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Tema 9 de la agenda
Racismo, discriminación racial, xenofobia y formas conexas de intolerancia, seguimiento y aplicación de la Declaración y el Programa de Acción de Durban

Informe del Comité Especial sobre la Elaboración de Normas Complementarias acerca de su sexto período de sesiones* **

Presidente-Relator: Sr. Abdul **Samad Minty** (Sudáfrica)

Resumen

Este informe se presenta de conformidad con la decisión 3/103 y las resoluciones 6/21 y 10/30 del Consejo de Derechos Humanos. El informe es un resumen de las deliberaciones del sexto período de sesiones del Comité Especial sobre la Elaboración de Normas Complementarias, durante el que, con las aportaciones de varios expertos en las esferas pertinentes, se celebraron debates sustantivos sobre los numerosos temas acordados en el quinto período de sesiones. Además, durante el período de sesiones el Comité examinó el cuestionario enviado por la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos y la versión actualizada del resumen de las respuestas elaborado por el Presidente-Relator de conformidad con la resolución 21/30 del Consejo de Derechos Humanos.

* Los anexos del presente informe se distribuyen únicamente en el idioma en que se presentaron.
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I. Introducción

1. El Comité Especial sobre la Elaboración de Normas Complementarias presenta este informe de conformidad con la decisión 3/103 y las resoluciones 6/21 y 10/30 del Consejo de Derechos Humanos.

II. Organización del período de sesiones

2. El sexto período de sesiones del Comité Especial tuvo lugar del 7 al 17 de octubre de 2014. Durante el período de sesiones, el Comité celebró 15 sesiones.

A. Asistencia

3. Asistieron al período de sesiones representantes de los Estados Miembros y de los Estados no miembros en calidad de observadores, organizaciones intergubernamentales y organizaciones no gubernamentales (ONG) reconocidas como entidades consultivas por el Consejo Económico y Social.

B. Apertura del período de sesiones

4. La primera sesión del sexto período de sesiones del Comité Especial fue inaugurada por el Jefe de la Sección de Lucha contra la Discriminación Racial de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos (ACNUDH). El Alto Comisionado de las Naciones Unidas para los Derechos Humanos formuló una declaración de apertura en la que recordó que el Comité tenía por tarea buscar formas de reforzar la protección de todas las personas contra los flagelos del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, como se enunciaba en la Declaración y el Programa de Acción de Durban, que seguía orientando la labor de la Oficina. La labor del Comité consistía en indicar de qué modo la comunidad internacional podía asegurar a los millones de víctimas de esas vulneraciones un mayor grado de decencia, es decir, unas condiciones más dignas, igualitarias y equitativas. El Alto Comisionado señaló que confiaba en que el Comité continuara avanzando durante el período de sesiones, cumpliera su mandato y siguiera adelante, proporcionando orientación sobre cómo hacer frente con más eficacia al racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia.

C. Elección del Presidente-Relator

5. En su primera sesión, el Comité Especial eligió Presidente-Relator por aclamación a Abdul Samad Minty, Representante Permanente de la República de Sudáfrica ante la Oficina de las Naciones Unidas en Ginebra.

6. El Presidente-Relator expresó su agradecimiento al Alto Comisionado por su participación y su declaración de apertura y al Comité por haberlo reelegido, y señaló que trabajaría conjuntamente con todos los asociados y miembros del Comité. En el párrafo 199 del Programa de Acción de Durban, la Conferencia Mundial había recomendado que la Comisión de Derechos Humanos preparara normas internacionales complementarias que fortalecieran y actualizaran los instrumentos internacionales contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, en todos sus aspectos. Las deliberaciones del Comité continuarían con el enfoque gradual que se había

adoptado en períodos de sesiones anteriores, lo que brindaba a los miembros la oportunidad de seguir reflexionando sobre los temas que se habían de examinar, así como sobre su vínculo con el mandato del Comité y el párrafo 199 del Programa de Acción, y comprenderlos mejor. La forma de presentación del resultado del período de sesiones se determinaría mediante las deliberaciones que tendrían lugar a lo largo de este. Sobre la base del consenso alcanzado en los dos períodos de sesiones anteriores, el Presidente-Relator alentó al Comité a que siguiera centrándose en la difícil situación de las víctimas y garantizara el respeto incondicional de la dignidad humana. A ese respecto, consideraba conveniente estudiar la posibilidad de establecer un marco normativo internacional sobre la xenofobia, en vista de que, por sus manifestaciones más agresivas, se requería la adopción de medidas más enérgicas. Destacó, en particular, los flagrantes actos de racismo y xenofobia que se seguían observando en los campos de fútbol y sus inmediaciones en muchos países debido a que no se habían adoptado medidas adecuadas para contrarrestarlos.

D. Aprobación del programa

7. Durante la primera sesión, el Comité Especial aprobó el programa del sexto período de sesiones.

E. Organización de los trabajos

8. El Presidente-Relator presentó el proyecto de programa de trabajo. El programa de trabajo (véase el anexo III) se aprobó en la primera sesión.

9. El Presidente-Relator invitó a las delegaciones y los participantes a que formularan declaraciones generales sobre el período de sesiones. Muchas delegaciones acogieron con gran satisfacción la declaración de apertura y la participación del Alto Comisionado.

10. El representante de Etiopía, en nombre del Grupo de los Estados de África, reafirmó la adhesión del Grupo a la labor del Comité y recordó la decisión 3/103 del Consejo de Derechos Humanos, en la que el Consejo había encomendado al Comité el mandato de elaborar, como cuestión prioritaria y necesaria, normas complementarias en forma de convención o protocolo adicional de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial (en lo sucesivo, la Convención) que subsanaran las lagunas de esta y que también establecieran una nueva normativa para combatir todas las formas del racismo contemporáneo, incluida la incitación al odio racial o religioso. Preocupaba al Grupo que los avances en la elaboración de normas complementarias de la Convención hubiesen sido limitados debido a los debates injustificados sobre la propia necesidad de normas complementarias. El representante destacó que era necesario ocuparse de las víctimas de la aplicación de perfiles en los ámbitos que se detallaban en la lista de temas del segundo período de sesiones, ya que el Comité debía brindarles una mejor protección y una reparación plena y eliminar completamente la impunidad respecto de esos actos de racismo. El Grupo de los Estados de África exhortó a todos los grupos regionales a que reforzaran su compromiso político de establecer normas complementarias e intensificar la lucha contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia.

11. El Embajador del Brasil ofreció el apoyo de la Misión Permanente del Brasil ante la Oficina de las Naciones Unidas en Ginebra a los trabajos del Comité Especial. El Embajador puso de relieve el carácter multicultural y multirracial de la sociedad del Brasil y subrayó la importancia de la Declaración y el Programa de Acción de Durban para su país, así como la importante contribución de ese instrumento a la lucha contra el racismo, la

discriminación racial, la xenofobia y las formas conexas de intolerancia. En relación con las medidas de lucha contra el racismo, señaló que las medidas de acción afirmativa eran fundamentales en la política nacional del Brasil.

12. El Embajador del Pakistán, en nombre de la Organización de Cooperación Islámica (OCI), se refirió a la creciente discriminación contra los musulmanes y la tendencia general a la islamofobia en todo el mundo, que constituían impedimentos para la cohesión pacífica. Subrayó la importancia del párrafo 199 del Programa de Acción de Durban y de la resolución 16/18 del Consejo de Derechos Humanos, que resultaban instructivos para combatir el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. Hizo hincapié en la necesidad de tipificar como delito la incitación al odio racial, nacional y religioso, y señaló que el Plan de Acción de Rabat sobre la prohibición de la apología del odio nacional, racial o religioso que constituía incitación a la discriminación, la hostilidad o la violencia se consideraba una base útil para deliberaciones futuras.

13. El Embajador de Argelia manifestó que su país respaldaba las declaraciones formuladas por el representante de Etiopía y por el Embajador del Pakistán, quienes habían intervenido en nombre del Grupo de los Estados de África y de la OCI, respectivamente. Observó que habían aumentado los actos racistas y la xenofobia, así como sus repercusiones para los migrantes, los refugiados y los solicitantes de asilo. El fenómeno de la xenofobia se estaba propagando por todo el mundo, y también estaba aumentando el número de víctimas. Destacó que las víctimas resultaban afectadas tanto a nivel "moral" como "físico". Argelia apoyaba el mandato del Comité Especial e instó a que se adoptara para su labor un enfoque centrado en las víctimas. Sería importante analizar la especificidad de los instrumentos existentes.

14. El representante de Marruecos expresó el respaldo de su país a las declaraciones formuladas en nombre del Grupo de los Estados de África y en nombre de la OCI. Marruecos otorgaba particular importancia a la labor del Comité. Observó que habían proliferado la mentalidad y las acciones racistas y xenófobas en todo el mundo, y alertó sobre el peligro de adoptar un enfoque unidireccional en los trabajos del Comité Especial. Señaló que el marco ya establecido se encontraba bajo una grave amenaza, e indicó que la Declaración y el Programa de Acción de Durban, junto con la Declaración y el Programa de Acción de Viena, constituían importantes fuentes de información. El delegado afirmó que era necesario aportar equilibrio a la comunidad internacional, y dio las gracias a las delegaciones que habían contribuido de manera positiva a la labor del Comité. El Plan de Acción de Rabat proporcionaba un marco firme para tratar las cuestiones que incumbían al Comité.

15. La representante de la Unión Europea señaló que el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia se oponían a los principios que subyacían a la Unión Europea y que constituían valores comunes de todos sus Estados miembros, a saber, el respeto de la dignidad humana, la libertad, la democracia, la igualdad, el estado de derecho y el respeto de los derechos humanos. Citó textualmente la declaración formulada en nombre de la Unión Europea por la Alta Representante de la Unión para Asuntos Exteriores y Política de Seguridad en el Día Internacional de la Eliminación de la Discriminación Racial: "Debemos actuar de manera más resuelta para afrontar todas las formas de intolerancia, racismo, xenofobia y otros tipos de discriminación. En tiempos de crisis económica, los peligros del racismo y de la xenofobia en auge, alimentados en parte por el aumento del desempleo y la inseguridad sobre el futuro, son muy reales. Precisamente en estos tiempos difíciles nuestro empeño en la lucha contra el racismo debe ser inexorable". La aplicación efectiva del derecho internacional de los derechos humanos vigente, en particular la Convención, debe ser una cuestión prioritaria.

16. El representante de la República Bolivariana de Venezuela ofreció el respaldo de su país a la labor del Comité Especial y lamentó que algunos países aún no prestaran apoyo al Comité. Instó a que se refrendaran y llevaran a la práctica las disposiciones acordadas por consenso en el párrafo 199 del Programa de Acción de Durban, a fin de hacer frente al racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia en todo el mundo.

17. El representante de Suiza, en nombre también de la Argentina, Armenia, el Brasil, Chile, Colombia, el Japón, México y el Uruguay, expresó su reconocimiento por los preparativos llevados a cabo entre períodos de sesiones y su respaldo al programa de trabajo y a la inclusión de presentaciones de expertos en el período de sesiones. Hizo hincapié en la importancia de la Convención y de la Declaración y el Programa de Acción de Durban para los trabajos del período de sesiones, y señaló que las delegaciones en cuyo nombre intervenía trabajarían constructivamente para determinar si existían lagunas en el marco normativo y cómo se abordarían durante el período de sesiones.

18. La representante de Sudáfrica señaló que su delegación suscribía la declaración general formulada por el representante de Etiopía en nombre del Grupo de los Estados de África. Acogió con satisfacción la aplicación de un enfoque gradual para abordar los temas, siguiendo la orientación del Presidente-Relator. Preocupaba a Sudáfrica que el párrafo 199 del Programa de Acción de Durban se hubiera convertido en objeto de disputa y que no se hubiera avanzado en la elaboración de normas complementarias de la Convención. La oradora recordó al Comité su mandato, citando la decisión 3/103. En opinión de Sudáfrica, la tarea del Comité era subsanar lagunas y, por consiguiente, la oradora instó a las delegaciones a que superaran sus posturas inflexibles y trataran de proporcionar protección y reparación adecuadas a las víctimas del racismo y de poner fin a la impunidad respecto de los actos de racismo, discriminación racial, xenofobia y formas conexas de intolerancia. La oradora manifestó la voluntad de su delegación de trabajar constructivamente para agilizar la tarea apremiante de elaborar las normas complementarias de la Convención.

19. El representante de Indonesia destacó que los fenómenos del racismo, la xenofobia y las formas conexas de intolerancia seguían existiendo y, en algunos casos, se habían intensificado y habían adoptado formas diversas. La importante labor del Comité consistía en lograr un resultado concreto respecto de lo que se entendía por normas complementarias de la Convención. Era necesario abordar la cuestión del discurso de odio con dimensiones religiosas y étnicas, que guardaba relación con la del límite entre la libertad de religión y la libertad de expresión y de opinión. Indonesia otorgaba gran importancia a la libertad de religión y a la libertad de expresión, y consideraba que esas libertades podían ir unidas en el marco del derecho internacional de los derechos humanos a escala nacional. Además, su país había constatado que los fenómenos mencionados tenían carácter transfronterizo, debido, en parte, al rápido desarrollo de la tecnología de la información y de las comunicaciones. Indonesia estimaba que podría hacer falta un instrumento internacional destinado a prevenir eficazmente la incitación a la hostilidad y la violencia por motivos de religión o creencias.

20. El representante de los Estados Unidos de América señaló que el racismo era incompatible con los valores de su país. Subrayó la importancia de la labor del Comité y observó que su mandato incluía la promoción de planes de acción consensuados y no la elaboración de nuevos instrumentos de derecho internacional confusos. La xenofobia representaba un problema grave; no obstante, no se requerían nuevos tratados o tratados revisados para hacerle frente, sino que había que aplicar el derecho de los derechos humanos vigente. La delegación opinaba que esas conclusiones se habían reiterado en las opiniones de los expertos que se habían dirigido previamente al Comité.

21. El representante de Nigeria señaló que su país se adhería a la declaración formulada en nombre del Grupo de los Estados de África. Puso de relieve las cuestiones de la

estigmatización y la xenofobia, destacó la importancia de reforzar la protección internacional de las víctimas de esos agravios e hizo hincapié en que los refugiados, los solicitantes de asilo y los migrantes eran particularmente vulnerables, lo que ponía de manifiesto la importancia de la labor del Comité.

III. Deliberaciones generales y temáticas

A. Prevención y concienciación

22. En la segunda sesión, realizaron presentaciones ante el Comité Especial Patrick Gasser, Director de la Sección de Fútbol y Responsabilidad Social de la Unión de Federaciones de Fútbol Europeas (UEFA), Jonas Burgheim, Director Adjunto de la Oficina de las Naciones Unidas sobre el Deporte para el Desarrollo y la Paz, y Pavel Klymenko, representante de la red Football Against Racism in Europe (FARE), sobre el tema de la agenda "Prevención y sensibilización, entre otras cosas mediante la educación y formación en derechos humanos, relativas a la lucha contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia" en lo referente al deporte.

23. En la tercera sesión, la Presidenta del Grupo de Trabajo de Expertos sobre los Afrodescendientes, Mireille Fanon-Mendès-France, hizo una presentación sobre el mismo tema de la agenda. En la cuarta sesión, Karel Fracapane, de la Sección de la Educación para la Salud y la Ciudadanía Global de la Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura (UNESCO), informó al Comité de la labor de la Organización sobre ese tema del programa.

24. Los resúmenes de las presentaciones y los subsiguientes debates con los asistentes a la sesión se recogen en el anexo I, sección A.

B. Cuestionario realizado de conformidad con lo dispuesto en el párrafo 4 de la resolución 21/30 del Consejo de Derechos Humanos

25. En la quinta sesión, el Presidente-Relator expuso de manera general la versión actualizada del resumen de las respuestas recibidas al cuestionario redistribuido, realizado de conformidad con lo dispuesto en el párrafo 4 de la resolución 21/30 del Consejo de Derechos Humanos. En una nota verbal de 21 de julio de 2014, había invitado a presentar sus respuestas al cuestionario a las misiones permanentes en Ginebra y Nueva York que todavía no lo habían hecho, y había indicado que agradecería recibir información adicional de los Estados que ya habían respondido al cuestionario.

26. Al vencer el plazo, el 19 de septiembre de 2014, se habían recibido 13 respuestas adicionales. El Presidente-Relator propuso que el cuestionario y el resumen de las respuestas se examinaran colectivamente para ayudar al Comité Especial a mejorar la información que figuraba en la versión actualizada del resumen de las respuestas, y a examinar las deficiencias y formular sugerencias para subsanarlas. Ambos enfoques de la labor del Comité, con una nueva convención o sin ella, eran pertinentes en la medida en que permitiesen mejorar las condiciones de las víctimas.

27. El Presidente-Relator presentó el documento en el que se resumían las respuestas al cuestionario e invitó a los asistentes a que reflexionaran sobre cómo proceder con el resultado y cómo proseguir con el tema del cuestionario. Las respuestas todavía no eran representativas, sino anecdóticas, pero resultaban útiles en relación con los diversos

aspectos de las deliberaciones. La versión original de las respuestas recibidas al cuestionario podía consultarse en el sitio web del ACNUDH.

28. El Presidente-Relator planteó diversas cuestiones relativas a la función de las instituciones y la legislación, las disposiciones constitucionales, la reparación a las víctimas y las medidas positivas. Señaló que la mayoría de las nuevas respuestas proporcionaban información interesante sobre la cuestión de la xenofobia, que parecía ser un problema que afectaba a muchos países de todo el mundo. A ese respecto, preguntó qué iniciativas se estaban emprendiendo a escala nacional, y si cabía la posibilidad de que algunos países o regiones no se enfrentaran a problemas relacionados con la xenofobia. Preguntó en qué se diferenciaban los delitos motivados por prejuicios y los delitos motivados por la xenofobia, y si la xenofobia era un sentimiento o la motivación de un acto. Invitó a los asistentes a que consideraran la xenofobia en sus diversas manifestaciones. El Presidente-Relator también preguntó si combatir el extremismo era lo mismo que combatir la discriminación y la xenofobia, solicitó información sobre la eficacia de los mecanismos nacionales y preguntó si la definición de "mecanismo nacional" debía entenderse en un sentido estricto o interpretarse de manera amplia, y si el Comité para la Eliminación de la Discriminación Racial resultaba eficaz, especialmente en relación con la xenofobia. Preguntó, además, qué recomendaciones de ese Comité habían llevado a la práctica los Estados y si las reservas estaban obstaculizando considerablemente la aplicación de la Convención.

