



## 人权理事会

## 第二十一届会议

## 议程项目 9

种族主义、种族歧视、仇外心理和相关的不容忍现象：

《德班宣言和行动纲领》的后续行动和执行情况

## 拟定补充标准特设委员会第四届会议的报告\* \*\*

主席兼报告员：Abdul Samad Minty(南非)

## 内容提要

本报告是根据人权理事会第 3/103 和第 10/30 号决定以及第 6/21 号决议提交的。本报告概述了拟定补充标准特设委员会第四届会议的进程和讨论情况。在一些相关领域的专家发言之后，与会者就“仇外心理”、“建立，指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”以及“在《消除一切形式种族歧视国际公约》方面的程序性空白”等议题进行了实质性的讨论。

\* 本报告附件未经编辑和翻译散发。

\*\* 迟交。

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## 一. 引言

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

## 二. 会议组织安排

2. 特设委员会第四届会议于 2012 年 4 月 10 日至 20 日举行。在会议期间，特设委员会总共举行了 16 次会议。

### A. 出席情况

3. 各成员国、代表非成员国的观察员、政府间组织以及在经济及社会理事会具有咨商地位的非政府组织的代表参加了本届会议。

### B. 会议开幕

4. 人权事务高级专员办事处反歧视科科长 Yuri Boychenko 于 2012 年 4 月 10 日宣布拟定补充规定特设委员会第四届第 1 次会议开幕。他欢迎各位代表到会，并且指出人们希望，本届会议将会同上届会议一样富有成果。他表示需要为特设委员会选举主席兼报告员，以便开展第四届会议的实质性工作。

### C. 选举主席兼报告员

5. 在第 1 次会议上，特设委员会以鼓掌方式选举南非共和国常驻联合国日内瓦办事处的代表 Abdul Samad Minty 先生为会议主席兼报告员。Minty 先生在其简短的开幕词中感谢特设委员会对他的信任。

### D. 通过议程

6. 在本届会议的第 1 次会议上，特设委员会通过了第四届会议的议程(A/HRC/AC.1/4/1)。

### E. 工作安排

7. 主席兼报告员在第 1 次会议上介绍了议程中所载的工作方案草案。他宣布说，在当天下午续会之前召开区域协调员会议，以便就工作方案开展更多的协商。

8. 特设委员会在其第 2 次会议上通过了经过修订的工作方案。

9. 主席兼报告员在第 2 次会议上作了介绍性发言。他对与会者的理解与合作表示感谢，并且代表特设委员会前主席兼报告员 Jerry Mathews Matjila 表示歉意。Matjila 先生无法继续担任特设委员会的主席，因为他已被任命为南非政府国际关系与合作部部长。主席兼报告员还对以下情况表示遗憾：南非作为会议主席没有能够履行其关于在开会之前同特设委员会的成员进行协商的承诺。

10. 主席兼报告员指出，南非将继续促请特设委员会在继续开展其工作的同时，选出常任的主席兼报告员，因为虽然对于南非来说，种族主义、种族歧视、仇外心理和相关的不容忍现象是个重要问题，但是这个国家还必须应付大量其他事务。

11. 考虑到出席会议的专家和发言者的情况，第四届会议有希望成为一次有挑战性的和激动人心的届会。他感谢各国和秘书处为筹备会议作出了努力。他希望，在会上的发言和讨论将为特设委员会提供一次机会：借以思考和理解在前几次届会的报告中所提出的问题以及特设委员会的任务同《德班宣言和行动纲领》第 199 段之间的联系。

12. 他指出，南非(代表非洲集团)担任特设委员会的主席，是为了确保在特设委员会中的伙伴共同努力，解决所关注的问题。他的目标是：确保特设委员会继续致力于三大主题；但是有一项谅解：今后仍将讨论其他议题。他期望在今后两周中与会者合作。

13. 在第 2 次会议上，在通过了工作方案之后，古巴以国家身份表示，鉴于拟定和通过工作方案方面的气氛，它有义务公开发表意见。它认为，某些区域集团和代表团试图“抵制和拖延”特设委员会的工作。

14. 欧洲联盟指出，拖延的原因在于“准备不足和透明度不够”。它认为，工作方案草案没有反映出在第三届会议的续会上所达成的共识。它重申自己关于同种族主义、种族歧视、仇外心理和相关的不容忍现象作斗争的承诺。它指出，当天是 1994 年卢旺达种族灭绝国际反思日，因此建议特设委员会默哀一分钟。

15. 瑞士(代表阿根廷、巴西、智利、日本、墨西哥、大韩民国以及乌拉圭)强调了它在准备讨论的议题上的灵活性；它同时指出，它对一致通过的本届会议的工作方案感到满意。它指出，上述国家的代表团一贯支持以专家、发言者、研究以及数据等形式对特设委员会作出实质性投入，因为这是开展其工作的最好方法。它对以下情况感到遗憾：本届会议“准备不足”；前主席的建议和承诺没有实现；在开会日期由 11 月推迟到目前之后，更是如此。

16. 塞内加尔(代表非洲集团)重申该集团有关参与特设委员会工作的承诺。它同时指出，尽管其他一些区域集团造成了延误，但是工作方案已经获得通过。它希望按照人权理事会第 3/103 号决定进行特设委员会的工作，特别是因为去年正是《德班宣言和行动纲领》通过 10 周年以及非洲人后裔国际年。

