowosad, Special Procedures Branch, OHCHR]</i></p>	<p>Xenophobia <i>[Fanny Dufvenmark; Christine Aghazarm, IOM]</i></p>	<p><b>Item 4b</b> Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance  <i>[Vladlen Stefanov, National Institutions Section, OHCHR; Zanofer Ismalebbe, UNDP Geneva]</i></p>

## 2nd week

	Monday 16.04	Tuesday 17.04	Wednesday 18.04	Thursday 19.04	Friday 20.04
10.00–13.00	<p>Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance</p> <p><i>[Patrick Charlier, Centre pour l'égalité des chances et la lutte contre le racisme en Belgique: Michel Forst, French National Consultative Commission on Human Rights]</i></p>	<p>Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance</p> <p><i>[Ricardo Bucio-Mujica, President of the National Commission against Discrimination of Mexico]</i></p>	<p><b>Item 4c</b></p> <p>Procedural gaps with regard to the International Convention on the Elimination of All Forms of Racial Discrimination</p> <p><i>[Alexei Avtonomov, CERD]</i></p>	<p>Informal Consultations / Compilation of the Report</p>	<p><b>Item 5</b></p> <p>Chair's Consultations and Recommendations</p>
15.00–18.00	<p>Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance</p> <p><i>[Jozef De Witte, Equinet - European Network of Equality Bodies]</i></p>	<p>Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance</p> <p><i>[Andre Castella, Office for Integration of Foreigners, Geneva Canton]</i></p>	<p>General discussion and exchange of views on the establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance</p> <p>---</p> <p>General discussion and exchange of views on ICERD procedural gaps</p>	<p>Informal Consultations / Compilation of the Report</p>	<p><b>Item 6</b></p> <p>Adoption of the report of the 4th session</p>

## Annex V

*[English/French only]*

### **List of attendance**

#### **A. Member States**

Albania, Algeria, Argentina, Armenia, Austria, Bahrain, Bangladesh, Belgium, Benin, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Chile, China, Colombia, Congo, Cote d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Ethiopia, Finland, France, Germany, Ghana, Greece, Guatemala, Honduras, Hungary, India, Indonesia, Iran (Islamic Republic of), Ireland, Italy, Ireland, Jamaica, Japan, , Kuwait, Lao People's Democratic Republic, Latvia, Lichtenstein, Lithuania, Malaysia, Mauritania, Mauritius, Mexico, Morocco, Nepal, Netherlands, Nigeria, Norway, Pakistan, Paraguay, Portugal, Qatar, Republic of Korea, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Syrian Arab Republic, Thailand, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, Unites States of America, Uruguay, Venezuela (Bolivarian Republic of)

#### **B. Non-Member States represented by observers**

Holy See, Palestine

#### **C. Intergovernmental organizations**

African Union, European Union

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

Association of World Citizens, Birdil Resource Center for Palestine Residency and Refugee Rights, Bureau international catholique de l'enfance, Franciscans International, Geneva For Human Rights, Human Rights Watch, Indian Council of South America (CISA), Indigenous Peoples and Nations Coalition, International Council for Human Rights, Nord-Sud XXI, Rencontre Africaine pour la Défense des Droits de l'Homme.

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