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Agenda item 9

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

## **Report of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination on its fourteenth session<sup>\*</sup>, <sup>\*\*</sup>**

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

### *Summary*

The present report is submitted pursuant to Human Rights Council decision 3/103 and Council resolutions 6/21 and 10/30. The report is a summary of the proceedings of the fourteenth session of the Ad Hoc Committee of the Human Rights Council on the Elaboration of Complementary Standards to the International Convention on the Elimination of All Forms of Racial Discrimination.

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\* The annexes to the present report are being circulated in the language of submission only.

\*\* The present report was submitted to the conference services for processing after the deadline so as to include the most recent information.



## **I. Introduction**

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

## **II. Organization of the session**

2. The Ad Hoc Committee held 16 meetings during its fourteenth session, which was held at the Palais des Nations, Geneva, from 22 July to 2 August 2024.

### **A. Attendance**

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

### **B. Opening of the session**

4. The fourteenth session of the Ad Hoc Committee was opened by the Chief a.i. of the Rule of Law, Equality and Non-discrimination Branch, Office of the United Nations High Commissioner for Human Rights. He said that the fight against racism, racial discrimination and related intolerance remained crucial to achieving a world free from discrimination that ensured freedom, dignity, equality and justice for all, irrespective of race, colour, descent or national or ethnic origin. All persons deserved dignity and protection of their rights, regardless of where they lived. Indeed, no country could claim to be free of racism. Significant challenges needed to be addressed. Systemic racism persisted against national, ethnic, linguistic and religious minorities, migrants, people of African descent and Indigenous Peoples, including women and girls. Many migrants, refugees, asylum-seekers and stateless persons faced limited access to basic rights and services and experienced xenophobia, hatred, stigmatization and racial stereotyping. Manifestations of racism and xenophobia communicated through digital spaces and by politicians and public figures were on the rise and there had been a resurgence of nationalistic and supremacist movements.

### **C. Election of the Chair-Rapporteur**

5. At its 1st meeting, held on 22 July 2024, the Ad Hoc Committee elected Kadra Ahmed Hassan, Permanent Representative of Djibouti to the United Nations Office and other international organizations in Geneva, as its Chair-Rapporteur, by acclamation.

6. The Chair-Rapporteur recalled that, at its thirteenth session, the Ad Hoc Committee had heard presentations from and engaged in discussions with legal experts on issues pertaining to the structure, scope, elements, terms and procedural aspects of a draft additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination, criminalizing acts of a racist and xenophobic nature. One of the recommendations from that session had been that the legal experts be tasked with continuing to provide the Chair-Rapporteur with precise guidance and input, including on specific issues and elements that had been raised during its thirteenth session, listed in paragraph 101 of the report of the session.<sup>1</sup>

7. The Chair-Rapporteur said that the experts had undertaken legal research and analysis and provided input and guidance to facilitate the preparation of the Chair's updated draft document. They had responded to the specific issues and elements on which the Ad Hoc

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<sup>1</sup> [A/HRC/54/65](#).

Committee had requested further information at its thirteenth session. The Ad Hoc Committee's substantive focus during the first week of the fourteenth session would be its questions, observations and concerns. Regrettably, as hybrid meetings could no longer be held, it would not be possible for the experts to engage in discussions with the Ad Hoc Committee during the fourteenth session. Nevertheless, the Ad Hoc Committee would hear the experts' pre-recorded presentations. The Chair-Rapporteur called upon the Ad Hoc Committee to deepen its discussion on the legal issues and expressed her expectation that discussions based on the experts' presentations and the Chair's updated draft document would enable the Ad Hoc Committee to make substantive progress, guided by its mandate.

8. The Chair-Rapporteur noted that, in the face of contemporary manifestations of racism, increased efforts were required from the Ad Hoc Committee to strengthen the protection of victims of racism and racial discrimination, particularly to address the protection gaps in international norms and standards through the elaboration of an additional protocol to the Convention. The Chair-Rapporteur urged the Committee members to contribute substantively during the fourteenth session.

