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**Human Rights Council**

**Fifty-seventh session**

9 September–9 October 2024

Agenda item 9

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

Report of the Ad Hoc Committee on the Elaboration of Complementary Standards on its fourteenth session[[1]](#footnote-1)\*, [[2]](#footnote-2)\*\*

*Chair-Rapporteur:* Kadra Ahmed Hassan (Djibouti)

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| *Summary* |
| The present report is submitted pursuant to the Human Rights Council decision 3/103 and Council resolutions 6/21 and 10/30. The report is a summary of proceedings of the fourteenth session of the Ad Hoc Committee on the Elaboration of Complementary Standards and the substantive discussions that took place during the session. |
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I. Introduction

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

II. Organization of the session

2. The Ad Hoc Committee held sixteen meetings during its fourteenth session, which took place at Palais des Nations in Geneva from 22 July to 2 August 2024.

A. Attendance

3. The session was attended by representatives of Member States, intergovernmental organizations, one national human rights institution and non-governmental organizations in consultative status with the Economic and Social Council (see annex II).

B. Opening of the session

4. The fourteenth session was opened by the Chief ad interim of the Rule of Law, Equality and Non-Discrimination Branch, Office of the United Nations High Commissioner for Human Rights, Abdoul Thioye.

5. Mr. Thioye recalled that the fight against racism, racial discrimination and related intolerance remained crucial to achieving a world free from discrimination that ensured freedom, dignity equality and justice for all irrespective of race, colour, descent, national or ethnic origin. He noted that all persons deserved dignity and protection of their rights regardless of where they lived emphasizing that no country could claim to be free of racism. Mr. Thioye noted significant challenges that needed to be addressed and recalled that systemic racism persists against national ethnic, linguistic and religious minorities, migrants, people of African descent and indigenous peoples including women and girls. He recalled the limited access to basic rights and services, xenophobia, hatred, stigmatization, and racial stereotypes experienced by many migrants, refugees, asylum seekers, and stateless persons. He pointed out the rise in manifestations of racism and xenophobia through digital spaces and by politicians and public figures as well as the resurgence of nationalistic and supremacist movements.

C. Election of the Chair-Rapporteur

6. At its first meeting, held on 22 July 2024, the Ad Hoc Committee elected Kadra Ahmed Hassan, Permanent Representative of Djibouti to the United Nations Office and other international organizations in Geneva, as its Chair-Rapporteur, by acclamation.

7. The Chair-Rapporteur thanked the Ad Hoc Committee for her re-election and committed to continuing to chair in an inclusive manner reflective of all views. She stated that she counted on the Committee’s cooperative and constructive engagement throughout the fourteenth session.

8. The Chair-Rapporteur recalled that at its thirteenth session, held in 2023, the Committee had heard presentations from and engaged in discussion with, legal experts on issues pertaining to the structure, scope, elements, terms, and procedural aspects of a draft additional protocol criminalizing acts of a racist and xenophobic nature. She noted that the Committee’s conclusions and recommendations[[3]](#footnote-3) renewed the request to further engage with the legal experts through the Chair-Rapporteur, on further elaboration on issues and elements in paragraph 101 of the report of its thirteenth session.

9. The Chair-Rapporteur underlined that the experts had undertaken legal research and analysis and provided inputs and guidance to allow the preparation of an updated Chair-Rapporteur’s document and that the experts responded to the issues and elements on which the Committee had requested further information in paragraph 101 of the thirteenth session report. She indicated that the Committee’s questions, observations, and concerns would be the substantive focus of the first week of the fourteenth session. The Chair-Rapporteur expressed regret that, due to the unavailability of hybrid meetings, the legal experts were unable to be present with the Committee at the fourteenth session for an interactive engagement, but that the Committee would hear their pre-recorded presentations. The Chair-Rapporteur called on the Committee to deepen its discussion on the legal issues and expressed her expectation that discussions based on the recorded expert presentations and the updated Chairperson’s document would enable the Committee to make substantive progress, guided by its mandate.

10. The Chair-Rapporteur noted that contemporary manifestations of racism required increased efforts from the Committee to strengthen the protection of victims of racism and racial discrimination, notably addressing protection gaps in international norms and standards through the elaboration of an additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). The Chair-Rapporteur urged Committee members to contribute substantively during the fourteenth session.

D. Adoption of the agenda

11. At its first meeting, the Ad Hoc Committee adopted the following agenda for its fourteenth session:

(a) Opening of the session;

(b) Election of the Chair-Rapporteur;

(c) Adoption of the agenda and programme of work;

(d) Presentations by legal experts on paragraph 101 (a-g) of the Committee’s report;[[4]](#footnote-4)

(e) Discussion on defining additional terms and norms according to paragraph 101 (i) of the Committee’s report;[[5]](#footnote-5)

(f) Introduction of and discussion on the Updated Chairperson’s draft document concerning the possible scope, terms, elements and structure of the “draft additional protocol to the Convention criminalizing acts of a racist and xenophobic nature” pursuant to Human Rights Council resolution 51/32;

(g) Conclusions and recommendations of the session;

(h) Adoption of the conclusions and recommendations of the fourteenth session.

E. Organization of work

12. At its first meeting, the Chair-Rapporteur introduced the draft programme of work for the session, which was adopted. The programme of work is contained in annex I to the present report. She invited delegates to make general statements. The following delegations congratulated the Chair-Rapporteur on her re-election and made general statements.

13. On behalf of the Organisation of the Islamic Conference (OIC), the representative of Pakistan stated that the OIC Member States deeply valued the mandate of the Ad Hoc Committee to negotiate an additional protocol to the ICERD, which has become more significant due to growing contemporary global challenges of racism, racial discrimination, xenophobia, hate speech, and religious intolerance and hatred. He regretted the that anti-Muslim hatred was often tolerated by some States and promoted by the media. He also noted some States’s reluctance to prevent manifestations of racial discrimination. He regretted the continued public acts of desecration of the Quran in some States and stated that these instances were emblematic of a wider and extent structural Islamophobia embedded in those societies.

14. On behalf of the African Group of States, the representative of The Gambia reaffirmed support to the mandate of the Ad Hoc Committee and underlined the imperative to elaborate complementary standards. due to the contemporary global challenges of racism, racial discrimination, xenophobia and related intolerance, which continued to rise nearly 60 years since the adoption of the ICERD. He stated that lingering legacies of historical racial injustices - such as colonialism, slavery and the transatlantic slave trade, apartheid, and genocide - continued to be among the main obstacles to the full enjoyment of all human rights.

15. The representative of the European Union (EU) affirmed the continued commitment to the fight against racism, racial discrimination, xenophobia and related intolerance and the respect, protection, and fulfilment of human rights for all without discrimination on any ground. He stated that racism and racial discrimination and xenophobia inflicted profound harm on individual victims and undermined the fabric of peaceful and democratic societies. He informed about the EU existing legal and institutional measures against racial discrimination. He reiterated the EU’s position that there was no need for complementary standards or an additional protocol.

16. The representative of Egypt aligned with statements delivered by Pakistan on behalf of the OIC and The Gambia on behalf of the African Group of States. She reaffirmed Egypt’s support for the Ad Hoc Committee’s mandate and the advancement in efforts to finalize complementary standards to the ICERD. She asserted the importance of addressing discrimination on the grounds of religion and belief in the draft additional protocol, the role of digital technology in amplifying hate speech, and the misuse of social media platforms to spread national, racial, or religious hatred which constituted incitement to discrimination, hostility, or violence.