17. 巴基斯坦(代表伊斯兰合作组织)指出，种族主义表现的新趋势对于全世界的和平社会都是一种威胁。该代表说，在许多社会中穆斯林在公开的和私下的场合

都遭到羞辱和诽谤。他说，由于存在仇外心理，因此需要在法律上和宪法上采取足够的保护措施。

18. 主席兼报告员要求为卢旺达种族灭绝国际反思年默哀片刻，以支持所有种族主义、种族歧视、仇外心理和相关的不容忍现象以及种族灭绝的受害者。常设委员会届会的与会者默哀了片刻。

### 三. 关于“仇外心理”议题的讨论

19. 从4月10日至13日，拟定补充标准特设委员会按照其工作方案，听取了一些专家关于“仇外心理”议题的发言。在4月10日的第2次会议上，Nozipho January-Bardill就南非最近发生的仇外事件以及政府的反应作了发言。在4月11日的第3次会议上，消除种族歧视委员会的成员Patrick Thornberry就仇外心理作了发言，其中特别提到了《消除一切形式种族歧视国际公约》。在同一天举行的第4次会议上，人权事务高级专员办事处特别程序部公民权利和政治权利科科长Orest Nowosad概要介绍了特别程序任务负责人就仇外心理问题开展的工作。在4月12日举行的第5次会议上，非政府组织“人权第一”的高级顾问Duncan Breen作了题为“打击仇外心理暴力”的发言。当天下午早些时候，来自国际移民组织的Fanny Dufvenmark和Christine Aghazarm在第6次会议上就国际移民问题作了发言。4月13日，来自儿童基金会的Miguel Hilario-Manenima在第7次会议上作了发言，其题目为“透过表象看在拉丁美洲实际存在的仇外心理问题：是平等对待有色人种的时候了”。

20. 由于本报告的字数限制，上述发言以及随后与会者就此开展的讨论的概要收录在本报告附件二。

21. 在第7次会议的第二部分上，主席兼报告员邀请与会者针对过去一周以来已经讨论的或者尚未讨论的内容就仇外心理进行一般性讨论。他指出，除了最后一位发言者之外，在讨论中似乎尚未提到过着眼于受害者的办法。

22. 他说，也许需要突出议员和政治领导人、其他具体的群体(例如：儿童、难民和境内流离失所者)、其他形势(例如：冲突和冲突后形势)以及关于阶级和贫困的作用。他就历史因素(例如：在南非历史上存在过的问题)提出了问题：哪些因素影响到目前形势？什么是民众历史教训的依据？

23. 玻利瓦尔委内瑞拉共和国的代表重申：必须拟定关于处理仇外心理表现的补充标准，同时强调必须对仇外心理表现进行界定，以便加强反歧视斗争。界定工作应当符合特设委员会的任务：根据人权理事会第3/103号决定注重于拟定补充标准。

24. 欧洲联盟指出，各种发言说明仇外心理是多层面的，因此必须通过各种方法(例如：立法、机制以及其他手段)予以处理。他指出，没有一位发言者提到存在明显的空白；没有一位发言者建议作出法律定义。国际移民组织的定义对于特设

委员会的工作不一定有帮助，而且也无法操作。欧洲联盟的代表还强调指出，人们在整个发言过程中注意到，仇外心理是一种多层面的现象。该代表说，可以各种理由采取不同的反歧视措施打击仇外心理。

25. 挪威代表说，本届会议为挪威代表团提供了一个机会：可以借此反思在本国发生的情况。她对界定工作表示关注，因为定义可能会过于广义或者过于狭隘。该代表强调指出，仇外心理对于个人是一种危险，对于民主是一种挑战；情况严重者可能导致种族歧视、反人类罪和种族灭绝等等。2011年在挪威发生的袭击事件使得所有挪威人民都受到了创伤。她指出，袭击是出于政治仇恨；突出地表明必须为进一步的开放、民主和包容性加紧努力。挪威承诺：任何时候都无条件地尊重任何人的尊严。关于具体问题，她指出，法律保护并不总是足以确保平等；需要作出共同努力。挪威认为，同种族主义和仇外心理作斗争具有坚实的法律基础，但是可以开展进一步的辩论。所采用的方法应当是实用的、一致认同的以及建立在实际需要和明确表现的基础上的。所采用的方法应该表明：法律领域的空白使得进展受到阻碍。

26. 日本(代表阿根廷、巴西、墨西哥、大韩民国、瑞士以及乌拉圭)指出，专家们的发言是有用的和-content丰富的，提供了更加清晰的和准确的情况。专家发言强调指出了仇外心理的多层面和跨领域的性质；同时提出了具体解决问题的办法。日本代表指出，不能得出结论认为：明确需要在国际一级制定关于仇外心理的补充标准。日本代表指出，消除种族歧视委员会的工作似乎并没有受到缺乏定义的阻碍。日本建议：请消除种族歧视委员会提出关于这个问题的正式意见，以便就仇外心理的问题解释《消除一切形式种族歧视国际公约》的有关条款。

27. 中国代表指出，仇外心理以及经济和文化冲突有增无已。中国强调，目前的国际文件有些落后于时代。虽然已经采取了一些措施，但是这是不够的；还需要进行更多的国际合作。必须从国际法律角度讨论仇外心理的问题，以便消除仇外心理和保护人民权利。她强调指出，已经开展的工作只是朝向解决问题的目标的一小步。

28. 美利坚合众国指出，虽然许多专家发表了各种各样的意见，但是在他们提出的具体政策建议方面，很大一部分是有关联的。如果人权事务高级专员办事处可以整理专家们的发言，并且编制出一种简单的矩阵，列出关于数据分列、教育运动以及其他政策的建议，那将是十分有用的。