#### **D. Adoption of the agenda**

9. At its 1st meeting, held on 22 July 2024, the Ad Hoc Committee adopted the following agenda for its fourteenth session:

1. Opening of the session.
2. Election of the Chair-Rapporteur.
3. Adoption of the agenda and programme of work.
4. Presentations by legal experts on the issues listed in paragraph 101 of the report of the Ad Hoc Committee on its thirteenth session and discussion thereon.
5. Discussion on defining additional terms or notions, as detailed in paragraph 101 (i) of the report of the Ad Hoc Committee on its thirteenth session.
6. Introduction of and discussion on the Chair's updated draft document concerning the possible scope, terms, elements and structure of the draft additional protocol criminalizing acts of a racist and xenophobic nature, pursuant to Human Rights Council resolution 51/32.
7. Conclusions and recommendations.
8. Adoption of the conclusions and recommendations.

#### **E. Organization of work**

10. At its 1st meeting, the Ad Hoc Committee adopted the programme of work for the session (see annex I).

11. The representative of Pakistan, speaking on behalf of the Organization of Islamic Cooperation (OIC), said that the OIC member States deeply valued the mandate of the Ad Hoc Committee to negotiate an additional protocol to the Convention. That mandate had become more significant given the growing contemporary global challenges of racism, racial discrimination, xenophobia, hate speech and religious intolerance and hatred. He regretted that anti-Muslim hatred was often tolerated by some States and promoted by the media. He noted some States' reluctance to prevent manifestations of racial discrimination. He regretted the continued public acts of desecration of the Qur'an in some States, which were emblematic of wider structural Islamophobia embedded in those societies.

12. The representative of the Gambia, speaking on behalf of the African Group, reaffirmed the Group's support for the mandate of the Ad Hoc Committee. It was imperative to elaborate complementary standards, given that racism, racial discrimination, xenophobia and related intolerance continued to be global challenges nearly 60 years after the adoption of the Convention. Lingering legacies of historical racial injustices such as colonialism,

slavery and the transatlantic slave trade, apartheid and genocide continued to be among the main obstacles to the full enjoyment of all human rights.

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

14. The representative of Egypt said that her country aligned itself with the statements that had been made on behalf of OIC and the African Group. She reaffirmed the support of Egypt for the Ad Hoc Committee's mandate and the progress and efforts made to finalize complementary standards to the Convention. In the draft additional protocol, it was important to address discrimination on the grounds of religion and belief, the role of digital technology in amplifying hate speech and the misuse of social media platforms to spread national, racial or religious hatred, which constituted incitement to discrimination, hostility and violence.

15. The representative of Iraq said that his country aligned itself with the statement made on behalf of OIC. He reiterated the full commitment of Iraq to the principles of human rights and legality and its full support for the Ad Hoc Committee's mandate. He affirmed the need to combat racial discrimination and to address gaps in that area.

16. The representative of Brazil expressed her country's willingness to contribute to the Ad Hoc Committee's efforts to combat hate speech both online and offline. She shared information about the existing domestic legislative framework in her country to address racial discrimination in all its forms.

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

18. The representative of South Africa said that her country aligned itself with the statement made on behalf of the African Group. She reaffirmed the support of South Africa for the work of the Ad Hoc Committee. She noted that the collective responsibility of the global community to promote and protect the human rights of all without discrimination was at the core of human rights pillars and mechanisms. South Africa joined the African Group in condemning all forms of racism, racial discrimination, xenophobia and related intolerance wherever they occurred, and called for a victim-centred approach to be adopted in all efforts aimed at combating them. Racism and racial discrimination, including contemporary forms thereof, affected all people. It was therefore incumbent upon everyone to address their root causes and effectively implement concrete measures to combat those scourges, as proposed in the Durban Declaration and Programme of Action.

