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الدورة الحادية والعشرون

البند ٩ من جدول الأعمال

العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك
من أشكال التعصب: متابعة وتنفيذ إعلان وبرنامج عمل ديربان

تقرير اللجنة المختصة المعنية بوضع المعايير التكميلية عن أعمال دورتها الرابعة**

الرئيس - المقرر: السيد عبد الصمد مينتي (جنوب أفريقيا)

موجز

يقدم هذا التقرير عملاً بمقرر مجلس حقوق الإنسان ١٠٣/٣ و ٣٠/١٠ و بقراره ٢١/٦. والتقرير عبارة عن ملخص للمداولات والمناقشات التي جرت أثناء انعقاد الدورة الرابعة للجنة المختصة المعنية بوضع المعايير التكميلية. وبفضل مدخلات العدد الكبير من الخبراء في الميادين ذات الصلة، دارت مناقشات موضوعية بشأن الموضوعات المتعلقة بـ "كره الأجانب" و"إنشاء أو تعيين أو حفظ آليات وطنية معنية بالحماية من جميع أشكال ومظاهر العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها" وبشأن "الثغرات الإجرائية فيما يتعلق بالاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري".

* تعمم مرفقات هذا التقرير كما وردت وباللغة التي قدمت بها فقط.

** تأخر تقديم الوثيقة.

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أولاً - مقدمة

١- تقدم اللجنة المختصة المعنية بوضع المعايير التكميلية الدولية هذا التقرير عملاً بمقرري مجلس حقوق الإنسان ١٠٣/٣ و ٣٠/١٠ و بقراره ٢١/٦.

ثانياً - تنظيم الدورة

٢- عقدت اللجنة المختصة دورتها الرابعة في الفترة من ١٠ إلى ٢٠ نيسان/أبريل ٢٠١٢. وعقدت اللجنة المختصة ١٦ جلسة خلال الدورة.

ألف - الحضور

٣- حضر الدورة ممثلون عن الدول الأعضاء، وكانت الدول غير الأعضاء ممثلة بمراقبين، كما حضرتهما منظمات حكومية دولية ومنظمات غير حكومية ذات المركز الاستشاري لدى المجلس الاقتصادي والاجتماعي.

باء - افتتاح الدورة

٤- افتتح السيد يوري بويتشينكو، رئيس وحدة مكافحة التمييز في المفوضية السامية لحقوق الإنسان، في ١٠ نيسان/أبريل ٢٠١٢، الجلسة الأولى للدورة الرابعة للجنة المختصة المعنية بوضع معايير تكميلية. ورحب بالمندوبين وأفاد بأنه يعقد الأمل على أن تكون هذه الدورة مثمرة مثل سابقتها. وأشار إلى ضرورة انتخاب الرئيس - المقرر للجنة المختصة ليتسنى تناول الأعمال الموضوعية للدورة الرابعة.

جيم - انتخاب الرئيس - المقرر

٥- انتخبت اللجنة المختصة، بالهاتف، في الجلسة الأولى، السيد عبد الصمد ميني، الممثل الدائم لجمهورية جنوب أفريقيا لدى مكتب الأمم المتحدة في جنيف رئيساً - مقررراً لها. ووجه السيد ميني الشكر إلى اللجنة المختصة في ملاحظاته التمهيديّة الموجزة على الثقة التي وضعتها فيه.

دال - إقرار جدول الأعمال

٦- أقرت اللجنة المختصة خلال الجلسة الأولى للدورة جدول أعمال الدورة الرابعة (A/HRC/AC.1/4/1).

هاء- تنظيم العمل

٧- قدم الرئيس - المقرر في الجلسة الأولى مشروع برنامج العمل الوارد في جدول الأعمال. وأعلن عن عقد جلسة للمنسقين الإقليميين قبل استئناف الدورة بعد ظهر هذا اليوم ليتسنى إجراء مشاورات إضافية بشأن برنامج العمل.

٨- واعتمد برنامج العمل المنقح، بصيغته المعدلة في الجلسة الثانية للجنة المختصة.

٩- وقدم الرئيس - المقرر بياناً استهلالياً في الجلسة الثانية. ووجه الشكر للمشاركين على تفهمهم وتعاونهم وقدم اعتذارات نيابة عن الرئيس - المقرر السابق للجنة المختصة، السيد جيرى ماتيوز مايجيلا، الذي تعذر عليه الحضور لرئاسة اللجنة المختصة نتيجة إعادة تعيينه مديراً عاماً لإدارة العلاقات الدولية والتعاون في حكومة جنوب أفريقيا. كما أعرب عن أسفه لعدم تمكن جنوب أفريقيا، بصفتها رئيسة اللجنة، من الوفاء بتعهداتها بالتشاور مع المشاركين في اللجنة المختصة بشأن الموضوعات المعينة لهذه الدورة.

١٠- وأفاد الرئيس - المقرر بأن جنوب أفريقيا ستظل تحت على انتخاب رئيس - مقرر دائم للجنة المختصة مع مواصلة عملها لأن على البلد مسؤوليات أخرى كثيرة في جهات أخرى، وذلك بصرف النظر عن أهمية قضايا العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب بالنسبة لجنوب أفريقيا.

١١- وتبشر الدورة الرابعة بأن تكون دورة تحفيزية ومثيرة نظراً للمشاركين فيها من خبراء ومقدمي العروض. وشكر الدول والأمانة على ما بذلته من جهود لإعداد الدورة. وأعرب عن الأمل في أن تتيح مساهمات مقدمي العروض ومناقشتهم فرصة للجنة المختصة للتفكير في القضايا التي أثرت في التقارير السابقة وفهمها، هي والصلة القائمة بين ولاية اللجنة المختصة والفقرة ١٩٩ من إعلان وبرنامج عمل ديربان.

١٢- وصرح بأن جنوب أفريقيا قد تولت، نيابة عن المجموعة الأفريقية، مسؤولية رئاسة اللجنة المختصة لضمان تعاون اللجنة المختصة معها كشريكة للتصدي لقضايا مثيرة للقلق. وأفاد بأن هدفه هو أن تواصل اللجنة المختصة عملها بشأن الموضوعات الثلاثة، على أن يكون مفهوماً أن الموضوعات الأخرى ستظل قيد المناقشة في المستقبل. وقال إنه يتطلع إلى العمل مع المشاركين خلال الأسبوعين القادمين.

١٣- وقامت كوبا، بصفتها الوطنية، بإبداء التزامها في الجلسة الثانية، عقب اعتماد برنامج العمل، بإيراد إشارة عامة إلى الجو المحيط بإعداد واعتماد برنامج العمل، مشيرة إلى الجهود التي بذلتها مجموعات ووفود إقليمية معينة "لمقاطعة وإطالة" عمل اللجنة المختصة.

١٤- وصرح الاتحاد الأوروبي بأن التأخير يعزى إلى "سوء الإعداد وقلة الشفافية" وإلى أن مشروع برنامج العمل لم يعكس، في رأيه، التعهدات التي تم التوصل إليها في الدورة الثالثة

المستأنفة. وأعاد التأكيد على التزامه بمكافحة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، وبالإشارة إلى أن هذا اليوم هو اليوم الدولي للتفكير في الإبادة الجماعية التي وقعت في رواندا في عام ١٩٩٤، اقترح أن تلزم اللجنة المخصصة دقيقة صمت.

١٥- وأكدت سويسرا (باسم الأرجنتين، وأوروغواي، والبرازيل، وجمهورية كوريا، وشيلي، والمكسيك، واليابان) على أنها تتوخى المرونة بشأن الموضوعات الواجب مناقشتها وأعربت عن ارتياحها لبرنامج عمل الدورة الذي اعتمد بتوافق الآراء. وصرحت بأن هذه الوفود قد دعمت على الدوام المدخلات الموضوعية للجنة المخصصة، في شكل الخبراء ومقدمي العروض، والبحوث والبيانات، لأن ذلك هو أفضل نهج للاضطلاع بعملها. وأعربت عن أسفها "لسوء الإعداد" للدورة ولعدم الوفاء باقتراحات وعود الرئيس السابق، خاصة وأن تواريخ الدورة قد أُرجت من تشرين الثاني/نوفمبر إلى يومنا هذا.

١٦- وأعادت السنغال، نيابة عن المجموعة الأفريقية، تجديد التزام مجموعتها بالمشاركة في اللجنة المخصصة، مصرحة بأن برنامج العمل قد اعتمد رغم التأخير الذي فرضته مجموعات إقليمية أخرى. وأفادت بأنها تتطلع إلى بدء عمل اللجنة المخصصة، كما تم تحديده في مقرر مجلس حقوق الإنسان ١٠٣/٣، خاصة وأن الاجتماع يعقد في العام التالي للذكرى العاشرة لاعتماد إعلان وبرنامج عمل ديربان والسنة الدولية للمنحدرين من أصل أفريقي.