17. The representative of Iraq aligned with the statement delivered by Pakistan on behalf of the OIC, and reiterated Iraq’s full commitment to the principles of human rights and legality and its full support of the Ad Hoc Committee’s mandate. He affirmed the need to combat racial discrimination and address gaps in this area.

18. The representative of Brazil expressed Brazil’s readiness to contribute to the Ad Hoc Committee’s efforts in combating hate speech both online and offline. She notably shared information about the existing domestic legislative frameworks to address racial discrimination in all its forms.

19. The representative of China noted that the elimination of all forms of racism and the equal enjoyment of dignity and rights by all embodied the spirit of the United Nations Charter and international equity and justice. He noted, however, the historical legacy of colonialism and the slave trade had yet to be overcome and erroneous ideas - such as white supremacy, racism, racial discrimination and their manifestations - continued to cause widespread violations of human rights.

20. The representative of South Africa aligned with the statement delivered by The Gambia on behalf of the African Group and reaffirmed South Africa’s support to the work of the Ad Hoc Committee. He noted that the collective responsibility of the global community to promote and protect the human rights of all without discrimination was at the core of human rights pillars and mechanisms. He called for collective work to combat these scourges, noting that South Africa joined the African Group in condemning all forms of racism, racial discrimination, xenophobia and related intolerance wherever they occurred, and called for a victim-centred approach in all efforts aimed at combating these scourges. He noted that racism and racial discrimination, including contemporary forms, affected all people and therefore it was incumbent upon everyone to address its root causes and effectively implement concrete measures to combat those scourges, as envisioned by the Durban Declaration and Programme of Action (DDPA).

III. Discussions

A. Presentations and discussion with legal experts on paragraph 101 (a) –(i) of the Ad Hoc Committee’s report at its thirteenth session

21. From its first to eight meetings, held from 22 -26 July 2024, the Ad Hoc Committee considered its agenda item 4, namely presentations from the legal experts and discussion on paragraph 101 (a)-(h) of its report on its thirteenth session. It heard and discussed presentations from the following legal experts: Beatrice Bonafe, Professor of International Law, Sapienza University of Rome, Italy; Joanna Botha, Professor of Public Law, Faculty of Law, Nelson Mandela University, South Africa; Mark Drumbl, Class of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University, United States of America; Fatsah Ouguergouz, Visiting Professor of International Law, Graduate Institute of International and Development Studies, Geneva, Switzerland; and Li-Ann Thio, Provost’s Chair Professor, Faculty of Law, National University of Singapore, Singapore. The experts addressed issues pertaining to the structure, scope, elements and terms of a draft additional protocol criminalizing acts of racist and xenophobic nature, in order to assist the Chairperson and the Committee in view of the fourteenth session.

Presentation and discussion on paragraph 101(a)

22. On its first meeting, the Ad Hoc Committee heard presentations from Li-Ann Thio. Ms. Thio noted that if the primary mandate of the Ad Hoc Committee was to consider the criminalization of acts of a racist and xenophobic nature, it could extend beyond criminal law to consider civil law measures in line with the ICERD. Among non-criminal measures, she identified mediation, reconciliation, and rehabilitation as areas that were not explicitly covered by ICERD.

23. The Ad Hoc Committee also heard from Mark Drumbl. Mr Drumbl elaborated on the difference between criminal liability and civil liability, noting that the latter allows for broader responses including rehabilitation, reintegration, restitution, and early warning mechanisms. He argued that several examples exist at the international and domestical levels where criminalization has been enhanced and supported by non-criminal mechanisms.

24. The representatives of Algeria, Brazil, Egypt, The Gambia and the European Union made statements.

25. At its second meeting, held on 23 July 2024, the representatives of Cape Verde and Iran also delivered statements in the context of the above-mentioned presentations.

26. At its second meeting, the Ad Hoc Committee heard a presentation by Michal Balcerzak, Professor, Faculty of Law, Department of Human Rights, Nicolaus Copernicus University, Poland, CERD Chair but acting in his capacity as an academic expert.

27. Mr. Balcerzak highlighted the Ad Hoc Committee’s unique opportunity to draw upon extensive experience of the Committee on the Elimination on the Racial Discrimination (CERD) by provide a modern, high-quality additional protocol that could address contemporary challenges of racial discrimination. He stated the Ad Hoc Committee could work on definitions, which would bring clarity on crucial concepts, thus significantly benefiting and strengthening the ICERD. He encouraged the inclusion of xenophobia and racial profiling in the draft additional protocol.

Presentations and discussions on paragraph 101(b)

28. At its second meeting, the Committee heard and discussed presentations by Joanna Botha and Mark Drumbl.

29. Ms. Botha highlighted that article 4 of ICERD calls on States parties to introduce criminal measures in their domestic legal systems and indicated that the Convention should be interpreted broadly and that there was scope to include xenophobia, racial profiling, hate crimes and hate speech using a “living instrument” approach. She noted that the concept of xenophobia generally relates to the idea of foreignness and had previously been subsumed by CERD under the umbrella of discrimination on the ground of race.

30. Mr Drumbl examined on whether it was appropriate or not to define in the draft additional protocol additional terms or notions that were not included or defined in the ICERD. He noted the usefulness of definitions in treaties of a criminal nature as they provided clarity, precision and the transparency required by criminal law. However, he warmed that consensus on precise definitions might be difficult to obtain, particularly where terms were not yet defined under international law such as those listed under paragraph 101(i).

31. The representatives of Egypt, the European Union, The Gambia, South Africa and Venezuela made comments.

Presentation and discussion on paragraph 101(c)

32. At its third meeting, the Ad Hoc Committee heard and discussed a presentation by Fatsah Ouguergouz.

33. Mr. Ouguergouz explained how intersectionality had been captured under United Nations resolutions and instruments and developed in CERD’s practice. He suggested that expanding the list of grounds of discrimination in article 1 of ICERD could allow more room in approaches aimed at addressing discrimination based on religion or belief.

34. Regarding the application of aggravating factors, Mr. Ouguergouz informed that a legal concept existed where crimes had been committed based on particular criteria such as race, ethnicity, skin colour, religion and others; such circumstances generally led to more punitive sanctions. He concluded that the motivation of the perpetrator could constitute an aggravating factor if it was based on any of the grounds of discrimination of article 1 of ICERD, concluding that these factors could be integrated in the complementary standards.

35. The representatives of Egypt, Iran, the European Union, The Gambia, Pakistan, and South Africa made comments.

Presentation and discussion on paragraph 101(d)

36. At its fourth meeting, the Ad Hoc Committee heard and discussed a presentation by Joanna Botha.

37. Ms. Botha stated that xenophobic discrimination and racial profiling could be addressed as hate crimes or as the offences of hate speech. She noted that CERD subsumed xenophobic discrimination and acts of xenophobia under the ground of race, but xenophobia could be considered as an act or discriminatory practice where a person was targeted because a person was foreign including when that person was a citizen of the country in which that person was targeted. She presented three options to address xenophobia in the draft additional protocol. She further noted that racial profiling had been defined in various instruments, but no definition existed in hard law.

38. The representatives of Brazil, Egypt, the European Union, Iran and Pakistan delivered statements.

39. At its fifth meeting, the Ad Hoc Committee continued its discussion of paragraph 101(d). The representatives of Algeria, Brazil, Egypt, the European Union, Pakistan and Venezuela shared comments.