### **III. Discussions**

#### **A. Presentations and discussion with legal experts on paragraph 101 of the Ad Hoc Committee's report on its thirteenth session**

19. From its 1st to its 8th meetings, held from 22 to 26 July 2024, the Ad Hoc Committee considered agenda item 4, namely presentations by legal experts on the issues listed in paragraph 101 of the Ad Hoc Committee's report on its thirteenth session and discussion thereon. It heard and discussed presentations by the following legal experts: Béatrice Bonafé, Professor of International Law, Sapienza University of Rome; Joanna Botha, Professor of Public Law, Faculty of Law, Nelson Mandela University, South Africa; Mark Drumbl, Class

of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University, United States of America; Fatsah Ouguerouz, Visiting Professor of International Law, Graduate Institute of International and Development Studies, Geneva; and Li-ann Thio, Professor, Provost's Chair, Faculty of Law, National University of Singapore. The experts addressed issues pertaining to the structure, scope, elements and terms of a draft additional protocol criminalizing acts of a racist and xenophobic nature, in order to assist the Chair-Rapporteur and the Ad Hoc Committee in its work.

#### **Presentation and discussion on paragraph 101 (a)**

20. At its 1st meeting, held on 22 July 2024, the Ad Hoc Committee heard a presentation from Ms. Thio. She noted that if the primary mandate of the Ad Hoc Committee was to consider the criminalization of acts of a racist and xenophobic nature, it could extend beyond criminal law to consider civil law measures in line with the Convention. Among non-criminal measures, she identified mediation, reconciliation and rehabilitation as areas that were not explicitly covered by the Convention.

21. At the same meeting, the Ad Hoc Committee also heard a presentation from Mr. Drumbl. He elaborated on the difference between criminal liability and civil liability, noting that civil liability allowed for broader responses, including rehabilitation, reintegration, restitution and early warning mechanisms. He drew attention to several examples at the international and national levels of cases in which criminalization had been enhanced and supported by non-criminal mechanisms.

22. The representatives of Algeria, Brazil, Egypt and the Gambia, as well as the European Union, made statements during the discussion.

23. At the 2nd meeting, held on 23 July 2024, the representatives of Cabo Verde and Iran (Islamic Republic of) also made statements in the context of the above-mentioned discussion.

24. At its 2nd meeting, the Ad Hoc Committee heard a presentation by Michał Balcerzak, Professor, Faculty of Law, Department of Human Rights, Nicolaus Copernicus University, Poland, who was acting in his capacity as an academic expert rather than as Chair of the Committee on the Elimination of Racial Discrimination. Mr. Balcerzak highlighted the Ad Hoc Committee's unique opportunity to draw upon the extensive experience of the Committee on the Elimination of Racial Discrimination in its efforts to develop a modern, high-quality additional protocol that could address the contemporary challenges of racial discrimination. The Ad Hoc Committee could work on definitions, which would bring clarity on crucial concepts, thus significantly benefiting and strengthening the Convention. He encouraged the Ad Hoc Committee to include xenophobia and racial profiling in the draft additional protocol.

#### **Presentations and discussions on paragraph 101 (b)**

25. At its 2nd meeting, the Ad Hoc Committee heard and discussed a presentation by Ms. Botha. She highlighted the fact that article 4 of the Convention provided that States parties should introduce criminal measures in their domestic legal systems. The Convention should be interpreted broadly; there was scope to include in the draft additional protocol xenophobia, racial profiling, hate crimes and hate speech using a "living instrument" approach. She noted that the concept of xenophobia generally related to the idea of foreignness and had previously been subsumed by the Committee on the Elimination of Racial Discrimination under the umbrella of discrimination on the ground of race.