١٧- وأفادت باكستان، نيابة عن منظمة التعاون الإسلامي، بأن الاتجاهات والمظاهر الجديدة للعنصرية تشكل تهديداً للمجتمعات السلمية في العالم. وصرح المندوب بأنه يجري وصم المسلمين والتشهير بهم علناً وسراً في كثير من المجتمعات. وقال إن هناك مواقف تنم عن كره الأجانب وتتطلب أن تتخذ بشأنها تدابير توفر حماية كافية من الناحيتين القانونية والدستورية على السواء.

١٨- ودعا الرئيس - المقرر إلى لزم دقيقة صمت احتراماً لليوم الدولي للتفكير في الإبادة الجماعية التي وقعت في رواندا وتضامناً مع جميع ضحايا العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومع ضحايا الإبادة الجماعية. ولزم المشاركون في اللجنة المخصصة لحظة صمت على النحو الواجب.

ثالثاً - مناقشة موضوع "كره الأجانب"

١٩- استمعت اللجنة المخصصة المعنية بوضع معايير تكميلية، خلال الفترة الممتدة من ١٠ إلى ١٣ نيسان/أبريل، ووفقاً لبرنامج عملها، إلى عروض قدمها عدة خبراء عن موضوع "كره الأجانب". وفي الجلسة الثانية المعقودة في ١٠ نيسان/أبريل، قدم السيد نوزيفو جانواري - بارديل، عرضاً تناول فيه تجارب جنوب أفريقيا الحديثة بقضية "كره الأجانب" وردود المؤسسات عليها. وفي الجلسة الثالثة المعقودة في ١١ نيسان/أبريل، قدم السيد باتريك

ثورنبيري، عضو لجنة القضاء على التمييز العنصري، عرضاً عن "كره الأجانب - مع الإشارة بوجه خاص إلى الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري". وفي الجلسة الرابعة المعقودة في نفس اليوم، قام السيد أوريست نوفوساد، رئيس قسم الحقوق المدنية والسياسية التابع لفرع الإجراءات الخاصة بمكتب المفوض السامي لحقوق الإنسان، باستعراض عمل المكلفين بولاية في إطار الإجراءات الخاصة بصدد قضية كره الأجانب. وفي الجلسة الخامسة المعقودة في ١٢ نيسان/أبريل، قدم السيد دانكن برين، كبير المنتسبين إلى منظمة حقوق الإنسان أولاً، وهي منظمة غير حكومية، عرضاً عنوانه "مكافحة عنف كره الأجانب". وقدمت في وقت لاحق من بعد ظهر نفس اليوم السيدة فاي دوفنمارك والسيدة كريستين أغازارم من المنظمة الدولية للهجرة عرضين في الجلسة السادسة عن قضايا الهجرة الدولية. وفي ١٣ نيسان/أبريل، قدم السيد ميغيل هيلاريو - مانينما من اليونيسيف عرضاً في الجلسة السابعة للدورة عنوانه "تجاوز المظاهر: كره الأجانب في أمريكا اللاتينية: حان وقت عد الملونين".

٢٠- ونظراً للقيود المفروضة على عدد كلمات هذا التقرير، ترد في المرفق الثاني بهذا التقرير ملخصات العروض والمناقشات التي جرت بعد ذلك مع المشاركين في الاجتماع بشأنها.

٢١- وفي الجزء الثاني من الجلسة السابعة، دعا الرئيس - المقرر المشاركين إلى بدء مناقشة عامة بشأن كره الأجانب بالإشارة إلى ما تم تناوله أو عدم تناوله حتى الآن هذا الأسبوع. وباستثناء مقدم العرض الأخير، لاحظ أن المناقشات لم تتناول على ما يبدو النهج الموجه نحو الضحايا.

٢٢- وأبدى تعليقاً للإفادة بأن الأمر ربما يتطلب التركيز على البرلمانين والقادة السياسيين؛ وعلى مجموعات أخرى محددة مثل الأطفال واللاجئين والمشردين داخلياً وعلى حالات أخرى مثل حالات النزاع وحالات ما بعد النزاع؛ وعلى دور الطبقات والفقير. واستعلم عن العوامل التاريخية كذلك التي كانت قائمة في جنوب أفريقيا وتساءل عن العوامل التي تؤثر على ما تمت وراثته وعن أساس الخبرة التاريخية الجماعية.

٢٣- وكرر مندوب جمهورية فنزويلا البوليفارية ضرورة وضع معايير تكملية للتصدي لمظاهر كره الأجانب وأكد على ضرورة وضع تعريف لتعزيز مكافحة التمييز. ويجب أن يتم ذلك مع مراعاة ولاية اللجنة المخصصة التي يجب أن تركز على وضع معايير تكملية وفقاً لمقرر مجلس حقوق الإنسان ١٠٣/٣.

٢٤- وأشار الاتحاد الأوروبي إلى أن العروض المختلفة قد بينت تعدد جوانب كره الأجانب وضرورة التصدي له من ثم بوسائل مختلفة، تشمل التشريع والآليات وغير ذلك من وسائل. وأفيد بأن ما من مقدمي العروض قد صرح بوجود ثغرات واضحة ولم يتمكن أحد من اقتراح تعريف قانوني. ولم يكن تعريف المنظمة الدولية للهجرة مفيداً أو عملياً بالضرورة فيما يتعلق بعمل اللجنة المخصصة. وسلط الممثل الضوء أيضاً على أنه أفيد في جميع العروض

بأن كره الأجانب ظاهرة متعددة الجوانب. وصرح المندوب بأنه يمكن مكافحة كره الأجانب باتخاذ تدابير مختلفة لمناهضة التمييز بمختلف أسبابه.

٢٥- وصرحت مندوبة النرويج بأن الدورة أتاحت لوفد بلدها التفكير في ما جرى في السياق الوطني. وأبدت قلقها إزاء العمل على وضع تعريف لأن هذا التعريف سيكون على الأرجح أوسع أو أضيق من اللازم. وشددت المندوبة على أن كره الأجانب يشكل خطراً للأفراد وتحدياً للديمقراطية، وأنه يؤدي في حالات خطيرة إلى التمييز العنصري وارتكاب جرائم ضد الإنسانية وإلى الإبادة الجماعية، وما إلى ذلك. فالهجمات التي شهدتها النرويج في ٢٠١١ كانت صدمة بالنسبة لجميع أفراد الشعب النرويجي. وأفادت بأن الكراهية هي التي غذت الهجمات سياسياً وسلطت الضوء على أهمية تكثيف الجهود لإتاحة مزيد من الانفتاح والديمقراطية والشمول. وقد تعهدت النرويج باحترام الكرامة الإنسانية لكل فرد بلا شروط وفي جميع الأوقات. وفيما يتعلق بالقضايا العملية، أفادت بأن الحماية القانونية لا تكفي دائماً لضمان المساواة وأن الأمر يتطلب جهوداً مشتركة. وهناك في رأي النرويج سند قانوني متين لمكافحة العنصرية وكره الأجانب ولكنها على استعداد لمناقشة هذا الموضوع إلى حد أبعد. ويجب أن يكون النهج واقعياً وتوافقياً وقائماً على احتياجات حقيقية ومظاهر واضحة وأن يثبت أن ثغرات النظام القانوني قد أعاققت التقدم أو أبطأته.

٢٦- وصرح اليابان، نيابة عن الأرجنتين، وأوروغواي، والبرازيل، وجمهورية كوريا، وسويسرا، والمكسيك بأن عروض الخبراء كانت مفيدة وإعلامية لكونها قد قدمت استعراضاً أكثر وضوحاً ودقة. فقد سلطت هذه العروض الضوء على بعد كره الأجانب المتعدد الجوانب وطابعه الشامل وبينت أن هناك نهجاً عملياً للقضية. وأفاد المندوب بأنه لا يمكن الاستخلاص بأن الحاجة تدعو صراحة إلى وضع معايير تكميلية على الصعيد الدولي في ميدان كره الأجانب. وإذ أشار إلى أن انعدام التعريف لم يشكل فيما يبدو عائقاً في عمل لجنة القضاء على التمييز العنصري، فقد أوصى اليابان بدعوة اللجنة إلى تقديم رأي رسمي بشأن القضية لتوضيح كيفية تفسير أحكام منصوص عليها في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري بصدد كره الأجانب.