40. At the twelfth and thirteenth meetings of the Ad Hoc Committee, Ms. Botha responded to questions put by delegations in a previous meeting.

Presentations and discussion on paragraph 101(e)

41. At its sixth meeting the Ad Hoc Committee heard and discussed presentations by Li-Ann Thio and Fatsah Ouguergouz.

42. Ms. Thio noted a gap in human rights treaties regarding discrimination based on religion or belief. She suggested that the additional protocol could provide better protection for certain aspects of discrimination based on religion or belief. She noted that ICERD does not directly address the phenomenon of incitement to racial and religious hatred and she elaborated on CERD’s practice in this regard. She further suggested several approaches to address this issue in a draft additional protocol.

43. The representative of Algeria, Brazil, China, Egypt, the European Union, The Gambia, Pakistan and South Africa made comments.

44. Mr. Ouguergouz stated that there were many favourable elements to conclude that discrimination based on religion or belief could be a form of racial discrimination. He elaborated on CERD’s developments of the concept of intersectionality addressing the racialization of religion and presented several examples supporting these conclusions.

45. At the Committee’s tenth meeting, held on 29 July 2024, Ms. Thio responded to follow-up requests put by delegations at a previous meeting.

Presentation and discussion on paragraph 101(f)

46. At its seventh meeting, the Ad Hoc Committee heard and discussed a presentation by Beatrice Bonafe. Due to technical issues, the presentation was read out by the Secretariat.

47. Ms. Bonafe’s presentation the main principles that govern the international criminal law, namely the principles of legality, necessity, and the *non bis in idem* principle. She recalled that *mens rea*, or intent, was a fundamental element of criminal responsibility.

48. The representative of the European Union delivered a statement.

Presentations and discussions of paragraph 101(h)

49. At its eighth meeting, the Ad Hoc Committee heard and discussed a presentation by Li-Ann Thio.

50. Ms. Thio elaborated on the potential for social media and internet communications technology to amplify racism and intolerance. She explained the main difference between offline and online hate speech, underlining that the same rights and obligations should apply to both while noting the existence of difficulties to hold perpetrators accountable and also raising the issue of multiple and concurrent state jurisdiction. She elaborated on the third-party liability of internet platforms and their accountability for any violations or breaches of their duties.

51. The representative of the European Union, Iran, The Gambia and South Africa made comments.

52. At its tenth meeting, held on 29 July 2024, Ms. Thio responded to follow-up questions raised by delegations regarding her presentation on paragraph 101(h).

Presentation and discussion on paragraph 101(g).

53. At its eighth meeting, the Ad Committee heard and discussed a presentation by Beatrice Bonafe, on paragraph 101(g). Due to technical issues, the presentation was read out by the Secretariat.

54. Ms. Bonafe’s presentation focused on procedural guarantees under international criminal law to protect victims including their right to participate in the criminal trial and the right to reparation for damages suffered. She elaborated on the rights to judicial protection and to remedy for victims of human rights violations in international human rights law.

55. The representative of the European Union made a statement.

Discussion on defining additional terms and norms, paragraph 101(i)

56. At its ninth meeting, held on 29 July 2024, the Ad Hoc Committee considered issues under its agenda item 5, namely “discussion on defining additional terms and norms, paragraph 101(i). It heard and discussed a presentation by Mark Drumbl.

57. Mr Drumbl repeated his presentation delivered at the second meeting on whether to define terms and notions in the draft additional protocols.

58. The representatives of Algeria and Egypt made comments.

59. The Chair-Rapporteur clarified that the experts had referred to different sources in the updated Chairperson’s draft document. She recalled the suggestion made by the legal experts not to define all terms and notions as definitions could evolve over time in relation to the context in which the acts were considered. She emphasized that in negotiating definitions, the Committee should recall that its mandate consisted of elaborating a text of criminal nature.

60. The Chair-Rapporteur reviewed the sources referred to by the legal experts to define the term “hate”, which didn’t refer to rage, anger or general dislike, but to “bias” against people or groups with specific characteristics defined by the law. She recalled that the legal experts clarified that this definition had been used mainly for hate crimes committed on the basis of bias, prejudice or hate, elaborating that hate threshold in this context would be lower because the parallel crime drove criminal responsibility with the element of prejudice aggravating the crime and the sentence. The Chair-Rapporteur again recalled the suggestion made by the legal experts to define “hate” as it constitutes an element of the offence of hate speech, and that in hate speech law, “hate” or “hatred” were defined as an intense emotion of derision, aversion and enmity towards the group targeted.

61. The representatives of the European Union and Iran made comments.

62. The Chair-Rapporteur recalled the legal experts ‘statement according to which ICERD had defined “racial discrimination” not the terms “race”, “racism”, or “racist”. She recalled the definition of a “racial group” emanated from the case-law of the International Criminal Tribunal on Rwanda to which the legal experts had referred. The Chair-Rapporteur relayed the legal experts’ suggestion to define race in a manner that reflected the underlying social dynamics rather than an alleged and false scientific basis, should the Committee decided to do so.

63. The Secretariat read out the definitions prepared by the legal experts on the terms and notions.

64. Following the reading, the representative of South Africa made a statement.

65. The Secretariat then read out definitions provided by the legal experts on “hate crime”, “harm”, “intersectionality”, “ethnic origin”, “national origin”, “indigenous populations”, “race”, “racism”, and “racist”, “racial profiling” and “religion or belief”, upon the Chair-Rapporteur ‘s request.

66. Regarding a definition of “racial profiling”, the Chair-Rapporteur observed that discussions in the Committee suggested to consider defining “racial profiling” beyond the context of law enforcement. She noted that no definition of the notions of “structural racism” and “systemic racism”, were provided by the legal experts.

67. Upon the invitation of the Chair-Rapporteur, the Secretariat to read out the perspective of the legal experts on the terms - “victims”- and “xenophobia”.

68. The representative of the European Union made a statement.

69. At its tenth meeting, held on 29 July 2024, the Ad Hoc Committee heard responses provided by Ms. Thio to follow-up questions put to her by delegations at a previous meeting.

B. Introduction of and discussion on the updated Chairperson’s draft document

70. At its eleventh and twelfth meetings, held on 30 July 2024, the Ad Hoc Committee considered agenda item 6, namely “discussion on the updated Chairpersons’ draft document concerning the possible scope, terms, elements and structure of the draft additional protocol criminalizing acts of a racist and xenophobic nature”, pursuant to Human Rights Council resolution 51/32. The Chair-Rapporteur indicated that the document had been provided to all participants in the room and to regional coordinators by email.

71. The Chair-Rapporteur introduced the document and explained that it reflected the discussions thus far at the fourteenth session. She recalled her efforts to integrate delegations’ views in her document to help them work on concrete proposals, that could be integrated in conclusions and recommendations to be adopted at the present session, providing guidance on the way forward. She invited delegates to bear in mind two main principles when considering the document. First, the need to work on a modern, high-quality instrument that would complement any gaps in the ICERD and equip CERD and Member States with appropriate guidance to address contemporary forms of racial discrimination. She invited delegates not to undermine the existing legal provisions, standards and guarantees in international human rights law, especially ICERD. Finally, the Chair-Rapporteur invited the Committee to be guided by these parameters and be mindful that it is working on an instrument intended to criminalize acts of a racist and xenophobic nature. The Chair-Rapporteur called on delegates to work towards a consensus where possible as discussions that took place so far evidenced convergent views on several issues while, on other issues, more deepening and clarification might be needed.