29. La representante de la Unión Europea formuló observaciones preliminares, en las que manifestó decepción por el hecho de que la tasa de respuesta al cuestionario siguiese siendo baja. Hizo hincapié en que algunas regiones continuaban estando insuficientemente representadas en esas respuestas, y en que a la Unión Europea le gustaría escucharlas. Destacó la importancia de la Convención y reiteró que los Estados que aún no la habían ratificado o no se habían adherido a ella debían hacerlo. Desde hacía mucho tiempo, la Unión Europea mantenía que la plena aplicación de las normas existentes era fundamental; solo en una de las nuevas respuestas se mencionaba la necesidad de normas complementarias.

30. El representante del Brasil señaló que, según las respuestas recibidas, tanto la xenofobia como los mecanismos nacionales eran motivo de preocupación para los países. Sin embargo, aún no se había alcanzado un consenso sobre la cuestión de las lagunas. Era necesario seguir examinando ambos temas, y el dictamen al respecto del Comité para la Eliminación de la Discriminación Racial resultaba esencial. El Comité Especial también podía considerar la posibilidad de privilegiar la formulación de, entre otras cosas, planes de acción y directrices sobre esas cuestiones. Con respecto a las lagunas de procedimiento, en las respuestas al cuestionario se indicaba que el Comité para la Eliminación de la Discriminación Racial seguía careciendo de un mandato oficial para realizar visitas a países o supervisar la aplicación de sus recomendaciones, acciones que resultaban importantes para el cumplimiento de sus funciones. Los órganos de tratados creados posteriormente contaban con disposiciones sobre esos asuntos. Por tanto, posiblemente se necesitasen normas adicionales en esa esfera.

31. El representante de la República Bolivariana de Venezuela destacó la importancia de disponer de nuevas normas complementarias para luchar contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, y se refirió a la necesidad de tipificar como delito la discriminación en todas sus formas. La sociedad venezolana era multiétnica y el Gobierno se esforzaba por aplicar la ley de 2011 de lucha contra la discriminación racial, en cuyo artículo 11 se abordaban la xenofobia y los actos de racismo. El representante también destacó la función positiva de la sociedad civil respecto de la prevención y erradicación de la discriminación racial, e informó sobre el establecimiento de una institución nacional de lucha contra la discriminación racial como medida de aplicación efectiva de las disposiciones de la Convención y de la Declaración y

el Programa de Acción de Durban. El Gobierno se había comprometido a recopilar datos desglosados y el reciente censo de 2011 aportaría información más detallada sobre la población.

32. El representante de la Federación de Rusia también estimaba necesario elaborar normas adicionales y destacó que la normativa internacional vigente estaba resultando ineficaz. Alentó a las delegaciones a que consideraran la posibilidad de redactar nuevas normas complementarias y mejorar la eficacia de los mecanismos existentes.

33. El representante de Marruecos comunicó a los asistentes que su país había aprobado una nueva política migratoria, que exigía la adopción de un enfoque basado en los derechos humanos. Los migrantes requerían reconocimiento legal y derechos en esferas como el acceso a la vivienda y la educación. La nueva política era de carácter amplio y abarcaba a los solicitantes de asilo y los refugiados. Señaló que era necesario evitar un enfoque orientado a la seguridad, que conducía a una mentalidad cerrada, y reconoció que existían problemas en relación con la recopilación de datos, si bien añadió que el país estaba realizando un censo que repercutiría de forma positiva en la formulación de las políticas públicas. Destacó la importancia de las estadísticas vitales.

34. El Presidente-Relator preguntó si las constituciones y las legislaciones eran suficientes para hacer frente al racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia, y cómo podían los gobiernos traducir en acciones sobre el terreno las medidas jurídicas para la protección de las víctimas. Invitó a los asistentes a que intercambiaran información sobre buenas prácticas y dificultades a ese respecto.

35. El representante de Marruecos señaló que existían diferentes enfoques para combatir el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. Por una parte, la Constitución incluía disposiciones destinadas a la lucha contra la discriminación. Por otra parte, a partir de los hechos concretos, había que considerar los aspectos operativos, ya que Marruecos era un país de origen, tránsito y destino de migrantes. La combinación de esos factores hacía que en Marruecos existiese un gran número de migrantes en situación irregular. Se necesitaba una nueva política de asilo y migración, y, a ese respecto, se había presentado un informe al Gobierno, que había decidido adoptar una nueva política. El representante observó que había que hacer frente en la práctica a las cuestiones cotidianas. Las medidas de alerta temprana habían puesto de relieve la necesidad de enmendar las disposiciones legales. Se habían aprobado nuevos proyectos de ley sobre la migración y los refugiados. La dificultad estribaba en traducir esas normas jurídicas en acciones concretas.

36. El representante de Italia puso de relieve los sólidos principios consagrados en la Constitución italiana, en la que se transponían directivas de la Unión Europea que imponían obligaciones. Instituciones como la Oficina Nacional contra la Discriminación Racial tenían el mandato de proteger a las víctimas, que podían acceder fácilmente al sitio web de la Oficina y disponían de una línea telefónica que funcionaba las 24 horas. Reconoció que se necesitaban recursos adicionales. En relación con la pregunta 2 vi) del cuestionario relativa al artículo 14 de la Convención, señaló que no existía información sobre el número de Estados que habían aceptado el artículo 14. Destacó que la gran cantidad de informes atrasados que debían presentarse al Comité para la Eliminación de la Discriminación Racial constituía un problema grave, e indicó que muchos países no habían presentado ningún informe o acumulaban un gran retraso.

37. El Presidente-Relator confirmó que el gran número de informes atrasados que debían presentarse a los órganos de tratados era un problema general, que había sido reconocido durante el proceso del examen periódico universal. Algunos países no disponían de los recursos necesarios para presentar informes.

38. El representante de Egipto indicó que la sociedad de su país era "concordante y armoniosa" en lo relativo a la raza y la religión, y que las minorías no se veían afectadas por problemas de discriminación racial en el contexto de la Constitución vigente. Todos los ciudadanos eran iguales, y todas las personas eran iguales ante la ley. No existía xenofobia a escala nacional y los ciudadanos se consideraban egipcios, aunque fuesen de otra procedencia. El Consejo Nacional de Derechos Humanos era un órgano independiente que se ocupaba de todas las cuestiones de derechos humanos y recibía quejas de las víctimas. Disponía de los recursos que necesitaba. El Consejo Nacional remitía las quejas a las autoridades judiciales y a los tribunales, y facilitaba el acceso al proceso judicial.

39. El representante del Uruguay señaló que su país había ratificado la Convención. Además de la Constitución, existían una serie de leyes específicas acerca de cuestiones relacionadas con la discriminación, por ejemplo, sobre los migrantes, que incluían sus derechos, la reunificación familiar y la no discriminación por ningún motivo. Las autoridades de migración habían puesto en marcha un programa de respuesta rápida, que les permitía expedir documentos de identidad en un plazo de 48 horas. En 2004 se había aprobado una ley de lucha contra la discriminación racial y se había creado una comisión contra el racismo y la discriminación encargada de aplicar la ley. También existían políticas destinadas a prevenir la discriminación. La comisión había presentado al Parlamento un proyecto de ley de cuotas para los afrodescendientes, que había sido aprobado. Durante el examen periódico universal del Uruguay, el Gobierno se había comprometido a elaborar un plan de acción contra la discriminación racial, y el proceso se encontraba en su segunda fase, centrada en la redacción del plan.

40. La representante de Sudáfrica puso de relieve que la Constitución de 1996 reconocía las injusticias cometidas en el país en el pasado, se centraba en la idea de una nación unida en su diversidad y tenía por objeto fomentar la armonía racial. En el capítulo 9 de la Constitución se disponía la creación de la Comisión para la Promoción y Protección de los Derechos de las Comunidades Culturales, Religiosas y Lingüísticas. En 2002 el país había acogido la Cumbre de la Unión Africana, destinada a reforzar la cohesión del pueblo africano. En 2012 había acogido la Cumbre Mundial de la Diáspora Africana, en la que se había dotado de un significado concreto al concepto de "una familia". Sudáfrica también había desempeñado una importante función en la Nueva Alianza para el Desarrollo de África (NEPAD).

41. El representante de Argelia afirmó que en la Constitución del país se abordaba la discriminación racial y que existían leyes destinadas a hacer efectivo el principio de no discriminación. El artículo 29 de la Constitución prohibía toda forma de discriminación; todos los códigos, incluidos el penal y el electoral, prohibían la discriminación. Hizo hincapié en la importancia de la igualdad entre las personas y dijo que se prestaba especial atención a las cuestiones relativas a los migrantes y sus familias. Existían medidas legislativas e institucionales destinadas a eliminar la discriminación, y el acceso a la justicia civil ya no estaba sujeto a condiciones para los extranjeros, que además tenían a su disposición servicios de interpretación y asistencia letrada.

42. El representante de Suiza señaló que la xenofobia no era legal en el marco de su legislación nacional y que la administración pública debía respetar los derechos fundamentales. La discriminación racial era sancionable en Suiza. La legislación brindaba protección suficiente contra la discriminación, si bien convenía reforzar la aplicación de las leyes vigentes. Informó a los asistentes sobre tres instituciones: a) la Comisión Federal contra el Racismo, que desde su creación en 1995 se encargaba de supervisar actividades a fin de detectar casos de racismo y discriminación racial, trabajaba para fomentar una mejor comprensión, hacía hincapié en la prevención y escuchaba las preocupaciones de las minorías; b) el Servicio de Lucha contra el Racismo, que desde 2001 se ocupaba de promover la coordinación y disponer medidas para combatir el racismo; y c) la Comisión

Federal para las Migraciones, que desde 2008 se dedicaba a salvar la distancia entre las autoridades y la sociedad civil sobre cuestiones relativas a la migración.

43. El representante de Grecia informó al Comité de que, tres semanas antes, el Parlamento griego había aprobado una nueva ley de lucha contra el racismo, que prohibía las declaraciones racistas y la violencia infligida a personas por motivos de raza y otras formas de discriminación, y establecía diversas medidas y sanciones, como penas de prisión y multas. La condición de funcionario se consideraba factor agravante, lo que entrañaba una duplicación de la sanción. El delegado también señaló la importancia de las medidas de concienciación pública e informó a los asistentes sobre algunas actividades organizadas en Ginebra por la Misión Permanente de Grecia, entre otras un acto paralelo al Consejo de Derechos Humanos sobre la igualdad y el deporte y otro acto organizado con la Misión Permanente de Sudáfrica que contó con la presencia del abogado del difunto Presidente Nelson Mandela, George Bizos.

44. El Presidente-Relator destacó la función de la judicatura en la interpretación de la legislación. Dijo que sería interesante analizar la jurisprudencia y la forma en que la judicatura asumía su propia responsabilidad y sentaba precedente para otros casos. También indicó que los mecanismos nacionales recibían sus mandatos mediante disposiciones legales, pero convenía examinar la eficacia de dichas instituciones y cómo representaban a la población. Se refirió, asimismo, a las lagunas de procedimiento respecto de la Convención, especialmente en lo relativo a la xenofobia.

45. El representante de la Federación de Rusia subrayó que las reservas a la Convención repercutían negativamente en su aplicación. Por ejemplo, en relación con el artículo 4, en la era de la tecnología moderna se estaban propagando los discursos de odio y se hacía necesario retirar las reservas a ese artículo. La Federación de Rusia no tenía reservas.

46. El representante del Brasil señaló que el Comité Especial debía seguir examinando si la Convención tenía lagunas sustantivas. En cuanto a las lagunas de procedimiento, los expertos del Comité para la Eliminación de la Discriminación Racial habían señalado, en los dos períodos de sesiones anteriores, que carecían de un mandato para llevar a cabo visitas a países y que les resultaría útil contar con dicho mandato, establecido en un documento adicional. Esta cuestión también se había planteado en las respuestas al cuestionario.

47. El representante de los Estados Unidos destacó que la mejor forma de responder al discurso de odio era con más discurso. Observó que la Convención prohibía claramente la discriminación y los actos de violencia, y que no había lagunas en la Convención en lo relativo a la xenofobia como cuestión jurídica. Era evidente que existían deficiencias en el cumplimiento efectivo de las obligaciones vigentes y ese tema se prestaba a un debate productivo que los Estados Unidos esperaban con interés.

48. La representante de Sudáfrica recordó que se permitían las reservas que no fuesen incompatibles con el tratado, incluidas las reservas al artículo 4. Subrayó que, si no se establecían normas adicionales, las formas contemporáneas del racismo y la discriminación racial quedarían impunes, y señaló la importancia de la recomendación general Nº 15 (2004) del Comité para la Eliminación de la Discriminación Racial relativa a la discriminación contra los no ciudadanos.

49. La representante de la Unión Europea dijo que los Estados miembros de la Unión Europea estaban obligados, con arreglo a directivas, a establecer organismos para la igualdad, que eran organizaciones independientes las cuales, entre otras cosas, podían realizar estudios independientes, publicar informes independientes y formular recomendaciones. Equinet era una red europea de organismos para la igualdad integrada por 38 organizaciones. En relación con el discurso de odio, se insistió en el pleno respeto de la libertad de expresión y en la importancia del marco internacional existente. La

representante se refirió a la decisión marco de 2008 del Consejo de la Unión Europea relativa a la lucha contra determinadas formas y manifestaciones de racismo y xenofobia mediante el derecho penal, en la que se disponía que la incitación pública intencionada al odio o la violencia por motivos racistas o xenófobos constituía un delito y se exigían enmiendas a la legislación penal.

50. El representante de Marruecos señaló la necesidad de reprimir el discurso de odio en Internet, lo que constituía una gran preocupación para muchos Estados, si bien no debía socavar en modo alguno los esfuerzos estatales destinados a combatir el discurso de odio difundido por los medios tradicionales. Marruecos había establecido medidas jurídicas, entre otras el artículo 6 de la Constitución, que consagraban la igualdad ante la ley, y había elaborado un código penal y un código de la prensa. Los periodistas que incitaban al odio contra los extranjeros eran sancionados. Resultaba importante interactuar de modo eficaz con el Comité para la Eliminación de la Discriminación Racial y presentar informes periódicos.

51. El representante de los Estados Unidos expresó el firme desacuerdo de su país con las restricciones a la libertad de expresión. Destacó que esas restricciones eran peligrosas y que los gobiernos no debían ejercer control sobre la expresión. Los gobiernos no democráticos utilizaban indebidamente esas medidas.

C. Medidas especiales

52. En la sexta sesión, el Comité Especial inició un debate sobre el tema "Medidas especiales, incluidas medidas, estrategias y acciones afirmativas o positivas para prevenir, combatir y erradicar todas las formas y manifestaciones del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia". La sesión fue presidida, de manera excepcional, por Ephrem B. Hidug, de la Misión Permanente de Etiopía ante la Oficina de las Naciones Unidas en Ginebra. Durante la sesión, Carlos Vázquez, miembro del Comité para la Eliminación de la Discriminación Racial, hizo una presentación sobre cómo se abordaban las medidas especiales en la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial y en la práctica del Comité.

53. En la séptima sesión, Theodore Shaw, Profesor y Director del Centro de Derechos Civiles de la Facultad de Derecho de Chapel Hill, de la Universidad de Carolina del Norte, también hizo una presentación sobre la cuestión de las medidas especiales. En la octava sesión, Elisa Alonso Monçores, investigadora del Instituto de Economía de la Universidad Federal de Río de Janeiro (Brasil), hizo una presentación sobre el tema "Medidas de acción afirmativa en el Brasil: la experiencia reciente y los indicadores sociales".

54. En la novena sesión, Dimitrina Petrova, Directora Ejecutiva de Equal Rights Trust, hizo una presentación sobre el tema del programa.

55. Los resúmenes de las presentaciones y los subsiguientes debates con los asistentes se recogen en el anexo I, sección B.

D. Mecanismos nacionales

56. En la décima sesión, Pedro Mouratian, Presidente del Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI) de la Argentina, informó al Comité Especial sobre la labor llevada a cabo por su organización en relación con el tema "Creación, designación o mantenimiento de mecanismos nacionales competentes para la prevención y protección contra todas las formas y manifestaciones del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia".

57. El resumen de la presentación y el subsiguiente debate con los asistentes se recogen en el anexo I, sección C.

E. Xenofobia

58. El tema "Xenofobia" se examinó en la 11ª sesión. Hizo una presentación Ioannis Dimitrakopoulos, Jefe del Departamento de Igualdad y Derechos de los Ciudadanos de la Agencia de los Derechos Fundamentales de la Unión Europea.

59. El resumen de la presentación y el subsiguiente debate con los asistentes se recogen en el anexo I, sección D.

F. Debate general e intercambio de opiniones, 12ª sesión

60. El Comité Especial celebró un debate general y un intercambio de opiniones en su 12ª sesión.

61. La representante de la Unión Europea formuló algunas observaciones preliminares y señaló que, a su juicio, el cuestionario redistribuido había producido unos resultados muy similares, en cuanto al fondo, a los del primer cuestionario. Algunas regiones estaban bien representadas, entre ellas los países de Europa, mientras que seguía faltando información representativa sobre algunas otras. En las deliberaciones del Comité Especial se confirmó que seguía habiendo dificultades. También se destacaron numerosas medidas positivas y mejores prácticas adoptadas en diversas partes del mundo. Las situaciones diferían y las soluciones para hacer frente al racismo y abordar cuestiones relacionadas adoptaban distintas formas, en función del país, de modo que no existía un enfoque único válido para todos. En cuanto a la cuestión de las normas complementarias, la representante indicó que, en opinión de la Unión Europea, en el sexto período de sesiones se había confirmado la conclusión de que los Estados y las partes interesadas debían hacer más por aplicar las normas vigentes y supervisar esa aplicación con mayor determinación. La Convención seguía siendo el principal instrumento internacional y la Unión Europea lamentaba que no hubiera sido ratificada universalmente. La Unión Europea no observaba ningún indicio de que la falta de normas jurídicas internacionales impidiera que se adoptasen medidas para luchar contra esos fenómenos.

62. El representante de los Estados Unidos señaló, en relación con el debate mantenido durante la 11ª sesión, que la reforma en materia de inmigración era prioritaria para su Gobierno, que había insistido en la necesidad de proporcionar una vía hacia la ciudadanía a los 11 millones de inmigrantes ilegales presentes en los Estados Unidos. Con respecto a la cuestión del gran número de niños no acompañados, que había recibido gran atención, los Estados Unidos estaban trabajando con los gobiernos de los países vecinos afectados para abordar las causas profundas de la emigración y para informar sobre los riesgos de la migración.

63. El representante del Brasil sugirió la posibilidad de que el Comité comenzase a redactar documentos, como planes de acción o directrices, para subsanar la laguna interpretativa a la que se había referido en su presentación la Sra. Petrova. El representante del Brasil dijo que debía otorgarse máxima prioridad al logro de efectos positivos para la vida de las víctimas y que esperaba con interés el debate sobre las lagunas de procedimiento.