٢٧- وأفادت مندوبة الصين بأن كره الأجانب والمنازعات الاقتصادية والثقافية تتزايد. وشددت على أن الصكوك الدولية الراهنة قد أصبحت متخلفة نوعاً ما. وقد تم اتخاذ بعض التدابير ولكنها لم تكن كافية ويحتاج الأمر إلى مزيد من التعاون الدولي. ولا بد من مناقشة قضية كره الأجانب من المنظور القانوني الدولي للقضاء على كره الأجانب وحماية حقوق الشعوب. وأبرزت أن ما تم القيام به ليس سوى الخطوة الأولى بشأن هذه القضية.

٢٨- وأشارت الولايات المتحدة الأمريكية إلى أنه كانت هناك عدة آراء مختلفة أبداها الخبراء المتعددون وكان هناك مع ذلك قدر كبير من التناسق في التوصيات الملموسة التي قدموها بشأن السياسة العامة. ومن المفيد أن تقوم المفوضية السامية لحقوق الإنسان بتناول

عروض الخبراء وتجميع مصفوفة واحدة تتضمن توصيات بشأن تصنيف البيانات، والحملات التثقيفية وغير ذلك من التوصيات في مجال السياسة العامة.

٢٩- وصرحت مصر بأنها توافق على أن العروض لم تقدم تعريفاً حاسماً لكره الأجانب وأن جميع مقدمي العروض قد أكدوا مع ذلك أن دور الدول الأعضاء هو القيام بوضع تعريف. والقضية ليست أن الخبراء لاحظوا وجود ثغرات، بل أنهم يترددون على الأرجح في الإشارة إلى مدى وجوب وضع معايير تكميلية. وتساءل عن سبب تزايد كره الأجانب إذا لم تكن هناك حاجة إلى وضع معايير تكميلية؟ وقال إن التعليقات العامة التي أبدتها لجنة القضاء على التمييز العنصري ليست كافية لأنها تتعلق بالقانون الدولي القائم، لا بالظواهر الجديدة مثل كره الأجانب. ورحب المندوب بإعداد مصفوفة تتضمن التعاريف المختلفة لكره الأجانب كما قدمها الخبراء وكما ترد في الفقرات ذات الصلة من إعلان وبرنامج عمل ديربان والوثيقة الختامية الصادرة عن مؤتمر استعراض نتائج ديربان.

٣٠- وشددت السنغال، متحدثة باسم المجموعة الأفريقية، على أن مقرر مجلس حقوق الإنسان ١٠٣/٣ كان واضحاً بشأن ولاية اللجنة المختصة، وأن إعادة فتح المناقشة لم تكن مشروعة وأن الصكوك القانونية يجب أن تستند إلى الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري وإعلان وبرنامج عمل ديربان. وأبرز المندوب الحاجة إلى وضع تعاريف من وجهة نظر قانونية، وأفاد في هذا الصدد بأن إعلان وبرنامج عمل ديربان قد أوصيا بتعزيز الاتفاقية التي لا تتضمن إشارة إلى كره الأجانب؛ ولذلك يلزم وضع تعريف لمعرفة ماهية كره الأجانب وضمان اتساقه. وستكون هناك بهذه الطريقة شفافية واستقرار قانوني لمصلحة الضحايا. فمكافحة الإفلات من العقاب وانتهاج نهج يركز على الضحايا هما السيلان الوحيدان الواجب اعتمادهما. وينبغي للجنة المختصة أن تسعى إلى توفير الحماية الوطنية من كره الأجانب وأن تعاقب عليه بضمان وصول الضحايا إلى العدالة؛ وتعزيز الآليات أو ما يعادلها من هيئات لمكافحة كره الأجانب؛ وتنظيم حملات للتوعية.

٣١- وصرح مندوب النمسا بأن كره الأجانب مشكلة عالمية. وأفاد أيضاً بأن الحاجة تدعو إلى وضع نهج يركز على الضحايا. ومن المهم في هذا الصدد معرفة احتياجات الضحايا وكيفية مساعدتهم في حقيقة الأمر. وشدد المندوب على أن الآليات القائمة تفتقر إلى التنفيذ. وهناك عدد كبير جداً من التوصيات التي قدمها المقررون الخاصون والمسألة هي معرفة كيفية تعزيز التنفيذ. وقال إنه يؤيد تعريفاً أوسع لكره الأجانب بحيث يشمل أسباباً أخرى للتمييز.

٣٢- وأثنت مندوبة البرازيل على النهج المستخدم في هذه الدورة التي تعقدها اللجنة المختصة، وعلى عروض الخبراء ودعت الرئيس - المقرر إلى استخدام نفس النهج في الدورات المقبلة. وأوجزت بعض الاستنتاجات لتكون الأساس الذي يستند إليه في المناقشات المقبلة بشأن كره الأجانب: النهج الموجه نحو الضحايا نهج رئيسي؛ ينبغي تشجيع الحكومات

على التصديق على الصكوك الدولية؛ وينبغي الاستفادة من الدراسة التي أعدها لجنة القضاء على التمييز العنصري في عام ٢٠٠٧ بشأن الثغرات الإجرائية.

٣٣- وأشار مندوب ليختنشتاين إلى تزايد التوافق في الآراء داخل اللجنة المختصة بشأن اعتماد نهج يركز على الضحايا؛ وقال إن ما ينبغي ضمانه من ثم هو أن لا تضعف اللجنة ما هو قائم بالفعل. ولاحظ أن الإطار القائم للاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري يتعرض لخطر حقيقي وأنه يمكن أن يضعف لأن لجنة القضاء على التمييز العنصري قد عالجت قضية كره الأجانب وأن الدول قد قبلت هذه التوصيات. فاحتمال وضع تعريف دولي جديد لكره الأجانب أمر يمكن أن يقوض هذه التوصيات.

٣٤- وشددت باكستان، نيابة عن منظمة التعاون الإسلامي، على أنه ينبغي للجنة المختصة أن تعترف بأن لغة وأفعال كره الأجانب تشكل إهانة للضحايا وأنه لا بد للمجتمع الدولي أن يتخذ إجراءات سريعة. وتساءل هو الآخر عن سبب تزايد كره الأجانب إذا لم تكن هناك ثغرات في الواقع. وأفاد بأن من شأن التدابير القانونية والإدارية أن تحل المشكلة بمزيد من الفعالية. وأن الافتقار إلى تعريف يعوق بذل جهود منسقة على الصعيد الدولي يعني استخدام مجموعة من التفسيرات. وصرح بأن الحاجة تدعو إلى فهم كره الأجانب فهماً مشتركاً وفقاً للأسباب الواردة في الاتفاقية وإعلان وبرنامج عمل ديربان والوثيقة الختامية لمؤتمر استعراض نتائج ديربان. وشدد على عدم وجوب الخلط بين الجنسية وكره الأجانب لأن مواطني نفس البلد يتعرضون هم أيضاً لاعتداءات. وأفاد المندوب بضرورة التصدي للقوالب النمطية السلبية وحديث كره الأجانب. وشدد على ضرورة وضع معايير تكميلية بشأن كره الأجانب.

٣٥- وصرحت مندوبة جنوب أفريقيا بأن الحاجة تدعو إلى اتخاذ تدابير قانونية لمعالجة السلوك وحماية الضحايا. وكان واضحاً ومعروفاً منذ البداية بأن ليس هناك تعريف لكره الأجانب وإن كان يمارس مع ذلك. وأفادت بأن وسائل الإعلام تقوم بدور إيجابي واقترحت استكشاف دورها ربما بالتعاون مع تحالف الأمم المتحدة للحضارات. ولاحظت أن البروتوكولات الاختيارية التي تم اعتمادها بصدد عدد من صكوك الأمم المتحدة، والتي تم بموجبها إنشاء آليات للشكاوى، لم تؤد إلى تقويض الآلية أو الحماية المتاحة.

٣٦- وصرح مندوب فرنسا بأن الفقرة ١٩٩ من برنامج عمل ديربان، التي أوصت بأن تعد لجنة حقوق الإنسان السابقة معايير دولية تكميلية لتعزيز وتحديث الصكوك الدولية لمناهضة العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب بجميع جوانبه، أساس تعهد حكومته. وأفاد بأن فرنسا اعتمدت تعريفاً ضيقاً بشأن الخوف أو الكراهية تجاه الأشخاص من غير المواطنين ومن غير القوميين، وأن هذا التعريف قد استخدم لتعزيز القانون الجنائي. ويتمشى هذا النهج تماماً مع أحكام الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري. وأشار إلى أن لجنة القضاء على التمييز العنصري قد

استخدمت في بعض الحالات التعريفين الضيق والواسع على السواء. وتساءل عن مدى الحاجة إلى تعريف كهذا إذا كانت المواد ٢ و ٤ و ٦ من الاتفاقية تنص على أن القانون يحمي الضحايا. وكرر أن ما من خبير قد صرح بوجود ثغرة في الإطار الدولي، وإنما بوجوب تحسين عملية التنفيذ.