72. The Chair-Rapporteur presented the updated Chair’s draft document, highlighting new paragraphs and proposals and invited delegates to make general comments.

73. The representative of India noted a reference to “caste” in the Annex 5 of the document and explained India’s position that caste could not be equated with race or covered under “descent” as enshrined in article 1 of ICERD; and urged to remove any reference to caste from the updated Chair’s draft document.

74. The representative of the EU expressed appreciation for the updated Chairperson’s draft document and legal experts’ s contributions, which she considered, had facilitated some progress in the discussions. She regretted the lack of interactive dialogue with the legal experts, which prevented significant progress to be achieved in discussions. She also regretted that document had not incorporated sufficiently the comments and follow-up questions raised by delegates during the discussions in response to the legal experts’ assessment. She reiterated her delegation’s position that there were no substantive or procedural gaps in the existing anti-racial discrimination framework and its lack of full and effective implementation remained the problem.

75. The representative of the EU emphasized that discrimination based on religion or belief should only be addressed in an intersectional approach in the context of racial discrimination.

76. The representative of Pakistan expressed appreciation for the changes and details that were brought to the document and indicated that more time was needed to review the document fully. He noted that the document outlined in detail some elements not contained in the ICERD such as discrimination based on religion or belief. He reiterated his delegation’s position in favour of the elaboration of an optional protocol.

77. The Chair-Rapporteurinvited delegates to comment on the updated Chair’s draft document explaining it was not the report of the Ad Hoc Committee for the session, but a document requested by the Committee at its twelfth session to facilitate engagement while taking into account inputs provided by the legal experts. The Chair-Rapporteur reassured delegates that their questions would be brought to the attention of the legal experts.

78. Replying to delegations, the Chair-Rapporteur recalled that her role did not consist of re-opening the debate about whether to work on an additional protocol, as the General Assembly’s resolution[[6]](#footnote-6)) had decided this by mandating the Ad Hoc Committee to begin negotiations in this regard. She pointed out that her role was to fulfil that mandate and she encouraged delegates to engage constructively. She acknowledged that representatives might feel compelled to restate the official positions of their States but she urged them to focus on the substance of the issues rather than revisiting settled matters as already decided upon by the General Assembly.

79. The representative of Eritrea mentioned that her delegation had forwarded the document to the capital, and she would need for time for its consideration.

80. The representative of the Council of Europe expressed support to the work of the Ad Hoc Committee and appreciated that the document referred to human rights instruments adopted by the Council of Europe. She stated that the fight against discrimination has always been an integral part of the Council of Europe’s activities and noted that the prohibition of discrimination, along with freedom of thought, conscience, and religion, were enshrined in the European Convention on Human Rights, supported by an extensive case- law developed by the European Court of Human Rights. Additionally, she referred to Protocol no. 12 to the European Convention on Human Rights, which extended its anti-discrimination provisions.

81. She elaborated on the mandate, policy and monitoring activities of the European Commission against Racism and Intolerance on the role and work of the Committee of Ministers of the Council of Europe in combating hate crimes and hate speech both online and offline.

82. The Chair-Rapporteur thanked the representative of Council of Europe for her statement, pointing out that the Committee’s work would acknowledge the existence of legislation adopted in regional and international levels. She recalled that the primary objective of the additional protocol was to harmonize and codify existing practices.

83. The representative of The Gambia expressed his appreciation for the Chair’s draft document, noting that it provided various options, which would require decision-making by the Committee at the current session, and possibly beyond. He asked about the process of reviewing the document, acknowledging that the document addressed many issues that had been raised during the session. He emphasized the need to update the anti-racial discrimination framework to ensure it effectively addresses contemporary forms of racism.

84. The Chair-Rapporteur explained the process to be followed, namely the detailed review of the document section by section. In areas where there were multiple options available, she would highlight these sections and request the Committee’s opinion, while final decisions should be taken by consensus. Where no consensus emerged, all options would remain available for further negotiations.

85. The Chair-Rapporteur then proceeded with the review of the document section by section. Regarding section 1 on the preamble, the Chair-Rapporteur introduced a new paragraph on criminal responsibility explaining its content and rationale. She invited delegates to agree on its integration in the additional protocol if there was a consensus. The Chair-Rapporteur concluded that there was a general agreement to ask the legal experts to consider including the principles of criminal responsibility and the right of victims to reparation in the draft additional protocol.

86. The representative of The Gambia expressed support for the inclusion of criminal responsibility and the principle of reparation for victims of racial discrimination in the draft additional protocol.

87. The representative of the European Union noted the agreement that proper and effective remedies should be provided to victims and reparation measures, including restitution, compensation, rehabilitation, satisfaction, and non-recurrence; and also noted that criminal law measures should not preclude the inclusion of non-criminal measures in the draft additional protocol.

88. The Chair-Rapporteur presented section 3 of her updated draft document, outlining a new paragraph with a non-exhaustive list of harms to be addressed in the draft additional protocol.

89. The representative of The Gambia noted the opportunity for the Committee to address contemporary forms of racism in the additional protocol such as racial profiling and xenophobia, to ensure a comprehensive approach towards addressing racial discrimination.

90. Under section 4 relating to the use of terms and notions, the Chair-Rapporteur explained that a new paragraph offers several definitions to be considered for inclusion in the draft additional protocol, on the notions of “victims”, “harm”, “national origin” and “race”, noting that not all notions necessitated a definition. She invited delegates to decide in this regard, highlighting that, as the draft additional protocol should be a criminal law text, definitions might be relevant. She underlined the importance of such notions for the purpose of criminalization and the responsibility regime that could follow and agreed that notions not defined in ICERD, might need to be elaborated. The Chair-Rapporteur stressed that the notion of “race” might be difficult to define in legal terms as indicated by legal experts. She invited delegates to decide whether the notions of “victims”, “harm” and “national origin” should be defined.

91. The Chair-Rapporteur presented section 5 of her updated draft document relating to the definition of the main conduct to be criminalized and introduced a new paragraph on the principle of legality in criminal conduct. The Chair-Rapporteur examined new paragraphs relating to the legal safeguards or guarantees for a person accused of a criminal act. She suggestions to explicitly include a clause on the prohibition of a state to commit racist conduct, which may entail its responsibility and to include the prohibition of a racist conduct by a private natural person. She mentioned that, since the ICERD already obliged State public authorities not to engage in acts of racial discrimination, incorporating these principles in the additional protocol would reinforce the ICERD. Regarding the second suggestion, the Chair-Rapporteur explained that ICERD already prohibited discrimination by private individuals and groups, and the Committee could build upon it, make it clearer, more explicit and reinforce this obligation in the context of the draft additional protocol, and discuss further all elements to be met in terms of criminalization.

92. The Chair-Rapporteur acknowledged that delegates might need more time to consider her updated draft’s document but emphasized that her objective was to guide them through the text to identify where the proposed principles could be integrated for further discussion. She noted that, if specific instructions were received by the following day, these could be presented these to the Committee.

93. The Chair-Rapporteur invited delegates to consider recommendations and conclusions for the Ad Hoc Committee despite the short time left before the closing of the session. She pursued that, although not all issues would be resolved in this present session, delegations were encouraged to indicate areas where they required further discussions and elaboration as the legal experts had already provided suggestions and recommendations on various sections, which were reflected in her document with the intention to address new areas based on prior interactive discussions.