64. El representante de la Unión Africana subrayó que el mandato establecido del Comité Especial comprendía la elaboración de normas complementarias. No incumbía al Comité examinar si esas normas eran necesarias o si existían lagunas, puesto que esas cuestiones ya se habían resuelto en la Declaración y el Programa de Acción de Durban y en

las deliberaciones del Consejo de Derechos Humanos. Durante el sexto período de sesiones y los períodos de sesiones anteriores se habían expresado opiniones diversas, y había llegado el momento de avanzar y redactar un proyecto de disposiciones. El Comité no debía seguir deliberando indefinidamente, sino que debía apoyarse en las conclusiones ya extraídas y cumplir fielmente su mandato. Hizo referencia a la cuestión de la inmigración planteada por el representante de los Estados Unidos y dijo que sería importante lograr avances en esa esfera. Señaló que el racismo y el deporte representaban un ámbito notable al que el Comité podría contribuir.

65. La representante de Sudáfrica, en nombre del Grupo de los Estados de África, reiteró que, en virtud de su decisión 3/103, el Consejo de Derechos Humanos había establecido el Comité Especial y le había encomendado el mandato inequívoco de elaborar, "como cuestión prioritaria", convenciones o protocolos adicionales de la Convención. No se hacía referencia en esa decisión a consideraciones o debates sobre posibles lagunas o sobre la necesidad de normas. Tampoco el párrafo 199 del Programa de Acción de Durban dejaba margen para esas consideraciones. Existía un mandato expreso de elaborar normas complementarias. Ese enfoque central estaba claro, sin lugar a dudas. El Grupo de los Estados de África consideraba improcedentes el debate en curso y la insistencia en la aplicación de la Convención, ya que la comunidad internacional había redactado normas adicionales en muchos otros casos. Las víctimas de la aplicación de perfiles raciales requerían un mejor apoyo; era hora de poner fin a la impunidad de los autores de actos de racismo. Solo con voluntad política podrían elaborarse normas complementarias, y debía encontrarse esa voluntad, ya que era necesario avanzar.

66. El representante de Argelia observó que existían lagunas en el marco jurídico, en particular en lo relativo a los derechos de las víctimas. Por tanto, había que trabajar para aplicar un enfoque centrado en las víctimas a la lucha contra el racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. Pidió a todas las delegaciones que prestaran especial atención a la grave situación de las víctimas. Las presentaciones realizadas durante los períodos de sesiones anteriores habían proporcionado información suficiente, se habían distribuido varios cuestionarios, se habían celebrado deliberaciones, también en el marco del Consejo de Derechos Humanos, y no se podía alegar que los elementos disponibles no bastasen para avanzar. Temas como la migración requerían la atención del Comité, y el representante se refirió a la cuestión recurrente de los métodos de trabajo del Comité y de otros comités del Consejo. Los mandatos se cuestionaban con frecuencia. No obstante, esa no era la función del Comité Especial, puesto que tenía un mandato claro, y había llegado el momento de avanzar en el cumplimiento del mandato convenido en Durban.

67. El representante del Pakistán, en nombre de la OCI, observó que durante el período de sesiones se habían recibido importantes contribuciones de expertos y afirmó que no se podía cuestionar el mandato del Comité. A la luz de las presentaciones, resultaba difícil comprender por qué el Comité había debatido sobre la necesidad de normas complementarias, puesto que el mandato ya reflejaba la aceptación de que existía tal necesidad. La OCI estimaba que se necesitaban normas complementarias. Durante el 25º período de sesiones del Consejo de Derechos Humanos, en relación con el tema 9 del programa, un representante de la OCI había recomendado que se elaborara un protocolo facultativo en el que se trataran todas las formas de racismo, discriminación racial, xenofobia y formas conexas de intolerancia. Por consiguiente, la OCI recomendó que se redactase un protocolo adicional a la Convención que abordara el racismo de manera global, y que el siguiente período de sesiones del Comité Especial se dedicase a tratar las lagunas sustantivas. La OCI opinaba que había llegado el momento de tratar de avanzar y considerar las nuevas formas de intolerancia, incluida la intolerancia religiosa.

68. El representante de Suiza dijo que, a su juicio, había una división de opiniones entre quienes defendían el mandato sin tener una idea clara de cuáles eran las lagunas y quienes insistían en que la aplicación resultaba decisiva y que la Convención no necesitaba nuevos protocolos. Su país no había logrado determinar en qué esferas podrían detectarse lagunas y, por consiguiente, no cuestionaba el mandato, aunque albergaba dudas sobre si sería posible cumplirlo. La reformulación de la Convención no era una opción viable, ya que no existían argumentos de peso que justificasen la elaboración de nuevas leyes. El tema de la xenofobia ya se había aclarado dos años antes, y se habían creado los instrumentos necesarios para hacer frente a ese y a otros fenómenos. Nunca había existido una fórmula que funcionase en todas las situaciones y no era buena idea imponer un sistema prefabricado estricto a todos los Estados. Se habían establecido los principios básicos para orientar la lucha contra el racismo; lo fundamental ahora era aplicarlos.

69. El representante de la República Bolivariana de Venezuela reiteró el firme apoyo de su delegación al mandato del Comité Especial. El Comité llevaba trabajando seis años y había examinado las normas internacionales y la no observancia de esas normas. En la Declaración y el Programa de Acción de Durban se establecía el mandato de subsanar las lagunas que existieran en relación con nuevas formas de discriminación y el Comité debía centrar su labor en esa esfera. Expresó su respaldo a las declaraciones formuladas por la representante de Sudáfrica en nombre del Grupo de los Estados de África y por el representante del Pakistán en nombre de la OCI, e instó al Comité a que realizara una labor más sustantiva. A su juicio, en las distintas presentaciones se había puesto de manifiesto que existían nuevas formas de racismo y el Comité podía basarse en el contenido de esas presentaciones para redactar nuevas normas complementarias de la Convención. Era necesario mejorar el mecanismo para que abarcase nuevas formas de racismo, xenofobia, discurso de odio e incitación al odio, entre otros respecto de los migrantes.

70. El representante de Alemania insistió en que el Comité tenía que encontrar la forma de avanzar y el intercambio de ideas que se estaba manteniendo en la sala resultaba provechoso. Sin embargo, en opinión del representante, había que escuchar a los expertos invitados, que habían subrayado, sin excepción, que no se necesitaban nuevas normas para combatir fenómenos como la xenofobia. Alemania apoyaba plenamente la afirmación de la Unión Europea de que no había lagunas sustantivas en la Convención; no obstante, los países tenían que mejorar su aplicación. Lo mismo ocurría en otros ámbitos de los derechos humanos. No era habitual que se cuestionase de forma automática la normativa subyacente a esos ámbitos, sino que era conveniente centrarse en la aplicación. A ese respecto, el representante corroboró la declaración del representante de Suiza.

71. El representante de Egipto afirmó que el propio hecho de que existiese el Comité Especial ponía de manifiesto la necesidad de actualizar el marco jurídico. Había que detectar las lagunas existentes en la legislación y estudiar la forma de subsanarlas. El representante expresó su apoyo a la propuesta formulada por el representante del Pakistán, en nombre de la OCI, sobre la elaboración de un protocolo adicional, ya que constituiría un paso fundamental para el Comité.

72. El representante de Indonesia señaló que se debía abordar la cuestión de la aplicación, así como la necesidad de normas complementarias. La idea de las normas complementarias había sido aceptada al establecerse el Comité Especial, y no debía ser objeto de controversia. En cuanto a los aspectos sustantivos, el representante corroboró las declaraciones formuladas por el representante del Pakistán en nombre de la OCI y por el representante de Egipto. En Indonesia existía una auténtica laguna debida a cuestiones transfronterizas en relación con la incitación al odio. Su país consideraba que no se castigaba a los responsables, quienes, no obstante, tenían una gran influencia en la situación interna del país, lo que podía generar disturbios. Por tanto, era evidente que existían

deficiencias sustantivas en lo relativo a la incitación transfronteriza al odio basado en la religión.

73. El representante de Marruecos dijo que había una motivación clara para la existencia del Comité Especial, y que las resoluciones y decisiones pertinentes y la Declaración y el Programa de Acción de Durban proporcionaban una base jurídica sólida. El debate sobre si debía existir el Comité no debía continuar. La Declaración y el Programa de Acción de Durban se habían aprobado en 2001, y en ese momento, 13 años después, el racismo seguía vivo, como se había puesto de relieve en numerosas presentaciones. El Comité no solo tenía la obligación de limitar el racismo sino también de erradicarlo, y no podía quedarse de brazos cruzados. Había celebrado seis períodos de sesiones y era evidente que tenía por delante grandes tareas. Necesitaba reforzar la legislación internacional, y, según la opinión de consenso, no había que reescribir la Declaración y el Programa de Acción de Durban sino perfeccionarlos. En opinión de Marruecos, al no actuar, el Comité estaba incumpliendo su mandato y cometiendo un "delito". La labor del Comité era necesaria y podía adoptar diversas formas; correspondía al Comité decidir cuál prevalecería.

74. El representante de Túnez expresó apoyo a las declaraciones formuladas por la representante de Sudáfrica en nombre del Grupo de los Estados de África y por el representante del Pakistán en nombre de la OCI. El marco internacional vigente resultaba inadecuado porque existían nuevas formas de racismo y habían surgido movimientos políticos basados en plataformas que se aprovechaban del odio a los extranjeros. Ningún acto de racismo podía quedar impune y la comunidad internacional tenía que completar el arsenal jurídico. Con frecuencia, las víctimas se mostraban reacias a denunciar incidentes o presentar cargos, según se había señalado al Comité durante las ponencias. Desde la aprobación de la Convención, el racismo había cambiado y ahora solía aparecer en combinación con la discriminación por motivos religiosos y económicos. La crisis económica del momento agravaba la discriminación racial. La Convención pasaba por alto muchos otros factores, como la religión. Según había señalado la representante de Sudáfrica, el Comité no podía reinventar las normas jurídicas, pero tenía que luchar contra las nuevas manifestaciones del racismo. Además, la revolución de las comunicaciones había añadido un nuevo factor.

75. El representante del Pakistán aclaró que la OCI no insinuaba que redactar un protocolo facultativo significase reformular la Convención. Había una serie de convenciones de derechos humanos que tenían protocolos facultativos. Por tanto, proponía que se celebrasen deliberaciones sustantivas en el siguiente período de sesiones del Comité Especial para examinar las verdaderas lagunas sustantivas que había que subsanar. El Comité disponía de suficiente material en el que basarse.

76. El representante de Alemania observó que, efectivamente, nada impedía a los países adoptar medidas para luchar contra el racismo. De nuevo, las cuestiones fundamentales que cabía plantearse eran si se estaba aplicando la Convención y si se estaban armonizando los instrumentos nacionales con las normas internacionales de derechos humanos.

77. El representante de Suiza reiteró que el Comité había deliberado durante seis períodos de sesiones y todavía no había detectado ninguna laguna sustancial que fuera tan apremiante que lo obligase a elaborar normas complementarias. Sin embargo, en su opinión, el Comité transmitía un mensaje claro: los países tenían que luchar contra los fenómenos del racismo. Suiza dudaba de que la elaboración de normas complementarias fuese a entrañar un refuerzo de la acción. Además, cabía observar que la mayoría de los protocolos facultativos se referían a las comunicaciones y abordaban necesidades claramente determinadas.

78. El representante de Argelia afirmó que la necesidad de normas era evidente y que había que subsanar las lagunas que se habían determinado durante los períodos de sesiones

anteriores. Se habían dirigido al Comité reiterados llamamientos a mejorar la aplicación, pero la aplicación de los instrumentos existentes presentaba claras limitaciones. En opinión de Argelia, en los debates generales se había puesto de manifiesto que los instrumentos vigentes no bastaban para hacer frente a todas las formas de discriminación.

79. El representante de Túnez agregó que la redacción de un proyecto de protocolo no impedía a los países aplicar la Convención. No obstante, era necesario subsanar las lagunas existentes, como la xenofobia y la aplicación de perfiles raciales. El representante expresó su confianza en que el Comité Especial pudiera avanzar y observó que la labor del Comité en absoluto representaba un obstáculo para que los países adoptasen medidas a escala nacional.

80. El representante de la Unión Africana indicó que la creación de una norma era solo un primer paso previo a su aplicación, ya que la norma podía no ser aceptada universalmente. Los Estados podían decidir en todo caso si deseaban convertirse en parte en un tratado.

81. El Presidente-Relator resumió las deliberaciones y señaló que seguía existiendo divergencia de opiniones. Las delegaciones, al parecer, no habían examinado las pruebas presentadas y se habían aferrado a sus posiciones originales en materia de políticas.

82. La Declaración y el Programa de Acción de Durban habían sido aprobados por consenso, y no se habían puesto objeciones al documento en la Conferencia Mundial contra el Racismo, la Discriminación Racial, la Xenofobia y las Formas Conexas de Intolerancia celebrada en Durban en 2001. Los Estados que habían convenido en esa decisión debían mantener la buena voluntad que había existido en aquel momento.

83. El Comité Especial había celebrado un gran número de sesiones a causa de las diferencias y divisiones surgidas entre algunos grupos de países. Un grupo insistía en que no se necesitaba una nueva ley, sino que era preferible centrarse en mejorar la aplicación, mientras que otro defendía que se podía tener por objeto mejorar la aplicación, pero eso no bastaba, y se necesitaba un protocolo que abordase los nuevos fenómenos.

84. El Presidente-Relator subrayó que, según varios oradores, el racismo había ido en aumento en muchos foros, sectores y regiones. Como se explicó durante el período de sesiones, el racismo era notable en determinados sectores, como el fútbol, y en la Fédération Internationale de Football Association (FIFA) y otras federaciones ya se estaba debatiendo cómo hacer frente al problema.

85. El Presidente-Relator se mostró reacio a que continuara el estancamiento y pidió a las delegaciones que buscaran la manera de avanzar para hallar una solución antes de que concluyera el período de sesiones. Levantó la sesión oficial, y el Comité Especial procedió a celebrar una sesión oficiosa de los coordinadores regionales y las delegaciones interesadas.

G. Lagunas de procedimiento en relación con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial

86. En la 13ª sesión, Anwar Kemal, miembro del Comité para la Eliminación de la Discriminación Racial, hizo una presentación sobre el tema "Lagunas de procedimiento en relación con la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial". El resumen de la presentación y el subsiguiente debate se recogen en el anexo I, sección E.

H. Debate general e intercambio de opiniones, 14ª sesión

87. En la 14ª sesión, el Comité Especial celebró otro debate general y otro intercambio de opiniones. El Presidente-Relator recordó la necesidad de examinar qué se iba a hacer con la lista de nuevos temas y qué medidas debían adoptarse con respecto al cuestionario.

88. El representante de los Estados Unidos se refirió a la cuestión de las reservas a la Convención, el propósito del Comité Especial y la labor futura de este. Con respecto a las reservas, durante los debates se habían dirigido críticas a los Estados que habían formulado reservas a la Convención, en particular al artículo 4. El representante observó que, según el sitio web de la Colección de Tratados de las Naciones Unidas, alrededor de 20 Estados habían formulado reservas al artículo 4. Una amplia gama de Estados habían formulado reservas, incluidos los Estados Unidos. La intersección entre la libertad de expresión y las leyes contra la discriminación planteaba algunas cuestiones difíciles; no obstante, los Estados Unidos no estaban dispuestos a aceptar ninguna obligación que limitase las libertades fundamentales protegidas en su Constitución. Por ejemplo, el país había autorizado una controvertida marcha organizada por el partido nazi en un vecindario mayoritariamente judío y, a la vez, había protegido el derecho de otras personas a protestar contra la marcha. El representante destacó que las reservas a las convenciones se permitían de manera general. En cuanto al propósito del Comité Especial, el representante puso de relieve que la decisión 3/103 del Consejo de Derechos Humanos, en la que el Consejo había pedido al Comité que elaborara un nuevo tratado, había sido aprobada por votación y no por consenso. Además, en el párrafo 199 del Programa de Acción de Durban no se exigía un nuevo tratado, sino que se pedía, literalmente, la preparación de "normas internacionales complementarias", sin imponer ningún tipo de documento. La labor del Comité Especial de subsanar las lagunas existentes estaba justificada, pero en la Declaración y el Programa de Acción de Durban no se solicitaba al Comité que elaborase un nuevo tratado o protocolo, sino normas complementarias, que podían adoptar otras formas. En sus resoluciones aprobadas por consenso más recientes, como la 21/30, el Consejo se había referido al párrafo 199 del Programa de Acción de Durban y subrayado la necesidad de elaborar normas complementarias. Los Estados Unidos consideraban que no se necesitaba un nuevo instrumento jurídicamente vinculante, pero posiblemente sí otro tipo de normas complementarias, y estaban dispuestos a examinar clases de normas que pudiesen mejorar la protección en esas esferas.

89. El representante del Brasil señaló que las presentaciones realizadas durante el período de sesiones habían proporcionado al Comité abundante información para poder avanzar. En su exposición sobre las lagunas de procedimiento, el Sr. Kemal había subrayado la importancia de reforzar la aplicación de la Convención subsanando dichas lagunas, por ejemplo mediante la elaboración de un protocolo facultativo de la Convención en el que se previeran las visitas a países. El representante subrayó que esa cuestión había sido planteada al Comité Especial en varias ocasiones por el Comité para la Eliminación de la Discriminación Racial y que había llegado el momento de que el Comité Especial adoptase al respecto medidas que resultasen eficaces.

90. El representante del Pakistán, en nombre de la OCI, acogió con satisfacción la propuesta de que el Comité Especial diese seguimiento a la recomendación del Comité para la Eliminación de la Discriminación Racial y considerase la posibilidad de elaborar un protocolo facultativo de la Convención en el que se abordasen las lagunas de procedimiento. También acogió con agrado la opinión del representante de los Estados Unidos de que había llegado el momento de examinar las formas que podían adoptar las normas complementarias. El Pakistán subrayó que las recomendaciones generales del Comité para la Eliminación de la Discriminación Racial, en las que el Comité estudiaba las lagunas sustantivas, no se consideraban jurídicamente vinculantes, sino orientativas, y las

normas complementarias podrían retomar las cuestiones que se trataban en las recomendaciones generales e incluirlas en un protocolo facultativo. El representante recomendó que, en su siguiente período de sesiones, el Comité Especial dedicara tiempo a estudiar: a) las formas que podían adoptar las normas complementarias; b) la elaboración de un protocolo facultativo de la Convención para subsanar las lagunas de procedimiento; y c) la elaboración de un protocolo facultativo de la Convención para subsanar las lagunas sustantivas, teniendo en cuenta las cuestiones a las que se hacía referencia en las recomendaciones generales del Comité para la Eliminación de la Discriminación Racial.

91. El representante de Chile dijo que su país estaba a favor de toda propuesta dirigida a hacer avanzar la labor del Comité Especial y corroboró las observaciones formuladas por el representante del Brasil en su intervención anterior.