29. 埃及指出，虽然它也认为，在发言中没有提出关于仇外心理的结论性定义，但是所有发言者都确认：各成员国应当开展界定工作。专家们并没有注意到存在空白；相反他们不愿意指出：是否应当拟定国际标准。他询问：如果没有必要制定补充标准，那么仇外心理的问题是否会更趋严重？消除种族歧视委员会的一般性意见是不够的，因为这些意见涉及目前的国际法，而不是诸如仇外心理等新的现象。一些专家建议：按照《德班宣言和行动纲领》和《德班审查会议》成果文件的某些段落的规定，编制关于各种仇外心理定义的矩阵；埃及代表对此表示欢迎。

30. 塞内加尔(代表非洲集团)强调指出：人权理事会第 3/103 号决定明确规定了特设委员会的任务；重新开始讨论是无效的；法律文书应当基于《消除一切形式种族歧视国际公约》和《德班宣言和行动纲领》。他从法律的角度强调了定义的必要性。他在这一方面指出，《德班宣言和行动纲领》建议加强《公约》，因为在《公约》中没有提到仇外心理；因此有必要予以界定，以便确保一致性。这样，就能确保有利于受害者的透明度和法律稳定性。打击有罪不罚现象和采用以受害者为中心的方法是唯一正确的道路。特设委员会应当寻求建立全国性的预防和惩治机制，确保受害者能够诉诸于法律；加强打击仇外心理的机制或者类似机构；以及组织提高认识运动。

31. 奥地利代表说，仇外心理是一种世界性的问题。他还指出，需要采取一种以受害者为中心的方法。在这一方面，必须了解受害者的需求以及如何在实际上给予援助。奥地利代表强调指出，目前的机制执行不力。特别报告员提出了许许多多建议，但是问题是如何加强实施。他主张对于仇外心理下一个比较广泛的定义，使之包括其他歧视原因。

32. 巴西代表赞扬了特设委员会本届会议所采用的关于请专家发言的方法；并请主席兼报告员在今后的届会中继续使用同样的方法。他概述了一些结论，希望将此作为今后关于仇外心理讨论的基础：以受害者为中心的方法是关键；应该鼓励各国政府批准国际文书；应当利用消除种族歧视委员会 2007 年关于程序性空白的研究。

33. 列支敦士登的代表指出，特设委员会在采用以受害者为中心的方法方面日益取得共识。因此，应当确保委员会巩固已经取得的成果。他指出，在《消除一切形式种族歧视国际公约》的现有框架方面存在明显的风险；由于消除种族歧视委员会已经处理过仇外心理的问题，而且各国也已经接受这些建议，因此可能会削弱这些框架。一项新的关于仇外心理的国际定义可能会破坏这些建议。

34. 巴基斯坦(代表伊斯兰合作组织)强调指出，特设委员会应当承认，关于仇外心理的言论和行动是对受害者的公开侮辱；国际社会需要对此迅速采取行动。他还询问：如果实际上并不存在空白的话，为何仇外心理问题日趋严重。他指出，法律和行政措施将比较有效地解决这个问题。没有定义的状况影响到国际一级的协调努力；这种情况意味着同时存在各种解释。他说，根据《公约》、《德班宣言和行动纲领》以及《德班审查会议》成果文件的规定，必须取得共识。他强调指出，不应将国籍同仇外心理混为一谈，因为即使同一个国家的国民也受到袭击。这位代表指出了关于处理负面的刻板印象和仇外心理言论的必要性。他强调，必须拟定关于仇外心理的补充标准。

35. 南非代表说，有必要采取法律措施，处理违法行为和保护受害者。从一开始就十分清楚：没有关于仇外心理的定义，但是这种现象是实际存在的。她指出了媒体的积极作用；并且建议同联合国不同文明联盟合作，研究媒体的作用。她指出，已经获得通过的一些联合国文书的任择议定书规定了申诉机制；不应该破坏这些机制和所提供的保护。

36. 法国代表说,《德班行动纲领》的第 199 段建议前人权委员会拟定补充国际标准,以便加强和增订关于反对种族主义、种族歧视、仇外心理和相关的不容忍现象的国际文书的各个方面;《德班行动纲领》是法国政府参与工作的基础。他说,法国已经采用了一种关于恐吓或者仇视非公民和非国民的狭隘定义,以便加强刑法。这种方法完全符合《消除一切形式种族歧视国际公约》的条款。他指出,消除种族歧视委员会在一些情况下曾经用过狭隘的和广义的定义。他对这种定义的必要性提出了质疑,因为《公约》第 2、4 和 6 条已经规定:法律保护受害者。他重申,没有一名专家曾经指出,在国际框架中存在空白,只是指出需要更好地实施。

37. 瑞士代表指出,有必要考虑:定义对于受害者来说是否有用或者具有反作用。她说,埃及代表关于编制专家定义的矩阵的建议可能是有用的,但是它只能证明要确定一项定义是如何困难。

38. 主席兼报告员指出,在空白和定义的问题上存在着意见分歧。他强调:必须具体研究信息和客观地审查所涉的各种问题。他指出,即使如此,还是会存在不同意见。

#### 四. 关于议题“建立,指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”的讨论

39. 4 月 16 日和 17 日,根据其工作方案,拟定补充标准特设委员会听取了一些专家关于议题“建立,指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”的发言。在 4 月 13 日的第 8 次会议上,特设委员会听取了人权高专办国家机构和区域机制科科长 Vladlen Stefanov 和联合国开发计划署人权事务顾问 Zanofer Ismalebbe 关于议题“建立,指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”的发言。

