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Point 9 de l'ordre du jour

**Le racisme, la discrimination raciale, la xénophobie
et l'intolérance qui y est associée : suivi et application
de la Déclaration et du Programme d'Action de Durban**

Rapport du Comité spécial sur l'élaboration de normes complémentaires sur sa huitième session*, **

Président-Rapporteur : Taonga Mushayavanhu (Zimbabwe)

Résumé

Le présent rapport est soumis en application de la décision 3/103 et des résolutions 6/21 et 10/30 du Conseil des droits de l'homme. Il s'agit d'un résumé des travaux du Comité spécial chargé d'élaborer des normes complémentaires à sa huitième session et des débats de fond qui se sont tenus à cette même session, notamment suite à l'examen par le Comité du questionnaire et des réponses reçues à ce questionnaire en application de la résolution 21/30 du Conseil.

* Les annexes au présent rapport sont reproduites telles qu'elles ont été reçues, dans la langue de l'original seulement.

** Le présent document est soumis tardivement pour que l'information la plus récente puisse y figurer.



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I. Introduction

1. Le Comité spécial chargé d'élaborer des normes complémentaires soumet le présent rapport en application de la décision 3/103 et des résolutions 6/21 et 10/30 du Conseil des droits de l'homme.

II. Organisation de la session

2. Le Comité spécial a tenu sa huitième session du 17 au 28 octobre 2016. Au cours de la session, le Comité a tenu 17 séances.

A. Participation

3. Ont participé à la session des représentants d'États Membres, d'États non membres représentés par des observateurs, d'organisations intergouvernementales et d'organisations non gouvernementales (ONG) dotées du statut consultatif auprès du Conseil économique et social (voir annexe III).

B. Ouverture de la session

4. La huitième session du Comité spécial chargé d'élaborer des normes complémentaires a été ouverte par le secrétaire du Comité spécial.

C. Élection du Président-Rapporteur

5. À sa 1^{re} séance, le Comité spécial a élu Taonga Mushayavanhu, Représentant permanent du Zimbabwe auprès de l'Office des Nations Unies à Genève, Président-Rapporteur, par acclamation.

6. Le Président-Rapporteur a remercié le Comité spécial de l'avoir élu et a exprimé sa reconnaissance aux précédents présidents, aux coordonnateurs régionaux et au secrétariat pour leur contribution. Il a pris acte de la montée des manifestations des formes contemporaines de discrimination raciale et a noté la pertinence des paroles de l'ancienne Haut-Commissaire des Nations Unies aux droits de l'homme, Navi Pillay, dans son avant-propos à la publication de 2012 intitulée « *Unis contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée* » :

Le racisme et la discrimination raciale portent atteinte à la dignité des personnes car ils tentent de diviser la famille humaine, à laquelle appartiennent tous les peuples et tous les individus, en catégories dont certaines seraient supérieures à d'autres. L'histoire a montré à maintes reprises que, lorsqu'on laisse la discrimination, le racisme et l'intolérance s'immiscer dans les sociétés, ils en ébranlent les fondements et y laissent leurs traces pendant des générations.

Le chemin vers un monde exempt de racisme n'est pas facile. Une volonté politique et des engagements à long terme sont nécessaires.

7. Le Président-Rapporteur a rappelé le mandat du Comité spécial, ainsi que les termes du paragraphe 199 du Programme d'action de Durban, dans lesquels la Conférence mondiale contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée a recommandé à la Commission des droits de l'homme d'élaborer des normes internationales complémentaires destinées à renforcer et à actualiser les instruments internationaux contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée, sous toutes leurs formes. Il a souligné en particulier la décision 3/103 du Conseil des droits de l'homme, dans laquelle le Conseil a prié le Comité spécial d'élaborer, à titre prioritaire et pour répondre à une nécessité, des normes complémentaires qui, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la

Convention internationale sur l'élimination de toutes les formes de discrimination raciale, combleront les lacunes actuelles de la Convention et proposeront également de nouveaux textes normatifs visant à combattre toutes les formes de racisme contemporain, notamment l'incitation à la haine raciale et religieuse. Il a ajouté que Comité spécial poursuivrait ses débats en suivant l'approche progressive adoptée aux précédentes sessions. Compte tenu de l'ampleur des travaux entrepris durant les sept sessions précédentes, il a suggéré que des recommandations concrètes pour la création d'un cadre réglementaire international sur les domaines que le Comité spécial avait couvert soient établies.

D. Adoption de l'ordre du jour

8. Également à la 1^{re} séance, le Comité spécial a adopté l'ordre du jour ci-après pour sa huitième session :

1. Ouverture de la session.
2. Élection du Président.
3. Adoption de l'ordre du jour et du programme de travail.
4. Présentation et discussion de la mise à jour par le Comité pour l'élimination de la discrimination raciale de son rapport de 2007 sur les normes internationales complémentaires.
5. Discussion sur la xénophobie.
6. Discussion sur les lacunes de procédure s'agissant de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale.
7. Exposés et débats sur des recours utiles et adéquats et le droit de demander aux tribunaux nationaux compétents et à d'autres institutions nationales une réparation et satisfaction justes et adéquates pour les victimes, conformément à l'article 6 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale et au paragraphe 165 du Programme d'action de Durban.
8. Débat général et échange de vues sur les points 4 et 6.
9. Débat général et échange de vues sur le point 5.
10. Débat général et échange de vues sur le sport et le racisme.
11. Débat général et échange de vues sur le point 10.
12. Questionnaire.
13. Débat général et échange de vues sur le point 7.
14. Débat sur l'introduction de nouveaux sujets de la liste et leur examen.
15. Adoption du rapport.

E. Organisation des travaux

9. À la même séance, le Président-Rapporteur a présenté le projet de programme de travail pour la session, qui a été adopté. Le programme de travail, tel qu'il a été ensuite révisé, figure à l'annexe II. Le Président-Rapporteur a invité les participants à faire des déclarations d'ordre général.

10. Les délégations ont vivement félicité le Président-Rapporteur pour son élection.

11. Le représentant de la République dominicaine, parlant au nom de la Communauté des États d'Amérique latine et des Caraïbes (CELAC), a réaffirmé l'appui de la Communauté en faveur des recommandations et conclusions sur le racisme dans le sport, adoptées par le Comité spécial à sa septième session. La CELAC a souligné l'importance de la lutte contre le racisme dans le sport et que le football, en particulier, pourrait servir à

diffuser plus largement les messages de lutte contre la discrimination et à soutenir les efforts déployés par les gouvernements et la société civile. En décembre 2015, la CELAC avait adopté une déclaration sur la Décennie internationale des personnes d'ascendance africaine et a reconnu que, en dépit de quelques progrès, le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée persistaient et continuaient d'avoir des répercussions sur l'exercice des droits des personnes d'ascendance africaine en Amérique latine et dans les Caraïbes. La CELAC a réaffirmé son soutien en faveur de l'élaboration de stratégies nationales et de la coordination des politiques régionales et internationales en vue de l'élimination totale du racisme et de toute forme de discrimination, en accordant une attention particulière aux droits des afrodescendants.

12. Le représentant de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a souligné la détresse des victimes du racisme, de la discrimination raciale, de la xénophobie et de l'intolérance qui y est associée, et a fait observer que quinze années s'étaient écoulées depuis l'adoption de la Déclaration et du Programme d'Action de Durban en 2001. Les victimes du racisme avaient besoin d'une protection urgente, pas d'un débat académique sur l'existence de lacunes. Le Groupe des États d'Afrique s'est félicité des discussions sérieuses et constructives menées en vue de l'exécution du mandat du Comité spécial et de l'élaboration de normes complémentaires.

13. La représentante du Pakistan, intervenant au nom de l'Organisation de la coopération islamique (OCI), a rappelé, qu'en 2007, le Conseil des droits de l'homme, dans la résolution 6/21, avait créé le Comité spécial chargé d'élaborer, à titre prioritaire et pour répondre à une nécessité, des normes complémentaires, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la Convention, comblant les lacunes actuelles de la Convention et proposant également de nouveaux textes normatifs visant à combattre toutes les formes de racisme contemporain, notamment l'incitation à la haine raciale et religieuse mais que, si lors des sept sessions précédentes, le Comité spécial avait tenu des débats sur plusieurs sujets, peu de progrès avaient été réalisés. Elle a attiré l'attention sur les nouvelles formes de discrimination qui ne sont pas couvertes par la Convention, qui avaient entraîné une augmentation des crimes motivés par la haine et touchaient en particulier les populations autochtones, les travailleurs migrants, les réfugiés et les groupes religieux et ethniques. Elle a souligné que les mécanismes nationaux n'étant ni uniformes ni universels il fallait renforcer d'urgence le cadre juridique international. Elle a appelé le Président à diriger les débats du Comité spécial en vue d'obtenir des éléments mutuellement acceptables qui constitueraient un projet de protocole additionnel.