92. La representante de Sudáfrica, en nombre del Grupo de los Estados de África, reiteró la opinión de que las reservas a los artículos 2, 4 y 14 de la Convención habían generado lagunas y debían abordarse. Propuso que se invitase al Comité para la Eliminación de la Discriminación Racial a proporcionar información sobre las reservas y sobre cómo afectaban a la aplicación de la Convención. La representante hizo hincapié en que la Convención era un documento vivo respecto del que se habían formulado 35 recomendaciones generales, lo que ponía de manifiesto que tenía lagunas sustantivas. El Comité Especial debía examinar las lagunas sustantivas en su siguiente período de sesiones. Debía analizar, asimismo, los elementos fundamentales de las lagunas de procedimiento de la Convención señaladas por el Comité para la Eliminación de la Discriminación Racial en relación con la supervisión y las visitas a países, y, además, debía solicitarse al Comité que hiciera una presentación sobre ese tema en el siguiente período de sesiones del Comité Especial. La representante también sugirió que se propusiera invitar al ACNUDH a realizar una presentación durante el séptimo período de sesiones del Comité Especial que incluyese un análisis comparativo de los mecanismos de los órganos de tratados, y las divergencias que mostraban los procedimientos de la Convención Internacional sobre la Eliminación de Todas las Formas de Discriminación Racial, para que se pudieran subsanar las lagunas.

93. La representante de la Unión Europea reiteró que la Unión Europea estaba dispuesta a examinar las posibles lagunas y a buscar modos constructivos de aplicar las medidas de lucha contra el racismo que ya existían. Desde la creación del Comité Especial, se había avanzado mucho en la Unión Europea a escala nacional y regional, y se había aprobado legislación comunitaria que, en algunos casos, trascendía el marco de las Naciones Unidas. Cuando se habían examinado los métodos de trabajo del Comité Especial, los representantes de la Unión Europea habían hecho hincapié en la necesidad de avanzar sobre la base de los hechos, y no de las aspiraciones. La labor que se llevase a cabo para detectar las lagunas existentes debía partir del análisis y los hechos. Las normas complementarias no tenían que adoptar necesariamente la forma de un protocolo facultativo o una nueva convención, sino que podían redactarse como nuevas directrices, mejores prácticas y recomendaciones generales del Comité para la Eliminación de la Discriminación Racial. La representante solicitó información fáctica sobre las lagunas sustantivas que no podían abordarse mediante la Convención, y afirmó que los miembros del Comité para la Eliminación de la Discriminación Racial habían señalado en repetidas ocasiones que el Comité lamentaba que los Estados no estuvieran cumpliendo como debían sus obligaciones de presentación de informes y de aplicación de la Convención.

94. El Presidente-Relator clausuró la sesión y señaló que existían percepciones diferentes: por una parte, que para establecer normas complementarias había que estudiar la elaboración de convenciones o protocolos adicionales y, por otra, que las normas jurídicas podían adoptar la forma de, por ejemplo, mejores prácticas y directrices. En diversas presentaciones e informes, el Comité para la Eliminación de la Discriminación Racial había solicitado a los países que revisaran sus reservas, por lo que era evidente que existían

problemas tanto en cuanto a las reservas como a la presentación de informes, ámbitos desde los que se podía contribuir a mejorar la aplicación de las disposiciones de la Convención. Otra cuestión por resolver era la de la interpretación o el dictamen basados en los hechos. Los Estados no tendrían que aceptar una nueva norma jurídica, ya que tenían la prerrogativa de decidir si ratificaban el instrumento.

95. Se levantó la sesión para permitir a los coordinadores regionales que consideraran las propuestas enunciadas y estudiaran en qué ámbitos podrían formularse conclusiones y recomendaciones en el sexto período de sesiones, y presentaran propuestas sobre el nivel de consenso y acuerdo.

IV. Aprobación del informe

96. El Presidente-Relator declaró abierta la 15ª sesión en la mañana del 17 de octubre. Se levantó la sesión a fin de conceder al Comité más tiempo para proseguir sus debates oficiosos, con miras a alcanzar un acuerdo.

97. La sesión se reanudó por la tarde. Tras los debates oficiosos, el Comité Especial acordó que durante el séptimo período de sesiones del Comité se examinasen los siguientes temas:

a) Cuestiones relacionadas con la aplicación de la Convención:

i) Ratificación universal de la Convención, o adhesión a ella de todos los países;

ii) Análisis del número, el alcance y el fundamento de las reservas a diversos artículos y sus consecuencias; evaluación del uso del mecanismo de denuncia previsto en el artículo 14;

iii) Problemas, dificultades y mejores prácticas respecto de la presentación de informes con arreglo a la Convención;

iv) Aplicación de las recomendaciones a los Estados;

b) Lagunas de procedimiento en relación con la Convención:

i) Exposición más detallada de las opiniones del Comité para la Eliminación de la Discriminación Racial sobre los elementos fundamentales respecto de las lagunas de procedimiento y mejores formas de subsanarlas (seguimiento del estudio llevado a cabo en 2007 y las diferentes presentaciones realizadas y propuestas formuladas al Comité Especial de conformidad con su mandato);

ii) Presentación a cargo del ACNUDH: comparación entre los procedimientos pertinentes de otros tratados;

c) Mecanismos nacionales, regionales y subregionales:

i) Mesa redonda para proporcionar una perspectiva comparativa de los mecanismos nacionales, regionales y subregionales;

d) Presentación y debate sobre el propósito de las recomendaciones generales formuladas por el Comité para la Eliminación de la Discriminación Racial y antecedentes de su formulación en el contexto de la aplicación efectiva de la Convención, y posibles deficiencias;

e) Debates generales con uno o más miembros del Comité para la Eliminación de la Discriminación Racial.

98. El Comité Especial convino en las siguientes conclusiones generales sobre el racismo y el deporte:

a) El racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia están aumentando en todo el mundo. También se han observado y documentado manifestaciones agresivas de estos flagelos en el deporte y sus ámbitos relacionados, en particular en campos de fútbol de todas las regiones.

b) El fútbol es un deporte sumamente popular en todo el mundo, capaz de atraer a públicos masivos, y causa gran impresión a millones de personas en todas las regiones.

c) Las federaciones de fútbol internacionales y las asociaciones de fútbol nacionales son conscientes de los problemas de la discriminación racial en el deporte y están adoptando medidas para luchar contra esta lacra.

d) El deporte, y en particular el fútbol, puede utilizarse para fomentar la difusión de los mensajes de lucha contra la discriminación y apoyar los esfuerzos primordiales de los gobiernos y la sociedad civil para combatir el racismo.

e) El Comité Especial alienta al Consejo de Derechos Humanos a que invite al ACNUDH, en particular a la Sección de Lucha contra la Discriminación Racial, a seguir otorgando carácter prioritario en su labor a las cuestiones relativas al racismo en el deporte, especialmente en el fútbol. A ese respecto, el Comité estima que deberían asignarse recursos al ACNUDH para que lleve a cabo actividades relacionadas con el racismo y el deporte.

99. Asimismo, en la 15ª sesión se aprobó *ad referendum* el informe del sexto período de sesiones, en el entendimiento de que las delegaciones enviarían correcciones técnicas a sus intervenciones, por escrito, a la secretaría, a más tardar el 31 de octubre de 2014. El Presidente-Relator invitó a los asistentes a que formularan declaraciones generales.

100. El representante del Pakistán, en nombre de la OCI, agradeció al Presidente-Relator su excelente liderazgo y orientación durante el período de sesiones.

101. La representante de Sudáfrica, en nombre del Grupo de los Estados de África, dio las gracias al Presidente-Relator por su liderazgo y expresó reconocimiento por los avances logrados y por el fomento de un clima constructivo durante el sexto período de sesiones. La oradora recordó que el mandato del Comité Especial debía guiarse por lo establecido en el párrafo 199 del Programa de Acción de Durban y en la decisión 3/103 y la resolución 10/30 del Consejo de Derechos Humanos, y reafirmó la opinión del Grupo de los Estados de África de que esa orientación debía constituir el eje del Comité para el desempeño de su labor.

102. La representante de la Unión Europea agradeció al Presidente-Relator que hubiera contribuido a fomentar un clima constructivo y un rico intercambio de opiniones, y añadió que su amplia experiencia había ayudado al Comité a encontrar una base común para el futuro. En cuanto a los dos nuevos temas examinados durante el período de sesiones, a saber, el de la prevención y la concienciación y el de las medidas especiales, la Unión Europea opinaba que habían sido tratados de manera exhaustiva por los expertos invitados, ninguno de los cuales había señalado la ausencia de alguna esfera determinada en el marco jurídico internacional vigente destinado a luchar contra el racismo y abordar las cuestiones conexas. Con respecto a la xenofobia, la oradora destacó que se estaba combatiendo mediante distintas medidas de lucha contra la discriminación por diversos motivos y que la Unión Europea seguía considerando que el establecimiento de una definición jurídica de ese fenómeno por el Comité no aportaría ningún valor añadido. En cuanto a los mecanismos nacionales, todavía había que continuar explorando su potencial para mejorar la aplicación de las normas internacionales vigentes, y asegurar así su eficacia. Respecto de las lagunas de procedimiento, la representante subrayó que, como punto de partida, el

Comité para la Eliminación de la Discriminación Racial podía llevar a cabo su labor eficazmente en el marco de los procedimientos existentes. El nivel de cooperación de los Estados partes no siempre resultaba satisfactorio, por lo que, en primer lugar, debía mejorarse la aplicación de los procedimientos en vigor. La representante propuso también que el Comité Especial facilitara al Consejo de Derechos Humanos su examen sobre la cuestión de la duración del tiempo de reuniones asignado al Comité. La representante, que aguardaba con interés el siguiente período de sesiones, dijo que el análisis de esos temas de consenso, durante el que los Estados de todas las regiones podrían compartir sus experiencias en la aplicación de las normas y reglas existentes, resultaría provechoso para la labor del Comité.

103. El representante de China expresó reconocimiento por el buen juicio del Presidente-Relator y elogió a todos los colegas del Comité Especial y de la secretaría por la ardua labor que habían llevado a cabo durante las dos semanas precedentes. El delegado señaló que el racismo constituía una violación grave de los derechos humanos y que la comunidad internacional estaba siendo testigo de incidentes graves y cada vez peores de racismo, discriminación racial, xenofobia y formas conexas de intolerancia. La comunidad internacional debía defender el marco internacional destinado a combatir el racismo y, por consiguiente, la Declaración y el Programa de Acción de Durban y los resultados de la Conferencia de Examen de Durban debían acompañarse de una voluntad política demostrable. Era importante promover la armonía y la coexistencia entre las diferentes razas y sociedades del mundo y, en ese esfuerzo, debían elaborarse nuevas normas complementarias para hacer frente a las formas contemporáneas del racismo, la discriminación racial, la xenofobia y las formas conexas de intolerancia. Se instó al Comité Especial a que obtuviera resultados tangibles en ese sentido.

104. La representante del Brasil dio las gracias al Presidente-Relator por haber ayudado al Comité Especial a lograr un consenso para aprobar las conclusiones del período de sesiones. Expresó optimismo respecto del enfoque del Comité Especial y de la eficacia de su labor futura para cumplir el mandato que le había otorgado el Consejo de Derechos Humanos. Acogió con especial satisfacción las conclusiones y la propuesta de que se debatiese ulteriormente la cuestión de las lagunas de procedimiento en relación con la Convención.

105. El representante de los Estados Unidos también dio las gracias al Presidente-Relator por el espíritu y la orientación que había impartido al sexto período de sesiones del Comité Especial y expresó reconocimiento a todos sus colegas por los esfuerzos que habían destinado a alcanzar un consenso durante el período de sesiones.

106. Al clausurar la sesión, el Presidente-Relator dio las gracias a los participantes por las declaraciones de reconocimiento que le habían dirigido y señaló que los avances logrados durante el período de sesiones eran el resultado de la intensa labor de las delegaciones.

Anexos

[Inglés únicamente]

Annex I

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

A. Summary of the expert presentations and initial discussions on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance"

1. At the 2nd meeting on 7 October 2014, the Ad Hoc Committee on the Elaboration of Complementary Standards heard presentations given by Mr. Patrick Gasser, Senior FSR Manager at Union of European Football Associations (UEFA), Mr. Jonas Burgheim, Deputy Head of the United Nations Office on Sport for Development and Peace (UNOSDP), and Mr. Pavel Klymenko, a representative of the Football Associations against Racism in Europe (FARE Network) on "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance" as it related to sport.

2. Mr. Patrick Gasser presented on UEFA's role in the area of racism in sport, stating that football provided a unique platform to address that issue. UEFA was active in anti-racism initiatives in football. It had established a set of sanctions for disciplinary controls, it organized Football Action week every October during Day 3 of the UEFA Champions League and had just held a "Respect Diversity" conference in Rome in September 2014. Its' "No to Racism" campaign included education, campaigning and sanctions. He noted that UEFA's anti-discrimination campaign comprised 54 Euro 2016 qualifiers (national team's competition), 40 games of the Champions League and Europa League (club competition). The following actions took place during those matches: "No to Racism" campaign via announcements on stadium speakers; graphics on giant screens; the broadcasting of television advertisements; messages in match programmes and kids-players escort initiative. In addition, UEFA pursued a number of educational programmes, such as seminars on institutional discrimination, the Captains for Change Initiative and the Women in Football Leadership Programme.

3. UEFA noted that it tackled all forms of discrimination, including racism, gender

discrimination and homophobia. While its jurisdiction was currently limited to UEFA-sponsored events, such as Champions League matches, UEFA also worked at influencing national associations. An important part of UEFA's national approach was the cooperation between the UEFA's control and disciplinary body and the FARE Network in order to monitor football matches and report discriminatory behaviour.

4. Mr. Jonas Burgheim, introduced the work of the Special Adviser on Sport for Development and Peace and the United Nations Office on Sport for Development and Peace and the work of the Intergovernmental Working Group in the area of sport, peace and development. The Group's main activities were the promotion and support of (national) policies and projects as well as policy work in cooperation with UN partners, with reference

to GA resolution A/RES/67/17. He noted that the Human Rights Council had become increasingly active in the field of human rights and sport, noting resolutions A/HRC/RES/13/27, adopted in 2010, A/HRC/RES/26/18 and A/HRC/27/L.14 both adopted in 2014 in that regard. Mr. Burgheim explained that UNOSDP worked with a number of different actors ranging from governments to other United Nations entities to sport federations. The Office was active in policy formulation and was implementing concrete projects under its mandate. UNOSDP was involved in the drafting process of the relevant General Assembly resolutions, and had intervened from time to time to resolve emblematic cases concerning discrimination in sport, notably a recent case concerning the wearing of the head scarf during a women's basketball games. Mr. Burgheim underlined the importance of sport in the area of anti-discrimination, noting that sport was a powerful tool to strengthen social ties and networks, and promote ideals of peace, fraternity, solidarity, non-violence, non-discrimination, tolerance and justice. Sport was a global phenomenon, which had a strong convening power and enjoyed wide-spread popularity, especially among youth. He offered the support of the Office on Sport for Development and Peace and provision of relevant expertise to the Ad Hoc Committee.

5. Mr. Pavel Klymenko, FARE Network, briefed delegates about the work of the network concerning racism and xenophobia in sport, especially football. The FARE network membership, though primarily European, was also growing on a global scale. FARE was currently active in more than forty countries and cooperated with UEFA, FIFA, CONCACAF and others. Among the major issues in football that were addressed by FARE were: the re-emergence of far-right parties and extremist movements in Europe; the continued abuse of ethnic minorities; escalating xenophobia and extremist symbolism at matches; the existence of glass ceilings for minorities in sports administration and coaching; and the fact that national bodies and Governments were slow to respond to such problems. He explained that stronger sanctions from responsible sport associations, as well as national authorities were important to combat racism and xenophobia in sport. It was important that UEFA disciplinary bodies be informed, following an analysis of the probability of risk at certain matches and that independent monitoring of these matches take place. He added that FARE assisted with the collection of data, carrying out a preventative prognostic function.

6. Mr. Klymenko stated that strong leadership was necessary, as there was an obvious need to broaden diversity in sport, in cooperation with affected communities. He added that the system of data collection undertaken by FARE Network allows for prevention, and could be replicated at the national level. It was also important to ensure that legal frameworks were consistent at the national level, as such commonly-agreed principles to assist in addressing discriminatory incidents in sport at the international level could be useful. The cooperation between police forces and sport organizers was critical. In addition, the expert suggested that anti-discrimination campaigns needed to be supported by countries and public authorities should engage with fans and victims.

7. The representative of Morocco while noting that football was at the forefront in addressing discrimination in that sport, inquired about anti-discrimination initiatives in other sports and other regions and whether it would be possible to build on the initiatives taking place in Europe. The European Union welcomed the expert discussion of practical initiatives taking place to combat racism in sport. It also inquired whether there were attempts to expand these initiatives to other regions and other sports, and also asked about other forms of discrimination, such as discrimination against women and persons with disabilities, asking about examples of efficient approaches. It noted that an increased partnership between UN organizations and sport federations was essential to combat discrimination. The Human Rights Council should play a role in that regard. Some sport associations, such as the International Olympic Committee, that had UN observer status,

were very active, but, the potential for close cooperation was largely l untapped and remained to be utilized.

8. Mr. Burgheim and Mr. Gasser noted that in addition to football, other sport federations were becoming engaged in the fight against discrimination. With regard to the global coverage of football and racism issues, it was recalled that FIFA was invited to present to the Ad Hoc Committee, but was unable to participate on this occasion due to scheduling constraints. Mr. Klymenko noted that similar problems in other sports such as basketball, cricket and rugby had triggered some responses in other regions, like North America, Latin America and Asia. He told the Committee that Australian sport associations had, for example, developed frameworks for fighting discrimination, in particular homophobia, in team sports. Football associations in other regions were undertaking similar actions such as the independent monitoring used by the FARE network and that the network was open to assisting other regions, if requested. Nevertheless, he added, clearly not all stakeholders were engaged in the fight against racism.

9. The representative of Uruguay noted that racism and violence existed in football in Uruguay, mostly at the club level and noted a chain of responsibilities, which included the need to enhance the awareness of national federations.

10. The representative of the Republic of South Africa asked the experts to comment on the role of sport in healing, remembrance and reconciliation, with regard to racism. Mr. Burgheim recalled that dual aspects and values of sport were reflected in para. 86 and 218 of the DDPA, and noted that the symbolism and practice of sport could have a strong impact on reconciliation. Mr. Gasser noted that UEFA actively pursued reconciliation projects for example, in Eastern Europe or in the Middle East. In his view, the goal is to "wave a new social fabric for the next generation". Mr. Gasser explained that UEFA jurisdiction and its rules and regulations applied to UEFA competitions, and not national leagues, which complicated addressing national instances of racism in football. He did however; note some good practice examples that could share with the organizers of national competitions and national associations. He stated that improved cooperation was required on this and that UEFA was pleased to share its good practices, if asked. He added that UEFA was also involved in sponsoring tobacco-free matches, and public health issues such as childhood obesity.