40. 在 4 月 16 日的第 9 次会议上,来自比利时平等机会和反对种族主义中心的 Patrick Charlier 谈到了如何选择国家机制、机制的地位以及机制的职权范围。在当天晚些时候举行的第 10 次会议上,欧洲平等机构网络(Equinet)主席 Jozef DeWitte 向特设委员会作了发言,解释了该中心的任务、作用和功能。他还概述了该网络的任务和工作。

41. 在 4 月 17 日的第 11 次会议上墨西哥国家预防歧视委员会主席 Bucio Mujica 作了关于国家反歧视机制的发言,其中特别强调了他本人所在的组织。日内瓦州外国人融合办公室主任 André Castella 在特设委员会第 12 次会议上作了发言。

42. 由于本报告的字数限制,关于上述发言以及与会者随后的有关讨论的概要收录在本报告附件二。



## 五. 关于议题“在《消除一切形式种族歧视国际公约》方面的程序性空白”的讨论

43. 在4月18日的第13次会议上，消除种族歧视委员会主席 Alexey Avtonomov 作了题为“阻碍充分实施《消除一切形式种族歧视国际公约》的程序性空白”的发言。他说，该委员会认为，《消除一切形式种族歧视国际公约》的实质性条款已经足以打击目前状况下的种族歧视。该委员会认为，它在最近的将来能够在不修订《公约》的情况下解决有关问题。然而，该委员会认为，制定某些新的程序可能会加强委员会作为一个监测机构的有效性。该委员会认为，缺乏某些程序已经构成《公约》的程序性空白。委员会特别重视同仇外心理有关的问题，指出《公约》中关于种族歧视的定义涉及许多不同方面。他提醒说，任何其他定义可能会限制目前的定义。他说，今后可能需要修订有关定义的措辞，但是目前并非这种情况。他说，如果需要拟定《公约》的任择议定书，则应该突出关于调查、询问、评估形势的程序或者国别访问的新程序。

44. Avtonomov 先生解释说，有时几年之后才有可能采取行动，因此委员会建议制定一种经常性的程序，以便专家们访问受到关注的国家和迅速调查形势。例如，一名或者两名专家可以开展访问，收集第一手信息以及向委员会作出汇报。在这一方面，消除种族歧视委员会要求考虑拟定一项任择议定书。在新程序的名称上存在不同意见：一些专家建议将它称为评估访问；另外一些专家则称之为调查或者询问程序。他说，委员会明白，任何国别访问都需要额外的财政资源；然而一些条约监测机构已经实施了这种程序。这项提议符合目前关于协调条约监测机构的进程。

45. Avtonomov 先生说，被称为评估访问/后续访问的第二项程序不仅有利于已经作出的结论性意见，而且也有利于定期报告的编写。可以委派一名即将担任有关国家报告员的消除种族歧视委员会的专家开展所建议的后续访问。这种访问也有助于定期报告的编写。

46. 塞内加尔代表(代表非洲集团)说，Thornberry 先生也曾经说过，《消除一切形式种族歧视国际公约》没有缺点。这种说法不符合非洲集团的意见。他再次强调了法律不安全的问题，同时强调指出，《公约》并未提及仇外心理的问题。他认为，在通过《公约》时，民族迁移的现象还不十分普遍。他强调指出，从《公约》通过以来，许多年已经过去了；现在应当予以重新审议。目前仇外心理的现象要比以往明显得多。他要求对所提出的调查程序作出实质性的解释。他指出，预警和紧急程序早已存在。他提到了安全理事会在维护和平与安全方面的作用；同时强调了国际刑事法院的管辖权。他在这一方面提出疑问：是否可能存在工作重复？

47. 美利坚合众国的代表强调指出，从 Avtonomov 先生的发言中可以理解到：修订《公约》中关于种族歧视的定义不仅是不必要的，而且还十分危险。他指出，有人几次说过：仇外心理是一种新的现象。这种说法是不正确的，因为仇外

心理可能是描述一个老问题的新字眼，但是这种现象已经存在了很长时间。关于所提出的新的程序，他问消除种族歧视委员会：准备如何避免人权理事会和人权高专办所开展的活动发生重复？他还询问了同提议中的新程序有关的开支。

48. 欧洲联盟的代表强调指出，实施现有的标准和程序是极为重要的。关于程序问题，该代表强调指出，必须在遵守报告程序和针对消除种族歧视委员会的结论性意见/建议采取后续行动方面以最佳方式利用现有程序。欧洲联盟的代表就如何进行这项工作征求了 Avtonomov 先生的意见。该代表还询问：何种情况可能引发所提议的评估访问？访问是否由委员会决定？是否应有关国家的要求进行访问？

49. 关于提议中的调查程序的增值问题，Avtonomov 先生指出，消除种族歧视委员会可以借此提出预防性建议。进行国别访问是为了收集信息。之所以要开展调查，是因为有可能发生了侵犯人权的事件。安全理事会和国际刑事法院的工作没有发生重复。他解释说，该委员会只收到了少量个别申诉。他认为，需要就这项建议开展更多的提高认识活动。

50. 巴西询问：在目前协调条约监测机构的进程中如何处理空白问题。

51. 古巴代表强调指出，古巴政府不能同意所提出的程序和意见。该代表指出，其中许多建议早就有人提过，而且也不是成员国拟定的，而是由学术专家、调查人员等拟定的。古巴不能同意旨在加强对于国家监测的提议；同时也对是否有实施新程序的资源提出了疑问。

52. 俄罗斯联邦的代表询问：什么样的利益攸关方将参与提议中的评估访问？是否只限于国家机构？是否与其他利益攸关方(例如：非政府组织和受害人)进行互动？该代表还对提议中的后续访问提出了相同的问题。他询问：这种做法是否会改变关于要求各国在一年之内对于要求作出答复的程序。