14. Le représentant de l'Union européenne a réaffirmé son ferme attachement à la promotion et à la protection des droits de l'homme pour tous, affirmant que toutes les formes et manifestations de racisme et de xénophobie étaient incompatibles avec les valeurs fondatrices de l'Union, à savoir le respect de la dignité humaine, de la liberté, de la démocratie, de l'égalité, de l'état de droit et des droits de l'homme. L'Union européenne a engagé tous les États qui ne l'avaient pas encore fait à ratifier la Convention et à redoubler d'efforts pour assurer l'application complète et effective du droit international des droits de l'homme. Elle était entièrement acquise aux objectifs et aux engagements pris par les États à la Conférence mondiale contre le racisme et résolue à collaborer avec le Groupe de travail d'experts sur les peuples d'ascendance africaine, le Comité spécial et le Groupe de travail intergouvernemental sur l'application effective de la Déclaration et du Programme d'action de Durban. Elle bénéficiait de l'examen minutieux et des conseils de l'Agence des droits fondamentaux et de la Commission européenne contre le racisme et l'intolérance. Elle était disposée à partager des données d'expérience quant au règlement de ces questions, et attendait avec intérêt les contributions de toutes les régions du monde et était impatiente d'engager des discussions constructives au Comité spécial.

15. La représentante de la Namibie a indiqué que sa délégation reprenait à son compte la déclaration générale faite par le représentant de l'Afrique du Sud au nom du Groupe des États d'Afrique. Elle a déclaré que la lutte contre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée était une lutte à laquelle tout le monde devrait participer afin de garantir la coexistence pacifique des différents groupes de population. Le profilage racial était une violation des droits de l'homme et un problème qui préoccupait de longue date les Namibiens. La représentante a appelé l'attention sur le profilage

discriminatoire et la victimisation des migrants par les forces de l'ordre et les agents de l'immigration sur la seule base de l'appartenance ethnique ou religieuse, parfois avec des niveaux inacceptables d'impunité. Elle a appelé la communauté internationale à coopérer afin de remédier aux graves lacunes constatées dans le cadre normatif existant et aux réserves maintenues par certaines parties à la Convention.

16. Le représentant de la République bolivarienne du Venezuela a associé sa délégation à la déclaration faite par le représentant de la République dominicaine au nom de la CELAC, affirmant que le Venezuela restait fermement attaché à la lutte contre le racisme, la discrimination et l'intolérance qui y est associée. Il a réaffirmé la nécessité d'élaborer des normes complémentaires pour renforcer et actualiser le cadre juridique international, pour faire face aux nouvelles manifestations de la discrimination raciale et à l'intolérance qui y est associée et pour protéger les victimes. La délégation vénézuélienne a regretté que certains pays n'aient pas soutenu cet important mandat au fil des années et a de nouveau appelé les États Membres à mettre efficacement en œuvre la Déclaration et le Programme d'action de Durban, et en particulier le paragraphe 199 dudit programme. Les échanges avec d'éminents experts étaient précieux pour déterminer les lacunes et d'autres questions pertinentes concernant la Convention.

17. La représentante du Mexique a dissocié la délégation mexicaine de la déclaration faite par le représentant de la République dominicaine au nom de la CELAC sur des questions de forme, et a réaffirmé l'engagement du Mexique à l'égard des travaux du Comité spécial.

18. La représentante du Brésil a indiqué que sa délégation s'associait à la déclaration faite par la République dominicaine au nom de la CELAC. L'application effective de la Déclaration et du Programme d'action de Durban était une priorité essentielle pour le Brésil. Le représentant a cru comprendre que le Comité spécial allait examiner plus avant les lacunes de procédure de la Convention et la question du racisme dans le sport. Il a reconnu que le sport pouvait être un langage universel à même de contribuer à éduquer les peuples aux valeurs que sont la diversité, la tolérance et l'impartialité et constituer un moyen de combattre le racisme, la discrimination raciale, la xénophobie et l'intolérance qui y est associée. Ayant accueilli récemment deux grandes manifestations sportives, à savoir la Coupe du monde de football et les Jeux olympiques ainsi que les jeux paralympiques, le Brésil savait par expérience que le sport pouvait jouer un rôle dans la promotion de l'inclusion et de la diversité, et il était conscient des défis que posait l'élimination du racisme dans le sport. Il était essentiel que les tribunaux nationaux accordent aux victimes des réparations et des recours utiles et adéquats. Au Brésil, la législation prévoyait des sanctions fermes et des recours pour discrimination raciale, et les tribunaux avaient joué un rôle de plus en plus important pour faire évoluer les perceptions et avaient permis les recours nécessaires. Enfin, la représentante a réaffirmé l'attachement du Brésil aux travaux du Comité spécial.

19. La représentante des États-Unis d'Amérique a reconnu que la lutte contre la discrimination raciale n'était pas seulement une question d'ordre national, mais bien un problème auquel tous les pays étaient confrontés. Elle a souligné que les États-Unis étaient fermement attachés à la Convention en tant que principal cadre juridique international de lutte contre la discrimination raciale, et se faisaient l'écho des vues que les membres du Comité spécial avaient exprimées lors de sessions précédentes, à savoir que la Convention était suffisamment souple pour répondre aux défis contemporains et ne nécessitait pas de protocoles opérationnels. Les procédures qu'il avait été proposé d'ajouter jusqu'à présent feraient double emploi avec les mécanismes existants ou représenteraient une mauvaise utilisation de ressources limitées. Le Comité spécial devrait axer ses travaux sur l'élimination des lacunes constatées dans la mise en œuvre et sur des approches pratiques orientées vers l'action pour lutter contre la discrimination raciale sous toutes ses formes. La semaine précédente, les États-Unis avaient participé aux efforts du Groupe de travail intergouvernemental en vue de la célébration de la Décennie internationale des personnes d'ascendance africaine et des initiatives prises récemment au niveau national pour lutter contre la discrimination raciale. Enfin, la délégation des États-Unis appuyait l'examen de la question du racisme dans le sport, et s'est félicitée de l'élaboration par le Comité spécial

d'un plan d'action concret ou d'un ensemble de directives qui porteraient sur la corrélation qui existe entre le racisme et le sport.

20. Le représentant de la Libye a indiqué que son pays s'associait aux déclarations faites au nom du Groupe des États d'Afrique et de l'OCI. La Libye attachait de l'importance aux travaux du Comité spécial. Le représentant a souligné la nécessité de redoubler d'efforts pour limiter les formes contemporaines de racisme qui étaient en augmentation, en particulier celles qui visaient les personnes d'ascendance africaine, les musulmans, les immigrés et d'autres groupes. Il a exhorté les États Membres à œuvrer de concert à tous les niveaux pour lutter contre la montée de la xénophobie et du profilage racial.

III. Débat général et débats thématiques

A. Présentation et discussion sur la mise à jour par le Comité pour l'élimination de la discrimination raciale de son rapport de 2007 sur les normes internationales complémentaires

21. À sa 2^e séance, le Comité spécial a examiné le point 4 de l'ordre du jour. La Présidente du Comité pour l'élimination de la discrimination raciale, Anastasia Crickley, a fait un exposé sur la question des lacunes de procédure s'agissant de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale. Un résumé de son exposé et du débat qui a suivi est présenté à l'annexe I du présent rapport.

B. Débat sur la xénophobie

22. À sa 3^e séance, le Comité spécial a examiné le point 5 de l'ordre du jour. Un résumé des débats consacrés à ce thème est présenté à l'annexe I du présent rapport.

C. Débat sur les lacunes de procédure dans le cas de la Convention internationale sur l'élimination de toutes les formes de discrimination

23. Lors de sa 4^e séance, le Comité spécial a examiné le point 6 de l'ordre du jour. Un résumé du débat figure à l'annexe I du présent rapport.