٣٧- وأشارت مندوبة سويسرا إلى ضرورة النظر في ما إذا كان وضع تعريف يعتبر أمراً مفيداً للضحايا أو ضاراً لهم. وقالت إن المصنوفة بشأن تعاريف الخبراء التي اقترحتها مندوب مصر يمكن أن تكون مفيدة، وإن أثبتت فقط مدى صعوبة إيجاد تعريف.

٣٨- وأفاد الرئيس - المقرر بأن هناك تفاوتاً في الآراء بشأن الثغرات والتعاريف وألقى الضوء على ضرورة بحث المعلومات بشكل عملي ودراسة القضايا المختلفة بموضوعية. وقال إن تفاوت الآراء سيظل قائماً مع ذلك حتى بعد القيام بهذه العملية.

رابعاً- مناقشة موضوع "إنشاء أو تعيين أو حفظ آليات وطنية معنية بالحماية من جميع أشكال ومظاهر العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها"

٣٩- وفقاً لبرنامج عملها، استمعت اللجنة المختصة المعنية بوضع معايير تكميلية، في ١٦ و ١٧ نيسان/أبريل، إلى عروض قدمها خبراء عن موضوع "إنشاء أو تعيين أو حفظ على آليات وطنية معنية بالحماية من جميع أشكال ومظاهر العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها". وفي جلستها الثامنة المعقودة في ١٣ نيسان/أبريل، استمعت اللجنة المختصة إلى عرضين عن موضوع "إنشاء أو تعيين أو حفظ آليات وطنية معنية بالحماية من جميع أشكال ومظاهر العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها" قدمهما السيد فلادان ستيفانوف، رئيس المؤسسات الوطنية وقسم الآليات الإقليمية بالمفوضية السامية لحقوق الإنسان، والسيد زانوفير إسمالبي، مستشار حقوق الإنسان لدى برنامج الأمم المتحدة الإنمائي بجنيف، على التوالي.

٤٠- وفي الجلسة التاسعة المعقودة في ١٦ نيسان/أبريل، ناقش السيد باتريك شارلييه من المركز البلجيكي لتكافؤ الفرص ومناهضة العنصرية المسألة المتعلقة بكيفية اختيار آلية وطنية ومركز الآليات واختصاصها. وفي الجلسة العاشرة التي عقدت في وقت لاحق من ذلك اليوم، قدم السيد جوزيف دي وايت، رئيس الشبكة الأوروبية لهيئات التكافؤ، عرضه إلى اللجنة المختصة بشرح ولاية المركز البلجيكي ودوره ووظائفه. وشرح أيضاً بإيجاز ولاية الشبكة وعملها.

٤١- وفي الجلسة الحادية عشرة المعقودة في ١٧ نيسان/أبريل، قدم السيد بوسيو موخيكّا، رئيس المجلس الوطني المكسيكي لمنع التمييز، عرضاً عن الآليات الوطنية لمناهضة التمييز مع التشديد بوجه خاص على منظمته. وألقى السيد أندريه كاستيلا، مدير مكتب إدماج الأجناب في كانتون جنيف، كلمة أمام المشاركين في اللجنة المخصصة في جلستها الثانية عشرة.

٤٢- ونظراً للقيود المفروضة على عدد كلمات هذا التقرير، ترد في المرفق الثاني بهذا التقرير ملخصات لجميع العروض المشار إليها أعلاه وما يناظرها من مناقشات دارت بعد ذلك مع المشاركين في الاجتماع.

خامساً- مناقشة موضوع "الثغرات الإجرائية فيما يتعلق بالاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري"

٤٣- قدم السيد ألكسي أفتونوموف، رئيس لجنة القضاء على التمييز العنصري، في الجلسة الثالثة عشرة المعقودة في ١٨ نيسان/أبريل، عرضاً عنوانه "الثغرات الإجرائية التي تحول دون تنفيذ الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري". وقال إن اللجنة تعتقد حالياً أن الأحكام الأساسية المنصوص عليها في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري كافية لمكافحة التمييز العنصري في الأوضاع المعاصرة. وترى اللجنة أنها ستتمكن في المستقبل القريب من معالجة المشاكل دون تعديل الاتفاقية. ومع ذلك، تعتبر اللجنة أن وضع إجراءات جديدة معينة يمكن أن يعزز فعالية أنشطة اللجنة كهيئة رصد والافتقار إلى إجراءات بعينها هو ذلك الذي تعتبر اللجنة أنه يشكل الثغرات الإجرائية في الاتفاقية. وتولي اللجنة عناية كبيرة للقضايا ذات الصلة بكره الأجناب مفيدة بأن هناك عدة جوانب مختلفة مشمولة بتعريف التمييز العنصري في الاتفاقية. وحذر من احتمال أن يحد أي تعريف آخر من نطاق التعريف الراهن. وقال إن التعريف قد يحتاج في المستقبل إلى صياغة جديدة ولكن ذلك ليس هو الوضع حالياً. وأضاف قائلاً إنه إذا أريد أن يكون هناك بروتوكول إضافي للاتفاقية، فينبغي أن يركز على الإجراءات الإضافية المتعلقة بالتحقيقات والتحريرات وإجراءات تقييم الحالات أو الزيارات القطرية.

٤٤- وأفاد السيد أفتونوموف بأن سنوات كثيرة قد تمر قبل أن يتسنى للجنة اتخاذ إجراءات، ولذلك تقترح وضع إجراء ثابت يتيح للخبراء زيارة البلد موضع القلق والتحقيق في الحالة على نحو أسرع. فعلى سبيل المثال، يمكن للخبير أو خبيرين القيام بزيارة، وجمع معلومات أولية، وتقديم إحاطة إلى اللجنة. وفي هذا الصدد، طلبت لجنة القضاء على التمييز العنصري إيلاء الاعتبار لبروتوكول اختياري. وكانت الصيغة المقترحة للإجراءات الإضافية مختلفة، إذ اقترح عدد من الخبراء تسميتها بزيارة تقييم؛ وأشار آخرون إليها على أنها إجراء تحقيق أو إجراء تحري. وصرح بأن اللجنة على علم بأن أية زيارة قطرية تتطلب موارد مالية

إضافية؛ على أن لدى عدداً من هيئات رصد المعاهدات بالفعل هذه الإجراءات. ويتمشى هذا الإجراء أيضاً مع العملية الجارية لتنسيق هيئات رصد المعاهدات.

٤٥ - وصرح السيد أفتونوموف بأن إجراءً ثانياً يعرف باسم زيارات التقييم/زيارات المتابعة يمكن أن يكون في غاية الفائدة فيما يتعلق بالملاحظات الختامية التي سبق تقديمها ولكن أيضاً في حالة الافتقار إلى تقرير مرحلي. ويمكن تكليف خبير من لجنة القضاء على التمييز العنصري يكون المقرر القطري للدولة المعنية بمهمة إجراء زيارة المتابعة المقترحة، وهو ما يمكن أن يساعد أيضاً في إعداد التقارير المحلية.

٤٦ - وقال مندوب السنغال، نيابة عن المجموعة الأفريقية، إن السيد ثورنبري قد صرح هو الآخر بأن ليس في الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري أية أوجه قصور، وهو ما يخالف رأي المجموعة الأفريقية. وشدد مرة أخرى على قضية انعدام الأمن القانوني وعلى أن كره الأجانب غير وارد في الاتفاقية وأفاد بأن ظاهرة هجرة الأفراد ربما لم تكن معروفة تماماً وقت اعتماد الاتفاقية. وأكد أن عدة سنوات قد مضت منذ اعتماد الاتفاقية وأنه يجدر إعادة النظر فيها. وإن ظاهرة كره الأجانب تظهر اليوم بوضوح أكبر. وطلب شرح إجراء التحري المقترح بمزيد من التعمق مصرحاً بأن إجراء الإنذار المبكر والإجراء العاجل قائمان بالفعل. وأشار إلى دور مجلس حقوق الإنسان فيما يتعلق بحفظ السلام والأمن وألقى الضوء أيضاً على اختصاصات المحكمة الجنائية الدولية. وفي هذا الصدد، استعلم عن مدى احتمال ازدواج الجهود.