53. 关于国别访问，Avtonomov 先生说，访问同个别申诉程序不一样，因为它们是不同的性质的。国别访问类似于旨在收集信息的实况调查团。为此，应当召开由各种利益攸关方(包括：国家机构、非政府组织和受害人)参加的会议。后续访问应当基于消除种族歧视委员会提出的建议，因此重点在于国家机构，因为它们负责实施。然而，也有可能同一些非政府组织举行会议。

54. 巴基斯坦(代表伊斯兰合作组织)强调了界定仇外心理的必要性，因为各缔约国对此具有各种解释。消除种族歧视委员会在审议定期报告时，也需要一种关于仇外心理的统一标准。

55. 南非代表询问：提议中的后续访问如何建设国家关于编写定期报告的能力。她询问：提议中的调查程序是否将取代报告义务；还问到了同特别程序的互补性以及这种访问的标准。

56. 意大利说，实施《消除一切形式种族歧视国际公约》是极为重要的。它就计划中的 6 个月时期提出了疑问；并且要求澄清：缔约国的摘要介绍是否将纳入联合国大会的报告。

57. Avtonomov 先生在回答巴基斯坦(代表伊斯兰合作组织)提出的问题时说，消除种族歧视委员会一直在处理关于划线和定性的问题——往往在结论性意见中对两者进行谴责。如果在《公约》中纳入关于仇外心理、划线和定性的定义，委员会将根据这些定义开展工作和应付挑战。他认为，委员会的成员并不绝对反对采用一种新的定义；而是考虑应将重点放在加强其工作的程序性空白上。他还说，在他的记忆中，委员会从来没有拒绝受理过任何关于仇外心理的案件，因为案件总是会涉及《公约》第一条所提及的原因。

58. 在 4 月 18 日的第 14 次会议上，主席兼报告员请与会者就议题“建立，指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制”进行一般性讨论和交换意见。

59. 欧洲联盟指出，国家机制对于确保采用以受害者为中心的方法以及突出补救办法和预防歧视都是十分重要的。国家机制可能有助于确保向歧视受害者提供有效保护和补救办法；在司法程序中向受害者提供法律援助。在赋予国家机制以准司法职能的情况下，这些机制可以弥补法庭诉讼的缺点，因为诉讼有时是冗长的、封闭的和昂贵的。他还说，提供补救办法是必要的，但是不足以打击歧视。国家机制同样必须组织提高认识运动，开展教育活动和培训新闻记者，以预防歧视。

60. 国家机制的选择或者组合应该取决于当地情况。欧洲联盟也欢迎在各种国家机制之间以及在国家机制与联合国机构之间进行合作和交流良好做法。必须进一步研究国家机制的潜力，以便更好实施目前的国际标准，从而确保其有效性。今后的委员会届会最好进一步研究关于建立国家机制的准则。

61. 塞内加尔(代表非洲集团)促请有关国家建立国家机制。这些机制的任务应当包括处理关于种族主义、种族歧视、仇外心理和相关的不容忍现象的问题。国家机制应当采用以受害者为中心的方法，确保受害者有机会向机制提出申诉。在有国家机构和特别部门的地方，应当开展协调，确保提高效率。塞内加尔还说，人权高专办应当提供适当的技术援助，帮助各国建立国家人权机构。

62. 法国指出，在国家一级进行调解和在区域一级组织网络是在当地直接援助受害者的有效方法。

63. 主席兼报告员也认为，国家机制应当考虑到当地情况。他还说，委员会不妨在适当时候考虑审议区域机制在处理种族主义、种族歧视、仇外心理和相关的不容忍现象等问题方面的作用、性质和有利之处；同时考虑国家机制如何帮助区域制定解决有关问题的方法。他以非洲同行审议机制及其在共同管治方面的成功为例作了说明；同时强调指出了宗教组织的作用。

64. 美利坚合众国赞赏主席兼报告员就区域机制问题采取的干预行动；同时指出，美洲国家组织和欧洲安全与合作组织也是区域举措的榜样。这两个组织在宗教和信念的基础上，通过国家评估处理个人申诉和提出反歧视举措。今后委员会应当审议这些区域方法。
65. 埃及说，最好在今后的届会上组织关于区域标准的发言。埃及重申了特设委员会的任务。它指出：虽然应当在国家一级采取措施，但是必须基于国际标准和机制。
66. 古巴强调指出，虽然国家机制是重要的，但是它们必须同有关国家的主权、独特的文化以及特点相联系。交流最佳做法和信息是十分必要的。
67. 列支敦士登说，国家机制同受害者的关系最密切，非常适合在国家一级解决有关种族主义、种族歧视、仇外心理和相关的不容忍现象的问题。该代表指出，在任何涉及《消除一切形式种族歧视国际公约》方面程序性空白的文件中均可提到缔约国关于建立国家机制的义务。
68. 美利坚合众国的代表补充说，委员会尚未遇到过一个具体案件或者状况，其中由于缺乏定义而使得消除种族歧视委员会审议问题的能力受到限制；或者由于存在国际法方面的实质性空白而使得国家机制无法解决有关问题。
69. 南非强调指出，关于国家机制的议题是跨领域的；同时指出这些机制在国家一级实施方面的重要性。该代表回顾说，虽然这些机制是在国家一级，但是《巴黎原则》却是由联合国大会拟定和通过的。关于对于仇外心理的“狭隘的”和“广义的”解释，确实存在不一致的地方。这种情况说明，必须采取方法，确定何为仇外心理。
70. 突尼斯强调了政治领导人的重要性，同时突出了各国议会联盟可以发挥的作用。该代表指出，大量国家对于《消除一切形式种族歧视国际公约》第4条的保留严重阻碍了《公约》的有效实施。
71. 在这次会议期间，与会者还就议题“《消除一切形式种族歧视国际公约》方面的程序性空白”进行了一般性讨论和交换了意见。
72. 瑞士代表(代表阿根廷、巴西、智利、日本、墨西哥、大韩民国以及乌拉圭)强调了《公约》及其监测程序的现实意义。同时，它指出 Avtonomo 先生已经说明了处理《公约》程序性空白的具体影响。关于仇外心理的议题，它说，必须进行进一步讨论和审议。
73. 列支敦士登评论了关于建立调查和现场评估程序的建议。它强调指出，它们只是程序性文件；不会产生任何新的实质性理由或者权利。可以考虑制定一项便于委员会专家研究国家状况的评估程序。
74. 塞内加尔(代表非洲集团)说，关于评估(提交报告)程序，最好是审议推迟提交国家报告的原因；同时还必须审议后续访问的增值问题，因为还有其他的相关访问(其中包括任务执行人的访问)。