D. Exposés et débat sur les recours utiles et adéquats et le droit des victimes de saisir les tribunaux et d'autres instances nationales compétentes afin d'obtenir une réparation et une satisfaction justes et adéquates - questions visées à l'article 6 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, ainsi qu'au paragraphe 165 de la Déclaration et du Plan d'action de Durban

24. Lors de sa 5^e séance, le Comité spécial a examiné le point 7 de l'ordre du jour. Isabel Obadiaru, spécialiste des droits de l'homme, des questions de genre et des migrations, a présenté un exposé.

25. À sa 6^e séance, le Comité spécial a examiné la question de la fourniture d'une aide judiciaire gratuite aux victimes de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y est associée. Klara Kalibová, Directrice et conseillère juridique à In Iustitia, et Sharmaine Hall, Directrice exécutive du Centre d'assistance juridique en matière de droits de la personne d'Ontario (Canada), ont présenté des exposés.

26. À sa 7^e séance, le Comité spécial a reçu Jamil Dakwar, Directeur du Programme des droits de l'homme à l'American Civil Liberties Union, qui a présenté un exposé.

27. À la 8^e séance, des exposés ont été présentés sur les perspectives nationales, régionales et internationales sur ce point de l'ordre du jour par Jerald Joseph, membre de

la Commission nationale des droits de l'homme de la Malaisie, et Lilla Farkas, analyste principale des politiques juridiques au sein du Groupe chargé de la politique migratoire (Bruxelles).

28. On trouvera à l'annexe I du présent rapport un résumé de ces différents exposés et des discussions qui ont suivi entre les participants.

29. À la 7^e séance, le Président-Rapporteur a annoncé avoir accepté la proposition formulée par les membres du Comité spécial tendant à reporter au 24 octobre l'examen des points de l'ordre du jour initialement programmés pour le 21 octobre et à réorganiser les travaux, de manière à pouvoir recevoir les délégués qui assisteraient à la vingt-cinquième session extraordinaire du Conseil des droits de l'homme, consacrée à la situation des droits de l'homme en République arabe syrienne. En l'absence d'objection, le programme de travail a été révisé en conséquence.

E. Débat général et échange de vues, 9^e séance

30. Lors de la 9^e séance, le Président-Rapporteur a proposé de débiter par un débat général et un échange de vues sur le point 6, puis de débiter du point 5 l'après-midi. Après avoir appelé les participants à s'efforcer de trouver un terrain d'entente, il les a invités à faire part de leurs remarques d'ordre général.

31. La représentante de l'Afrique du Sud a fait observer que dans son exposé Mme Crickley avait indiqué que le rapport établi par le Comité pour l'élimination de la discrimination raciale en 2007 et les recommandations qui y figuraient étaient toujours d'actualité. Les lacunes de procédure identifiées par le Comité lui-même pouvaient constituer un bon point de départ.

32. Le représentant du Royaume-Uni de Grande-Bretagne et d'Irlande du Nord a réaffirmé la position de longue date de son Gouvernement, qui était qu'il n'y avait pas lieu d'adopter des normes complémentaires et qu'il ne prendrait pas part à des débats visant à en élaborer.

33. La représentante des États-Unis d'Amérique était du même avis que le représentant du Royaume-Uni. Selon elle, les débats étaient fort intéressants et utiles, mais ils montraient aussi que les principaux problèmes touchaient à la mise en œuvre de la Convention et non à d'éventuelles lacunes dans l'instrument lui-même. Elle a réaffirmé que c'était sur la mise en œuvre qu'il fallait mettre l'accent. La définition de la discrimination raciale était large et englobait la xénophobie et les formes contemporaines de racisme. Elle estimait en outre qu'il n'était pas indispensable que le Comité spécial produise un document.

34. La représentante de l'Afrique du Sud, prenant acte des déclarations des représentants du Royaume-Uni et des États-Unis, a fait valoir qu'il fallait rendre la mise en œuvre plus efficace. En l'état actuel des choses, le Comité pour l'élimination de la discrimination raciale n'avait pas la possibilité d'effectuer des visites de suivi, lacune qu'il avait mise en lumière dans son rapport de 2007. Elle a de nouveau déclaré que, selon sa délégation, des experts sur le terrain étaient nécessaires pour aider les États à mettre la Convention pleinement en œuvre et l'introduction de missions de suivi était un bon moyen de contribuer à l'élimination du racisme.

35. Le Président-Rapporteur a invité ceux qui estimaient qu'il n'était pas nécessaire d'élaborer des normes complémentaires mais qui reconnaissaient l'existence de problèmes de mise en œuvre à proposer des solutions concrètes pour faire émerger un consensus. Il a brièvement suspendu la séance, le temps pour les participants de tenir des consultations informelles.

36. La séance a repris après des consultations informelles entre les États Membres. Le Président-Rapporteur a rappelé au Comité spécial qu'en vertu du mandat que lui avait confié le Conseil des droits de l'homme, il était chargé « d'élaborer, à titre prioritaire et pour répondre à une nécessité, des normes complémentaires qui, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la Convention internationale

sur l'élimination de toutes les formes de discrimination raciale, combleraient les lacunes actuelles de la Convention et proposeraient également de nouveaux textes normatifs visant à combattre toutes les formes de racisme contemporain, notamment l'incitation à la haine raciale et religieuse ». Le Président-Rapporteur a pris note de l'avis partagé par certains États selon lequel ce mandat n'empêchait pas le Comité spécial de proposer une solution moins formelle qu'un protocole facultatif. Cependant, il était bien question dans le mandat de priorité et de nécessité, et l'utilisation des termes « combler les lacunes actuelles » signifiait que ces lacunes étaient reconnues. Le Président-Rapporteur a incité le Comité spécial à envisager le mandat de manière holistique et à éviter une approche du « tout ou rien ».

37. La représentante de l'Union européenne a réaffirmé la position de sa délégation, qui était qu'il n'y avait pas la moindre lacune à combler dans la Convention. L'Union européenne était disposée à travailler sur des directives ou des plans d'action, mais ne pouvait pas s'engager à travailler à l'élaboration d'une convention ou d'un protocole facultatif.

38. Le Président-Rapporteur a admis que l'un des défis auxquels le Comité spécial était confronté était de déterminer quel serait son produit final. Il fallait que les États Membres décident si ses travaux devaient aboutir à une convention ou non. Il a ajourné la séance pour permettre de nouvelles consultations informelles.

39. À la 11^e séance, un programme de travail révisé, qui tenait compte de l'annulation des 9^e et 10^e séances et de la reprogrammation des points de l'ordre du jour restant à examiner durant la seconde semaine de la session, a été distribué.

40. Le Président-Rapporteur s'est référé au projet de texte sur les points 4 et 6 de l'ordre du jour, qui avait été distribué aux membres du Comité spécial par l'entremise des coordonnateurs régionaux. Il a évoqué les problèmes de calendrier que posaient la demande du Comité pour l'élimination de la discrimination raciale et les dates de la 9^e session du Comité spécial. Il a insisté sur la nécessité de progresser encore sur les questions de la xénophobie, du racisme dans le sport et des recours utiles et suffisants.

41. Au sujet de la xénophobie, le Président-Rapporteur a résumé les enjeux débattus, évoquant notamment la définition de la xénophobie, l'existence de ce phénomène et son apparente expansion depuis quelques années ; la question de savoir si la xénophobie était couverte par l'article premier de la Convention, sachant qu'il n'y était pas expressément fait référence et qu'elle ne pouvait pas non plus être qualifiée d'induite implicitement par cette définition ; les avantages qu'il y aurait à mettre au point une norme complémentaire portant sur la xénophobie ; et le devoir de ne pas nuire. Concernant ce dernier point, le Président-Rapporteur a demandé en quoi pourrait nuire à quiconque le fait que des nations adoptent des lois contre la xénophobie sur la base d'une norme internationale. Il a invité les participants à faire part de leurs observations.