26. At the same meeting, the Ad Hoc Committee also heard and discussed a presentation by Mr. Drumbl. He examined whether it was appropriate to define in the draft additional protocol additional terms or notions that were not included or defined in the Convention. He noted the usefulness of definitions in treaties of a criminal nature as they provided clarity, precision and the transparency required by criminal law. Nevertheless, he cautioned that consensus on precise definitions might be difficult to obtain, particularly where terms such as those listed in paragraph 101 (i) were not yet defined under international law.

27. The representatives of Egypt, the Gambia, South Africa and Venezuela (Bolivarian Republic of), as well as the European Union, made comments during the discussion.

### **Presentation and discussion on paragraph 101 (c)**

28. At its 3rd meeting, held on 23 July 2024, the Ad Hoc Committee heard and discussed a presentation by Mr. Ouguergouz. He explained how intersectionality had been reflected in United Nations resolutions and instruments and how it had been developed in the practice of the Committee on the Elimination of Racial Discrimination. He suggested that expanding the list of grounds of discrimination in article 1 of the Convention could allow more room for approaches aimed at addressing discrimination based on religion or belief. Regarding the application of aggravating factors, a legal concept existed where crimes had been committed based on particular criteria such as race, ethnicity, skin colour and religion; such circumstances generally led to more punitive sanctions. He concluded that the motivation of the perpetrator could constitute an aggravating factor if it was based on any of the grounds of discrimination in article 1 of the Convention and that, therefore, those factors could be integrated in the complementary standards.

29. The representatives of Egypt, Iran (Islamic Republic of), the Gambia, Pakistan and South Africa, as well as the European Union, made comments during the discussion.

### **Presentation and discussion on paragraph 101 (d)**

30. At its 4th meeting, held on 24 July 2024, the Ad Hoc Committee heard and discussed a presentation by Ms. Botha. She stated that xenophobic discrimination and racial profiling could be addressed as hate crimes or as offences of hate speech. While the Committee on the Elimination of Racial Discrimination subsumed xenophobic discrimination and acts of xenophobia under the ground of race, xenophobia could be considered as an act or discriminatory practice where persons were targeted because they were foreign, including when they were citizens of the country in which they were targeted. She presented three options for addressing xenophobia in the draft additional protocol. She noted that racial profiling had been defined in various instruments, but that no definition existed in hard law.

31. The representatives of Brazil, Egypt, Iran (Islamic Republic of) and Pakistan, as well as the European Union, made statements during the discussion.

32. At its 5th meeting, held on 24 July 2024, the Ad Hoc Committee continued its discussion of paragraph 101 (d). The representatives of Algeria, Brazil, Egypt, Pakistan and Venezuela (Bolivarian Republic of), as well as the European Union, made comments.

33. At the 12th and 13th meetings of the Ad Hoc Committee, held on 30 and 31 July 2024, respectively, Ms. Botha responded to questions that delegations had asked on paragraph 101 (d).

### **Presentations and discussion on paragraph 101 (e)**

34. At its 6th meeting, held on 25 July 2024, the Ad Hoc Committee heard and discussed a presentation by Ms. Thio. Noting that discrimination based on religion or belief constituted a gap in human rights instruments, she suggested that the additional protocol could provide better protection for certain aspects of such discrimination. The Convention did not directly address the phenomenon of incitement to racial and religious hatred. She elaborated on the practice of the Committee on the Elimination of Racial Discrimination in that regard and suggested several approaches to addressing that issue in a draft additional protocol.

35. The representatives of Algeria, Brazil, China, Egypt, the Gambia, Pakistan and South Africa, as well as the European Union, made comments during the discussion.

36. At the same meeting, the Ad Hoc Committee heard and discussed a presentation by Mr. Ouguergouz. He stated that there were many elements supporting the conclusion that discrimination based on religion or belief could be a form of racial discrimination. He elaborated on the development by the Committee on the Elimination of Racial Discrimination of the concept of intersectionality, addressing the racialization of religion, and gave several examples supporting that conclusion.

37. At the Ad Hoc Committee's 10th meeting, held on 29 July 2024, Ms. Thio responded to follow-up questions that delegations had asked on paragraph 101 (e).