٤٧ - وبين ممثل الولايات المتحدة الأمريكية بوضوح أن تغيير تعريف التمييز العنصري الوارد في الاتفاقية ليس فحسب أمراً غير ضروري، بل أنه أمر خطير أيضاً، كما فهم ذلك من العرض الذي قدمه السيد أفتونوموف. وأشار إلى ما قيل عدة مرات وهو أن كره الأجانب ظاهرة جديدة، وهذا غير صحيح - فقد تكون عبارة كره الأجانب عبارة جديدة لوصف مشكلة قديمة، ولكن المشكلة قائمة منذ وقت طويل. وفيما يتعلق بالإجراءات الجديدة المقترحة، تساءل عن الطريقة التي يمكن بها للجنة القضاء على التمييز العنصري تفادي ازدواج الأنشطة التي يضطلع بها مجلس حقوق الإنسان أو المفوضية السامية لحقوق الإنسان. وتساءل أيضاً عن التكاليف المرتبطة بالإجراءات الجديدة المقترحة.

٤٨ - وشدد مندوب الاتحاد الأوروبي على أن من الأهمية بمكان تنفيذ المعايير والإجراءات القائمة. وفيما يتعلق بالإجراءات، ألقى المندوب الضوء على ضرورة استخدام الإجراءات القائمة على أمثل نحو من حيث الامتثال لإجراءات الإبلاغ ومتابعة الملاحظات الختامية/توصيات لجنة القضاء على التمييز العنصري. وطلب المندوب معرفة رأي السيد أفتونوموف بشأن كيفية القيام بذلك. واستفسر أيضاً عن المعايير التي يمكن أن تؤثر بالقيام بزيارة التقييم المقترحة: هل اللجنة هي التي تتخذ قرار الزيارة أم أن هذه الزيارة تتم بناء على طلب البلد؟

٤٩- وفيما يتعلق بفائدة إجراء التحري المقترح، أفاد السيد أفتونوموف بأنه سيتاح للجنة القضاء على التمييز العنصري بهذه الطريقة تقديم توصيات وقائية. وإن الهدف من الزيارات القطرية هو جمع معلومات. وتنفيذ إجراء التحري معناه احتمال وقوع انتهاك. وليس هناك ازدواج في العمل مع مجلس الأمن أو المحكمة الجنائية الدولية. وقال إن عدد الشكاوى الفردية التي تقدم إلى اللجنة محدود. وأفاد بأن الأمر يحتاج تنظيم المزيد من حملات التوعية بشأن هذا الاقتراح.

٥٠- ووجهت البرازيل سؤالاً لمعرفة الكيفية التي يمكن بها التصدي لمسألة الثغرات في سياق العملية الجارية لتعزيز هيئات رصد المعاهدات.

٥١- وشدد مندوب كوبا على أن حكومة بلده لن تستطيع الموافقة على الإجراءات المقترحة والتعليقات المقدمة مفيداً بأن العديد منها ليس بالاقترحات الجديدة وأنه لم يجبر وضعها من جانب الدول الأعضاء، بل من جانب خبراء أكاديميين ومحققين، وما إلى ذلك. ولن تستطيع كوبا الموافقة على اقتراحات يراد بها زيادة رصد الدول، وتساءل أيضاً عن مدى توافر الموارد اللازمة لهذه الإجراءات الجديدة.

٥٢- واستفسر مندوب الاتحاد الروسي عن الأطراف صاحبة المصلحة التي يمكن أن تشارك في زيارات التقييم المقترحة: هل سيقصر الأمر على سلطات الدولة أم سيكون هناك تفاعل مع أطراف أخرى صاحبة المصلحة مثل المنظمات غير الحكومية والضحايا؟ وطرح نفس السؤال بشأن زيارات المتابعة المقترحة. وطلب معرفة ما إذا كان من شأن ذلك أن يغير الإجراء الذي يطلب إلى الدول بمقتضاه الرد على الطلبات في غضون عام واحد.

٥٣- وفيما يتعلق بالزيارات القطرية، صرح السيد أفتونوموف بأنه لا يمكن أن تكون مماثلة لإجراء الشكاوى الفردية لاختلاف طابع كل منهما. وقد تكون الزيارات القطرية أقرب إلى بعثات تفصي الحقائق المراد بها جمع معلومات، وهذا ما يحتم عقد اجتماعات مع مجموعة من الأطراف صاحبة المصلحة، بما في ذلك سلطات الدولة والمنظمات غير الحكومية والضحايا. ويمكن أن تتم زيارات المتابعة بناء على توصيات لجنة القضاء على التمييز العنصري وأن ينصب التركيز من ثم على مؤسسات الدولة لأنها هي المكلفة بعملية التنفيذ. ومع ذلك، قد تكون هناك أيضاً إمكانية عقد اجتماعات مع بعض المنظمات غير الحكومية.

٥٤- وشددت باكستان، نيابة عن منظمة التعاون الإسلامي، على ضرورة تعريف كره الأجانب لأن لدى الدول الأطراف مجموعة من التفسيرات. كما يمكن أن تواجه لجنة القضاء على التمييز العنصري مشكلة بتبني نهج شامل ومتسق إذ يحتمل أن تأخذ قضية كره الأجانب في الاعتبار في تقرير مرحلي وأن لا تفعل ذلك في تقرير آخر.

٥٥- واستفسرت مندوبة جنوب أفريقيا عن الطريقة التي يمكن بها لزيارات المتابعة المقترحة أن تبني قدرات الدول على وضع تقارير محلية. وطلبت معرفة ما إذا كان إجراء التحري

المقترح سيحل محل الالتزام بالإبلاغ، واستفسرت عن تكامل هذا الإجراء مع الإجراءات الخاصة وعن المعايير اللازمة لهذه الزيارات.

٥٦- وقال مندوب إيطاليا إن تنفيذ الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري أمر بالغ الأهمية. وأبدى الشك بشأن فترة الأشهر الستة المتوخاة وطلب إيضاحات أيضاً لمعرفة ما إذا سيتم إدراج البيان الموجز المقدم من الدولة الطرف في التقرير الذي يقدم إلى الجمعية العامة.

٥٧- ورداً على سؤال طرحته باكستان نيابة عن منظمة التعاون الإسلامي، قال السيد أفتونوموف إن لجنة القضاء على التمييز العنصري قد تناولت قضيتي التنميط والقوالب النمطية بإدانة كليهما في كثير من الأحيان في الملاحظات الختامية. فإذا أدرجت تعاريف كره الأجانب والتنميط والقوالب النمطية في الاتفاقية، ستتناول اللجنة هذه التعاريف في عملها وسترد على التحديات الجديدة. وفي رأيه أن أعضاء اللجنة لم يعترضوا إطلاقاً على إدراج تعريف جديد؛ بل اعتبروا على الأرجح أن الاهتمام يجب أن ينصب على الثغرات الإجرائية لتعزيز عملهم. وأضاف قائلاً إنه لا يذكر حالة واحدة لكره الأجانب لم تتناولها اللجنة لأنها كانت تشمل على الدوام سبياً أو أكثر من الأسباب المنصوص عليها في المادة ١ من الاتفاقية.

٥٨- وفي الجلسة الرابعة عشرة المعقودة في ١٨ نيسان/أبريل، دعا الرئيس - المقرر المشاركين إلى بدء إجراء مناقشة عامة وتبادل الآراء بشأن موضوع "إنشاء أو تعيين أو حفظ آليات وطنية معنية بالحماية من جميع أشكال ومظاهر العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها".

٥٩- وصرح الاتحاد الأوروبي بأن أهمية الآليات الوطنية تتمثل في ضمان وجود نهج يركز على الضحايا وعلى سبل الانتصاف ومنع التمييز. ويمكن للآليات الوطنية أن تساعد في تأمين حماية وسبل انتصاف فعالة لضحايا التمييز وذلك بتوفير المساعدة القانونية للضحايا أثناء المداولات القضائية، وحيثما أنيطت بمهام شبه قضائية، يمكنها تكملة إجراءات المحكمة التي تكون أحياناً إجراءات طويلة وإجراءات يصعب الوصول إليها وإجراءات مكلفة. وأفاد علاوة على ذلك بأن توفير سبل انتصاف أمر ضروري ولكنه لا يشكل مع ذلك وسيلة كافية لمكافحة التمييز. ومما لا يقل أهمية عن ذلك قيام الآليات الوطنية بمنع التمييز بتنظيم حملات للتوعية وأنشطة تثقيفية وتدريب الصحفيين، وما إلى ذلك.

٦٠- ويجب أن يتوقف اختيار الآلية (الآليات) أو الجمع بينها على السياق المحلي. ويرحب الاتحاد الأوروبي أيضاً بالتعاون وتبادل الممارسات السليمة بين الآليات الوطنية المختلفة وبين الآليات الوطنية ووكالات الأمم المتحدة. وتدعو الحاجة إلى زيادة بحث إمكانيات الآليات الوطنية لتحسين عملية تنفيذ المعايير الدولية القائمة ومن ثم ضمان فعاليتها. وقد يكون من المفيد للجنة أن تمنع النظر في دورة لاحقة في المبادئ التوجيهية لإنشاء آليات وطنية.