42. La représentante du Pakistan, intervenant au nom de l'OCI, a déclaré que le Comité spécial se réunissait pour s'acquitter d'un mandat qui lui avait été confié par le Conseil des droits de l'homme et sur la base d'un consensus unanimement reconnu dans le paragraphe 199 du Programme d'action de Durban. Le Comité spécial lui-même avait reconnu que la xénophobie n'était pas couverte par la Convention et avait suggéré de prendre comme point de départ des discussions la recommandation générale n°30 (2004) concernant la discrimination contre les non-ressortissants adoptée par le Comité pour l'élimination de la discrimination raciale. Elle a ajouté qu'il n'était pas possible de prétendre qu'il n'y avait pas de lien entre la xénophobie et l'intolérance qui y est associée et la Convention ou le Comité.

43. Le représentant du Zimbabwe a dit que définir les contours du phénomène pourrait faciliter le travail de définition et d'élaboration de normes complémentaires destinées à lutter contre celui-ci.

44. La représentante des États-Unis a fait savoir que de l'avis de sa délégation il n'y avait pas de lacune de fond au regard de la xénophobie et que les États-Unis ne jugeaient pas nécessaire d'adopter des normes complémentaires. La représentante de l'Union européenne a exprimé son accord, ajoutant que le résumé des réponses reçues au

questionnaire montrait bien que les États Membres faisaient en sorte de lutter contre la xénophobie même si le terme était rarement défini dans le droit national. L'Union européenne n'était pas prête à s'engager dans un travail de définition ou dans des discussions sur la notion de xénophobie.

45. La représentante de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a rappelé que dans un des paragraphes du préambule de la Déclaration de Durban, les États avaient reconnu que « les différentes manifestations de la xénophobie étaient l'une des principales sources et formes contemporaines de discrimination et de conflit, et que la lutte contre la xénophobie exigeait l'attention et l'intervention urgentes des États et de la communauté internationale ». La xénophobie était qualifiée à la fois de « source » et de « forme » de racisme. Par conséquent, la représentante se demandait si ce qui lui semblait être des résistances au paragraphe 199 du Programme d'action de Durban était à interpréter comme une négation des souhaits exprimés par les chefs d'État et de gouvernement ou comme un signe du fait que le problème de la xénophobie avait été résolu depuis 2001. Elle a rappelé que, comme cela avait été souligné dans le rapport du Comité spécial sur sa quatrième session, les États n'étaient nullement tenus d'appliquer les recommandations générales du Comité. Elle a vivement engagé le Comité spécial à n'exclure aucune possibilité, à ne pas revenir sur des accords internationaux déjà conclus et à lancer les travaux sur la question à l'examen.

46. La représentante du Pakistan, s'exprimant au nom de l'OCI, a noté que la xénophobie et l'intolérance qui y est associée étaient liées et devaient être prises en compte dans tout protocole ou tout instrument voué à être élaboré. Elle a rappelé qu'un expert invité à la sixième session du Comité spécial, Ioannis Dimitrikopolous, de l'Agence des droits fondamentaux de l'Union européenne, avait souligné la nécessité d'identifier les éléments constitutifs de la xénophobie. Celui-ci avait aussi relevé que les données publiées par les services de répression et les services judiciaires des États membres de l'Union européenne faisaient apparaître d'importantes fluctuations entre 2011 et 2012 dans le nombre d'infractions officiellement recensées présentant un caractère raciste, xénophobe, anti-Rom, antisémite ou islamophobe/antimusulman. Certains pays avaient vu décroître le nombre d'infractions alors que d'autres l'avaient au contraire vu s'accroître. L'expert avait indiqué que selon les études menées à grande échelle par l'Agence à laquelle il appartenait auprès de catégories de population ciblées, les infractions racistes et la discrimination demeuraient une réalité pour une proportion non négligeable des personnes interrogées. La représentante a demandé au Comité spécial de faire preuve de souplesse et de ne pas nier l'évidence.

47. Le Président-Rapporteur a encouragé les membres du Comité spécial à s'efforcer de trouver un terrain d'entente ; étant donné qu'il n'était pas contesté que la xénophobie existait et n'était pas bien définie, il était indispensable de s'accorder sur ce que revêtait cette notion.

48. La représentante du Mexique a déclaré que la xénophobie était en hausse et qu'un débat approfondi s'imposait sur la question. Bon nombre de pays s'étaient déjà dotés de lois sur la xénophobie. Il importait d'évaluer l'impact sur une situation nationale d'une définition expresse de la xénophobie à l'échelle internationale.

49. La suite de la 11^e séance a été consacrée à des consultations informelles sur le point 5.

F. Exposé et débat sur le racisme dans le sport

50. À sa 12^e séance, le Comité spécial a examiné le point 10 de l'ordre du jour. Un résumé de l'exposé présenté sur le racisme dans le sport et du débat qui a suivi avec les participants est présenté à l'annexe I du présent rapport.

G. Débat général et échange de vues, 13^e séance

51. À sa 13^e séance, le Comité spécial a poursuivi ses discussions informelles sur le projet de document consacré aux points examinés à la session en cours, en particulier au point 10 de l'ordre du jour

52. À cette même séance, le Comité spécial a débattu du questionnaire qui avait été diffusé en 2013, puis de nouveau en 2014, comme suite aux décisions prises à ses quatrième et cinquième sessions.

53. À la demande du Président-Rapporteur, le secrétariat a rappelé l'historique du questionnaire et présenté les grandes lignes du résumé actualisé qu'avait rédigé le Comité pour l'élimination de la discrimination raciale des réponses reçues au questionnaire qui avait été établi en application du paragraphe 4 de la résolution 21/30 du Conseil des droits de l'homme. Au paragraphe 4 de ladite résolution, le Conseil avait demandé au Haut-Commissariat des Nations Unies pour les droits de l'homme (HCDH) de diffuser un questionnaire, dans la limite des ressources disponibles, en vue de réunir des renseignements sur les trois questions dont le Comité spécial avait débattu pendant sa quatrième session et qu'il avait traitées dans ses rapports (xénophobie, mécanismes nationaux et lacunes de procédure), notamment sur les cadres et pratiques juridiques et judiciaires et sur les mesures de fond et de procédure, conformément à son mandat, ainsi que des éventuelles recommandations. Le Conseil avait invité le HCDH à afficher les réponses du questionnaire sur son site Internet, et, en consultation avec le Président-Rapporteur, à effectuer un résumé des réponses apportées au questionnaire lors de la période intersessions, lequel ferait l'objet de discussions lors de la cinquième session.

54. Sous le couvert d'une note verbale en date du 3 décembre 2012, le HCDH avait invité les missions permanentes à Genève et à New York à transmettre leurs réponses au questionnaire joint au 15 janvier 2013 au plus tard. Il avait reçu 30 réponses. Le résumé ainsi que le texte intégral des réponses reçues avaient été postés sur le site Internet du HCDH en prévision de la cinquième session du Comité spécial, en 2013. À cette session, il avait été convenu que le Président-Rapporteur rediffuserait le questionnaire afin d'obtenir d'autres réponses pendant l'intersession et qu'un résumé actualisé des réponses reçues serait établi.

55. Sous le couvert d'une note verbale en date du 21 juillet 2014, le HCDH avait ainsi invité les missions permanentes à Genève et à New York qui n'avaient pas encore répondu au questionnaire à le faire avant le 12 septembre 2014 (le délai de réponse avait par la suite été prolongé jusqu'au 19 septembre, en indiquant que tout complément d'information et toute précision de la part des États y ayant déjà répondu seraient les bienvenus. Le HCDH avait reçu 13 réponses supplémentaires et un résumé actualisé avait été rédigé, lequel avait également été mis en ligne sur le site Internet.

56. Il a été rappelé que, considérant le texte de la résolution 21/30, 9 questions avaient été posées concernant la xénophobie, les mécanismes nationaux et les lacunes de procédure, notamment les cadres et pratiques juridiques et judiciaires et les mesures de fond et de procédure, conformément à son mandat, ainsi que d'éventuelles recommandations.

57. Le secrétariat a récapitulé le contenu du résumé et a indiqué que le document contenant ledit résumé, le questionnaire lui-même et chacune des réponses reçues des États Membres et d'une organisation régionale pouvaient être consultés sur le site Internet du Comité spécial, sur les pages consacrées à la cinquième et à la sixième sessions. Le Président-Rapporteur a invité les participants à faire part de leurs observations et de leurs recommandations quant aux étapes suivantes.