### **Presentation and discussion on paragraph 101 (f)**

38. At its 7th meeting, held on 25 July 2024, the Ad Hoc Committee heard and discussed a presentation by Ms. Bonafé, which was read out by a member of the secretariat, owing to technical issues. Ms. Bonafé's presentation was focused on the main principles governing international criminal law, namely the principles of legality, necessity and the principle of *non bis in idem*. She recalled that *mens rea*, or intent, was a fundamental element of criminal responsibility.

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

### **Presentations and discussions of paragraph 101 (h)**

40. At its 8th meeting, held on 26 July 2024, the Ad Hoc Committee heard and discussed a presentation by Ms. Thio. She elaborated on the potential for social media and information and communications technology to amplify racism and intolerance. She explained the main difference between offline and online hate speech, underlining that the same rights and obligations should apply to both, while noting the difficulties inherent in holding perpetrators accountable. She also raised the issue of multiple and concurrent State jurisdictions. She elaborated on the third-party liability of Internet platforms and their accountability for any violations or breaches of their duties.

41. The representatives of the Gambia, Iran (Islamic Republic of) and South Africa, as well as the European Union, made comments during the discussion.

42. At the Ad Hoc Committee's 10th meeting, Ms. Thio responded to follow-up questions raised by delegations regarding her presentation on paragraph 101 (h).

### **Presentation and discussion on paragraph 101 (g)**

43. At its 8th meeting, the Ad Committee also heard and discussed a presentation by Ms. Bonafé on paragraph 101 (g), which was read out by a member of the secretariat, owing to technical issues. Ms. Bonafé's presentation was focused on procedural guarantees under international criminal law to protect victims, including their rights to participate in the criminal trial and to reparation for damages suffered. She also elaborated on the rights to judicial protection and to remedy for victims of human rights violations in international human rights law.

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

### **Discussion on defining additional terms and notions, paragraph 101 (i)**

45. At its 9th meeting, held on 29 July 2024, the Ad Hoc Committee considered issues under its agenda item 5, namely a discussion on defining additional terms or notions, as detailed in paragraph 101 (i) of the report of the Ad Hoc Committee on its thirteenth session. It began by hearing again the presentation by Mr. Drumbl that it had first heard at the 2nd meeting, on whether to define additional terms and notions in the draft additional protocol.

46. The representatives of Algeria and Egypt made comments.

47. The Chair-Rapporteur clarified that the experts had referred to different sources in the Chair's updated draft document. She recalled the suggestion made by the legal experts not to define all terms and notions, as definitions could evolve over time in relation to the context in which the acts were considered. She emphasized that in negotiating definitions, the Ad Hoc Committee should recall that its mandate was to elaborate a text on criminalizing acts of a racist and xenophobic nature.

48. The Chair-Rapporteur reviewed the sources referred to by the legal experts to define the term "hate". That term did not refer to rage, anger or general dislike, but rather to bias against persons or groups with specific characteristics defined by law. She recalled that the legal experts had clarified that that definition had been used mainly for hate crimes committed on the basis of bias, prejudice or hate. Furthermore, the threshold for reaching the level of hate in that context would be lower because the corresponding act drove criminal responsibility, with the element of prejudice aggravating the crime and the sentence. She

recalled once again the legal experts' suggestion to define "hate" as it constituted an element of the offence of hate speech, and that in hate speech law, "hate", or "hatred", was defined as an intense emotion of derision, aversion and enmity towards the person or group being targeted.

49. The representatives of the Islamic Republic of Iran and of the European Union made comments.

50. The Chair-Rapporteur recalled that the legal experts had highlighted the fact that the Convention contained a definition of the term "racial discrimination", not the terms "race", "racism" or "racist". She recalled that the definition of a "racial group" emanated from the case law of the International Criminal Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighbouring States between 1 January and 31 December 1994, to which the legal experts had referred. She drew attention to the legal experts' suggestion to define race – should the Ad Hoc Committee decided to do so – in a manner that reflected the underlying social dynamics, rather than an alleged and false scientific basis.