94. The Chair- Rapporteur emphasized that the principles outlined in her updated draft document should be contextualized within existing international human rights law, with the aim of identifying and addressing new areas where the legal experts could bring inputs for consideration at future sessions. Regarding the prohibition of racist conduct by private individuals, the Chair-Rapporteur observed that, while the appropriate language was not yet finalized, the legal experts had pointed to relevant references and principles in the context of the draft additional protocol. She invited delegates to provide views on principles related to group-based hatred, particularly racial, ethnic, national, and religious minorities.

95. The representative of The Gambia highlighted the importance of a holistic approach that included criminal and civil law measures, as well as non-legal measures, such as education, awareness-raising, and early warning mechanisms in the context of group-based hatred to be considered in the draft additional protocol.

96. Concerning criminalization measures, the Chair-Rapporteur outlined that a new paragraph of her document introduced examples of violence based on prohibited grounds contained in the ICERD, which presented presenting a basis for criminalization. Regarding the participation in racist organizations, new paragraphs provided information on how the criminalization of participation in such organizations could be addressed in the context of the draft protocol. On racial profiling, the Chair-Rapporteur noted that new paragraphs in her document described racial profiling and elements that could generate its criminalization. Recalling earlier discussions during the present session about the possibility to consider racial profiling outside the context of law enforcement, she suggested it as an area, requiring further guidance from the legal experts. Regarding xenophobia, the Chair-Rapporteur stated it was explained and discussed in new paragraphs of her updated draft’s Chair document. She called for a decision on the option to be adopted among the three options proposed by the legal experts on methods to criminalize xenophobia.

97. Concurring with some delegations, the representative of Mexico noted that he would need more time to consider the document.

98. The Chair-Rapporteur recalled that the interventions by delegates would be reflected in the report of the present session, whereas the Chairperson’s updated draft document was a reflection of the legal experts’ inputs based on the Committee’s requests in the report at its thirteenth session. The Chair-Rapporteur responded that the remainder of the session offered an opportunity for delegates to pose questions and request further guidance and clarification from the legal experts on specific areas. She further invited delegates’ inputs to avoid that the legal experts elaborate indefinitely on the same questions and issues.

99. The representative of Iraq noted the importance of reaching agreement on the additional protocol and expressed willingness to have a collective draft text with the assistance of the legal experts before the closing of the fourteenth session.

100. In relation to xenophobia, the representative of Togo stated that the criminalized nature of the draft additional protocol required some specificity and further clarification was needed on the notions of descent and xenophobia. He supported the Chairperson-Rapporteur’s suggestion on continued experts’ support from the legal experts to elaborate upon all aspects of the updated Chair’s draft document.

101. The Chair-Rapporteur presented new paragraphs of her updated draft’s document which outlined options to address discrimination based on religion or belief in the draft additional protocol including under the ambit of ICERD.

102. The representative of the EU reiterated the position of the EU that the fight against racism and the fight against religious intolerance should not be intermingled due to a risk of weakening both. She stressed the intersectional approach as the acceptable option to the EU, which would then apply in situations where discrimination based on religion or belief is linked to racial discrimination.

103. The Chair-Rapporteur suggested that the Committee reflects on the EU’s position that, if discrimination based on religion or belief could not be addressed as a stand-alone ground of discrimination in the draft additional protocol, it should be considered under the intersectionality approach in relation to racial discrimination as defined in the ICERD. She suggested further elaboration by the legal experts on how such an intersection with discrimination based on religion or belief could be reflected in the additional protocol.

104. In reply to the statement made by the representative of the EU, the Chair-Rapporteur recalled that the decision to adopt any of the approaches relied on the Committee.

105. The Chair-Rapporteur further introduced new paragraphs in her updated Chair’s draft document which incorporated the offence of hate committed online in the context of new technologies and artificial intelligence and how it could be criminalized and accountability of perpetrators ensured. She recalled the convergence that emerged in the Committee at the present session to capture racial discrimination committed online or in the cyberspace in the ambit of the draft additional protocol.

106. The Chair-Rapporteur also introduced new paragraphs regarding criminal jurisdiction for online offenses. She mentioned that one new paragraph laid down the principles of proportionality including determination of the offence and the principle of *ne bis in idem*.

107. The Chair-Rapporteur presented on section 15 relating to the right to a fair trial in relation to a new paragraph providing numerous examples of clauses for the respect of the duty to fundamental rights of a fair trial. She further referred to section 16 containing a revised paragraph outlining several definitions on victims’ rights based on existing international instruments. The Chair-Rapporteur suggested to include these respective principles in the draft additional protocol since they are considered as generally accepted under the international human rights law and applied in most of domestic jurisdictions.

108. Under section 18 of the draft Chair-Rapporteur’s draft document relating to prevention and promotion measures, the Chair-Rapporteur introduced new paragraphs regarding exiting gaps in the ICERD relating to non-criminal measures which could complement the criminal measures. The Chair-Rapporteur recalled the convergence that emerged in this regard during discussions in the Committee during the first week of the its session and invited delegates to consider incorporating this aspect in the draft additional protocol. Finally, the Chair-Rapporteur referred to the new section 24 of her updated draft document relating to the terminology to be defined in the context of criminal elements and to be integrated in the draft additional protocol. She indicated that this area would need further guidance by the legal experts and discussion in the Committee.

109. At its twelfth meeting, held on 30 July 2024, the Ad-Hoc Committee heard responses from Ms. Botha to questions regarding her presentations under agenda item 4 relating to the consideration of paragraph 101(d) and pursued its discussions on the Chairperson’s document under agenda item 6.

110. At its thirteenth meeting, held on 31 July 2024, the Ad Hoc Committee continued to hear and discuss responses provided by Ms. Botha to questions put during her presentation at previous meetings.

111. At the same meeting, the Ad-Hoc Committee pursued its consideration of the updated Chair-Rapporteur ’s updated draft document.

112. The representative of South Africa suggested to also engage members of CERD to provide views on the Chair-Rapporteur’s updated draft document.

113. The representative of Pakistan noted the updated Chair-Rapporteur’s updated draft document was an important step towards further discussion and progress on fulfilling the Committee’s mandate. He suggested to address xenophobia in the draft additional protocol, since it constitutes a gap in international hard law instruments. He noted that misuse of emerging technologies posed new challenges that required legal response and should be addressed in line with the principles of mutual respect and international cooperation.

114. In response to South Africa, the Chair-Rapporteur indicated that the CERD Chair was one of the legal experts advising her in his own capacity, and that CERD had designated a focal point to follow the work of the Ad Hoc Committee. She requested further clarification on how South Africa would like to see further contribution from CERD in the work of the Ad Hoc Committee.

115. The representative of Iran made observations to sections 1 and 5 of the Chair-Rapporteur’s updated document regarding the inclusion of marginalized groups and made suggestions in that regard. He suggested that section 5(e) of the document clearly differentiate between discrimination based on religion and discrimination based on belief, to ensure their appropriate consideration. He noted the document’s broad approach to discrimination based on religion or belief failed to address specifically insults to Islam or Muslim sanctities and suggested to consider Islamophobia as an authentic and independent ground of discrimination in the document rather than an aggravating factor, with a view to address the unique challenges and prejudices faced by Muslims globally.