75. 古巴指出，委员会的任务是拟定补充标准，而不是程序。它说，委员会的机制和程序已经足够；委员会要完成目前的工作都有困难。

76. 南非不同意一些代表团的论点：侧重于关于仇外心理的狭隘的或者广义的解释具有反作用。南非也不同意这样的论点：这种考虑可能会损害委员会的决定以及已经取得的成果。一项新的定义不会构成风险，因为要求成员国同意一项可能会损害以前的决定和标准的标准是有悖常理的。埃及同意南非的意见以及塞内加尔代表非洲集团作的发言：委员会有义务研究实质性空白。同时南非指出，关于程序性空白的讨论是脱离实际的。

77. 法国指出，今后仍然应该讨论关于国家机制的议题。法国承认委员会的成员对此有不同的解释。法国代表回顾说，《德班宣言和行动纲领》第 199 段以及《德班审查会议》的成果文件没有将问题限于程序性或者实质性的空白。该代表提到了加强条约机构的重要性，同时表示赞赏消除种族歧视委员会提出的关于处理程序性空白的建议。

## 六. 通过报告

78. 主席兼报告员于 4 月 20 日宣布：第 15 次会议开幕；已经向与会者散发本届会议的报告草案。他请与会者审议报告草案，以便确保本届会议报告的准确性，以及只对其做纯事实性或者技术性的修改。

79. 他还告知与会者说，他已经根据自己的职责编写了主席的结论和建议；并于前一天晚上同区域协调员进行了商讨。他将向全体与会者作出介绍。在口头介绍这份文件之后，将向与会者提供报告草案的副本。根据各代表团的要求，主席宣布休会，以便他们根据会议的商定结论性文件继续进行协商。

80. 在第 15 次会议的续会上，主席兼报告员朗读了题为“主席兼报告员南非共和国常驻代表 Minty 先生阁下的概述”的主席的结论和建议(见本报告附件一)。

81. 列支敦士登指出，主席兼报告员作出关于本届会议的概述是他的责任和特权。这位代表说，他对于辩论的概述有不同意见。他正式表示，他不同意主席兼报告员的概述的第 15 段。他指出，其中的说法损害了根据《消除一切形式种族歧视国际公约》的框架向仇外心理受害者提供的保护。

82. 欧洲联盟也重申，作概述的是主席兼报告员，而不是特设委员会。欧洲联盟不同意主席兼报告员的概述中的某些内容，特别是关于存在空白的说法。它强调指出，本届会议未能证实在《公约》中(特别是在仇外心理的问题上)存在需要弥补的实质性空白。欧洲联盟明白，主席兼报告员的文件将作为附件纳入第四届会议的报告。

83. 塞内加尔(代表非洲集团)作了发言，对于主席兼报告员的概述提出了一些修改意见。巴基斯坦(代表伊斯兰合作组织)支持非洲集团的发言，并且表示赞赏主席兼报告员同意他的想法。巴基斯坦指出，需要对概述作出进一步研究。

84. 美利坚合众国没有对主席兼报告员的概述进行详细的评论，只是指出它明白：这份文件包含了主席兼报告员的个人意见。然后，该代表发表了一般性意见，其中重申：旨在以新的定义取代或者补充《公约》中定义的努力或者建议不但是没有必要的，而且是危险的。他回顾说，在基于宗教或者信念的暴力和歧视方面，美国曾经在特设委员会的前几届会议上建议采取国际行动，并且支持实施人权理事会第 16/18 号决议。该代表指出，美国两党支持言论自由；美国对于《公约》第 4 条的保留是基于原则，而不是基于政治。

85. 瑞士(代表阿根廷、巴西、智利、日本、墨西哥、大韩民国以及乌拉圭)也指出，它明白这份文件代表了主席兼报告员的个人观点。瑞士强调了在届会期间为第五届会议作好准备工作的重要性。

86. 古巴表示支持主席兼报告员的概述。古巴特别指出，为处理仇外心理问题而制定准则和标准既是一种需要，也是一个优先项目。

87. 中国感谢主席兼报告员作了概述，并且表示充分支持。中国指出，主席兼报告员指出了进一步建立势头的正确方向。

88. 主席兼报告员在答复时说，他的概述只是主席的结论和建议；其内容将反映在第四届会议最后报告的附件之中。概述并非谈判文本，因此不会考虑建议或者修订意见。概述的措辞非常空泛。然而，现在应该由特设委员会决定是否利用这项概述。他期望看到本届会议关于今后方向的结论。