11. In response to the questions, Mr. Gasser also noted that while racism was a very key component, the UEFA respect diversity approach set a wider consideration than race, as the organization was against any form of discrimination. Both he and Mr. Burgheim also stressed the need to involve local actors and stakeholders in anti-discrimination initiatives, underlining the very important local partnerships with organizations like FARE Network. Mr. Klymenko agreed that it was essential to reach out to all stakeholders involved in sports in order to involve them in anti-discrimination initiatives.

12. A representative of the International Basketball Federation (IBF) stated that perhaps there was no racism per se in sport, as rather sport offered a platform for sentiments which already existed in different societies. While noting the important role to be played by sports federations, such as IBF, he underlined the fact that it was for Member Stares to have regulations in place to prohibit and punish racism.

13. The experts agreed that while sport indeed mirrored society, racism was also present in the sport itself. Large sporting events, unfortunately, could provide giant venues for discrimination, underlining the importance of using these very same venues to combat discrimination through anti-discrimination campaigns and messages. Mr. Gasser explained that the effect of sport as an "opinion maker" could be assessed by the fact that advertisement time during prominent sport events, such as the Champions League matches, sold for millions of Euros.

14. The Chairperson-Rapporteur inquired as to why despite the practical measures being undertaken in the arena of sport, racist and xenophobic incidents continued to occur; whether it was possible to link issues of awareness-raising to penalties in the initiatives being considered and carried out; and whether contexts like the media or political discourse could provoke these sentiments and violence at sports events. The Chairperson-Rapporteur also asked about whether the experts were involved in the FIFA "good behaviour barometer" and whether they had any comments on its scientific basis and effectiveness. Mr. Gasser replied that according to its own statistics, the number of incidents had increased, however this was a good sign as it meant that monitoring and tracking, in partnership with FARE Network were now more effective and that over time with the efforts undertaken, these figures would start to decrease. He cautioned that there was a limit to what could be asked of federations, as efforts against racism could backfire and fail. Football could not create peace; rather, the primary role was for Governments; federations, national associations and civil society were stakeholders who could assist within their jurisdictions and means. All society must contribute, and success could only come from interplay among all actors. Mr. Klymenko added that as civil society and governing bodies were making some good progress, the actions of football bodies now needed to be matched by the Governments and the United Nations,.

15. At the 3rd meeting on 8 October, the Chairperson of the Working Group of Experts on People of African Descent (WGEPAD), Ms. Mireille Fanon-Mendes France, presented on the topic of "Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance." She pointed out that several human rights instruments such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), the International Convention on the Rights of the Child (CRC) and mechanisms such as the Special Rapporteur on Education pointed to the importance of education as a commodity and service to achieve other aims. She indicated Declarations such as the International Decade for Education in the field of human rights proclaimed in 1994 by the General Assembly; the guidelines for national education plans on human rights adopted by the General Assembly in 1996 and proclamation of the "World education program in the field of human rights". Despite such efforts by the international community, she pointed out that education was increasingly being commercialized and driven by the market economy, leading to the creation of social hierarchy.

16. Ms. Fanon-Mendes France provided an overview of the situation of human rights education in France and stated that while vocational training was being promoted and integrated into the business sector, it had left out important elements of human rights education "directed to the full development of the human personality and the sense of dignity" and "for anyone able to play a useful role in a free society" as stipulated in the major human rights conventions. Rather, education and training was seen primarily as a productive investment for businesses. She added that the results were overwhelming elsewhere as well: in Africa, human rights was not a part of the curricula in many countries; in both Europe and the Americas, very few countries had developed action plans in the area of human rights education; and in the Asia and the Pacific, only two countries had developed plans of action in the area. She listed a number of reasons behind the challenge in promoting human rights education such as the lack of political will of States, the lack of resources and specialists in this field, as well as prevailing political instability, corruption, endemic poverty and illiteracy in different countries.

17. Ms. Fanon-Mendes France also described the detrimental impact of racism on the promotion of human rights education, impinging upon universal values of non-discrimination. She gave a number of contemporary examples in French society that pointed to the need to increase awareness-raising not only for children, but adults as well as people from all walks of life, on the importance of receiving human rights education. Given

the historical impact of racism, Ms. Fanon-Mendes France suggested that deconstructing the notion of racism was key to addressing the persistence of inequality and domination related to racial distinctions in pluralistic contemporary societies. In this context, she also suggested that the international community had an important opportunity during the International Decade for People of African Descent to promote human rights education, including through awareness-raising activities to prevent and combat racism, racial discrimination, xenophobia and related intolerance.

18. The delegate of Morocco asked if the construction of memorials could serve as a vector to combat racial discrimination, and asked if education on human trafficking could be seen as an example of a preventive approach. The representative also asked about preventive measures to combat xenophobia. The representative of the European Union delivered a statement strongly condemning all forms of racism, racial discrimination, xenophobia and related intolerance and added that comprehensive legislation had been in place in the EU since 2000 which covered areas such as education, employment, housing, etc. It also protected people of African descent as well as individuals from direct and indirect forms of discrimination. The representative asked the presenter to assess the possibility of attaining progress and tangible results in the promotion of human rights education as part of the upcoming Decade.

19. The representative of Switzerland (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Japan, Mexico, Switzerland and Uruguay) stated that human rights education played a vital role in combating racism, racial discrimination, xenophobia and related intolerance. These delegations shared the view that the World Programme for Human Rights Education and the United Nations Declaration on Human Rights Education and Training, adopted in December 2011, provided a common framework for action for all relevant actors. It hoped that States would further develop their national action plans and initiatives in this area in order to raise the awareness of the public and shift society toward a more tolerant and respectful one. Schools, especially primary school, are the perfect place to start efforts. As called for by the Durban Declaration and Programme of Action and the outcome documents of the Durban Review Conference, States should be encouraged to take action in keeping with the World Programme for Human Rights Education and the UN Declaration.

20. The delegate of Switzerland asked for the presenters’ views on the relationship between existing instruments, and the World Programme for Human Rights Education and whether there was a need for complementary standards. The representative of South Africa said that Paragraph 199 of the DDPA had already identified that there are gaps in the current instruments and asked the presenter for relevant recommendations related to elaborating instruments on prevention and human rights education. The representative of Cuba asked the presenter about ways to ensure increased prevention and awareness-raising on the subject and asked Ms. Fanon-Mendes France about the identification of gaps in the subject area. The representative of the USA stated that while the United States had made strides in combating racial discrimination, the example of the Trayvon Martin incident showed that more work needed to be done. While action needed to be undertaken to address gaps with respect to xenophobia at the international level, new treaties or modifications to existing treaties, were not required. The representative asked the expert if the existing tools were effective and adequate.

21. In response, Ms. Fanon-Mendes France said that it was crucial that the world community viewed the legacy of racism as a shared history not just limited to people of African descent. She noted that it was important effectively to enforce existing international laws and standards. She added that some of the issues which she felt were important to be elaborated upon further included the intersectionality of racial discrimination, xenophobia, the definition of Afrophobia and the phenomenon of racial profiling. All these areas

required further definitions clarity and laws relating to these issues needed to be less vague and more enforceable, she added. Besides these three issues, it was important to address the prevalence of structural racism, in order to reconcile the divisive gap between laws and practices. The representatives of the Republic of South Africa, Brazil and Uruguay expressed appreciation that the presenter had identified the issue of intersectionality in terms of combating racial discrimination.

22. In concluding the 3rd meeting, the Chairperson-Rapporteur said that Committee members thought that the ICERD was not sufficient to address the issue of xenophobia and therefore new standards were required, while others thought that the implementation of existing standards were sufficient to address xenophobia.

23. At the 4th meeting, Mr. Karel Fracapane, of the Section of Health and Global Citizen Education, Education Sector, at UNESCO briefed the Committee on UNESCO's work in the area of "Prevention of awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, and xenophobia and related intolerance." At UNESCO, he noted that human rights education (HRE) had a vital role in undermining prejudice, shaping attitudes and behaviours of tolerance, and cultivating respect for human rights of all people. He referred to the 1974 Recommendation concerning Education for International Understanding, Cooperation, Peace and Education relating to Human Rights and Fundamental Freedoms, which provided a normative framework for promoting values and principles of human rights in and through education. Member States were invited to report regularly on the implementation of the Recommendation. The 5th consolidated report on the implementation of the Recommendation had been submitted to the General Conference of UNESCO in 2013, and provided a vast overview of how themes and issues such as tolerance, women's rights, child protection, indigenous people's rights, social justice, violence at school, prevention of racism, discrimination and xenophobia, sexuality and health education, gender equality, etc. were addressed in the formal and non-formal educational sectors of the 55 reporting countries, as well as the challenges faced in their national contexts. He added that UNESCO and the OHCHR had jointly developed a self-assessment tool to help countries build their national plans of action on human rights education.

24. Mr. Fracapane explained that UNESCO had also developed a programme on global citizenship education (GCE), which included human rights education. GCE could be delivered through various modes and in all venues, including formal, non-formal and informal education, noting that in most countries, the formal education system would be the main mode of delivery. GCE should be integrated in education systems, either as a stand-alone subject, or as a component of existing programmes and/or the ethos of a learning environment and system.

25. He explained that the UNESCO project Teaching Respect for All (TRA) could be interesting to the Committee's work, as it was the project that created a set of guidelines to counter discrimination. Countries could adapt the content according to their contexts and needs. The project led to the elaboration of educational materials to address challenges such as racism, ethnic discrimination, xenophobia and prejudice based on gender, colour, descent or national, ethnic or religious identities.

26. Mr. Fracapane stated that an integral part of the human rights education work at UNESCO concerned Holocaust remembrance, and he outlined the features of the Education for Holocaust Remembrance project. He explained that UNESCO aimed at making the study of the past and the commemoration of victims meaningful to present generations. He stated that education about the Holocaust, genocide, and mass atrocity presented a good starting point for raising awareness about processes leading to violent conflicts. Analysing past and present examples of mass atrocities, Mr. Fracapane noted, would help raise awareness about the need to promote, preserve and nurture the fundamental rights of

individuals. The Education for Holocaust Remembrance project was established to educate about the Holocaust and also combat Holocaust denial. It involved the commemoration of the International Day in Memory of the Victims of the Holocaust on 27 January each year, as well as educational modules for ministries of educations around the world. It also aims to sensitize States and the general public on Holocaust remembrance and genocide prevention.

27. During the following discussion, the representative of Morocco underlined the importance of education and in particular human rights education. Answering a question posed by Morocco and Brazil, Mr. Fracapane noted that the Teaching Respect for All programme had now reached the end of its pilot phase, and that there were plans to expand the programme to a global level.

28. The representative of the USA inquired about the scope of the programme. Mr. Fracapane explained that the programme addressed various forms of discrimination and could be adapted to a local context – depending on which form of discrimination was dealt with. The programme per se covered among others racism, gender equality, homophobia or discrimination against handicapped people. Different countries made different uses of the programme.

29. Morocco inquired about the distinguishing characteristics of the Global Citizenship Education. Mr. Fracapane explained that the GCE methodology encompassed human rights education but had a broader focus. Global citizenship meant addressing a number of different areas that could not be separated of which a global citizen needed to be aware. Consequently, the programme encompassed sustainable development, health, education, human rights and other areas. The GCE initiative served as an umbrella under which all of those areas came together. The initiative also corresponded to a shift away from purely cognitive education.

30. The representative of Morocco noted the role of memorial processes and asked if UNESCO dealt with other atrocities, such as Rwanda or Srebrenica. Mr. Fracapane stated that the Holocaust was an important starting point to begin a discussion of “where discrimination can lead.” Indeed, all instruments to prevent genocide were based on the Holocaust experience. The Holocaust was the universal example of a mass atrocity, and it was also a practical example, as there was a lot of material from which teachers could draw. The UNESCO expert stressed that there was an obvious link between different crimes against humanity. It was important to focus on “the drama of history” rather than one event. The Holocaust could also be used in order to grapple with a country’s own history. He explained that Argentina, for example, had reformed school curricula and started to teach about the Holocaust, which allowed teachers to talk about the years spent under the rule of the military regime. Argentina was now proceeding to work on the issue of including crimes against indigenous populations in the curriculum. That was a practical example of how a country can tackle its own history by learning about the history of others.

31. The Chairperson-Rapporteur recalled that UNESCO was pioneering work on human rights education, in particular in the field of anti-racism, from the 1960s. A number of publications had been produced at that time which underlined one human race. The Chairperson-Rapporteur asked Mr. Fracapane to inquire with UNESCO headquarters if the impact of those various educational tools produced by UNESCO had been assessed. It would be important for the Committee to know which educational tools had been successful in the past, and which had failed in order not to repeat mistakes, but build on the achievements.

32. The Republic of South Africa noted that education was essential to anti-discrimination work and also stated that it was crucial to recognize the importance of the past. Three Holocaust memorials existed in South Africa, which were used for teaching purposes and served as a constant warning that silence (while someone was experiencing

discrimination) could result in disaster. The representative urged the Committee to take the side of the victims and recalled that during the morning's session, five additional protocols were discussed. The UNESCO expert was asked if Mr. Fracapane would be able to make any recommendations regarding the gaps in anti-racism law that could be addressed by the Committee.

33. The representative of the United States of America added that he would appreciate recommendations from the expert but did not agree with the South African position that there were gaps in the law. The UNESCO expert replied that, in his view, there was no need for new laws; as such laws were already in place. Countries were asked to report on the implementation of existing laws and it had become clear that there was a gap between the legal framework and the actual practice on the ground. The expert recommended that countries and stakeholders engage with UN system and agencies more intensively in order to develop programmes and ensure the implementation of the legal framework at all levels.

34. In response to the question of South Africa, Mr. Fracapane noted that discrimination resulted from a variety of factors. There was; however, a real gap between the legal framework and its implementation. One of the reasons was a lack of capacity and capacity-building measures, and a lack of focus by the international community. Regional and local communities, needed to participate in capacity-building – in particular when it came to human rights education. An important factor for future success would be to address informal education.

B. Summary of the expert presentations and initial discussions on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance"

35. In the afternoon of 9 October, the Ad Hoc Committee commenced a discussion on the topic of "Special measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance". This 6th meeting was chaired, exceptionally, by Mr. Ephrem B. Hidug of the Permanent Mission of Ethiopia to the United Nations Office at Geneva.

36. The presentation by the expert, Mr. Carlos Vazquez, a member of the CERD, was focused on the treatment of "special measures" in the Convention for the Elimination of All Forms of Racial Discrimination, as well as in the practice of the Committee on the Elimination of Racial Discrimination. The Committee's practice is reflected in its Concluding Observations and in its General Recommendation No. 32, on "The meaning and scope of special measures in the Convention on the Elimination of Racial Discrimination." In theory, the Committee might also have occasion to address special measures in individual communications against States parties that have opted into this procedure under article 14 of the Convention. However, to date the Committee has not addressed, in its decisions on individual communications, whether a State's decision to employ special measures, or its failure to do so, amounts to a breach of the Convention.

37. He clarified that the Convention uses the term "special measures" to describe a concept that is sometimes referred to by other terms, such as "affirmative action," "affirmative measures," or "positive measures," however, the meaning of these terms in certain legal systems can be different from the meaning in the Convention. "Special measures" is a broader term that includes, for example, programmes that draw distinctions along racial or ethnic grounds in order to benefit disadvantaged groups, and also

programmes that seek to improve the position of disadvantaged groups by other means. He noted that although the CERD occasionally used these other terms, especially "affirmative action," its preference, for the purpose of clarity, was to apply the wording of the Convention. He added that the one term that the Committee definitively rejected was the term "positive discrimination." This phrase, the Committee has said, is a contradiction in terms, since all racial discrimination is prohibited by the Convention and therefore cannot be "positive." Mr. Vazquez continued that the term "reverse discrimination" is more complicated and should be used cautiously, if at all. A measure pursued by a State party could in theory amount to reverse discrimination – if it failed to satisfy the conditions set forth in the Convention for using special measures. If a measure does satisfy the Convention's conditions, then the measure does not amount to discrimination, and hence is not reverse discrimination.

38. With regard to the text of the Convention, special measures are mentioned in two provisions: article 1, section 4, and article 2, section 2. Article 1 defines racial discrimination, which is prohibited by the Convention, and section 4 makes clear that special measures ordinarily do not constitute prohibited racial discrimination. Specifically, article 1, section 4 provides that "Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved."

39. Article 1, section 4 should be understood as a clarification of the definition of "racial discrimination" in article 1, section 1. Section 1 defines racial discrimination as "distinction[s], exclusion[s], restriction[s] or preference[s] based on race, colour, descent, or national or ethnic origin." Because special measures sometimes take the form of "preferences" based on race or ethnicity, they might be thought to be barred by article 1, section 1. Section 4, however, makes it clear that such preferences are not barred if they are adopted to secure the adequate advancement of groups requiring such protection, and if other conditions are satisfied. One might think that section 4 is an exception to the broad prohibition of racial discrimination. The Committee, however, views section 4 as instead a clarification of the meaning of section 1. Article 1, section 1 does not prohibit all preferences, but only those preferences "which ha[ve] 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." The Committee elaborated on this definition in its General Recommendation 14, in which it observed that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate." Article 1, section 4 should be understood to clarify that preferences adopted for the purpose of securing the advancement of disadvantaged groups serve a legitimate purpose, and, if they meet the other conditions set forth in Article 1, section 4, they do not violate the Convention.

40. Mr. Vasquez explained the conditions that determine the validity of special measures. Article 1, section 4 refers to special measures taken for the "sole purpose" of securing the advancement of disadvantaged groups. According to the Committee's General Recommendation 32, the "sole purpose" language "limits the scope of acceptable motivations for special measures within the terms of the Convention." This raises potentially difficult questions when racial preferences are adopted for multiple purposes. For example, in some countries, racial preferences in university admissions are justified on the ground that it is important for the educational mission to expose students to a diverse range of viewpoints. The achievement of diversity would appear to be a motivation distinct

from securing the advancement of disadvantaged groups. Do racial preferences adopted for the purpose of achieving diversity run afoul of the limitations of article 1, section 4, because they are not taken for the “sole purpose” of securing the advancement of disadvantaged groups? The Committee’s General Recommendation does not address this point, but the Committee’s practice does not suggest that special measures are problematic because they serve this additional purpose. This may be an example of the Committee’s interpretation of the Convention as a “living instrument.” As measures rarely have a single purpose, a literal approach to the “sole purpose” criterion is therefore unrealistic.