٦١- ونيابة عن المجموعة الأفريقية، حثت السنغال على إنشاء آليات وطنية في البلدان التي لم تؤسس فيها بعد. ويجب أن تشمل ولايات هذه الآليات قضايا العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب. ويجب أن يكون نهجها مركزاً على الضحايا وأن تكون سبيل وصولهم إلى الآليات مؤمنة. وحيثما كانت هناك مؤسسات وطنية وهيئة متخصصة، وجب التنسيق بينها بمزيد من الكفاءة. وأضافت السنغال بأنه ينبغي للمفوضية السامية لحقوق الإنسان توفير المساعدة التقنية الملائمة لتمكين الدول من إنشاء مؤسسات وطنية لحقوق الإنسان.

٦٢- وأفادت فرنسا بأن التوفيق على المستوى الوطني والتواصل الشبكي على المستوى الإقليمي سبيلان فعالان لدعم حصول الضحايا مباشرة على نتائج ذلك على أرض الواقع.

٦٣- ووافق الرئيس - المقرر على أنه ينبغي للآليات أن تأخذ السياق المحلي في الاعتبار وأضاف إن اللجنة قد تود النظر في وقت ما في دور الآليات الإقليمية وطابعها وفوائدها عند معالجة قضايا العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب فضلاً عن كيفية مساعدة الآليات الوطنية في وضع نهج إقليمي للتصدي للقضايا. وأعطى كمثال على ذلك الآلية الإفريقية لاستعراض الأقران ونجاحها في قضايا الإدارة المشتركة وأبرز أيضاً دور المنظمات الدينية.

٦٤- وأبدت الولايات المتحدة الأمريكية تقديرها لمداخلة الرئيس - المقرر بشأن الآليات الإقليمية، مفيدة بأن منظمة الدول الأمريكية ومنظمة الأمن والتعاون في أوروبا مثالان أيضاً للمبادرات الإقليمية وأهما تمثلان، من خلال عمليات التقييم القطرية، آليتين للشكاوى الفردية والمبادرات المتعلقة بالتمييز على أساس الدين والمعتقد. وهذه النهج الإقليمية جديدة بأن تنظر فيها اللجنة في المستقبل.

٦٥- وصرحت مصر بأنه من المفيد تقديم عروض عن المعايير الإقليمية في الدورات المقبلة. وأعادت تأكيد ولاية اللجنة المخصصة مفيدة بأنه ينبغي اتخاذ خطوات على أرض الواقع على المستوى المحلي على أن تكون جذور هذه الخطوات هي المعايير والآليات الدولية.

٦٦- وشددت كوبا على أهمية الآليات الوطنية وإن وجب ربطها بالثقافة ذات السيادة وبالثقافة الفردية وبخصائص بلد ما. وهناك حاجة ماسة لتبادل أفضل الممارسات والمعلومات.

٦٧- وصرحت ليختنشتاين بأن الآليات الوطنية أقرب إلى الضحايا وأنها مهياة تماماً للتصدي لقضايا العنصرية والتمييز العنصري وكره الأجانب وما يتصل بذلك من تعصب على المستوى المحلي. وأفاد المندوب بأنه يمكن إدراج الإشارة إلى التزام الدول الأطراف بإنشاء آليات وطنية في أي عمل يتصدى للثغرات الإجرائية التي تعترى اتفاقية القضاء على جميع أشكال التمييز العنصري.

٦٨- وأضاف مندوب الولايات المتحدة الأمريكية قائلاً إنه لم يسمع بعد عن قضية أو حالة ملموسة حدّ فيها نقص التعريف من قدرة لجنة القضاء على التمييز العنصري على الاستجابة للنظر في القضية، أو عن حالة عجزت فيها آلية وطنية عن التصدي لقضية بسبب وجود ثغرة إجرائية كبيرة في القانون الدولي.

٦٩- وأكدت جنوب أفريقيا على أن موضوع الآليات الوطنية موضوع شامل وبينت أهمية هذه الآليات في مراعاة التنفيذ على المستوى الوطني. وأشارت المندوبة إلى أنه في حين أن هذه الآليات آليات وطنية، فقد تم وضع مبادئ باريس والموافقة عليها على مستوى الجمعية العامة. وفيما يتعلق بالتفسيرين "الضيق" و"الواسع" لكره الأجنبي، قالت إن هناك بالفعل عدم اتساق، مما يوحي بأن من الأهمية بمكان استبعاد، منهجياً، ما لا ينطوي عليه كره الأجنبي.

٧٠- وأكدت تونس على أهمية القادة السياسيين وألقت الضوء على الدور الذي ينبغي للاتحاد البرلماني الدولي القيام به. وأفاد المندوب بأن تعدد تحفظات الدول على المادة ٤ من الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري يشكل عقبة كبيرة لتنفيذها بفعالية.

٧١- وجرت خلال هذه الجلسة مناقشة عامة أيضاً وتبادل للآراء بشأن موضوع "الثغرات الإجرائية فيما يتعلق بالاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري".

٧٢- وأكد مندوب سويسرا (نيابة عن الأرجنتين، وأوروغواي، والبرازيل، وجمهورية كوريا، وشيلي، والمكسيك واليابان) على أن الاتفاقية لا تزال تتسم بأهمية هي وإجراءات الرصد التابعة لها، مضيفاً أن السيد أفتونوموف قد أثبت الأثر الملموس الناتج عن التصدي لثغراتها الإجرائية. وفيما يتعلق بموضوع كره الأجنبي، صرح بأنه يلزم زيادة مناقشته والنظر فيه.

٧٣- وأبدت ليختنشتاين تعليقها على الاقتراح بتأسيس إجراء للتحري وإجراء للتقييم الموقعي، مشددة على أن الهدف البحث من ذلك هو استخدامهما كأداتين إجرائيتين وعدم تأسيس أي سند أو حقوق موضوعية جديدة. ويجدر النظر في إجراء للتقييم يتيح لخبير اللجنة بحث الحالة الوطنية.

٧٤- وفيما يتعلق بإجراء التقييم (تقديم التقارير)، صرحت السنغال، نيابة عن المجموعة الأفريقية، بأن من المفيد النظر في سبب التأخر في تقديم تقارير الدول وكذلك في الفائدة المستمدة من زيارات المتابعة لأن هناك بعثات أخرى ذات صلة، بما في ذلك تلك التي يقوم بها المكلفون بولايات.

٧٥- وصرحت كوبا بأن ولاية اللجنة تتمثل في وضع معايير تكميلية، لا إجراءات. وأفادت بأن آليات اللجنة وإجراءاتها كافية وأن اللجنة تواجه صعوبات في إدارة عبء عملها الراهن.

٧٦- وصرحت جنوب أفريقيا بأنها لا توافق على الحجة التي طرحها بعض الوفود ومفادها أن التركيز على تفسير ضيق أو واسع لكره الأجانب يؤدي إلى نتيجة عكسية وبادعاء أن النظر فيه من شأنه أن يقلل من شأن قرارات اللجنة والمكاسب التي تحققت بالفعل. وليس في تعريف جديد ما يشكل خطراً لأن ليس من الحكمة أن توافق الدول الأعضاء على معيار يقلل من شأن قرارات أو معايير سابقة. وقد اتفقت مصر مع جنوب أفريقيا ومع مداخللة السنغال نيابة عن المجموعة الأفريقية على أن مهمة اللجنة تتمثل في النظر في الثغرات الموضوعية وأن مناقشة الثغرات الإجرائية أمر يخرج عن هذا السياق.

٧٧- وصرحت فرنسا بأن موضوع الآليات الوطنية سيظل مطروحاً على مائدة المناقشات المقبلة، مسلّمة بتفاوت التفسيرات فيما بين أعضاء اللجنة. وذكر المندوب بأن الفقرة ١٩٩ من إعلان وبرنامج عمل ديربان والوثيقة الختامية لمؤتمر استعراض نتائج ديربان لم يقصرا القضية على الثغرات الإجرائية أو الثغرات الموضوعية. وتمت الإحاطة علماً بأهمية تعزيز هيئات المعاهدات وأعربت فرنسا عن تقديرها للاقتراحات التي قدمتها لجنة القضاء على التمييز العنصري للتصدي للثغرات الإجرائية.

سادساً - اعتماد التقرير

٧٨- افتتح الرئيس - المقرر الجلسة الخامسة عشرة المعقودة في ٢٠ نيسان/أبريل وأعلن عن أن مشروع تقرير الدورة قد عمم على المشاركين. ودعاهم إلى النظر فيه لضمان دقة تقرير الدورة والاقتصار على إدخال تعديلات واقعية أو فنية عليه.