89. 在第 16 次会议上，第四届会议的报告获得了通过，但是尚待核准。通过报告时有一项谅解：各代表团将在 2012 年 5 月 4 日之前收到报告草案的修订本；它们将对自己的发言作出技术性修订，并在 2012 年 5 月 18 日之前以书面方式提交秘书处。

90. 在这次会议上，塞内加尔(代表非洲集团)也提出了一项题为“拟定补充标准特设委员会第四届会议的结论草案”的商定案文。在欧洲联盟和埃及作了口头的技术性修正之后，会议一致通过了以下的案文：

“特设委员会为了完成其任务，决定请特设委员会主席在现有资源许可的情况下，在特设委员会第四届和第五届会议期间组织同区域和政治协调员的非正式协商。协商的目的是：根据委员会的任务筹备第五届会议和收集关于就‘仇外心理’、‘建立，指定或者维持有能力防卫和防止一切形式和表现的种族主义、种族歧视、仇外心理和相关的不容忍现象的国家机制’以及‘在《消除一切形式种族歧视国际公约》方面的程序性空白’等议题进行讨论的具体建议。

请人权高专办发出问卷调查表，以便收集关于在特设委员会第四届会议期间讨论的和会议报告中的三个议题(仇外心理、国家机制以及程序性空白)的信息，其中包括法律和司法框架与作法、符合特设委员会任务的实质性和程序性措施以及可能的建议。

请人权高专办将问卷调查的答复张贴于其网站，并且同主席进行协商，编写关于在届会期间所收到的对于问卷调查表的答复的概述，以供第五届会议讨论。

建议特设委员会第五届会议讨论特设委员会第三届会议的报告(A/HRC/18/36)中所载的新的议题或者届会期间提出的附加议题。”

91. 欧洲联盟、巴基斯坦(代表伊斯兰合作组织)、塞内加尔(代表非洲集团)、南非、美利坚合众国、古巴(代表拉丁美洲和加勒比集团)以及瑞士(代表阿根廷、巴西、智利、日本、墨西哥、大韩民国以及乌拉圭)等代表团作了发言。它们表示特别赞赏主席成功地组织了本届会议。

92. 主席兼报告员在宣布本届会议结束时，感谢所有与会者作出了宝贵的努力。他满意地指出，第四届会议一致通过了其工作方案和会议结论。虽然仍然还有工作要做，但是特设委员会已经成功地确定了今后的努力方向。

## Annexes

### Annex I

*[English only]*

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

#### **International legal mechanisms**

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

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

#### **National legal mechanisms**

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

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

#### **Political leadership**

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

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

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

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

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

### **Education**

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

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

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

### **Social inclusion**

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

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

## **D. Recommendations: Xenophobia**

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

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

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

address it, and hence a crime against humanity. That collective determination delegitimised Apartheid. In 1993 on the eve of the demise of Apartheid as well as during the World Conference on Human Rights there was a clear recognition that Xenophobia constituted a danger. Within that context, there was recognition that Xenophobia was a specific manifestation, hence the focus on it during the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, despite the absence of a definition of Xenophobia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**I. Concluding remarks**

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

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

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

## Annex II

*[English only]*

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

21. Senegal, on behalf of the African Group, commented that the presentation did not offer any new analysis concerning the definition of xenophobia and hoped that the approach would have been more audacious so as to discern the meaning of xenophobia. The added value would be found in a legal definition or approach concerning access to justice for victims and remedies, and impunity. He suggested a discussion on the alleged authors and perpetrators of xenophobia, the trends, incidents and regions affected. He noted that autonomy and legal status for xenophobia were required.

22. Liechtenstein stated that Mr. Thornberry's analysis illustrated that a lack of definition did not hinder the Committee in carrying out its role as the monitoring body for the implementation of the ICERD. Austria agreed that the lack of definition was not always a problem, in that minority rights had not been defined in the Declaration on the rights belonging to persons of minorities either. He noted that it was not always a question of laws and regulations and that it was necessary to look at societal aspects too.

23. Mr. Thornberry stated that a proliferation of definitions was not necessarily a desirable outcome and that the question for the Committee was whether it was missing something in not having a definition. The CERD resolutely insisted that legislation countering hate speech be enacted and maintained that racial discrimination was ubiquitous, despite some States claiming no domestic racial discrimination at all.

24. South Africa queried what happened when States excluded non-nationals from a full spectrum of rights, and asked what protection was available for non-citizens where States had made a reservation under article 4.

25. The delegate of France spoke about multiple discrimination and the intersection of motives for discrimination, asking Mr. Thornberry to provide additional details. The delegate of the United States of America asked whether CERD had a list of best practices/standards or indices to be applied by States Parties.

26. The delegate of Senegal, on behalf of the African Group, emphasized the lack of legal definition deprived individuals of their rights and access to justice. He noted that there were optional protocols to ICCPR on capital punishment and to CRC on the sale of children and prostitution which allowed for greater definition in order to protect victims. The African Group was only partially satisfied in that there would be a thematic discussion on racist speech and a likely general recommendation on the issue, but he underscored that general recommendations were not legally binding.

27. Mr. Thornberry said that the Committee's main concern was the applicability of the ICERD at the national level, including the coverage of the national law and how this affected the proper implementation of the Convention. He replied that the Committee did not compile an archive of good practices as such, rather it tried to reflect its general comments in the recommendations to States. He added that CERD would like to be more systematic in its follow-up and that in a future paper it might try to note a few areas in which CERD had expressed particular satisfaction. He noted that CERD was becoming more attentive to intersectionality in its work.

28. Mr. Thornberry noted that if CERD were to receive the report of the fourth session of the Ad Hoc Committee, it might consider the issue of xenophobia and take some of these issues on board in case of a general recommendation on racist speech in August. In reply to a comment from Japan, he stated that it was unlikely that a separate general recommendation on xenophobia would be considered by the CERD.