51. A member of the secretariat read out the definitions of the terms and notions that the legal experts had prepared.

52. The representative of South Africa made a statement.

53. At the Chair-Rapporteur's request, a member of the secretariat read out the definitions the legal experts had prepared of the terms "ethnic origin", "harm", "hate crime", "Indigenous populations", "intersectionality", "national origin", "race", "racial profiling", "racism", "racist" and "religion or belief".

54. The Chair-Rapporteur recalled that, during the Ad Hoc Committee's previous discussions, it had considered the need to define "racial profiling" beyond the context of law enforcement. She noted that the legal experts had not provided definitions of the notions of "structural racism" and "systemic racism".

55. At the invitation of the Chair-Rapporteur, a member of the secretariat read out the legal experts' perspectives on the terms "victims" and "xenophobia".

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

57. At its 10th meeting, held on 29 July 2024, the Ad Hoc Committee heard Ms. Thio's responses to follow-up questions that delegations had asked at a previous meeting.

## **B. Introduction of and discussion on the Chair's updated draft document**

58. At its 11th and 12th meetings, held on 30 July 2024, the Ad Hoc Committee considered agenda item 6, the introduction of and discussion on the Chair's updated draft document concerning the possible scope, terms, elements and structure of the draft additional protocol criminalizing acts of a racist and xenophobic nature, pursuant to Human Rights Council resolution 51/32.

59. The Chair-Rapporteur introduced the document and explained that it reflected the discussions held within the Ad Hoc Committee to date. She had strived to integrate delegations' views into the document to help them work on concrete proposals that could be included in the conclusions and recommendations to be adopted at the session, providing guidance on the way forward. She invited delegates to bear in mind two main issues when considering the document. First, the need for a modern, high-quality instrument that would complement any gaps in the Convention and equip the Ad Hoc Committee, the Committee on the Elimination of Racial Discrimination and Member States with appropriate guidance to address contemporary forms of racial discrimination. Second, the need not to undermine the existing legal provisions, standards and guarantees in international human rights law, especially the Convention. She invited the Ad Hoc Committee to be guided by those parameters and to be mindful that it was working on an instrument intended to criminalize

acts of a racist and xenophobic nature. She called upon delegates to work towards a consensus where possible, as the discussions that had taken place to date had revealed convergent views on several issues. On other issues, clarification and deeper consideration might be needed.

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

61. The representative of India, noting a reference to the term "caste" in annex V of the document, explained the position of India. As the term "caste" could not be equated with race and was not covered under "descent", as enshrined in article 1 of the Convention, any reference to "caste" should be removed from the Chair's updated draft document.

62. The representative of the European Union expressed appreciation for the Chair's updated draft document and the legal experts' contributions, which had facilitated some progress in the discussions. She regretted the lack of interactive dialogue with the legal experts, which had prevented significant progress from being achieved in the discussions. She also regretted that delegates' comments and the follow-up questions they had raised during the discussions in response to the legal experts' presentations had not been sufficiently incorporated into the updated document. She reiterated her delegation's position that there were no substantive or procedural gaps in the existing anti-racial discrimination framework. It was the lack of full and effective implementation of that framework that remained the problem. She emphasized that discrimination based on religion or belief should be addressed only from an intersectional perspective in the context of racial discrimination.

63. The representative of Pakistan expressed appreciation for the changes that had been made to the updated document and indicated that more time was needed to review it fully. It explored in detail some elements that were not contained in the Convention, such as discrimination based on religion or belief. He reiterated his delegation's position in favour of the elaboration of an additional protocol.