٧٩- وأحاط الاجتماع علماً أيضاً بأنه قام، بمسؤوليته الشخصية، بإعداد استنتاجات الرئيس وتوصياته وأنه شاطرها مع المنسقين الإقليميين الليلة السابقة وسيقدمها إلى اللجنة بكامل هيئتها. وبعد هذه المداخللة الشفهية بشأن الوثيقة، قال إن نسخاً منها ستتاح للاجتماع. وقام الرئيس برفع الجلسة بناء على طلب الوفود ليتسنى لهم مواصلة المشاورات فيما بينهم بشأن وثيقة ختامية متفق عليها للدورة.

٨٠- وقام الرئيس - المقرر، لدى استئناف الجلسة الخامسة عشرة، بتلاوة استنتاجات وتوصيات الرئيس المعنونة "ملخص الرئيس - المقرر: فخامة السيد مينتي، الممثل الدائم لجمهورية جنوب أفريقيا" (انظر المرفق الأول بهذا التقرير).

٨١- وأشارت ليختنشتاين إلى أن الرئيس - المقرر قد أعد ملخص الدورة بمسؤوليته وبناء على حقه الحصري في ذلك. وصرح المندوب بأن فهمه للملخص المناقشات يختلف عنه. وأعرب رسمياً عن عدم موافقته على الفقرة ١٥ من ملخص الرئيس - المقرر مشيراً إلى أن البيان الوارد فيه يقلل من شأن الحماية الممنوحة لضحايا كره الأجانب بموجب إطار الاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري.

٨٢- وكرر الاتحاد الأوروبي هو الآخر أن الملخص هو ملخص الرئيس - المقرر، لا ملخص اللجنة المخصصة. وأعرب الاتحاد الأوروبي عن عدم موافقته على بعض أجزاء ملخص الرئيس - المقرر، لا سيما ما يتعلق منه بوجود ثغرات. وشدد على أنه لم يُثبت في الدورة وجود ثغرات أساسية في الاتفاقية، خاصة بصدد كره الأجانب، وهي ثغرات ينبغي سدها. وقال إن ما فهمه هو أن وثيقة الرئيس - المقرر سترفق بتقرير الدورة الرابعة.

٨٣- وأخذت السنغال الكلمة نيابة عن المجموعة الأفريقية واقترحت عدداً من التوضيحات وإعادة صياغة اقتراحات بصدد الملخص الذي أعده الرئيس - المقرر. وأيدت باكستان، نيابة عن منظمة التعاون الإسلامي، مداخلة المجموعة الأفريقية وأيدت تقديرها للرئيس - المقرر لمشاطرة آرائها مفيدة بأن الملخص يحتاج إلى مزيد من الدراسة.

٨٤- ولم تقدم الولايات المتحدة الأمريكية تعليقات مفصلة على ملخص الرئيس - المقرر، ولكنها صرحت بأن مفهومها هو أن الوثيقة تتضمن الملاحظات الشخصية للرئيس - المقرر. وقدم المندوب بعد ذلك بعض الملاحظات العامة بالإشارة مرة أخرى إلى أن الجهود أو الاقتراحات المراد بها التوصل إلى تعاريف جديدة لتحل محل تلك الواردة في الاتفاقية أو لتكتملها ليست فحسب غير ضرورية، وإنما خطيرة. وفيما يتعلق بالعنف والتمييز القائمين على أساس الدين أو المعتقد، ذكر بأن الولايات المتحدة كانت قد اقترحت اتخاذ إجراءات دولية في دورات سابقة للجنة المخصصة وكانت تؤيد المضي قدماً بتنفيذ قرار مجلس حقوق الإنسان ١٨/١٦. وأفاد المندوب بأن في الولايات المتحدة تأييداً مشتركاً لحرية التعبير والرأي وأن تحفظ الولايات المتحدة على المادة ٤ من الاتفاقية قائم على أساس مبدأ لا على أساس السياسة.

٨٥- وصرحت سويسرا هي الأخرى (نيابة عن الأرجنتين، وأوروغواي، والبرازيل، وجمهورية كوريا، وشيلي، والمكسيك واليابان) بأن الوثيقة تمثل، حسب فهمها، الآراء الشخصية للرئيس - المقرر. وأكدت أهمية الأعمال التحضيرية في الفترات الفاصلة بين الدورتين لإعداد الدورة الخامسة على النحو الملائم.

٨٦- وأعربت كوبا عن تأييدها للملخص الرئيس - المقرر، لا سيما وأن وضع قواعد ومعايير للتصدي لكره الأجانب يمثل في رأيها حاجة وأولوية.

٨٧- ووجهت الصين الشكر إلى الرئيس - المقرر على الملخص الذي أعده وأعربت عن كامل تأييدها له مفيدة بأنه رسم الاتجاه الصحيح الذي يمكن أن يتولد عنه زخم آخر.

٨٨- ورد الرئيس - المقرر قائلاً إن الملخص الذي أعده ليس سوى استنتاجات الرئيس وتوصياته وإن محتوياته سترد في مرفق التقرير الختامي للدورة الرابعة. وبما أنه ليس نصاً متفاوضاً عليه، فلن يجري النظر في أي مقترحات أو تعديلات. وقد تم وضعه بطريقة عامة

جداً. ومع ذلك، فإنه الآن ملك اللجنة المخصصة ولها أن تستعمله أو لا تستعمله كما تراه مناسباً. وقال إنه يتطلع إلى استنتاجات الدورة بشأن الطريق الواجب سلكه.

٨٩- وفي الجلسة السادسة عشرة، اعتمد تقرير الدورة الرابعة بشرط الاستشارة، وبعلم أن الوفود ستلقى نسخة منقحة من مشروع التقرير بحلول ٤ أيار/مايو ٢٠١٢، وأنها سترسل بصدد التصويبات الفنية على مداخلتها، خطياً، إلى الأمانة بحلول ١٨ أيار/مايو ٢٠١٢.

٩٠- وفي هذه الجلسة، قدم وفد السنغال أيضاً، نيابة عن المجموعة الأفريقية، نصاً متفقاً عليه عنوانه "مشروع استنتاجات اللجنة المخصصة بشأن وضع معايير تكميلية عن دورتها الرابعة". وفي أعقاب التصويبات الفنية التي قدمها الاتحاد الأوروبي ومصر شفهيّاً، اعتمد النص بتوافق الآراء على النحو التالي:

"قررت اللجنة المخصصة، بغية الاضطلاع بولايتها، دعوة رئيس اللجنة المخصصة إلى إجراء مشاورات غير رسمية، في حدود الموارد القائمة، مع المنسقين الإقليميين والسياسيين خلال الفترة الفاصلة بين الدورتين الرابعة والخامسة للجنة المخصصة، من أجل إعداد الدورة الخامسة وجمع مقترحات ملموسة لمناقشة الموضوعات المتعلقة بكره الأجانب؛ إنشاء أو تعيين أو حفظ الآليات الوطنية المعنية بالحماية من جميع الأشكال ومظاهر العنصرية والتمييز العنصري وكراه الأجانب وما يتصل بذلك من تعصب، ومنع ظهورها؛ والتغرات الإجرائية فيما يتعلق بالاتفاقية الدولية للقضاء على جميع أشكال التمييز العنصري، وفقاً لولايتها.

تدعو المفوضية السامية لحقوق الإنسان إلى إرسال استبيان، في حدود الموارد القائمة، لجمع معلومات عن الموضوعات الثلاث التي جرت مناقشتها في الدورة الرابعة للجنة المخصصة وفي تقريرها (كره الأجانب والآليات الوطنية والتغرات الإجرائية)، بما في ذلك الأطر والممارسات القانونية والقضائية، والتدابير الأساسية والإجرائية، تمشياً مع ولاية اللجنة المخصصة، وتقديم التوصيات الممكنة.

تدعو المفوضية السامية لحقوق الإنسان إلى إرسال الردود على الاستبيان على موقعها على الشبكة، والقيام بالتشاور مع الرئيس، بإعداد ملخص للردود على الاستبيان خلال الفترة الفاصلة بين الدورتين لمناقشتها خلال الدورة الخامسة.

توصي بأن تناقش الدورة الخامسة موضوعاً جديداً (موضوعات) جديدة كما ترد في التقرير (A/HRC/18/36) للدورة الثالثة للجنة المخصصة أو موضوعاً (موضوعات) قدمت أثناء الفترة الفاصلة بين الدورتين."