58. La représentante du Pakistan, prenant la parole au nom de l'OCI, a pris acte de la contribution des États qui avaient répondu au questionnaire et a fait observer que le faible taux de réponse était aussi parlant que les réponses elles-mêmes. Elle estimait que le résumé contenait des observations substantielles faites par les États Membres et a suggéré qu'on le diffuse auprès de tous les pays, en encourageant les États à ajouter ou partager d'autres informations. Elle a fait valoir que le contenu du résumé était un bon point de départ pour débattre et avancer.

59. Le Président-Rapporteur a invité le Comité spécial à présenter son analyse et son évaluation du questionnaire ; il lui a aussi demandé quelles conclusions il tirait du résumé et quelle suite il entendait donner au résumé actualisé.

60. La représentante de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a estimé qu'il n'était pas nécessaire de redistribuer le questionnaire étant donné qu'il était peu probable que d'autres États Membres y répondent et que de nouvelles réponses ne modifieraient pas fondamentalement la teneur du résumé. Elle a proposé de la démarche utilisée pour l'étude réalisée en 2007 par le Comité pour l'élimination de la discrimination raciale afin de déterminer des domaines de convergence.

61. La représentante du Pakistan, s'exprimant au nom de l'Organisation de la coopération islamique (OCI), a précisé que sa proposition consistait à transmettre le résumé mis à jour aux États Membres en vue de partager les meilleures pratiques et a fait sienne la proposition de la représentante de l'Afrique du Sud.

62. Le représentant de l'Union européenne a noté que le questionnaire reflétait principalement les différentes positions exprimées ces dernières années au sein du Comité spécial. Le représentant du Brésil a demandé au Président-Rapporteur des précisions et des indications quant à la manière de procéder.

63. À la suite des explications données par le secrétariat, le Président-Rapporteur a précisé que le Comité spécial pouvait décider de soumettre le résumé mis à jour en tant que document officiel du Conseil des droits de l'homme, qui serait alors traduit et publié sous une cote de l'ONU, ou de le conserver comme document de session, reflétant les connaissances que le Comité spécial avait accumulées. Il a demandé au Comité de réfléchir à la suite à donner.

64. La représentante du Pakistan, au nom de l'OCI, a souligné la nécessité de donner un certain caractère officiel au document étant donné qu'il s'agissait des réponses des États et d'une organisation. La représentante de l'Afrique du Sud, au nom du Groupe des États d'Afrique, a proposé que le Comité spécial s'efforce d'élaborer un document relatif au questionnaire. Suite aux propositions du Président-Rapporteur, le Comité spécial a élaboré un document portant sur le point 12 de l'ordre du jour.

65. À sa 14^e séance, le Comité spécial a examiné le point 13 de l'ordre du jour.

66. Faisant référence au Pacte international relatif aux droits civils et politiques et à l'article 6 de la Convention, le représentant de l'Union européenne a déclaré que l'accès à la justice et le droit à un traitement égal devant les tribunaux et tout autre organe administrant la justice étaient des droits fondamentaux et qu'il incombait aux États de garantir une protection et des recours utiles contre la discrimination raciale. L'Union européenne considérait que les normes contenues dans la Convention et d'autres instruments relatifs aux droits de l'homme, les engagements pris à Durban ainsi que le système des droits de l'homme des Nations Unies fournissait un cadre à la lutte commune contre le racisme, la xénophobie et l'intolérance qui y est associée, notamment en ce qui concerne la promotion et la garantie de recours utiles et adéquats au niveau national.

67. Le Plan d'action de l'Union européenne en faveur des droits de l'homme et de la démocratie 2015-2019 avait pour but de prévenir les violations des droits de l'homme et de faire en sorte que les victimes aient accès à la justice et puissent obtenir réparation. Dans ce but, il prévoyait d'apporter un soutien ciblé aux systèmes judiciaires, de contrôler et de favoriser, au moyen de la coopération technique, le respect des obligations nationales concernant l'accès à la justice et le droit à un procès équitable à tous les stades du processus juridique, et de promouvoir l'indépendance du pouvoir judiciaire et l'accès à la justice au niveau local. L'intervenant a évoqué la persécution dont étaient victimes les personnes et les organisations de la société civile qui dénonçaient la discrimination et le racisme et qui n'avaient souvent pas accès à la justice et aux voies de recours.

68. L'Union européenne disposait d'une importante législation relative à la lutte contre certaines formes de crimes racistes et xénophobes qui fournissait un cadre à une réponse commune contre les discours haineux et les actes de violence inspirés par la haine et qui prévoyait que les auteurs de tels actes soient poursuivis. En application de cette législation, les États membres étaient tenus de sanctionner l'incitation publique à la haine et à la

violence à l'égard d'un groupe de personnes ou d'un membre d'un tel groupe défini par référence à la race, la couleur, la religion, l'ascendance ou l'origine nationale ou ethnique ; la commission de tels actes par diffusion ou distribution publiques d'écrits, d'images ou d'autres moyens était aussi passible de sanctions. S'agissant de toute autre infraction pénale, les États membres devaient veiller à ce que les motivations racistes et xénophobes soient considérées comme des circonstances aggravantes.

69. La Directive sur les droits des victimes, adoptée en 2012, a conféré aux victimes de crimes un grand nombre de droits, notamment concernant l'accès à la justice, l'indemnisation et la réparation, ainsi que le droit à recevoir des renseignements, une protection et un soutien adéquats. Elle prévoyait également une évaluation individuelle des besoins en matière de protection. Une attention particulière était accordée aux victimes d'actes de violence inspirés par la haine.

70. Outre l'adoption de mesures législatives, il était aussi important de renforcer les capacités de toutes les parties prenantes, de sensibiliser le public et de dispenser une éducation aux droits de l'homme afin de veiller à ce que les mesures législatives soient effectivement mises en œuvre et de favoriser le signalement des crimes aux autorités compétentes. L'Union européenne a mis en exergue le rôle important que jouaient les institutions nationales des droits de l'homme dans l'éducation aux droits de l'homme en promouvant des sociétés justes, tolérantes et exemptes de racisme, de discrimination raciale et de xénophobie, ainsi que le droit d'accès à la justice et à des recours utiles pour tous sans discrimination.

71. Le Président-Rapporteur a remercié le représentant de l'Union européenne pour sa déclaration et a demandé aux autres participants d'apporter leur contribution afin de trouver un terrain d'entente. S'agissant du résumé préparé par le secrétariat sur les principaux points des exposés présentés au titre du point 7, le Président-Rapporteur a mis en avant des questions telles que les obstacles empêchant les victimes d'accéder à la justice et à des voies de recours, le profilage racial et le fait que la charge de la preuve incombait aux victimes. Il a demandé aux participants de déterminer les meilleures pratiques et de mettre en évidence les domaines de convergence.

72. La représentante de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a déclaré que le point 7 était une question très intéressante et qu'elle devrait être examinée plus avant. Toutefois, elle estimait que le Groupe de travail intergouvernemental sur l'application effective de la Déclaration et du Programme d'action de Durban serait plus à même que le Comité spécial d'y donner suite.

73. Le représentant de l'Union européenne était du même avis, les questions de l'accès à la justice et des obligations des États étant couvertes par le Pacte international relatif aux droits civils et politiques.

74. Le représentant du Brésil estimait lui aussi que cette question importante dans la lutte contre le racisme devait être examinée par une instance qui pourrait y apporter des réponses concrètes.

75. Le Président-Rapporteur a conclu que la question des recours utiles et adéquats devait être examinée par le Groupe de travail intergouvernemental et qu'il procéderait de cette façon. Il a ajourné la 14^e séance pour que des consultations informelles puissent avoir lieu en vue d'élaborer une recommandation en lien avec le point 7.

76. À sa 15^e séance, le Comité spécial a tenu un débat sur la possibilité de traiter de nouveaux sujets et a étudié un document intitulé « Liste de sujets examinés à la deuxième session ». À propos de cette liste, le Président-Rapporteur a proposé de terminer l'examen des sujets en suspens avant d'en aborder de nouveaux.

77. Le Comité spécial a débattu de la question de savoir s'il fallait renvoyer l'examen de deux sujets au Comité pour l'élimination de la discrimination raciale, à savoir les lacunes de procédure et la xénophobie, auquel cas il poursuivrait ses discussions sur ces questions une fois qu'il aurait reçu une réponse du Comité. Les sujets restant à l'ordre du jour devaient être ajoutés et leur examen achevé.