64. The Chair-Rapporteur invited delegates to comment on the Chair's updated draft document, clarifying that it was not the report of the Ad Hoc Committee of the session, but a document that delegates had requested at the twelfth session of the Ad Hoc Committee in order to facilitate their engagement while taking into account the inputs provided by the legal experts. The Chair-Rapporteur reassured delegates that their questions would be brought to the attention of the legal experts.

65. Replying to delegates' questions and comments, the Chair-Rapporteur recalled that her role was not to reopen the debate about whether to elaborate an additional protocol, given that the General Assembly had decided that an additional protocol should exist and, in its resolution, had mandated the Ad Hoc Committee to commence negotiations in that regard.<sup>2</sup> Her role was to fulfil that mandate and she encouraged delegates to engage constructively in the negotiations. She acknowledged that representatives might feel compelled to restate the official positions of their States. Nevertheless, she urged them to focus on the substance of the issues rather than revisiting matters that had already been decided upon by the General Assembly.

66. The representative of the Council of Europe expressed support for the work of the Ad Hoc Committee and expressed appreciation for the fact that the updated document contained reference to human rights instruments adopted by the Council of Europe. The fight against discrimination has always been an integral part of the activities of the Council of Europe. The prohibition of discrimination and the rights to freedom of thought, conscience and religion were enshrined in the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) and were supported by the extensive case law of the European Court of Human Rights. Furthermore, Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms extended the anti-discrimination provisions. She elaborated on the mandate, policy and monitoring activities of the European Commission against Racism and Intolerance and on the role and work of the Committee of Ministers of the Council of Europe in combating hate crimes and hate speech, both online and offline.

<sup>2</sup> General Assembly resolution 73/262.

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

68. The representative of the Gambia expressed appreciation for the Chair's updated draft document, noting that it provided various options that would require the Ad Hoc Committee to reach some decisions at the current session and possibly thereafter. He asked about the process of reviewing the document, acknowledging that it addressed many issues that had been raised during the session. He emphasized the need to update the anti-racial discrimination framework to ensure that it effectively addressed contemporary forms of racism.

69. The Chair-Rapporteur explained that the Ad Hoc Committee would review the document section by section. She would highlight the sections in which several options were available and ask the Ad Hoc Committee's opinion. Final decisions should be taken by consensus. Where no consensus emerged, all options would remain available for further negotiation. She then proceeded to the review of the document, section by section. She explained the content and rationale for the new paragraph on criminal responsibility that she had introduced in section 1, the preamble. She invited delegates to indicate whether they disagreed with its inclusion in the additional protocol. Seeing no objections, she concluded that there was general agreement to ask the legal experts to consider including reference to the principles of criminal responsibility and the right of victims to reparation in the draft additional protocol.

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

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

72. The Chair-Rapporteur introduced the new paragraph in section 3 of her updated draft document, containing a non-exhaustive list of harms to be addressed in the draft additional protocol.

73. The representative of the Gambia noted that the additional protocol provided an opportunity for the Ad Hoc Committee to address contemporary forms of racism, such as racial profiling and xenophobia, and to take a comprehensive approach towards addressing racial discrimination.

74. The Chair-Rapporteur explained that under section 4, a new paragraph had been inserted, containing definitions of the notions of "harm", "national origin", "race" and "victims" for the Ad Hoc Committee's consideration for inclusion in the draft additional protocol. While not all notions required definition, given that the draft additional protocol should be a criminal law text, such definitions might be relevant. She underlined the importance of a common understanding of such notions for the purpose of criminalization and the ensuing responsibility regime. Notions that were not defined in the Convention might require similar elaboration. The notion of "race" might be difficult to define in legal terms, as the legal experts had indicated. She invited delegates to decide whether the notions of "harm", "national origin" and "victims" should be defined.