116. The representative of the EU suggested to extend the mandate of legal experts and called for a meaningful interactive dialogue with them at the fifteenth session of the Ad Hoc Committee. She stated that the work of the Committee should not undermine protections that currently exist in the international framework. She reiterated that the engagement of her delegation on the updated Chair’s document has no effect on the EU’s position that complementary standards and an additional protocol were unnecessary. She made observations and comments on the scope of the Convention and provide suggestions.

117. The representative of the EU further requested clarification on some issues and made suggestions on areas which might need further elaboration by the legal experts.

118. The representative of the EU objected that the draft additional protocol should address islamophobia as a distinct ground, noting that religion could be addressed intersectionally, and that the right to freedom of religion had to be read in conjunction with the right to freedom of opinion and expression both online and offline. The representative of the EU requested that the input from the legal experts in the Chair-Rapporteur updated draft’s document be made available in advance of the fifteenth session. Alternatively, she suggested to split that session in two segments of one week each held separately, to enable delegates to consult with capitals and provide inputs during the second week of the session.

119. Delegates did not object to the EU’s proposal to hold the fifteenth session of the Ad Hoc Committee in two separate segments of one week each.

120. The Chair-Rapporteur explained the rationale of holding a two-week session. She recalled that a decision to split the fifteenth session in two parts remained to be decided by the Committee.

121. The representative of South Africa noted the added value to continue interacting with the legal experts and expressed hope for a continuing engagement with them while waiting for a decision of the General Assembly regarding hybrid participation. She suggested areas where the legal experts could provide guidance and would be exempt from criminalization under hate speech, such as academic or scientific inquiry and artistic creativity.

122. The representative of Togo requested further elaboration by the legal experts on the categories of offences considering on their seriousness.

123. The representative of The Gambia suggested that the use of digital technologies to perpetuate racism, xenophobia, or related intolerance be duly considered in the additional protocol and elaborated further by the legal experts. He also suggested that racism in digital spaces be addressed not only in the section on inter-state obligations, but also in the section discussing the elements of crimes such as hate speech.

124. The representative of Togo noted that the intervention made by The Gambia drew attention to the issue of scope of application and suggested requesting from the legal experts further information or definition of the scope of application of all the different crimes addressed.

125. Referring to the United Nations Guiding Principles on Business and Human Rights, the representative of Iran stated that companies often acted arbitrarily and in alignment with the political agendas of their respective governments, thus resulting to acts of racial discrimination and the violation of the freedom of expression against Muslims on social media platforms.

C. Consideration and exchange of views on draft conclusions and recommendations of the session

126.At its fourteenth meeting, held on 31 July 2024, the Ad-Hoc Committee started consideration and exchanged views on the draft conclusions and recommendations, under item agenda 7.

127. The Chair-Rapporteur invited delegates to discuss draft conclusions and recommendations, which reflect the debates in the Committee during the session and be based on updated Chair-Rapporteur’s document while indicating the way forward. She introduced the two-page document containing the draft conclusions and recommendations. She explained that the document contains areas where minimum convergence appeared and on which legal experts - through the Chair-Rapporteur’s draft document, could start producing elements for draft provisions for consideration at the fifteenth session and areas and issues which needed further development, deepening and elaboration from the legal experts. She explained that the draft document underscored delegates’ appreciation for the legal experts’ s advice and contribution to the Chair-Rapporteur and requested such collaboration and engagement be pursued, highlighting that a consensus seemed to be reached on that point.

128. The representative of Pakistan provided comments on several issues and formulations and suggested adjustments in the draft conclusions and recommendations. He rejected the formulation on “discrimination based on religion or belief, including the notion of intersectionality” and requested to refer to the formulation of paragraph 101(e) included in the conclusions and recommendations of the thirteenth session. He also requested further time for consideration of the document to enable coordination among the OIC Member States.

129. The representative of The Gambia suggested to integrate references to the issue of reparations or compensation for victims of racist or xenophobic actions in the draft conclusions and recommendations e since consensus seemed to have been reached upon this issue. He made other substantive and structural adjustments to the text.

130. The representative of the EU required more time to review the draft conclusions and recommendations, while making preliminary comments and suggestions. She further reiterated the EU ’s position that discrimination based on religion and belief is outside the scope of the ICERD and could be considered in relation to racial discrimination only in the context of intersectionality as an aggravating factor. She agreed with the inclusion of reparations in the draft conclusions and recommendations.

131. The representative of Pakistan asked to remove the references to “hard and soft law” from the draft conclusions and recommendations.

132. The Chair-Rapporteur indicated that members of the Ad Hoc Committee bore responsibility to work collectively on the draft the additional protocol. She also recalled her role as Chair-Rapporteur.

133. The representative of Togo made general suggestions of issues to be considered in the Chair’s updated draft document and the draft conclusions and recommendations in relation to jurisdictional guarantees, remedies and reparation.

134. The representative of Egypt made preliminary comments concurring with those expressed by Pakistan and requested more time to consult her capital on the draft conclusions and recommendations. She suggested language adjustments to be brought and stressed that the legal experts had provided different approaches on how discrimination based on religion or belief could be incorporated in the additional protocol. She asked to remove the reference to intersectionality from the draft conclusions and recommendations and agreed with the suggestion to integrate the issue of reparations and redress.

135. The Chair-Rapporteur provided responses to of these comments and indicated her willingness to facilitate a smooth and efficient finalization of the draft conclusions and recommendations for adoption. She invited delegates to work in a constructive manner regarding the terminology, and she requested clarity and precision in formulations.

136. At its fifteenthmeeting, held on 2 August 2024,the Ad Hoc Committee continued its exchanges of views in consideration of the proposed conclusions and recommendations for the adoption of the outcome document of its session. The Committee continued to work on the draft outcome document in formal and informal consultation to reach consensus on unresolved substantive issues, terminology and the structure of the document.

137. The Chair-Rapporteur indicated that the preliminary suggestions made at the fourteenth meeting had been incorporated in the draft conclusions and recommendations by the Secretariat. She urged delegations to work efficiently in reviewing and refining the conclusions and recommendations. She called for clarity in instructions to her for the discharge of the mandate of the Ad Hoc Committee, while she acknowledged that further discussion was required in some areas that delegates might identify clearly in the conclusions and recommendations for the next session.

138. The Chair-Rapporteur asked the Secretariat to proceed with the reading of the revised text. The Secretariat proceeded accordingly.

139. The delegations of Pakistan, the Russian Federation, the European Union, Iran, Brazil, Algeria, Iraq, South Africa made comments and suggestions to the proposed conclusions and recommendations and agreed on the specific language to be included in the document. Delegates discussed and agreed on the necessity to continue engaging with the legal experts at the next session of the Committee through the Chair-Rapporteur.

140. Regarding the discussions on the terminology, the Chair-Rapporteur emphasized that the final decision depended on the consensus within the Committee. On the modalities of engagement with the legal experts, the Chair-Rapporteur proposed to use a more general term such as “ensure their participation” to encompass both physical and online presence to align with past practices and avoid qualifying the participation format, at least until the General Assembly’s decision on hybrid meetings is taken. She emphasized the importance of the legal experts’ availability to address follow-up questions and comments put during sessions. She proposed that if the General Assembly’s discussions remained unresolved, it would be more appropriate to use more general language in this regard. The Chair-Rapporteur noted no objections to reinsert the phrase “to ensure their interactive participation” in paragraph 2 of the proposed conclusions and recommendations.