41. Article 1, section 4 also provides that special measures must be adopted for the purpose of securing “adequate advancement” for disadvantaged groups. The General Recommendation indicates that this term refers to “goal directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination.” These include “persistent or structural disparities and de facto inequalities were resulting from” historical circumstances. As there is a danger that communities themselves may not agree that special measures are necessary to secure their advancement, the General Recommendation provides that special measures should be designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities. Special measures should not be imposed on disadvantaged groups against their wishes. He also noted also that Recommendation requires consultation with “affected communities,” not just the beneficiaries of the special measures, representatives of races or ethnicities that would not be benefited by the special measure.

42. Article 1, section 4 imposes two additional conditions for the validity of special measures: they must be temporary and not lead to the maintenance of separate rights for different racial groups. This is in contrast to article 2(2) which provides that special measures “shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.” Article 1(4) imposes two separate requirements – the measures must not maintain separate rights for different racial groups and they must be temporary; article 2(2) imposes one requirement – the wording indicates that measures may establish separate rights for different racial groups as long as they are temporary. The General Recommendation does not discuss the difference in language. In discussing article 1(4), the Recommendation interprets it to impose two separate requirements (that the measures not establish separate rights for different racial groups and that they be temporary). In discussing article 2(2), the Recommendation says that the limitations it imposes are “in essence the same” as those imposed by article 1(4). The General Recommendation does go on to say, however, that the obligation not to maintain special rights for different racial groups in “narrowly drawn” insofar as it refers only to “racial” groups, and thus and calls to mind the practice of Apartheid in South Africa.

43. The General Recommendation draws an important distinction between special measures, which must be temporary, and the permanent rights to which certain minorities might be entitled. For example, minorities have the right to enjoy their own culture, profess and practice their own religion and use their own language, and indigenous peoples have the right to use land traditionally occupied by them. Similarly, women have rights to non-identical treatment based on biological differences, such as maternity leave. These permanent rights should be distinguished from special measures, which are to be used only temporarily. The Recommendation also makes clear that these permanent rights recognized by international human rights law are not “special rights” within the meaning of article 1(4).

44. He noted that CERD practice on special measures has primarily been focused on urging States parties to put such measures in place more frequently. Although the Committee's Concluding Observations have at times expressed concern over special measures that have remained in place longer than necessary, or otherwise raise issues under article 1(4), it is much more common for the Committee to express concern about a State party's failure to take special measures where they seem warranted. And the Committee's Concluding Observations rarely express views about the appropriateness of particular types of special measures as compared to others.

45. Mr. Vazquez summarized the nature of States parties' obligations under the Convention: Article 2(2), as the General Recommendation makes clear, means that it is mandatory – not discretionary – for States parties to employ special measures "when circumstances so warrant." States parties must initially determine whether the circumstances warrant special measures, and this is to be done by assessing whether there is a disparate enjoyment of human rights by persons or groups within the State party on the basis of race, colour, descent, or national or ethnic origin, and an ensuing need to correct such imbalance. This assessment is to be made on the basis of disaggregated data. Once the need for special measures has been determined, the State party must choose among the various types of special measures that might conceivably be employed. This determination must, inevitably, be sensitive to the particular situation of the various racial and ethnic groups in the State party, and must be done in consultation with such groups and other "affected parties." As the General Recommendation notes, the Convention must be interpreted in a context-sensitive manner, and "context-sensitive interpretation . . . includes taking into account the particular circumstances of States parties without prejudice to the universal quality of the norms of the Convention." The Committee recognizes that "[t]he nature of the Convention and the broad scope of the Convention's provisions imply that . . . the conscientious application of Convention principles will produce variations in outcome among States parties," although it has also stressed that "such variations must be fully justifiable in light of the principles of the Convention." In the end, the selection of special measures inevitably requires sensitive judgments by the State parties, but these judgments are to be exercised within the parameters and in compliance with the requirements of the Convention, as elaborated in General Recommendation 32.

46. Brazil speaking (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, Switzerland and Uruguay) stated that special measures, including affirmative or positive action, can be an important tool to prevent and eliminate racism, racial discrimination, xenophobia and related intolerance. The importance of special measures, and its framework, can be found in both the ICERD, in its articles 1(4) and 2, and in the DDPA and in the outcome of its Review Conference. The DDPA recognizes the necessity for special measures or positive actions for the victims of racism, racial discrimination, xenophobia and related intolerance in order to promote their full integration into society. Those measures for effective action, including social measures, should aim at correcting the conditions that impair the enjoyment of rights and the introduction of special measures to encourage equal participation of all racial and cultural, linguistic and religious groups in all sectors of society and to bring all onto an equal footing. Therefore, special measures and affirmative action can not only have corrective functions, but also an important preventive role. The delegation asked Mr. Vazquez whether he considered that there are gaps in the international framework that would require additional international norms on special measures, and invited him to share good practices in the area.

47. Mr. Hidug, in his role as Chairperson-Rapporteur, asked for Mr. Vazquez's views on why, given the mandatory nature of article 2(2) of the ICERD, it was only being implemented by some countries.

48. Mr. Vazquez expressed his agreement at the preventative, as well as corrective, function of special measures. He explained that the Committee considers that CERD is flexible enough to address any gaps in the international framework, and therefore a new instrument on standard on special measures, was not really needed. The Convention was detailed enough in its provisions for special measures and the Committee has developed further guidance through General Recommendation 32, which is sufficient. Special measures are context specific and it is difficult to provide more detailed guidance than that provided in General Recommendation 32. The CERD could, if required, revisit the recommendation to add further details in the future.

49. In his personal view, a survey of the special measures undertaken by states around the world could be interesting. He stated that a significant number of States had taken special measures in different contexts such as in the area of employment, election to political office etc., adding that it was inaccurate to state that few States had implemented them. Although States report to CERD on special measures, due to word limit of the periodic report it was not possible to provide a lot of detail on special measures taken. Information about the type, context and nature of measures, would allow the Committee to analyse and compile best practices and provide States with further guidance on what available options and novel approaches which had not occurred to them.

50. The delegate of Mexico recalled that legislative measures were undertaken as part of national reforms in June 2014, including exclusion, inclusion and positive measures. The measures addressed physical access and communication barriers, and awareness-raising activities and training. Mexico is also taking steps to remove barriers through the distribution of documents in indigenous languages, and there is a policy to combat discrimination such as in the area of homophobia. Special temporary measures have been introduced for groups that face discrimination, particularly people of African descent and indigenous peoples. National councils to prevent discrimination are tasked with gathering information about the work of different institutions in this area.

51. The European Union underlined that ICERD is an important instrument and it reiterated its concern at delays in reporting under the Convention. The delegate inquired about how many states have recognized the communications procedure of CERD under article 14, and inquired whether any new General Recommendations were planned by CERD.

52. Mr. Vazquez appreciated the information provided about the new legislation in Mexico and the areas where action was being taken to ensure disadvantaged communities are not left behind. With regard to inclusion measures, he distinguished between permanent rights held by groups and special temporary measures. He added that special measures are dealt with by other committees and other conventions, and in those contexts special measures may take different forms.

53. In response to the EU, he noted that reporting in some cases is delayed and measures are being taken to address this. Regarding the number of States which have opted into the communications procedure there are approximately 55 states, which is a third of States parties and he encouraged more States to join. General Recommendation 35 on combatting racial hate speech was adopted and released in August 2013. During the April session in 2015, CERD will consider new topics for General Recommendations. CERD is in the process of looking at working methods with an aim to harmonize these with those of other treaty bodies and one of the areas to be harmonized concerns the adoption of General Recommendations.

54. Mexico provided clarification on its previous intervention regarding law reform and special measures. Only the last measure mentioned in her intervention is a temporary special measure.

55. At the 7th meeting on 10 October, Mr. Theodore Shaw, Professor and Director of the Center for Civil Rights of the Chapel Hill School of Law, University of North Carolina presented on the topic: Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance. Mr. Shaw provided some historical context and background to the issue recalling to the transatlantic slave trade and subsequent slavery in the USA, as well as the “Jim Crow” legal era which continued to exist in many parts of the country until the 1960s. He said that affirmative action began in the 1960s as a remedial imperative to address the effects of 350 years of segregation and slavery which had to be viewed as a continuum.

56. He also said that since its introduction in the United States, affirmative action in the education sector had faced repeated backlash in the form of lawsuits alleging “reverse discrimination”. He cited the example of the case of *DeFunis v. Odegaard* (1974) concerning Marco DeFunis, an applicant to the University of Washington Law School, who alleged that he was discriminated against when he was not admitted although black and Latino minority group members had been accepted into the university. The case was ultimately found to be moot in 1974, as DeFunis had been provisionally admitted while the case was pending. He also gave the example of the *Board of Regents of the University of California v. Bakke* (1978), in which Mr. Bakke, an applicant to medical school had been rejected, while applicants from minority groups had been accepted. This landmark decision by the Supreme Court of the US upheld affirmative action but ruled that specific quotas were impermissible. More recently,, in 2003 the United States Supreme Court dealt with the case of *Grutter v. Bollinger* in which it also upheld the affirmative action policy of the University of Michigan Mr. Shaw added that in the United States these decisions were taken on the basis of a diversity rationale, rather than a remedial rationale. He provided different examples of the challenges in implementing affirmative action in the employment sector and stated that while the aim had been to achieve a country in which race did not subordinate people; there has been an ongoing struggle to fight against colour blindness to address the impact of racial discrimination.

57. The representative of Uruguay provided information about ongoing country initiatives to promote affirmative action in the education system for people of African descent, and asked about ways to continue to enforce and implement affirmative action to bring about lasting change in the future, given its temporary nature. The representative of Egypt asked the presenter what he considered to be the most appropriate steps at the international and the national levels to address gaps between existing laws and their enforcement. The delegate of Morocco asked for the presenter’s view on the effectiveness of the justice system to address racism and best practices from US experience that could be replicated.. The representative of the Republic of South Africa provided information on the country’s experience in applying affirmative action through the introduction of the Employment Equity Act and asked the presenter for reasons as to why there had always been a strong reaction to affirmative action policies and measures. Brazil highlighted its positive experience with the introduction of affirmative action, and asked the presenter for reasons behind the backlash against affirmative action. The representative of the United States of America expressed the Government’s commitment to address disparities in the society including through federal measures, and requested the presenter to shed more light on his work with the National Association for the Advancement of Colored People (NAACP) Legal Defense Fund.

58. In response, Mr. Shaw emphasized that education was an engine of opportunity and that backlash in this sector was faced primarily through racial discrimination against black Americans. He observed that while several types of scholarships existed in the American educational system for people from different nationalities, groups and those with different interests, the policies most under attack were those opportunities availed to racial

minorities. He emphasized that laws themselves were insufficient, and, based on his experience, there needed to be a broader embracing of the principle of anti-discrimination. Given the present day challenges faced by African-Americans as evidenced in the recent situation in Ferguson, Missouri, he stated that there remained significant challenges and problems to be addressed, in spite of there being legislation in place. He stated that the fight against racial discrimination could not be won by lawyers but rather by politicians, and gave the example of Gandhi and Mandela, who despite being lawyers, were politicians who believed in equality and justice. According to Mr. Shaw, the backlash against affirmative action measures has been due to racial discrimination and the inability of people to deal with a long legacy of racism and to speak about it, by trying to leave it behind, including by ignoring what is an unpleasant part of a country's history. It is also a challenge to maintain affirmative action policies and programmes, as opportunity was often seen as a zero sum game. In conclusion, he gave a brief account of how the NAACP Legal Defense Fund had become the model for legal defence groups worldwide from its early days in the fight against racial discrimination.

59. At the 8th meeting on 10 October, Ms. Elisa Alonso Monçores, Researcher at the Instituto de Economia/UFRJ in Brazil gave a presentation on "Affirmative actions in Brazil: Recent experience and social indicators". The expert noted that her data stemmed from LAESER, a research group of the Federal University of Rio de Janeiro (UFRJ), working on race relations in Brazil (www.laeser.ie.ufrj.br).

60. She noted that Brazil had the second largest population of people of African descent in the world (after Nigeria) and the biggest "Afrodescendiente" population in the Americas. In the 2010 national census, 96.8 million Brazilians self-declared themselves as "Afrodescendientes", representing 50,7 per cent of the total population. Brazil's affirmative action policies were focused on the educational sector and access to public universities. She noted that over a period of time, the country's illiteracy rate had steadily declined; nevertheless, the comparative rates of illiteracy for "Afrodescendants" and whites remained highly unequal. In recent decades, there had been a pronounced increase in the average years of education for both people of African descent and the white population.

61. Ms. Monçores pointed out that generally there were more white students in private and public universities and at private schools. Private schools were considered of higher quality, whereas public universities were perceived as offering the best education. In 2013, statistics highlighted that 89.3 per cent of young "Afrodescendants" (between 18-24) were not attending university.

62. The expert explained that Law No. 12,711/2012, adopted in August of 2012 was the basis for affirmative action policies in Brazil. She noted that fifty per cent of all student slots at the public universities were reserved for people of African descent, and the remaining fifty per cent were subject to competition. This corresponded to the latest census of the Brazilian Institute of Geography and Statistics (IBGE). She added that as yet there was no affirmative action law with respect to the labour market. Draft Law 6783/13 had passed the House of Representatives on March 26th 2014 and was still pending in the Senate, reserving twenty per cent of public service posts for people of African descent. This Law would not apply to the legislature and the judiciary.

63. During the interactive discussion, the representative of Italy noted that the data presented by the expert did not indicate specific reasons for discrimination, as the discrimination and inequalities in access to university education could be attributed to race as well as to other socio-economic factors. The delegate inquired whether affirmative action policies of the State applied to poor white people in Brazil, and highlighted the problems faced by some European countries in the collection of disaggregated data.

64. Mexico requested data on the number of people of African descent and the delegate of the Republic of South Africa inquired about how long the affirmative action measures taken by Brazil would be kept in place, and what event or development had triggered the initiation of the affirmative action policies.

65. Responding to a question from the delegate of the Republic of South Africa about the efficiency of affirmative action, the expert noted that the impact of affirmative action had not yet been assessed in Brazil. She explained that graduates that had entered through the quota system attained lesser results than their peers upon entering university. During the course of their studies, they would often adapt to the new environment and would graduate in greater numbers compared to other students. In general, she noted that it was important to promote education. A smaller number of people of African descent graduated from high school; therefore, fewer people of African descent could attend university. However, as society underwent changes and the level of education among the general population (which was to a large degree of African descent) increased, that problem would decrease. She added that the overall efficiency of affirmative action would be studied during the next ten years.

66. The representative of Morocco asked about lessons learned which could be replicated elsewhere and inquired about why affirmative action policies focused only on people of African descent, while it appeared that indigenous populations were not included. Ms. Monçores noted that the indigenous population was much smaller, whereas people of African descent represented more than half of the country's population. Her research group studied people of African descent, as research issues concerning the indigenous population were "complex". She noted that it was not common in Brazil to integrate the study of both groups and that quotas were introduced for both groups.

67. Answering a question from the South African representative, the expert provided some context and noted that plans for introducing affirmative action policies had commenced in 2003. She explained that affirmative action was supported by the strong "Black movement" which had been mobilized in the lead up to the Durban Word Conference against Racism. The delegate added that Brazil was never a true racial democracy, and that indeed strong racism existed not far below the surface. The implementation of affirmative action policies had resulted in more open discussions about race and racism in Brazilian society.

68. The Brazilian representative added that the history of racism in Brazil was characterized by invisibility. In the 1980s, the country still reported to CERD that there was no racism in Brazil. That attitude had changed after the process of democratization. People of African descent were very well organized and Brazil featured a Ministry for Racial Equality. The representative noted that the Durban World Conference against Racism and the subsequent processes were essential to the developments in the country. Some questions were complicated, such as how to correctly address the linkages between socio-economic status and race.

69. The delegate of Mexico inquired about the labour market, and the expert noted that some federal states had introduced quotas for public service – but that was not yet the case at the federal level. Currently, more white people served in the public service than people of African descent (approximately 60 per cent of the public service consists of white civil servants).

70. The representative of the Bolivarian Republic of Venezuela noted that similar problems existed in other countries of the region, which shared a similar history and same context pertaining to racism. He noted that the mandate of the Working Group of Experts on People of African Descent had been focused on precisely those issues noted in the expert's presentation. He mentioned that his country supported the policies presented by the

expert. The representative of Uruguay also noted that the situation was similar in Uruguay. Affirmative action also existed, though only ten per cent of the population were of African descent. The law in Uruguay focused more on public service than the educational sector. The two countries were however, exchanging information regarding their experiences in that area. The representative also asked if Brazil had encountered the problem of "filling quotas". The expert replied that that was sometimes the case. Certain quotas existed (such as a 30 per cent quota for female parliamentarians), but there were not enough women parliamentarians to fill that quota.

71. The Chairperson-Rapporteur noted that according to the expert's presentation, students who were disadvantaged in early life could do well later in life. He inquired if that meant that they would also have better employment opportunities and if so, were they consequently better integrated in society. The Chairperson-Rapporteur also asked if some structural analysis had been undertaken and if the question of class and race been looked at in order to create upward mobility in Brazilian society. The expert answered that the integration of those who had benefitted from special measures in society had yet to been studied. She expressed some caution about the assessing the intersection between class and race, in terms of an economic analysis. There was a strong linkage between various factors that could lead to discrimination, such as social class, economic status and race. She underlined the fact that all aspects were of importance and that economic models had difficulties isolating for the impact of these various social factors. Professor Shaw added that race and class were indeed very often interlinked, noting that inequality was on the rise, on the global level as well as within certain countries. He stated that the increasing inequality had already reached crisis proportions tearing apart the social fabric in some countries.

72. The representative of Ghana pointed out that many historical and current conflicts were not fought among people of different racial backgrounds, but that conflicts were regularly sustained by the perception of superiority of one or both sides to the conflict. The representative noted that respect for the individual must always be the cornerstone of any policy. He also expressed support for the work of the Committee in contributing to the topic of racism and sport.

73. On 13 October, during the 9th meeting, Ms. Dimitrina Petrova, Executive Director of the Equal Rights Trust gave a presentation on Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance.

74. She introduced the concept of a unified human rights framework on equality which offered a holistic approach, recognizing both the uniqueness of each different type of inequality and the overarching aspects of different inequalities. The unified framework brought together: a) types of inequalities based on different grounds, such as race, gender, religion, nationality, disability, sexual orientation and gender identity, among others b) types of inequalities in different areas of civil, political, social, cultural and economic life, including employment, education and the provision of goods and services and c) status inequalities and socio-economic inequalities. This conceptual framework was expressed in the Declaration of Principles on Equality adopted at an expert meeting in 2008 and subsequently endorsed by various experts and activists on equality and human rights from around the world.