78. La représentante de l'Afrique du Sud, s'exprimant au nom du Groupe des États d'Afrique, a proposé que le Comité examine les sujets 14 et 16 de la liste, portant respectivement sur la protection des migrants contre les pratiques racistes, discriminatoires et xénophobes et la protection des réfugiés, des rapatriés et des personnes déplacées dans leur propre pays contre le racisme et les pratiques discriminatoires.

79. Le représentant de l'Union européenne a proposé de débattre du sujet 2 portant sur une législation générale contre la discrimination. Sa délégation a pris note de la proposition de la représentante de l'Afrique du Sud.

80. La représentante des États-Unis a accueilli avec satisfaction les propositions concernant les sujets à examiner. Elle a déclaré qu'elle devait consulter son gouvernement et qu'elle rendrait compte au Comité des commentaires qu'elle aurait reçus. Le Président-Rapporteur espérait qu'une décision sur les sujets à traiter lors des sessions suivantes serait prise le lendemain au plus tard, tout en signalant que les questions couvertes par le questionnaire et le point sur les recours utiles et adéquats avaient déjà été examinés lors de la session en cours et des précédentes, et qu'il n'était donc pas nécessaire de les aborder à nouveau. Il a ajouté que la xénophobie, le racisme dans le sport, ainsi que les lacunes de procédure faisaient toujours l'objet de débats au sein du Comité spécial et resteraient à l'ordre du jour des sessions suivantes.

81. Le Président-Rapporteur a encouragé les membres du Comité spécial à consulter sans délai leur gouvernement et groupe régional concernant les trois nouveaux sujets qui avaient été proposés, et a souligné qu'il était nécessaire d'obtenir une confirmation dès que possible, avant la fin de la session en cours. Les coordonnateurs régionaux détermineraient par la suite comment programmer ces sujets pour les sessions suivantes.

82. Le Comité spécial a ensuite poursuivi ses discussions informelles concernant le projet de document sur les sujets et points examinés à la session en cours.

H. Débat général et échange de vues, 16^e séance

83. À sa 16^e séance, le Comité spécial a une nouvelle fois tenu un débat général et eu un échange de vues. Il a examiné le projet de document de session sur lequel il travaillait et y a apporté des modifications en vue de son adoption à la dernière séance de la session. Le Président-Rapporteur a rappelé que ce projet serait mis à jour à la dernière séance et que les sujets proposés pour examen lors de la session suivante y seraient ajoutés.

84. La représentante du Pakistan, au nom de l'OCI, a demandé qu'il soit noté que la liste des sujets n'était pas définitive et qu'il était possible d'y apporter des modifications jusqu'à l'adoption du programme de travail final de la neuvième session du Comité spécial.

85. La 16^e séance a été ajournée pour laisser davantage de temps aux consultations informelles, dans le but de parvenir à un accord.

IV. Adoption du rapport

86. À la 17^e séance, le Président-Rapporteur a invité les participants à faire des déclarations d'ordre général. Les délégations ont remercié le Président-Rapporteur et tous les membres du Comité spécial et se sont félicités des travaux réalisés et des résultats obtenus. Elles avaient hâte de participer aux travaux du Comité spécial à l'avenir.

87. Dans ses observations finales, le Président-Rapporteur a remercié les participants pour leur coopération et leur contribution. Il a accueilli avec satisfaction l'esprit constructif dont ils avaient fait preuve ainsi que la grande expérience et les vastes connaissances des experts invités, et les vues qu'ils avaient présentées.

88. Tout en reconnaissant que certaines recommandations n'avaient pas fait l'objet d'un accord, il a déclaré que sa principale responsabilité en tant que Président était de veiller à ce que le Comité spécial s'acquitte de son mandat, qui consistait à élaborer des normes complémentaires qui, sous la forme soit d'une convention soit d'un ou de plusieurs protocoles additionnels à la Convention internationale sur l'élimination de toutes les formes

de discrimination raciale, combleraient les lacunes actuelles de la Convention et proposeraient également de nouveaux textes normatifs visant à combattre toutes les formes de racisme contemporain, notamment l'incitation à la haine raciale et religieuse. Quel que soit le critère retenu, le Comité spécial n'avait pas rempli sa mission. Aucun participant à cette session ne pouvait dire que le Comité avait fait des progrès dans la réalisation de son mandat ni dans la protection de la dignité humaine que méritaient ceux dont les droits étaient bafoués chaque jour. Il n'y avait aucun doute sur la légalité de ce mandat et sur le fait que le Comité devait s'en acquitter, sauf instructions contraires du Conseil des droits de l'homme.

89. À un moment où les cas d'infractions racistes, de racisme, de discrimination raciale et d'attaques xénophobes étaient de plus en plus nombreux, le Comité spécial aurait dû saisir l'occasion d'accomplir de réelles avancées dans la réalisation de son mandat. Au lieu de cela, il apparaissait que les participants étaient restés campés sur la position que leur gouvernement respectif avaient tenue depuis la création du Comité spécial. Bien qu'étant pleinement conscient que la diplomatie était, de par sa nature, un processus lent et laborieux, huit ans représentaient une longue période et un changement de stratégie s'imposait. Le Président-Rapporteur a invité tous les délégués à réfléchir pendant la période intersessions à de nouvelles manières de progresser. Il a considéré que des discussions préliminaires avant la neuvième session seraient utiles et a proposé son aide dans le cadre de ces discussions. Il exprimerait ses réflexions au Conseil des droits de l'homme en sa qualité de Président-Rapporteur lorsqu'il présenterait le rapport de la huitième session du Comité spécial à la trente-quatrième session du Conseil.

90. Il a salué le rapprochement des points de vue concernant la réalisation du mandat du Comité spécial et conservait l'espoir que des terrains d'entente seraient trouvés et que de réels progrès seraient accomplis à cet égard lors des sessions suivantes. Tout l'intérêt du mandat du Comité était de chercher à mieux protéger ceux qui, malheureusement, étaient parfois victimes d'actes de racisme, de discrimination raciale, de xénophobie et de l'intolérance qui y était associée, et le Comité ne devait pas les laisser tomber.

91. À la même séance, comme suite aux consultations officieuses qui s'étaient tenues, le Comité spécial a convenu des conclusions et recommandations ci-après et a également décidé de débattre à sa neuvième session des sujets mentionnés ci-dessous :

a) Conclusions et recommandations :

i) Le Comité spécial recommande au Conseil des droits de l'homme d'envisager d'adopter une résolution invitant le Comité pour l'élimination de la discrimination raciale à préciser, dans son étude de 2007 sur les mesures susceptibles de renforcer l'application de ses observations finales en adoptant de nouvelles recommandations ou en actualisant ses procédures de surveillance (A/HRC/4/WG.3/7), les points suivants :

a. La proposition d'élaborer un protocole facultatif se rapportant à la Convention qui prévoirait une procédure d'évaluation par des visites/enquêtes, et en particulier :

- i. L'objet de la procédure ;
- ii. Le format de la procédure ;
- iii. Les résultats attendus et/ou les avantages escomptés ;
- iv. Les différences et les similitudes entre ces visites et celles réalisées dans le cadre des procédures spéciales existantes ;

b. Les difficultés et les meilleures pratiques concernant les mécanismes nationaux observées par le Comité ;

ii) Le Comité spécial invite tous les États parties à envisager de faire la déclaration prévue à l'article 14 de la Convention, afin de reconnaître aux personnes et aux groupes de personnes la possibilité de lui présenter des communications ;

iii) Le Comité spécial note que les débats sur la xénophobie restent laborieux et décide de poursuivre l'examen de ce sujet lors des sessions suivantes ;

iv) Le Comité spécial encourage le Conseil des droits de l'homme à inviter le Haut-Commissariat des Nations Unies aux droits de l'homme (HCDH), en particulier la Section de la lutte contre la discrimination raciale, à poursuivre ses travaux relatifs au problème du racisme dans le sport, notamment en encourageant les échanges de meilleures pratiques entre les États, les instances sportives et d'autres parties prenantes concernées, selon qu'il convient. À cet égard, le Comité considère que des ressources devraient être mises à la disposition du HCDH pour mener à bien les activités relatives au racisme dans le sport ;

v) Le Comité spécial invite les États, selon qu'il convient, à intégrer le domaine du sport dans leurs plans d'action nationaux de lutte contre le racisme et la discrimination raciale. Le Comité invite également les États qui ne l'ont pas encore fait à envisager d'adopter des plans d'action contre le racisme et la discrimination raciale et, ce faisant, d'inclure des mesures concernant le sport ;

vi) Ayant examiné le résumé actualisé des réponses reçues au questionnaire qui avait été établi en application du paragraphe 4 de la résolution 21/30 du Conseil des droits de l'homme, le Comité spécial :