29. At its 4th meeting, Mr. Orest Nowosad Chief, Civil and Political Rights Section of the Special Procedures Branch at the Office of the High Commissioner for Human Rights gave an overview of the work of special procedures mandate holders in relation to the issue of xenophobia.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

60. Pakistan, on behalf of Organisation of Islamic Cooperation, pointed out that xenophobic violence was a global phenomenon requiring a corresponding international action, whereas the paper of Human Rights First focused on the national level. It was

uncertain whether these national measures suffice the magnitude of the phenomenon. He supported the role of political and religious leaders, but this should be complementary to legal and administrative procedures.

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

62. Ms. Fanny Dufvenmark and Ms. Christine Aghazarm from IOM made presentations at the 6th meeting, on international migration issues, later that day. With respect to xenophobia and migrants, Ms. Dufvenmark stated that as a starting point, it was important to understand that, although they often overlap, racism and xenophobia are two distinct phenomena. There is no international definition of what constitutes xenophobia; however, IOM had chosen to use a definition describing the phenomenon as: “(...) attitudes, prejudices and behaviour that reject, exclude and often vilify persons, based on the perception that they are outsiders or foreigners to the community, society or national identity.”

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

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

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

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

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

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

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

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

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

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

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

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

74. Mr. Miguel Hilario-Manëñima of the United Nations Children's Fund (UNICEF) gave a presentation at the 7th meeting of the session on 13 April entitled "Going beyond window dressing – Xenophobia in Latin America: It's time to count the people of colour". He stated that he defined xenophobia as a societal cancer that emanates from the core of the



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

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

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

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

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

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

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

81. With regard to the assessment of gaps at international level, Mr. Hilario-Manëxima pointed out the importance of creating incentives for government to eliminate xenophobia

at national and local levels. He stated that many states in Latin America had remarkable anti-discrimination legislation but they were yet to be enforced. Member States should collect data on xenophobic incidents at various levels, which would provide information on progress made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

97. The Chairperson-Rapporteur echoed the earlier inquiry of the European Union about the global coverage of national institutions, adding that it would be informative to receive a listing or matrix of institutions referenced with their accreditation criteria, type and number of complaints, cases settled remedies, timeframes, and cooperation with UN etc. He stated that this idea could be followed up at some point.

98. At the 9th meeting, on 16 April, the Secretariat announced that Mr. Michel Forst of the French National Consultative Commission had informed that he would not be able to

attend the meeting as planned, due to unforeseen circumstances. Mr. Patrick Charlier, of the Belgian Centre for Equal Opportunities and the Fight against Racism gave a presentation in which he discussed how to choose a mechanism, the status of mechanisms and the remit of mechanisms.

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

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

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

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

103. The monitoring function of the mechanism ensured conformity with international regulations and obligations; allowed for an assessment of the real state of affairs of minorities and groups in the country and their ability to take part in society (opportunities and chances); and it also allowed for the production of opinions and recommendations in respect of its own opinions, domestic laws and legislation and general comments opinions and issues.

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

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

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

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

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

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

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

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

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

113. Mr. Charlier replied that with respect to assessment and appraisal, OHCHR had issued a publication on “assessing the effectiveness of national institutions”. No single mechanism could meet all aspects of the national reality. What was most important was to

place victims at the centre because this would end discrimination and ensure the proper outcomes. With reference to gaps, he explained that he did not have enough information in this regard. He stated that it was important to protect the rights of individuals even if that State asserted that racism did not exist in the country.

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

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

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

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

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

119. Equinet's activities include equality laws, policy formulation, publications and a number of trainings. Mr. Dewitte reiterated that standards for equality bodies were not "one size fits all" as the standards, practices and functions have very specific cultural and historical context. In response to questions: How fast should we respond? What tools do we

have? How independent should we be? Each mechanism or body must learn from the standards to set their very own.

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

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

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

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

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

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

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

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

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

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

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

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

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

133. Mr. Bucio-Mujica also pointed out that the majority of rulings on the individual cases were not binding therefore requiring acceptance on behalf of the person responsible for the act and very often the person did not accept a commission of an act of xenophobia. Moreover, in Mexican law there were many distinctions between citizens: being naturalized Mexicans or Mexican by birth. According to CONAPRED some of these distinctions were illegal and xenophobic; therefore, it was suggesting an amendment to the constitution, looking at the barriers which might be xenophobic in nature, and having an impact on redress for victims. He noted that international instruments have a very direct impact in



Mexico as they had immediate application and constitutional effect upon ratification. He invited delegates to continue this process to consider which additional standards are needed to combat discrimination, emphasizing that the work of the Ad Hoc Committee was essential for combating racism, racial discrimination, xenophobia and related intolerance.

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

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

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

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

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

139. On behalf of the Organisation of Islamic Cooperation, Pakistan agreed that racism was a scourge and welcomed Mr. Castella’s ongoing efforts in this regard. He asked how in the future efforts will be better coordinated to defeat federal initiatives such as that banning minarets? He asked Mr. Castella how “foreigners” and “integration” were defined by the Office for Integration of Foreigners. He inquired about the conceptual challenges to fighting racism.

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

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

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

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

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

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

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

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

## Annex III

*[English only]*

### **Agenda**

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

## Annex IV

[English only]

## Programme of work

(adopted as amended, 10 April 2012)

## 1st week

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

## 2nd week

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

## Annex V

*[English/French only]*

### **List of attendance**

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

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

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

Holy See, Palestine

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

African Union, European Union

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

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