75. She explained that, in her view, the synonymous concepts of special measures, affirmative action and positive action should be seen in the light of the modern understanding of non-discrimination and equality as legal rights. As such, positive action is a necessary element of the right to equality. But it was very important to note the growing trend of interpreting "special measures" as part of, rather than an exception to, equal treatment. For example, the Committee on the Elimination of Discrimination against

Women (CEDAW) in its General Recommendation No. 25 stated that under the Convention, temporary special measures “should target discriminatory dimensions of past and current societal and cultural contexts which impede women’s enjoyment of their human rights and fundamental freedoms.” The notion of positive action should be similarly applied in the context of the rights to race-based equality and non-discrimination protected by the ICERD. The CERD General Recommendation No. 32 went a long way toward defining special measures as mandatory in a substantive equality paradigm, departing decisively from interpreting them as a supplementary afterthought. Having identified patterns of substantive inequality, including on the grounds of race, ethnicity and nationality, States should be required to take positive action measures to address them.

76. Special measures could be classified into different categories according to the purpose, or the compelling public interest they satisfy. She outlined different typologies of special measures identified both in the academic literature and in legislation. Professor Christopher McCrudden had identified five different types of affirmative action: (i) eradication of practices that have the effect of disadvantaging a particular group, such as a word-of-mouth hiring; (ii) policies that seek to increase the proportion of members of a previously excluded or under-represented group; (iii) outreach programmes, designed to attract members of under-represented groups; (iv) preferential treatment, or reverse discrimination in favour of a certain group; (v) redefining merit by altering the qualifications necessary for a post so as to encourage recruitment or promotion of members of a disadvantaged group. It should be noted, however, that “reverse discrimination” was increasingly excluded from the scope of legitimate special measures, as was the synonymous “positive discrimination” – justly described by CERD as a contradiction in terms.

77. She added that the countries which have significant experience in applying positive action measures included Canada, South Africa, some of the Member States of the European Union, the USA, and India. But there were also cautionary tales, such as Malaysian experience, where measures seemingly developed into entrenched privileges.

78. She recommended that: (i) UN mandate holders should engage in an effort to consolidate, harmonize and update the international human rights framework related to equality, in order to position special measures/positive action in the new, holistic legal framework, which was capable of reflecting both the overarching aspects and the “inter-sectionalities” of racism, racial discrimination, xenophobia and related intolerance with all other forms of bias and discrimination; and (ii) UN mandate holders, particularly the treaty bodies, should issue interpretative guidance to construe the denial of special measures as a form of discrimination, by analogy with the denial of reasonable accommodation in CRPD. The lack of positive action (also known as affirmative action or special measures) to overcome past disadvantage and accelerate progress towards equality of particular groups could constitute a violation of the right to non-discrimination or the right to equality. She explained that was not a new standard, but simply a corollary of the recognition of special measures as a necessary part of the right to non-discrimination, and of their mandatory character (the expert referenced CERD General Recommendation 32, paras. 20 and 30). Positive action measures were most commonly used to promote equality within the ambit of socio-economic rights such as, for example, education, work, housing or health. Examples included the recognition of special protection and special consideration to the needs of the Roma due to their different lifestyle (*Orsus v. Croatia*, European Court of Human Rights).

79. She noted that, in her view there were no significant substantive nor procedural gaps in the international human rights legal system related to special measures. Rather there was: (i) a need to update, harmonise and unify the international legal framework related to equality, and (ii) a need to fill certain interpretative gaps, and provide guidance on certain

aspects of “special measures”, including through explicit recognition that the denial of special measures, where they were mandatory (in order to realise the rights to non-discrimination and equality) constituted a form of discrimination.

80. During the discussion that followed, Brazil recalled efforts in Latin America to consolidate the laws on discrimination. Countries aimed, under the OAS umbrella, at drafting one convention that would encompass all forms of discrimination. As there was no consensus on some questions, two conventions were drafted and adopted as a solution. The representative of Brazil also asked if new norms on special measures were needed.

81. Ms. Petrova responded that while she saw no substantive or procedural gaps in the existing legal framework, there may be a need for further interpretation on how special measures and equality were related. Such an “interpretation gap” could be addressed in the form of another general recommendation by the CERD.

82. The representative of Morocco asked if the existing analysis of special measures in a number of countries could be compiled in one study. The expert noted that such compilation was possible, however its value would be hard to assess, as there was no rigorous quantitative assessment on the efficiency of special measures. That lack of quantitative assessment was also due to a lack of reliable statistics and in many regions, statistics on ethnicity were very controversial. There were also issues concerning data protection, as well as the quality of existing statistics was at doubt. Countries often used self-identification in order to determine ethnicity, which could be very insufficient; and it was not clear if data were comparable across borders.

83. Asked about her personal assessment of quotas, Ms. Petrova noted that she was not in support of them, as they often created more problems than benefits. In her view, it was advisable to empower people, through outreach programmes, clear targeting initiatives, mainstreaming and other measures, than to introduce quotas.

84. The representative of the United States noted that special measures needed to fit the local context and that consequently a certain amount of State discretion was required. Ms. Petrova replied that the best bodies for assessing the validity of special measures were the courts. It should be kept in mind that special measures were always purpose-driven, and designed for a specific purpose.

85. The Chairperson-Rapporteur noted that in many countries the group facing discrimination was in the minority; however, there were other countries such as South Africa or Brazil were those that were subject to discrimination were the majority of the population. The expert noted that the key issue was that of disadvantage, rather than the proportion of the population. With the development of equality law, the empowerment of the weakest had increasingly become the purpose of this law. In her view, the trend was moving in the direction of transformative equality and protection of the weaker members of society.

C. Summary of the expert presentation and initial discussion on the topic of “Establishment, designation or maintaining of national mechanisms with competences to protect against and prevent all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance”

86. At the 10th meeting on 13 October, Mr. Pedro Mouratian, President, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), Argentina, briefed the Committee on the work of his organization under the topic of “National mechanisms”. Mr. Mouratian noted that the institute was one of few specialized bodies in the region of

Latin America. It was founded in 1995 pursuant to the Law on National Institution against Racism. He added that INADI's history is strongly linked to the Durban process, during which Argentina committed to drawing up a national plan against racism. Since the inception of that plan, equality had become a cross-cutting policy issue in Argentina.

87. He explained that INADI was a decentralized organization, present in all of Argentina's provinces and had a staff of 470 civil servants working full time.. It was governed by an advisory body (10 representatives of civil society) and a board (that also included representatives of the States and civil society). While the president and the vice president were nominated by parliament, INADI, although a state institution enjoyed considerable independence and had its own budget. Working under the Human Rights Secretariat, the institute focused on two issues: i) the substantive matters of discrimination; and ii) the receipt of complaints, that were followed up by the delivery of opinions. He underscored the fact that INADI had cross-cutting mandate – addressing many areas of life.

88. The goal of INADI was to change societal behaviour which has a human rights or discriminatory approach and that its substantive work was directed at the promotion of equality. The institute cooperated closely with civil society organizations that fought discrimination and it also coordinated civil society networks. The institute also monitored legislative proposals. He cited three laws as particularly noteworthy: The 2004 Migration Act, the Equal Marriage Act, and the General Equality Act.

89. He underscored the fact that every kind of discrimination was considered a State matter in Argentina, and that INADI was consulted on bills before their submission to Parliament. He also highlighted INADI's work in the area of awareness-raising, including specialized materials which integrated non-discriminatory practices. Mr. Mouratian also commented on the issue of invisibility of people of African descent in Argentina, noting that these communities although historically large in number, now were a much smaller population, often hidden from view. He stated that the national institution for statistics and the national census were gathering statistics and those measures were aimed at awareness-raising and to reaching these communities which had been victims of serious discrimination over the centuries.

90. Mr. Mouratian told delegates that one of the problematic issues in Argentina was discrimination in football and that INADI was targeting it by observing football matches. INADI also conducted awareness-raising campaigns together with UNICEF and cooperated with sports journalists to spread anti-discrimination messages. He explained that this work was proving successful. In 2010, one third of all football matches had to be suspended due to discrimination and xenophobia, while now only one of six matches was suspended.

91. During the discussion which followed, Pakistan inquired whether guidelines or complementary standards at the international level were required to achieve uniformity of objectives so that countries had a standard by which to assess their national situation. Mr. Mouratian noted that each country was different, that there were many laws already in place, and that was important to use those laws and conventions in order to promote national legislation.

92. Further to Mr. Mouratian's presentation, the European Union underscored its full commitment to the rights of LGBT persons and recognized the important role played by civil society in this regard. The delegate further stressed the importance of national mechanisms and inquired if guidelines for setting up new national mechanisms would be useful. Mr. Mouratian agreed that national mechanisms were of importance, acknowledged the UN's role in assisting the creation of such institutions and national plans, and also emphasised the importance of networking among those institutions to create synergies and exchange experiences.

93. Asked about the role of the media by the European Union, Mr. Mouratian noted that the media played a key role in awareness-raising; however, media outlets could also create stigmatization and confirm societal prejudices. INADI consequently published handbooks for journalists to avoid such stereotyping, and it also observed national broadcasting in order to analyse media content and issue recommendations. He underlined that in doing so, INADI was careful to avoid any infringements on the independence of media and the freedom of expression and opinion.

94. The delegate of Morocco inquired about the division of labour between INADI and the Ombudsman of Argentina. Mr. Mouratian explained that the Ombudsman, created following constitutional reform, had the main task of follow-up on individual complaints. While INADI and the Ombudsman cooperated on a number of issues, issues related to discrimination were automatically referred to INADI.

95. The representative of Bolivarian Republic of Venezuela noted that INADI was setting a good example in the region. Venezuela had been learning from these good practices, and would soon be joining the network of national mechanisms to improve institutional cooperation and the exchange of experiences. The representative acknowledged the issue of racism in sport, supported further cooperation in that area, and fully supported the mandate of the Ad Hoc Committee to draw up international standards.

96. Brazil acknowledged its national-level cooperation with INADI, noting that several institutions for the promotion of racial equality, such as the SEPPIR existed in Brazil but pointed out that despite the close cooperation the two institutions also differed, in that they served different societies, with different populations. Brazil faced similar challenges regarding sports and football, as there were episodes of racism at Brazilian matches. A major team was expelled from national competition due to actions of supporters of that team. The delegate suggested that the Committee could further discuss this topic as a theme, and while perhaps not elaborate a standard, guidelines or plan of action could be considered.

97. A representative of the non-governmental organization "African Reporters for defence of human rights" complimented INADI for its work and noted that it was important for people of African descent to find their place in Argentinian society. The 1st of January 2015 marked the beginning of the Decade for People of African Descent, and he asked the expert to elaborate on any cases of discrimination that he had handled involving people of African descent. Mr. Mouratian replied that he had handled several such cases, highlighting the case of an Argentinian of African descent returning to Argentina with a valid passport, detained by immigrations officials who did not realize that there were Argentinians of African descent.

98. A representative of the non-governmental organization "Indian Council of South America" inquired about INADI activities to address issues concerning racial discrimination and violations of the right of self-determination of indigenous peoples. Mr. Mouratian replied that Argentina had taken steps to acknowledge its indigenous heritage. The 2006 Law on Expropriation of Land was an example in that regard, as it was an attempt to change the culture of the country.

99. The representative of Chile requested more information regarding the suspension of football matches, and inquired how INADI convinced football leagues to join human rights campaigns. The expert noted that discrimination in football was widespread, and confirmed that it was important to work with associations, and noting he importance of political decisions in that regard. In addition, cooperation with international agencies, such as UNICEF, was highly important and was responsible for good results.

100. In answer to questions from Morocco, the expert noted that INADI currently had 23 provincial offices in addition to its headquarters in Buenos Aires. He explained that

resources were distributed according to needs in the country based on where discrimination was particularly prominent.

D. Summary of the expert presentation and initial discussion on the topic of "Xenophobia"

101. The topic of "Xenophobia" was discussed at the 11th meeting on 14 October. A presentation was made by Mr. Ioannis Dimitrakopoulos, Head of the Equality and Citizen's Rights Department at the EU Fundamental Rights Agency. He provided an overview of the work of the Fundamental Rights Agency (FRA), which is a body of the European Union, created in 2007. He stated that FRA undertakes data collection and analysis to assist EU institutions and Member States in their efforts, as duty bearers, to comply to European and international human rights standards reflected in the EU treaties and the EU Charter of Fundamental Rights.

102. He explained that the Agency's mandate was to collect reliable, comprehensive and comparable data through a series of EU-wide surveys on discrimination and hate crime by interviewing large random samples of different target populations. The surveys target specific population groups, such as migrants and minorities, and select random samples who are asked how they are treated, if they experience discrimination and intolerance, and if their human rights are fulfilled. The surveys gave individual rights holders a voice through FRA reports which reach decision and policy makers, assisting the development of evidence-based legal and policy responses.

103. He pointed out that data published by law enforcement agencies and criminal justice systems in the EU Member States show great fluctuation between 2011 and 2012 in officially recorded crime in the EU with racist, xenophobic, anti-Roma, anti-Semitic or Islamophobic/anti-Muslim motives. In some countries there was a decrease in officially recorded racist crimes, while an increase of the same in other countries. Mr. Dimitrakopoulos noted that official data are not comparable, as they are collected using different methodologies, they are also not always comprehensive and cannot show the full extent of the problem, as hate crime tends to be both under-reported and under-recorded.

104. Mr. Dimitrakopoulos highlighted the fact that the results of large-scale surveys carried out by FRA, which target specific population groups, show that hate crime and discrimination remain a problem for a sizeable proportion of respondents. At the same time, the results also show that victims and witnesses of such crimes and discriminatory treatment often do not report, to law enforcement, the criminal justice system, other competent public bodies, NGOs or victim support groups. Between 57% and 74% of incidents of assault or threats experienced by members of minority or migrant groups surveyed in the EU were not reported to the police. He said that the main reasons for non-reporting for all these respondents include that "nothing would change" by reporting incidents, that "such incidents happen all the time", and that they "did not trust the police".

105. In order to tackle the problem of hate crime, the EU has put in place a broad set of legal and policy measures, including criminal legislation penalizing public incitement to violence or hatred on the basis of race, colour, religion, descent or national or ethnic origin; legislation prohibiting discrimination on the grounds of racial or ethnic origin and religion; and also the provision of financial support to address racism, xenophobia, and related intolerance through financial instruments, such as the Fundamental Rights and Citizenship Programme and the Programme for Employment and Social Solidarity. In 2012, a directive establishing minimum standards on the rights, support and protection of victims of crime required individual assessments to take into account personal characteristics of the victim, including ethnicity, race, religion, sexual orientation, disability, residence status, and

gender identity or expression. The assessments should also take account of whether it is a hate crime, or a crime committed with a discriminatory motive.

106. He stated that these responses are apparently not sufficient. At the level of legislation, hate crime should recognize the motivations underlying it and the effect it has on victims. At the policy level, this means implementing policies that will lead to collecting reliable data on hate crime that would record, at a minimum, the number of incidents of hate crime reported by the public and recorded by the authorities; the number of convictions of offenders; the grounds on which these offences were found to be discriminatory; and the punishments issued to offenders. This should be supplemented by practical mechanisms to encourage victims and witnesses to report incidents of hate crime, as well as mechanisms that would show that authorities are taking hate crime seriously. He noted that the Fundamental Rights Agency has recently been asked to work together with Member States, at their request, to assist them in efforts to develop effective methods to encourage reporting and ensure proper recording of hate crimes.

107. According to the speaker, what is currently necessary, in the EU context, is not additional legal standards, but rather the implementation of existing standards and effective monitoring. The FRA seeks to achieve this by developing specific indicators based on the model developed by the OHCHR, for measuring implementation of human rights standards. He said that in future, FRA will work on indicators concerning racism, xenophobia and related intolerance focusing on hate crime. He stated that indicators are neither designed, nor suitable for, ranking Member States, but that their objective is to highlight the norms and principles of fundamental rights enshrined in the EU treaties and translate these into contextually relevant indicators for implementing and measuring progress made at national level. He suggested that developing such indicators and populating them with data can contribute decisively in promoting human rights standards by strengthening accountability and empowering those most vulnerable and marginalized.

108. The delegate of Pakistan, on behalf of Organization for Islamic Cooperation, stated that there has been an increase in religious intolerance and discrimination in many parts of the world, and asked the speaker to elaborate on concrete steps taken by the FRA to curb religious intolerance and discrimination in European Union Member States. With regard to the collection of data, the delegate inquired about evidence regarding incitement to imminent violence.

109. The representative of the USA requested additional information on quantitative indicators, including their usefulness, advantages and limitations.

110. The delegate of the Republic of South Africa, on behalf of the African Group, pointed out that the speaker’s comment on the need for complementary standards was a moot point, as the World Conference against Racism in Durban had already identified a need to elaborate complementary standards, in the form of an additional protocol or a convention, and that now the question was how this would occur.

111. In his reply to the delegates’ questions, Mr. Dimitrakopoulos emphasized that the FRA applies existing definitions, as it is not a standard-setting institution. He noted that during the FRA’s surveys rights-holders are questioned directly, through a detailed questionnaire which asks them whether they had experienced unequal treatment, rather their general views on the subject matter. With regard to religious intolerance, the presenter said that the survey respondents sometimes were not able to distinguish whether the discrimination they faced was ethnic, racial or religious discrimination. He said that in 2009, the FRA published a report analysing the survey data of Muslim respondents and in 2012, a FRA survey focused on Jewish people living in nine EU Member States. He cautioned that a survey is a snapshot at time, and therefore FRA is committed to repeat surveys over a regular period of time to identify trends. These trends allow Governments to

target their measures more efficiently. He also said that developing indicators is not an easy task, however, measurement of factors tends to attract notice. He stated that human rights implementation is measurable.

112. The representative of Morocco stated that anti-discrimination policies often failed to materialize at two levels, in EU Member States and in the European Union Commission and he inquired about whether there were issues of political will or differences across Member States. The delegate added that the Rabat Plan of Action could be a blueprint for OHCHR action in the area of incitement to racial, national and religious hatred and asked whether the FRA incorporated the Plan in its work.

113. The EU stated that the FRA produces reliable and comparable data, helping the EU institutions and Member States at the national and regional level and its work is transparent and publicly available. It was noted that racism is a global issue, affecting every society and country everywhere in the world, and urged other regions to share similar experiences with regard to data collection.

114. The United States of America highlighted the fact that there is no need for new standards, rather better implementation of existing standards was required. With reference to LGBT issues, the delegate also requested information about how the FRA decided which specific grounds would be covered in their survey and data collection work, and whether it was on the basis of European Union law or regulation.

115. The delegate of Pakistan, on behalf of the OIC, stated that religious intolerance in many parts of the world was increasing and emphasized that ICERD does not have a definition of xenophobia, which created several loopholes in the existing standards.

116. The delegate of Algeria asked whether the FRA interacted with the European Commission “European barometer work” and whether racial discrimination is considered in those surveys. The delegate inquired how the European Charter was implemented on the ground, and whether the FRA analysed the implications of case law related to xenophobia and hate crime. Adding that preventative approaches, such as human rights education and good practices are useful, there are, nonetheless, certain limits which require legal and policy measures and that legal issues are part of a preventative approach. It was added that when victims are forced to take their cases to the European Court of Human Rights, there is likely a lack of protection.