- a. Remercie les pays et l'organisation régionale qui ont répondu au questionnaire ;
- b. Prend note du résumé des réponses ;
- c. Décide de s'en servir comme outil de référence pour les discussions à venir ;

vii) Le Comité spécial recommande au Groupe de travail intergouvernemental sur l'application effective de la Déclaration et du Programme d'action de Durban d'envisager d'aborder dans son programme de travail la question des recours utiles et adéquats et du droit des victimes de saisir les tribunaux et d'autres instances nationales compétentes afin d'obtenir une réparation et une satisfaction justes et adéquates, questions qui sont visées à l'article 6 de la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, ainsi qu'au paragraphe 165 du Plan d'action de Durban ;

b) Liste des sujets à examiner à la neuvième session :

- i) Législation générale contre la discrimination ;
- ii) Protection des réfugiés, des rapatriés et des personnes déplacées dans leur propre pays contre le racisme et les pratiques discriminatoires.

92. À la même séance, le rapport de la huitième session a été adopté *ad referendum*, étant entendu que les délégations communiqueraient par écrit au secrétariat le 11 novembre 2016 au plus tard toute correction d'ordre technique à apporter à leurs interventions.

Annexe I

[Anglais seulement]

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

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

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

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

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

4. One of the biggest obstacles to CERD's effectiveness is that some States submit their periodic reports very late or do not submit them at all. In response to this and in

compliance with General Assembly resolution 68/268, CERD adopted the simplified reporting procedure and offered it to States parties whose periodic reports were overdue by more than 5 years. The second obstacle identified by Ms. Crickley was the non-implementation of the Committee's concluding observations. Lastly, reservations expressed by some States parties, especially under article 4, were identified as an impediment to CERD's effectiveness. In addition to the withdrawal of reservations by States parties, Ms. Crickley expressed hope that there would be universal ratification of the ICERD.

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

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

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

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

9. The representative of Zimbabwe inquired about the protection gap in the ICERD with respect to xenophobia. He stated that definitions or references to xenophobia are missing from most international legal texts and instruments including article 1 of the ICERD. He explained that this lack of explicit legal recognition made it difficult to regulate the phenomenon and bred denial as perpetrators do not view xenophobia as a crime. The representative asked Ms. Crickley whether it would be advantageous to broaden the ICERD to include the issue of xenophobia.

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

procedures under ICERD and the EU is open to exploring ways of enhancing implementation of existing procedures.

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

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

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

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

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

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

17. The representative of South Africa asked for clarification from the Secretariat regarding the protocol to be followed regarding the requested addendum to the 2007 report. At the request of the Chair-Rapporteur, the Secretary of the Committee provided additional information on the protocols to be followed to issue a new report or an addendum to the

report. It was recalled that an outcome of the 7th session that “the Committee recommends that the Committee on the Elimination of Racial Discrimination update, either in the form of an addendum or a new report, its 2007 report on complementary international standards (A/HRC/4/WG.3/7)”. This request was communicated to the Human Rights Council at its 31st session and to the members of the CERD at its 89th session and also through a letter. While a decision had not as yet been taken by CERD on this request, it did not preclude a future update or addendum and the Secretariat stood ready to facilitate the technical requirements in that regard.

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

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

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

21. The representative of South Africa on behalf of African Group recalled that the years between 1973 and 1982 were declared the First Decade to Combat Racism and Racial discrimination, and referred to the Second and Third Decades that followed. At the end of the Third Decade, however, a decision was taken by the Member States to have another conference, this time on Racism, Racial Discrimination, Xenophobia, and Related Intolerance. At that time, three decades since the adoption of the ICERD, the world had evolved and by that time the situation in southern Africa had changed. The representative stated that the problem faced beyond racial discrimination was the issue of xenophobia. She pointed out that in its wisdom, the UN named the conference “Racism, Racial Discrimination, Xenophobia and Related Intolerance” necessarily because there was a distinction between those phenomena; xenophobia was singled out. The representative requested Ms. Crickley about such reasoning behind this distinction in the context of Article 1 of ICERD.

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

B. Xenophobia

23. At the 3rd meeting of the Ad Hoc Committee, on 18 October, the Chair-Rapporteur recalled the dialogue which had taken place on the topic of xenophobia over the past seven sessions and called for a more focused discussion on this topic with a view to weaving together common threads. He asked the Committee to consider the definition and treatment of xenophobia at international law; whether xenophobia and racial discrimination are the same; whether xenophobia fell within the ambit of article 1 of the CERD Convention; and

whether there are gaps that need to be elaborated or protection gaps that require filling. Reminding the Committee that these issues have been raised in previous sessions, he invited general statements on the topic of xenophobia.

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

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

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

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

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

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

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

31. The representative of Pakistan, speaking on behalf of the OIC, agreed to this approach and added that every important dictionary defines xenophobia, and that the concept is recognized in many important world summits and documents. As reflected in

HRC agenda item 9 and HRC resolution 16/18 and the discussions of the Committee over the last seven sessions, xenophobia is a very important concept for the OIC.

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

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

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

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

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

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

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

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

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

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

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

43. The Chair-Rapporteur recalled that some of these issues had already been tackled by regional experts in previous sessions. He quoted of Joy-Dee Davis Lake at the 5th session, who compared the ICERD to the Inter-American Conventions and said: “...I must point out that the ICERD - the first universal human rights treaty - was adopted in a very concrete and specific political context, in which important historical processes were developing both in the area of decolonization and in the recognition of equal rights principally in the USA...However, it was recognized that reality had changed drastically and not necessarily in the definitive eradication of racial discrimination. In addition to the migratory phenomena of the present time, there are new forms of intolerance, no longer only concerning race and ethnicity but involving many other human diversities. Intolerance has moved beyond an individual’s phenotypical characteristics to encompass other characteristics such as social condition, health, gender identity, national identity and religion. Therefore, the purpose of the Inter American Convention was to improve, strengthen, and enlarge the margins of protection already offered by the ICERD”. He urged the Committee to move in the direction of the mandate and to elaborate complementary standards as a matter of priority and necessity. Considering the extensive discussions with regional experts over the years, the Chair-Rapporteur recommended that the Committee zero in on the various issues.

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

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

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

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

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

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

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

51. The representative from the United States of America requested clarification on whether the in-session draft document would be the conclusion of the eighth session of the Ad Hoc Committee. The Chair-Rapporteur explained that the non-paper or in session document would not necessarily serve as the end product of the Ad Hoc Committee's session, but for the time being was a way of moving forward and refining some of the issues.

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

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

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

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

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

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

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

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

59. The representative of Brazil reinforced that the CERD continues to lack an official mandate to undertake country visits and follow-up to its recommendations which are key to

fully implementing Convention obligations. He stated that additional norms were needed in this area as all the treaty bodies created after the Convention already had this capacity.

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

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

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

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

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

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

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

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

67. In her presentation, Ms. Obadiaru provided an overview of the general situation of victims of racial discrimination in Switzerland and considered issues of effective and adequate remedies. Ms. Obadiaru noted that those who face discriminations increasingly confront forms of racism that are more complex and linked to wider issues such as gender discrimination, marginalization, and religion, etc. These issues are much more difficult to

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

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

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

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

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

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

73. Ms. Obadiaru underscored the complexity of multiple forms of discrimination, particularly as it relates to women, who face higher levels of discrimination, especially in the labour market, workplace, housing, etc. She emphasized the need for a comprehensive and intersectional approach in developing strategies, and the need for data collection to properly identify the main issues that affect racially disadvantaged groups, the profile of victims, and to develop concrete policies and mechanisms to better protect victims of racism or discriminations. Special attention must be given to those groups affected by the

intersection of different dimensions such as gender and racial discrimination (e.g. refugee and migrant women, female domestic workers, marginalized women, etc.).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

90. Ms. Kalibová's presentation focused on the general practice of criminal procedure in Czechia and Europe, the needs of victims, and how legislation and procedures can be

influenced by international conventions and the international community. She explained that In Iustitia is the only NGO in the region focusing on hate crimes. As a ‘frontline’ NGO, its mission is to improve the status of victims by providing legal representation and counselling. This work should be seen in the framework of Article 6 of the Convention, which binds all States to provide effective protection and remedies for victims. The Durban Declaration and Programme of Action also states that all persons who have experienced racial discrimination should have access to effective remedies, which should be widely known, easily accessible, expeditious, and not unduly complicated.