IV. Adoption of the conclusions and recommendations

141. At its sixteenth meeting, held on 2 August 2024, the Ad Hoc Committee pursued the negotiations on the draft conclusions and recommendations. The Chair-Rapporteur invited delegates to finalize their consultations on the remaining terminology issues, so that the Committee could proceed with the final adoption of the draft conclusions and recommendations and thanked them for their engagement. The meeting was suspended, and delegates pursued negotiations in an informal manner.

142. Delegates informed the Chair-Rapporteur and the Committee that they have agreed on terminologies to be included in the draft conclusions and recommendations and shared the revisions with the Committee. The Ad Hoc Committee continued to improve the draft conclusions and recommendations on terminology aspects.

143. At the same meeting, the Chair-Rapporteur walked delegates through the revised text and delegates made further terminology adjustments.

144. The Chair-Rapporteur invited the Secretariat to provide delegates with copies of and the revised conclusions and recommendations. She invited the Committee to proceed with the final review for adoption. She recalled that delegates have worked efficiently to achieve the mandate entrusted to the Committee. She also recalled all the discussions that took place on the inputs provided by the legal experts and on the Chair-Rapporteur draft’s document she presented. She stated that delegates had also negotiated on the draft conclusions and recommendations and that, convergent views appeared on several issues, and the Committee also requested more clarification and elaboration by the legal experts on which agreement had not been reached. She thanked delegates for their efforts and constructive engagement to reach consensus on the conclusions and recommendations. She invited to proceed with the formal adoption of the text.

145. Delegates adopted the conclusions and recommendations. The Chair-Rapporteur informed that she would prepare the report of the Ad Hoc Committee at its fourteenth session to be presented at the seventy-fifth session of the Human Rights Council. She again invited delegates to made concluding comments.

146. The representative of The Gambia delivered a statement on behalf of the African Group thanking the Chair-Rapporteur for her stewardship of the Ad Hoc Committee ad her commitment towards its the fulfilment of its mandate. He stressed the appreciation of the African Group for the presentations by the legal experts as well as the contributions to the updated Chair-Rapporteur’s draft document. He stated that deliberations continue to highlight critical gaps in international law and the legal and moral imperative to address these gaps in order to tackle recurrent challenges of contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which are further exacerbated by the use of technology. He recalled the African Group’s firm belief that the elaboration of complementary standards would strengthen the ICERD and not weaken it. Furthermore, to facilitate substantial progress in this process, he called on all States to constructively engage with the Chairperson’s draft updated document, the conclusions and recommendations of the report of the Ad Hoc Committee and to actively participate at its next session and other DDPA processes.

147. The representative of South Africa aligned with the statement delivered by the Gambia on behalf of the African Group and thanked the Chair-Rapporteur for the sterling manner in which she steered the deliberations of the fourteenth session, and the hard work put in and progress made thus far, including the updated Chair-Rapporteur updated’s draft document. She recognised the contributions of the legal experts and welcomed the recommendation for the legal experts to continue to support the Chair-Rapporteur, as well as their interaction with the Ad hoc Committee. She highlighted that the conclusions and recommendations reflected important elements and critical areas for clarification needed to move the process forward and to achieve enhanced protection of victims of racism and contemporary forms of racism, racial discrimination, xenophobia and related intolerance, as underlined in the DDPA.

148. The representative of Pakistan on behalf of the OIC, expressed thanks to the Chair-Rapporteur and to other delegates highlighting the importance and the relevance of the work of the Ad Hoc Committee to address the challenges faced.

149. The representative of the Russian Federation expressed thanks to the Chair-Rapporteur for the guidance and leadership and stated its satisfaction with the outcome of the session and with the conclusions and recommendation, which he qualified as a helpful document.

150. The representative of the European Union thanked the Chair-Rapporteur for her leadership during the session and for the important work done by the legal experts.

151. The representative of Brazil thanked the Chair-Rapporteur for her excellent work in presiding the session. He stated that for Brazil, the fight against racism is a core policy domestically and abroad. He stressed that the Ad Hoc Committee was a useful mechanism to advocate for the fight against racial discrimination.

152. In closing the session, the Chair-Rapporteur invited delegates to keep progressing towards the elaboration of a draft additional protocol as mandated to the Ad Hoc Committee, and not forget the final purpose, which is to have a modern high-quality text with the highest standards, to make sure than millions of people could have adequate remedies and solutions when they face racial discrimination in any forms. She expressed hope that the Committee could move to the next step in the discharge of its mandate, which remained key for millions of people across the globe expecting from the Committee to deliver and to contribute to the elimination of all forms of racial discrimination, racism, xenophobia and related intolerance.

V. Conclusions and recommendations

153. **The Ad Hoc Committee takes note with appreciation and considered the Updated Chairperson’s draft document on the scope, structure, terms and elements of the draft additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination criminalizing acts of a racist and xenophobic nature, prepared pursuant to paragraph 11 of Human Rights Council resolution 54/27, and took note of the further inputs and advice provided by legal experts during the session on elements and issues listed in paragraph 101 of the Committee’s report at its thirteenth session** **(A/HRC/54/65).**

154. **The Ad Hoc Committee recommends that, in accordance with its mandate, legal experts representing different regions and legal systems continue to provide the Chair Rapporteur with more developed inputs and precise legal advice, in view of the upcoming fifteenth and sixteenth sessions, and to ensure their interactive participation.**

155. **The Ad-Hoc Committee converged, in principle, on the following elements and issues discussed during the fourteenth session and requested concrete elements for draft provisions of the draft additional protocol for consideration at its fifteenth session:**

(a) **List of acts of racist and xenophobic nature including but not limited to article 4 of the Convention on the elimination of all forms of racial discrimination (ICERD) to be criminalized taking into account the threshold of each act;**

(b) **Elements of the personal jurisdiction of the draft additional protocol;**

(c) **Proposed definitions of acts of racist and xenophobic nature as mentioned in sub-paragraph (a) above, with elements for the criminalisation;**

(d) **Proposed definitions of other terms and notions that could be integrated in the draft additional protocol and provide guidance of their functionality or not in the context of the draft additional protocol;**

(e) **Elements for draft provisions for the explicit prohibition and (criminalization) of acts of racist and xenophobic nature to be listed in accordance with paragraph (a) above committed by individuals and legal entities, and in light with article 2 (1) *subsection* *d* of the ICERD;**

(f) **Elements for draft provisions for the explicit prohibition and (criminalization) of acts of a racist and xenophobic nature to be listed in accordance with paragraph (a) above committed by a State, and in light of article 2 (i) *subsections a, b, c* and article 4 (c) of the ICERD;**

(g) **Elements for draft provisions on the procedural guarantees for the accused, in particular the right to a fair trial;**

(h) **Elements for draft provisions on the protection of rights of the victim, in particular the right to protection and remedies and access to justice, and to seek effective, prompt and adequate reparation for the harm suffered as well as access to the relevant information concerning violations and reparation mechanisms;**

(i) **Elements for draft provisions on non-criminal measures in response to, and prevention of the commission of acts of racist and xenophobic nature against persons or groups of persons, including mediation, reconciliation, rehabilitation, non-repetition, education, and other measures as relevant;**

(j) **Elements on responses to acts of racist and xenophobic nature to be addressed under domestic legislation.**