117. In reply, the presenter noted that concerted and continuous efforts are required, particularly in the area of education, as that is where young people learn how to live in multicultural societies. He said that moving from a homogeneous to a multi-ethnic society will take some time. He stated that the manifestation of Islamophobia varied, depending on the Member State, and that there could be different reasons why Muslims would be treated differently. The fact that victims could not distinguish between ethnic or religious discrimination shows that they are intertwined. He noted that it is important to empower victims to seek redress and improve the way police handle hate crimes. He added that definitions could be discussed at length; however, it was important to see what people experienced on the ground. In his view, there is sufficient case law that provides definitions.

118. The delegate of Morocco highlighted the fact that perhaps victims were unable to distinguish the exact grounds for the discrimination they faced because they faced multiple forms of discrimination. He noted that surveys might not be the appropriate approach to collect data about racial discrimination. He emphasized the need for victim-centred approaches, as the victim of the discrimination might not be in a position to reply adequately to the survey and that the understanding of a question, and hence the responses, could change from one survey respondent to another.

119. The delegate of the Republic of South Africa pointed out that it had not been stated that racism, racial discrimination, xenophobia and related intolerance are necessarily attributed to one particular region, and noted that the persistence of xenophobia is a rejection of multiculturalism.

120. The delegate of Pakistan, on behalf of the OIC, stated that only when a crime is defined and identified could it be tackled in a comprehensive manner. If there is sufficient case law, additional international standards would unify such evidence that could be applied in all countries and not only in certain regions, and that these additional standards would bring about significant changes.

121. The delegate of the Bolivarian Republic of Venezuela stated that there is a need for additional standards as there is an increase of new forms of discrimination which must be combated in a systematic and multi-fashioned level. He noted that there has been an increase of incitement to hatred in recent times.

122. In his comments, Mr. Dimitrakopoulos stated that EU policies had come a long way and pointed out that both policies and data are needed to guide policy makers, adding that it the issue is not only protection on paper, but how it is translated in real practice. He informed the meeting that victims' support services data are collected and available on the website of the FRA for each Member State. The second wave of surveys, following up on previous surveys should illustrate whether victims are willing to use and enforce their rights. He noted that there is a certain fatigue as victims state that discrimination happens repeatedly. He added that improved police training is necessary and in the EU context, it is important to eliminate impunity and to monitor systematically the implementation of existing standards.

123. The Chairperson-Rapporteur referred to historical experiences of slavery, colonialism, apartheid, and the post-colonial period which occurred in many different regions of the world, highlighting their impact on racial discrimination as it developed in the 20th century and onward. He noted that the post-independence period and ensuing immigration witnessed racism and racial discrimination in developed countries. He stated that a victim was often a victim based solely on appearance, and highlighted instances of racial profiling in different regions and locations, including airports. He added that for this reason, surveys directed at victims did not always capture this dynamic or reveal the mind-set and mentality of perpetrators or violations. Therefore, surveys, such as those collected by the FRA, should reflect perpetrators' viewpoints well. He also stated that survey results could also seemingly highlight the lack of confidence in State structures and institutions. He stated that at times, the value of drafting of new laws could represent a moral barometer, telling society that certain behaviour will not be tolerated. The Chairperson-Rapporteur inquired whether in addressing racial discrimination and xenophobia, the objective was to eliminate racism, or just to reduce it, and inquired how far racism should be tolerated.

124. Mr. Dimitrakopoulos agreed that it would be useful to study the issue and profile of perpetrators, especially since they are often thought to be bigots, racists and extremists when in fact they are often regular people. There were good grounds to look at larger social groups and how they manifest their political convictions. He underlined the importance of victims and their right to seek redress and the necessity of building trust in order that victims report crimes, so that the system can respond effectively.

E. Summary of the expert presentation and initial discussion on the topic of "Procedural gaps to the ICERD"

125. At the 13th meeting on 15 October, Mr. Anwar Kemal of the Committee on the Elimination of Racial Discrimination, made a presentation on "Procedural Gaps with regard

to the ICERD." He noted that CERD had been following the discussions of the Ad Hoc Committee with keen interest, recalling that in previous sessions, CERD Committee members Mr. Alexey Avtonomov and Ms. Fatimata Binta Dah had shared valuable insights on the issue of procedural gaps; Mr. Patrick Thornberry interacted with the Ad Hoc Committee on the subject of xenophobia; and Mr. Carlos Vazquez had presented on the subject of special measures, just the week prior. Mr. Kemal recalled the 2007 study by CERD (A/HRC/4/WG.3/7) which outlined possible measures to strengthen the implementation of the Convention, including a proposal to adopt an optional protocol to provide for an inquiry procedure. He continued that Mr. Alexey Avtonomov, in his capacity as CERD's Chairperson 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 ought to be able to address any problems without amending the Convention, substantially.

126. He stated that Mr. Avtonomov had also suggested, however, the possibility of an optional protocol to the Convention adopting procedures to make possible to undertake country visits to selected countries for the purposes of investigating and evaluating the situations. He concurred that implementation of the ICERD could be strengthened if supported by the optional protocol to establish an inquiry procedure. Such an inquiry procedure already existed for the Committee against Torture, CEDAW, the Committee on the Rights of Persons with Disabilities, the Committee on Enforced Disappearances, the Committee on Economic, Social and Cultural Rights, and the Committee on the Rights of the Child. He noted that ICERD, adopted almost 50 years ago, remained relevant to new challenges faced today, and provided guidance on relevant and applicable standards owing to its flexible working methods, including through days of discussion, adoption of general recommendations, responding to urgent situations through early warning and urgent action procedures.

127. Mr. Kemal further highlighted the important role of General Recommendations that assist States Parties in interpreting the articles of the Convention and effectively implementing their obligations. CERD had adopted 35 general recommendations, including the most recent general recommendation on racist hate speech adopted in 2013. He stressed the fact that the Committee had been able to apply the Convention effectively to address new and emerging facts of discrimination based on race, colour, descent or national or ethnic origin. He noted that the biggest obstacle to effectiveness was that a large number of countries did not submit reports at all, or their reports were chronically overdue. The second obstacle was the non-implementation of CERD's recommendations, followed by the third obstacle which are reservations to ICERD.

128. Mr. Kemal also noted that CERD did not deal with discrimination on the grounds of religion. The Committee acted only if "intersectionality" were present. That meant that if persons belonging to another racial or ethnic group were also discriminated against on grounds of religion and gender – only then would such situation fall under CERD's competence. CERD was also active when it came to early warning and urgent action, Mr. Kemal noted. CERD for example, adopted Decision 1(85) under its Early Warning and Urgent Action Procedure responding to the current turmoil in Iraq. In that decision, CERD denounced massacres and other human rights abuses by terrorist that called themselves "Islamic State".

129. Brazil (on behalf of Argentina, Armenia, Brazil, Chile, Colombia, Mexico, the Republic of Korea and Switzerland) stated that CERD's views were central to discussing procedural gaps with regard to the ICERD. These delegations were of the view that in order to prevent and combat racism, racial discrimination, xenophobia and related intolerance, the best use of the existing international instruments must be made, and the implementation at national level (particularly the ICERD and the DDPA) secured. It recalled that Mr. Kemal

had stated that there were procedural gaps with regard to ICERD, in areas such as visits to countries, evaluation and follow-up procedures. By dealing with these gaps, both the implementation and monitoring of ICERD would be improved. This would also have positive impacts on other the topics that had been discussed by the Committee, such as prevention and human rights education, special measures, xenophobia and national mechanisms. The presentation of Mr. Kemal had shown that the Ad Hoc Committee should keep discussing the issue of procedural gaps and that there was clear room for improvement. That idea had already been stressed by the "study of CERD on possible measures to strengthen implementation through optimal recommendation or the update of its monitoring procedures" in 2007. The group believed that the topic of procedural gaps should be further discussed in future sessions of the Ad Hoc Committee, in order to find ways to address those concretely.

130. The United States of America noted that Mr. Kemal proposed a protocol to ICERD that would allow country visits. The representative asked if other treaties contained similar provisions for country visits and how such visits would be organized. The expert noted that other treaty bodies indeed used country visits. An improved inquiry procedure would be beneficial to CERD as racism had become a global phenomenon and CERD would need to inquire in various parts of the world. The expert explained that he was not in a position to explain the "mechanics" of a country visit, and that CERD would rely on the Secretariat to undertake work with regard to this issue when the need arose. He agreed that such visits might be expensive if all members of CERD would decide to travel, but the Protocol could be drafted in such a way to avoid this.

131. The representative of Uruguay asked if the article 14 procedure was used frequently and if the procedure could be made more effective. Mr. Kemal explained that less than 60 countries had accepted the article 14 procedure and that CERD received very few complaints on the basis of article 14. The procedure was not well-known, and individuals might consider the procedure not worth the effort, or they might fear it. He added that many complaints were, rejected because domestic remedies had not been exhausted. Nevertheless, CERD might consider taking some action in order to support the victim, if the Committee was of the opinion that the case had some merit.

132. Brazil inquired how CERD dealt with discrimination based on religion. The expert noted that in his view sometimes religion could be linked to ethnicity, and the aspects of ethnicity and religion became fused. CERD tended to treat issues of religious discrimination on a case-by-case basis, and only if there were multiple aspects of discrimination that were linked to ethnicity.

133. The delegate of Pakistan, on behalf of the OIC, reminded the Committee that a 2006 study noted that an optional protocol would be helpful. The representative asked Mr. Kemal how the Committee should proceed in his opinion. The expert noted that it was important to consult on the way forward with the CERD, following a decision made by the Committee.

134. The Republic of South Africa stated that multiple reservations made to key articles of ICERD impeded the Convention's implementation. The representative emphasized that ICERD was mainly an aspirational document for many countries that had made reservations, as the Convention was not enforceable. That constituted a protection gap. Implementation made sense only if human rights could be adjudicated, and reservations defeated that purpose. Implementation of ICERD was, however, not enough as paragraph 199 of the DDPA had held. That mandate still obliged the Committee to update the existing legal framework. The expert assured South Africa that recommendations by countries (for general comments) were considered by CERD, and that the Committee had recently published a comment on hate speech because it saw the need, and this need had also been expressed by several countries.

135. The European Union noted that the expert confirmed that CERD was able to address all new and arising challenges under the current Convention. His point that there was no substantial gap was important information for the Committee. The representative further asked what obstacles hindered full implementation according to the expert. The expert referred to his statement and noted that the lack of responses to CERD from countries was a major obstacle as was non-reporting by countries. Furthermore, countries did not respond to concluding observations. In addition, often implementation did not take place, and reservations weakened the treaty.

136. The representative of Ghana drew attention to the African Peer Review Mechanism (APRM), and noted there might be gaps in the legal framework when it came to migrants. The expert thanked the representative on the information regarding this mechanism and noted that CERD was interested to hear about developments in various regions and would appreciate receiving more information. On migrant workers, the expert noted that it was essential that countries that had not yet done so, joined the treaty. Ghana asked about the role of genocide in CERD's work, the expert stated that during the 1990s CERD became very mindful of genocide – because of massacres – and the Committee took action when a situation deteriorated. CERD had also become more sensitive to the problems of indigenous people and had taken those up in an early warning procedure.

137. Namibia noted that ICERD was not a stagnant instrument but should be subjected to constant evolution. Namibia had experienced drastic forms of racism, including hate speech which was particularly disturbing and the root causes of hate speech should be addressed. Data should be collected on the circumstances in which hate speech could arise. The representative also held that the importance of article 7 of ICERD had not diminished. An educational approach was essential to address indoctrination and inadequate education.

138. The Republic of South Africa, on behalf of the Africa Group, stated that when analysing the proposals for the future work of the Committee, one noticed that there were gaps in ICERD. The representative asked the expert about the key elements of an additional protocol. The delegate noted that ICERD was a living instrument as many forms of discrimination could not have been foreseen when it was created in the 1960s. Mr. Kemal suggested that an improved inquiry mechanism could rely on the existing procedures of other mechanisms. Country visits were needed because of the serious problems that existed when it came to implementing ICERD.

139. Italy remarked that the idea of country visits was interesting. Such visits could be important tools to increase the ICERD's implementation. However, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance had already undertaken 35 country visits. The added value of CERD visits was not clear, particularly since closer cooperation between CERD and the Rapporteur could result in an improved exchange of information. The proliferation of mechanisms and visits could in practice create problems. Italy also inquired about the level of cooperation between the Special Adviser on the Prevention of Genocide and CERD when it came to early warning. The expert noted that CERD and the special rapporteurs cooperated as closely as possible, reports and information were exchanged and improved cooperation would require additional resources. Regarding country visits, the expert noted that countries would have to consent to any visit. He agreed that they had to be planned well, and in advance.

140. Morocco noted that it had regularly called upon the various human rights mechanisms not to work in separate silos, but to cooperate closely. Cooperation, such as the cooperation between CERD and the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance should increasingly feed into the UPR process. The representative also asked if CERD planned a general comment on "Islamophobia". Mr. Kemal agreed that the UPR played a crucial role and that all mechanisms would nurture each other. Regarding the recommendation to draft a general

comment on “Islamophobia” Mr. Kemal noted that the topic and “phobias” relating to other religions were already referenced in CERD’s comment on hate speech. He underlined that CERD was concerned with vulnerable people regardless of which group or religion they belonged to. Action was taken in every regard. The most troubling aspect about hate speech was its use by politicians. In quite a few countries such hate speech was punished by voters, but that was not always the case. Religion was not the mandate of CERD, but the Committee was alert to all injustices and would act when forms of discrimination intersected with ethnic discrimination.

141. The representative of Pakistan remarked that CERD had covered procedural gaps by drafting general comments. However, States did not regard general comments as legally binding. Consequently, the representative doubted how general comments could cover substantive gaps that had emerged. Mr. Kemal noted that it was a “question of degree”, as in fact, ICERD was not fully implemented, despite the fact that it was binding. As international law did not know enforcement machinery, it was impossible to force countries to respect some international frameworks. General comments were also not intended to punish countries, but assist them.

142. Egypt requested clarification on the gaps in ICERD and inquired if the Committee could tackle those procedural gaps by drafting a single optional protocol or several. The representative also asked if the Committee should address substantive gaps. Mr. Kemal underlined that ICERD was comprehensive enough and that during the last forty years CERD had taken an activist approach. The Convention, as a living document, was flexible and had covered all issues. One single protocol on country visits as suggested by the CERD, was enough to further the implementation of the Convention.

143. The Chairperson-Rapporteur recalled that during the World Conference against Racism in Durban there was a consensus that there were gaps in the ICERD. Some countries appeared to have subsequently moved away from that agreement. He added that ICERD was subject to many reservations. He stated that it could be argued that the bulk of these reservations constituted a gap. Important new phenomena such as the surge of racism in and around football pitches also needed to be addressed. The Chairperson-Rapporteur asked if CERD had addressed such issues. The expert noted that the application of peer pressure could help address the issue of reservations. It was also important to note that regarding ICERD, countries would also insist on securing freedom of expression and opinion despite the dangers of hate speech, in particular, which used by politicians remained. He noted that punishment, as had sometimes been the case, came via the voting process where voters rejected those politicians. In some other countries, such a reaction had not materialized and CERD noted those situations.

Annex II

Agenda

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

Annex III

Programme of work

1st Week					
	Monday 06.10	Tuesday 07.10	Wednesday 08.10	Thursday 09.10	Friday 10.10
10:00-13:00	UN Holiday	Item 1 Opening of the Session by the High Commissioner for Human Rights Item 2 Election of the Chair Item 3 Adoption of the Agenda and Programme of Work General statements	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Mireille Fanon-Mendes, Chairperson, United Nations Working Group of Experts on People of African Descent]	Item 5 Questionnaire [introduction of the reissued summary and discussion] –	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Theodore Shaw, Director, Center for Civil Rights, Chapel Hill School of Law, University of North Carolina, US]
15:00-18:00	UN Holiday	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Patrick Gasser, UEFA] [Jonas Burgheim, UN Office on Sport for Development & Peace] [Pavel Klymenko, FARE Network]	Item 4 Prevention and awareness-raising, including through human rights education and training, in the fight against racism, racial discrimination, xenophobia and related intolerance [Karel Francapane, Section of Health and Global Citizen Education, Education Sector, UNESCO Paris]	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Carlos Vazquez, CERD member] – General discussion and exchange of views	Item 6 Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Elisa Alonso Monçores, Researcher, Instituto de Economia /UFRJ, Brazil]

2nd week					
	Monday 13.10	Tuesday 14.10	Wednesday 15.10	Thursday 16.10	Friday 10.10
10:00-13:00	Item 6 (*continued*) Special Measures, including affirmative or positive measures, strategies or actions, to prevent, combat and eradicate all forms and manifestations of racism, racial discrimination, xenophobia and related intolerance [Dmitrina Petrova, Executive Director; Equal Rights Trust, UK]	Item 8 Xenophobia [Ioannis Dimitrakopoulos, Head of the Equality & Citizens' Rights Department, EU Fundamental Rights Agency]	Item 9 Procedural gaps with regard to ICERD [Anwar Kemal, CERD member]	Conclusions and Recommendations – General discussion and exchange of views – Item 10 Discussion on the introduction of new/list topics… consideration of new/list topics	Conclusions and Recommendations – General discussion and exchange of views
15:00-18:00	Item 7 National Mechanisms [Pedro Mouratian, President, Instituto Nacional contra la Discriminación, la Xenofobia y el Racismo (INADI), Argentina]	General discussion and exchange of views	General discussion and exchange of views – Conclusions and Recommendations	Compilation of the Report	Item 11 Adoption of the report of the 6th session

Annex IV

List of attendance

A. Member States

Algeria, Argentina, Armenia, Austria, Belgium, Brazil, Bulgaria, Chile, China, Colombia, Costa Rica, Cuba, Egypt, Ethiopia, Finland, France, Germany, Greece, India, Italy, Japan, Jordan, Korea (Republic of), Kuwait, Latvia, Lesotho, Malaysia, Mexico, Morocco, Namibia, Nicaragua, Nigeria, Norway, Pakistan, Paraguay, Portugal, Romania, Russian Federation, Saudi Arabia, Senegal, Slovenia, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Togo, Tunisia, Turkey, Viet Nam, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Venezuela (Bolivarian Republic of)

B. Non-Member States represented by observers

Holy See, State of Palestine

C. Intergovernmental Organizations

African Union, European Union

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

Action internationale pour la paix et le développement dans la région des Grands Lacs (AIPD-GL)

African Commission of Health and Human Rights Promoters

Indian Council of South America (CISA)

Indigenous Peoples and Nations Coalition

Rencontre Africaine pour la Défense des Droits de l'Homme

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

International Basketball Federation

Rugby Club Geneva