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

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

93. Ms. Kalibová talked about the impact of bias crime on individuals, explaining that bias crime creates identity damage. Additionally, the loss of dignity experienced during the crime can be reinforced by interactions with investigators, police, judges, and even social workers. Bias crime can cause severe health issues, both physically and psychologically, and even trauma. Furthermore, some victims lose their job due to the effects of a bias crime, and can also lose housing or encounter difficulties in finding a place to live which is the case for the Roma community in Czechia. Ms. Kalibová stated that ideally, physical and psychological harm, material loss, loss of dignity, privacy or family life, should be compensated by effective remedies. Effective remedies should recognise white bias and white privilege present in all institutions, which could discourage victims from seeking help. Care must be taken not to cause secondary victimisation.

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

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

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

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

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

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

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

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

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

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

Directive had yet to be implemented in Slovakia. In response to Namibia, Ms. Kalibová recommended the International Network on Hate Studies, a website with the contact information of practitioners and criminology trainers.

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

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

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

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

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

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

110. The Human Rights Tribunal of Ontario hears cases and issues decisions. It can accept applications from self-represented individuals. Ms. Hall explained that the HRLSC is working with the Tribunal to simplify the application form which is lengthy and can be

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

111. Ms. Hall discussed the HRLSC's innovative programmes to increase access to remedies for indigenous communities. For instance, applicants of indigenous origin can choose to receive assistance specifically by indigenous staff members. As a result of such initiatives, services to indigenous clients rose tenfold within one year after the start of this programme.

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

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

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

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

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

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

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

119. At the 7th meeting on 20 October, the Chair-Rapporteur announced that he had agreed to the proposal from the Committee members to move the agenda items scheduled for the cancelled meetings on 21 October to 24 October, and to adjust the remaining agenda items of the session accordingly in order to accommodate delegates that were required to

attend the 25th special session of the Human Rights Council on the human rights situation in Syria. With no objections from the Committee, the Chair-Rapporteur proceeded to adopt the change in the programme of work.

120. At this meeting, the Committee heard a presentation from Mr. Jamil Dakwar, Director of the Human Rights Program at the American Civil Liberties Union, on the agenda topic of “Effective and adequate remedies and the right to seek from competent national tribunals and other national institutions just and adequate reparation and satisfaction of victims, consistent with article 6 of the Convention and paragraph 165 of the Durban Declaration and Programme of Action”.

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

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

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

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

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

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

reservations, together with the inadequate domestic implementation of human rights treaties, significantly undermines these treaties and renders the significant protection contained therein meaningless.

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

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

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

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

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

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

133. Mr. Dakwar noted that there is always going to be a gap between the international framework and the national implementation, and that it is debatable to what extent a new instrument would be appropriate as the rise in hate crimes could be because of the gap in Convention, or because States are not actively implementing at the national level. He said that the United States government could do much more to enforce the Convention. However, he worried that the risk of opening up negotiation of the Convention was to lower the standards that were adopted decades ago. He said that taking a look at how the concluding recommendations and general comments of CERD can be taken more seriously would be beneficial.

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

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

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

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

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

139. Mr. Dakwar responded to Namibia's question by noting that it is imperative to address history and past wrongs, and how civil society continues to address this. He stated that the historic context should always be kept in mind in order to improve the future. He remarked that although the United States passed civil rights legislation in the 50s, 60s and 70s, this has not been enough address the deep history of discrimination in the country, and substantive equality is lacking.

140. Mr. Dakwar observed that there has been a militarization of policing that has been a serious concern to the ACLU because it has made law enforcement not an institution that communities could trust and seek protection from, but rather a force that is using militarized weapons to enforce safety. In the area of law enforcement, Mr. Dakwar acknowledged the lack of diversity; the vast majority of police are white, even in predominantly black communities. The administration is encouraging diversity in law

enforcement and this is critically important, but this is not enough and can also be used to hide discrimination. He stated that there should be specific laws regarding diversity in policing, but he pointed out that social ills should be addressed in other areas as well. He added that the International Association of Police Chiefs recently made a rare statement in which it acknowledged and apologized for the history of police engagement with African American and black communities in the United States.

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

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

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

144. The representative of Egypt emphasised that there are new forms of migratory flows from the Middle East and other regions due to violent conflict and climate change. Many of them reside in a grey area, as they are irregular migrants waiting for refugee status. The representative requested further information on discrimination against refugees in the United States and other regions. Mr. Dakwar responded that the main issue in terms of migrants in the United States concerns the U.S.-Mexico border. He stated that protection should be given to all people regardless of their status. The expert also noted the role of media in negative depictions of migrants and refugees. He also mentioned that the OHCHR published important new guidelines on the protection of migrants at international borders and how to treat individuals in this situation. Mr. Dakwar reiterated the need to address climate change as a reason for migration.

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

146. Mr. Jerald Joseph of the National Human Rights Commission of Malaysia identified a number of challenges facing the ASEAN region including the racialization of criminality, racism in the business environment, persecution of ethnic and religious minorities,

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

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

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

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

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

151. Ms. Lilla Farkas, Senior Legal Policy Analyst of the Migration Policy Group in Brussels, discussed the remedies available under European Union law for discrimination based on racial or ethnic origin. She stated that the European Union has an enormous pulling effect on European States; however, only with practical will would there be a practical way of ensuring equality. She highlighted a discrepancy in that while all European Member States had ratified the Convention, the European Union itself had not.

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

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

154. Ms. Farkas discussed the various laws protecting against racial discrimination in the EU system. The EU Racial Equality Directive took Convention as its model because there was no European general model at the time. The Racial Equality Directive provides for the role of NGOS to make interventions and submit *amicus curiae* on behalf of plaintiffs, the reversal of the burden of proof, and the establishment of equality bodies. There is also

Article 47 of the EU Charter of Fundamental Rights which represents quite a low standard in terms of remedies and sanctions provided by EU law. Article 47 prescribes the “right to an effective remedy before a tribunal” and that “everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal” and there is the possibility – not an obligation on Member States – for victims to be advised, defended and represented. The Charter also mentions legal aid which Ms. Farkas is so expensive in reality that it will likely never be available universally. She also spoke of the cutting of legal aid budgets across Europe at the moment which has meant that legal aid is available in far less cases.

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

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

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

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

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

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

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

procedures. Lastly, Ms. Farkas called on Convention States parties to establish an equality bodies network in order to achieve better and coordinated outreach to victims.

E. Racism and sport

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

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

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

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

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

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

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

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

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

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

172. In addition, the Sports Visitors program brings youth athletes and youth influencers to the United States for a short-term sports cultural exchange, including sessions on gender equity in sport, acceptance and tolerance, sport and disability, and conflict resolution. It provides Americans with an opportunity to interact first-hand with people from every region of the world, which can help prevent and reduce xenophobia and increase inter-cultural understanding.

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

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

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

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

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

Annexe II

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

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

10:01 – 13:00	Item 8 General discussion and exchange of views on items 4 and 6	Item 9 General discussion and exchange of views on item 5	Item 11 Sport and racism General discussion and exchange of views on item 10 -- Item 12 Questionnaire [Update discussion, conclusions and recommendations]	Item 14 Discussion on the introduction of new/list topics...consideration of new/list topics -- General discussion and exchange of views -- Conclusions and Recommendations	Conclusions and Recommendations -- General discussion and exchange of views
15:00 – 18:00	Item 8 continued General discussion and exchange of views on items 4 and 6	Item 10 Sport and racism [Update discussion, conclusions and recommendations]	Item 13 General discussion and exchange of views on item 7	Compilation of the Report	Item 15 Adoption of the report of the 8th session

Annexe III

List of attendance

Member States

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

Non-Member States represented by observers

Holy See.

Intergovernmental Organizations

African Union, Organization of Islamic Cooperation, European Union.

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

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

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

Culture of Afro-Indigenous Solidarity.