٩١- وألقى عدد من الوفود (الاتحاد الأوروبي؛ باكستان نيابة عن منظمة التعاون الإسلامي؛ السنغال نيابة عن المجموعة الأفريقية؛ جنوب أفريقيا؛ الولايات المتحدة الأمريكية؛

كوبا نيابة عن مجموعة أمريكا اللاتينية ومنطقة بحر الكاريبي؛ وسويسرا نيابة عن الأرجنتين، وأوروغواي، والبرازيل، وجمهورية كوريا، وشيلي، والمكسيك واليابان) كلمة للإعراب عن تقديرها، خاصة للرئيس - المقرر، لطريقة إدارته للدورة.

٩٢- وفي ختام الجلسة، وجه الرئيس - المقرر الشكر إلى جميع المشاركين على الجهود القيمة التي بذلوها، ملاحظاً مع الارتياح أن الدورة الرابعة قد اعتمدت برنامج عملها واستنتاجات الدورة بتوافق الآراء. ولئن كانت لا تزال هناك أعمال ينبغي الاضطلاع بها، فقد نُحِتَت اللجنة المخصصة في رسم مسار ما لمستقبلها.

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 4th 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 80th 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 Conventional on the Elimination of All Forms of Racial Discrimination” noting that the views expressed in his brief analytical paper were personal and not those of the Committee.
14. Mr. Thornberry noted that ICERD does not include the term xenophobia but nevertheless the terms “xenophobia” and “xenophobic” are used with regularity by the Committee. Mr. Thornberry pointed out that it was possible to discern wider and narrower meanings grouped under “xenophobia”. The wider meaning would follow that of the Special Rapporteur on contemporary forms of racism in 1994 and amount to a generalized fear of “the Other” the “heterophobia” or fear of strangers. The narrower meaning related to foreigners, people from countries other than one’s own. In CERD jargon, the second might be reduced to hatred of the “non-citizen” or of “aliens”. On the other hand, “non-

citizenship”, on the face of it, might seem to be an unlikely target for hatred. Mr. Thornberry stated that while in a conceptual sense the wide meaning may be more compelling and closer to ordinary usage, addressing xenophobia in the narrow sense might resonate better with legal definitions in ICERD and the practice of CERD. He also added that it might be possible to distinguish xenophobia from ethnocentrism, or other identity-defending strategies or attitudes.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

37. Mr Nowosad stated that the mandate-holders appeared to deal with issues of xenophobia in reference to violations of individual rights in international law. He noted the preventive focus of their work and asked whether norms and standards were sufficient. He

noted the question on the protective gap and he highlighted the critical role played by national institutions in fighting xenophobia.

38. The delegate from the United States of America noted that focussing on violations of the rights of individuals avoided the difficult issue of proving psychological harm and motivation. He added that in December 2011 in Washington had been a follow-up meeting to Human Rights Council resolution 16/18 and that the issue of training exercises for law enforcement officials, including in the context of combating terrorism had been addressed. He noted that good law enforcement and good human rights were not mutually exclusive.

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

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

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

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

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

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

45. With regard to shortcomings in State responses he noted that xenophobic violence, like other forms of bias-motivated violence, tended to be under-reported as very often victims were afraid or unwilling to approach police or other government officials for help.

Lengthy and costly procedures also contributed to under-reporting and as a result, perpetrators developed a sense of impunity. Most States had yet to develop monitoring mechanisms. Non-governmental organizations and NHRIs could also play an important role in data collection.

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

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

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

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

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

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

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

53. The delegate from Italy said that the divergence of opinion in the room signified the complex nature of xenophobia. With regard to the Framework for Action paper, he urged caution with respect to the annex of countries as there was a risk of oversimplifying the situation. It was also very important to include information on responses by political leadership which should come at the highest political level. He added that generally, a xenophobic atmosphere often resulted from sudden changes in the social fabric of countries: for example, a country of net emigration suddenly becoming one of significant immigration.

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

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

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

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

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

59. The delegate of Switzerland said that Mr. Breen was the only expert to recommend the development of legislation and underlined the need to have a coherent approach to all types of violence and not to be selective. She asked about suggestions with regard to the nature of the legislation that needs to be adopted: with respect to punishment of crimes, implications for third parties, and the classification of hate speech. The delegate noted that no society was immune to discriminatory messages and discourse concerning foreigners,

migrants and refugees by political leaders. It was important for society to remain vigilant about these “myths” created about foreigners and the issues of immigration, employment and criminality.

60. Pakistan, on behalf of Organisation of Islamic Cooperation, pointed out that xenophobic violence was a global phenomenon requiring a corresponding international action, whereas the paper of Human Rights First focused on the national level. It was uncertain whether these national measures suffice the magnitude of the phenomenon. He supported the role of political and religious leaders, but this should be complementary to legal and administrative procedures.

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

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

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

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

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

66. On the ground, IOM had been programming, informing and educating policymakers and the wider public about migration and was also facilitating the integration of migrants –

both key in combating xenophobia. One good practice example was that through directly working within the educational system in countries of destination on toolkits, teacher trainer manuals inter religious dialogues, trainings and curriculum materials. IOM also directly engaged with the media to promote balanced reporting and analysis on migration to combating 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-Manëñima 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-Manëñima'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-Manëñima'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-Manëñima 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-Manëñima 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 DDDPA. The delegate asked about human rights strategy and diversity and composition in staffing, and with reference to the thematic fact sheets asked whether there was one on non-discrimination.

87. Mr. Ismalebbe noted that the toolkit enabled staff to adapt the sample and tools to the local context. The terms of reference in the toolkit were to be used to build capacity and help foster staff diversity at the country level through the employment of sample and tools.

He explained that there was no specific fact sheet on non-discrimination and equality since it was deemed a cross-cutting issue during the preparation of the toolkit and was therefore integrated throughout the document.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

112. China asked how it was possible to guarantee the impartiality of national mechanisms. In addition, from a legal point of view, how could migrants from other

countries be protected in the host country? Due to economic regions and discrimination, how could mechanisms entirely comprised of the local population be free from the political atmosphere in a country and provide protection to foreigners or “aliens”?

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

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

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

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

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

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

good practices. It has a fairly high level of competence on issues concerning race, religion and belief, gender, disability and sexual orientation.

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

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

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

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

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

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

125. He then outlined some of the advantages of institutions like CONAPRED including: the fact that its coverage of multi-dimensional issues strengthened its capacity to act in terms of its broader approach and the interdependence of rights. There was also a better

capacity to defend individual cases of discrimination and there was more credibility and public legitimacy attached to its work. Some disadvantages included the fact that the institutions could not impose public sanctions and provide redress, budgetary restrictions, and CONAPRED's very broad mandate and geographic coverage which involved a tremendous amount of work.

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

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

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

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

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

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

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

133. Mr. Bucio-Mujica also pointed out that the majority of rulings on the individual cases were not binding therefore requiring acceptance on behalf of the person responsible

for the act and very often the person did not accept a commission of an act of xenophobia. Moreover, in Mexican law there were many distinctions between citizens: being naturalized Mexicans or Mexican by birth. According to CONAPRED some of these distinctions were illegal and xenophobic; therefore, it was suggesting an amendment to the constitution, looking at the barriers which might be xenophobic in nature, and having an impact on redress for victims. He noted that international instruments have a very direct impact in Mexico as they had immediate application and constitutional effect upon ratification. He invited delegates to continue this process to consider which additional standards are needed to combat discrimination, emphasizing that the work of the Ad Hoc Committee was essential for combating racism, racial discrimination, xenophobia and related intolerance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Annex III

[English only]

Agenda

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

Annex IV

[English only]

Programme of work

(adopted as amended, 10 April 2012)

1st week

| | Monday 9.04 | Tuesday 10.04 | Wednesday 11.04 | Thursday 12.04 | Friday 13.04 |
|-------------|-------------|---|--|--|---|
| 10.00-13.00 | UN holiday | <p>Item 1</p> <p>Opening of the Session</p> <p>Item 2</p> <p>Election of the Chair</p> <p>Item 3</p> <p>Adoption of the Agenda and Programme of Work</p> | <p>Xenophobia</p> <p>[Patrick Thornberry, CERD]</p> | <p>Xenophobia</p> <p>[Duncan Breen, Human Rights First]</p> | <p>Xenophobia</p> <p>[Miguel Hilario, UNICEF]</p> <p>---</p> <p>General discussion and exchange of views on xenophobia</p> |
| 15.00-18.00 | | <p>Item 4a</p> <p>Xenophobia</p> <p>[Nozipho January-Bardill, South Africa]</p> | <p>Xenophobia</p> <p>[Orest Nowosad, Special Procedures Branch, OHCHR]</p> | <p>Xenophobia</p> <p>[Fanny Dufvenmark; Christine Aghazarm, IOM]</p> | <p>Item 4b</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>[Vladlen Stefanov, National Institutions Section, OHCHR; Zanofer Ismalebbe, UNDP Geneva]</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>Item 4c</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>Item 5</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>Item 6</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.