156. **The Ad Hoc Committee requested further elaboration, developments and clarification on the following issues:**

(a) **Definition of profiling in criminal law and elements for the criminalisation of racial profiling as well as objective and reasonable reasons which exclude the crime/offence of racial profiling;**

(b) **How and whether racial profiling could be extended beyond the context of law enforcement, such as in enjoyment of civil, political, economic, social and cultural rights;**

(c) **Different options for grounds under which xenophobia could be prohibited and criminalized, including as a separate ground under the notion of foreignness, bearing in mind paragraph 3 (a) above;**

(d) **Concrete options to address in the additional protocol discrimination based on religion or belief, including issues of the intersectionality of various forms of discrimination as aggravating factors;**

(e) **Elements for the criminalisation of acts of racist and xenophobic nature committed online and on cyberspace through digital tools, artificial intelligence and new technologies and the modalities of States’ obligations, liability of individuals and legal entities including the applicable law and the determination of State jurisdiction;**

(f) **Mitigating factors that could be considered for criminal liability including the age of the author/perpetrator of acts of racist or xenophobic nature;**

(g) **Elements, grounds and areas for excluding responsibility of States, individuals and legal entities for acts of racist and xenophobic nature.**

Annex I

Programme of Work – 14th Ad Hoc Committee on the Elaboration of Complementary Standards, 22 July – 2 August 2024

(as adopted 29.07.2024)

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| --- | --- | --- | --- | --- | --- |
| ***1st week*** | | | | | |
|  | **Monday 22.07** | **Tuesday 23.07** | **Wednesday 24.07** | **Thursday 25.07** | **Friday 26.07** |
| **10:00 – 13:00** | **NO MEETING** | **Item 4 continued**  Presentation by  **Michal BALCERZAK**, Professor, Faculty of Law, Department of Human Rights, Nicolaus Copernicus University, Poland  Discussion on para. 101 (b)  The scope of possible conducts to be criminalized, on the basis of article 4 of the Convention, while also looking into the question of how issues of participation in racist organizations, racial profiling, and xenophobia should be addressed in the additional protocol;  **Joanna BOTHA,** Professor of Public Law, Faculty of Law, Nelson Mandela University;  **Mark DRUMBL,** Class of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University School of Law | **Item 4 continued**  Discussion on para. 101 (d)  How xenophobia and racial profiling can be addressed in the additional protocol, including their linkages with contemporary forms of racism  **Joanna BOTHA,** Professor of Public Law, Faculty of Law, Nelson Mandela University | **Item 4 continued**  Discussion on para. 101 (e)  How issues of discrimination on the grounds of religion and belief could be addressed in the additional protocol, including issues of the intersectionality of various forms of discrimination as aggravating factors  **Li-Ann THIO,** Provost Chair Professor, Faculty of Law, National University of Singapore  **Fatsah OUGUERGOUZ**, Visiting Professor of Law, Graduate Institute of International & Development Studies, Geneva | **Item 4 continued**  Discussion on para. 101 (h)  Inputs on how to address the extraterritorial obligations of States for acts of a racist and xenophobic nature committed online, with a view to encouraging international cooperation between States and also with social media providers and relevant enterprises/non-State actors  **Li-Ann THIO,** Provost Chair Professor, Faculty of Law, National University of Singapore |
| **15:00 – 18:00** | **Item 1**  **Abdoul THIOYE**, Chief a.i.  Rule of Law, Equality & Non-Discrimination Branch,  OHCHR  **Item 2**  Election of the Chairperson  **Item 3**  Adoption of the Programme of Work  --  General statements  **Item 4**  Discussion on para. 101 (a) (Continued)  The relationship between and the role of criminal law and civil law in the context of fighting acts of a racist and xenophobic nature, including with regard to prevention, early warning, urgent and early actions, education, mediation, reconciliation and rehabilitation    **Li-Ann THIO,** Provost Chair Professor, Faculty of Law, National University of Singapore  **Mark DRUMBL**, Class of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University School of Law | **Item 4 continued**  Discussion on para. 101 (c)  The application of the concept of intersectionality and the question of whether to include aggravating factors or other possible grounds of discrimination  **Fatsah OUGUERGOUZ**, Visiting Professor of Law, Graduate Institute of International and Development Studies, Geneva | **Item 4 continued**  General discussion and exchange of views | **Item 4 continued**  Discussion on para. 101 (f)  Inputs on legal safeguards concerning the criminalization of acts of a racist and xenophobic nature, including the principles of legality, necessity and proportionality, equal access to justice and the right to fair trial  **Beatrice BONAFE,** Professor of International Law, Sapienza University, Rome | **Item 4 continued**  Discussion on para 101 (g)  Inputs on victims’ rights and on issues related to equal access to justice and the right to remedy  **Beatrice BONAFE,** Professor of International Law, Sapienza University, Rome |
| ***2nd week*** | | | | | |
|  | **Monday 29.07** | **Tuesday 30.07** | **Wednesday 31.07** | **Thursday 01.08** | **Friday 02.08** |
| **10:00 – 13:00** | **Item 5**  Discussion on defining additional terms and norms, para. 101 (i) | **Item 6**  Discussion on the updated  Chairperson’s draft document | **Item 6 continued**  Discussion on the updated  Chairperson’s draft document | **UN HOLIDAY** | **Item 7 continued**  Conclusions and recommendations of the session |
| **15:00 – 18:00** | **Item 5 continued**  Discussion on defining additional terms and norms, para. 101 (i) | **Item 6 continued**  Discussion on the  Chairperson’s updated draft document | **Item 6 continued**  General discussion and exchange of views  **--**  **Item 7**  Conclusions and recommendations of the session | **UN HOLIDAY** | **Item 8**  Adoption of the conclusions and recommendations of the  14th session |

**Annex II**

List of attendance

Member States

Algeria, Argentina, Bangladesh, Brazil, Burundi, Cabo Verde, China, Cuba, , Egypt, Eritrea, Gambia (Republic of The), Ghana, Greece, Guinea, Honduras, India, Iran (Islamic Republic of), Iraq, Israel, Japan, Kuwait, Maldives, Mexico, Niger, Pakistan, Portugal, Romania, Russian Federation, Slovenia, South Africa, Togo, Venezuela (Bolivarian Republic of), Zambia, Zimbabwe

Non-Member States represented by observers

Intergovernmental organizations

Council of Europe

European Union

National Human Rights Institutions

CNIDH Burundi

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

Arab-European Center of Human Rights and International Law (AECHRIL)

Fondation pour l'étude des relations internationales et du développement

International Human Rights Commission Relief Fund Trust

International Organization for the Oneness of the Arab Peoples

Iranian Association for United Nations Studies

Ligue Camerounaise des droits de l'homme

Nonviolence International

Sikh Human Rights Group

Society for Development and Community Empowerment

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

Foundation for Environmental Protection in Tanzania

Prime Minister Youth Programme

United Nations Foundation

Other

Saffron Walden County High

The OneGoal Initiative for Governance

University of Geneva

1. \* The annex to the present document is reproduced as received, in the language of submission only. [↑](#footnote-ref-1)
2. \*\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information. [↑](#footnote-ref-2)
3. A/HRC/54/65. [↑](#footnote-ref-3)
4. A/HRC/54/65. [↑](#footnote-ref-4)
5. A/HRC/54/65. [↑](#footnote-ref-5)
6. A/RES/73/262. [↑](#footnote-ref-6)