75. The Chair-Rapporteur presented section 5 of her updated draft document, relating to the definition of the main conduct to be criminalized. It contained new paragraphs on the principle of legality in criminal conduct and on legal safeguards or guarantees for a person accused of a criminal act. Turning to the suggestion that had been made to explicitly include a clause on the prohibition of racist conduct committed by a State that may entail its responsibility, she said that, since the Convention already obliged State authorities not to engage in acts of racial discrimination, incorporating those principles into the additional

protocol would reinforce the Convention. Regarding the second suggestion, to include the prohibition of racist conduct by private individuals, she said that, since the Convention already prohibited discrimination by private individuals and groups, that prohibition could be made clearer, more explicit and reinforced in the draft additional protocol.

76. The Chair-Rapporteur acknowledged that delegates might need more time to consider her updated draft document. She emphasized that her intention was to guide them through the text to identify where the proposed elements could be integrated for further discussion.

77. The Chair-Rapporteur invited delegates to consider the Ad Hoc Committee's conclusions and recommendations. While not all the pending issues would be resolved during the current session, delegations were encouraged to indicate areas on which they would welcome further discussion and elaboration. The legal experts had already provided suggestions and recommendations on various sections, which were reflected in her updated draft document.

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

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

80. The Chair-Rapporteur, turning to the issue of measures of criminalization, said that a new paragraph in her updated draft document introduced examples of violence based on prohibited grounds contained in the Convention, which presented a basis for criminalization. Other new paragraphs provided information on how the criminalization of participation in racist organizations could be addressed in the context of the draft additional protocol. Additional new paragraphs described racial profiling and elements that could generate its criminalization. Recalling earlier discussions during the present session about the possibility of considering racial profiling outside the context of law enforcement, she suggested that the legal experts might be able to provide further guidance on that topic. Xenophobia was also explained and discussed in new paragraphs in her updated draft document. She asked delegates to decide which option they wished to adopt from the three proposed by the legal experts on methods to criminalize xenophobia.

81. The Chair-Rapporteur recalled that the delegates' statements would be reflected in the report on the session, whereas the updated draft document was a reflection of the legal experts' inputs, based on the Ad Hoc Committee's requests in the report on its thirteenth session. The remainder of the session offered delegates an opportunity to pose questions and request further guidance and clarification from the legal experts on specific areas.

82. The representative of Iraq noted the importance of reaching agreement on the additional protocol and expressed willingness to work towards the preparation of a collective draft text, with the assistance of the legal experts, by the end of the fourteenth session.

83. The representative of Togo stated that the criminal law nature of the draft additional protocol required some specificity and that further clarification was needed on the notions of "descent" and "xenophobia". He supported the Chair-Rapporteur's suggestion to request continued support from the legal experts to elaborate upon selected aspects of the Chair's updated draft document.

84. The Chair-Rapporteur presented the new paragraphs of her updated draft document that outlined the options to address discrimination based on religion or belief in the draft additional protocol, including within the scope of the Convention.

85. The representative of the European Union reiterated the position of the European Union that the fight against racism and the fight against religious intolerance should not be intermingled, as that risked weakening them both. She stressed that taking an intersectional approach was the option that the European Union found acceptable. Such an approach would then apply in situations where discrimination based on religion or belief was linked to racial discrimination.

86. The Chair-Rapporteur suggested that the Ad Hoc Committee reflect on the position of the European Union that, if discrimination based on religion or belief could not be addressed as a stand-alone ground of discrimination in the draft additional protocol, it should consider taking an intersectional approach to racial discrimination, as defined in the Convention. She suggested asking the legal experts to elaborate further on how such an intersection with discrimination based on religion or belief could be reflected in the draft additional protocol. She recalled that the decision to adopt any of the approaches depended on the Ad Hoc Committee.

87. The Chair-Rapporteur introduced the new paragraphs in her updated draft document that incorporated the offence of hate committed online in the context of new technologies and artificial intelligence, how it could be criminalized and how the accountability of perpetrators could be ensured. She recalled the consensus that had emerged in the Ad Hoc Committee at the present session on the need to include racial discrimination committed online or in cyberspace in the draft additional protocol.

88. The Chair-Rapporteur also introduced the new paragraphs on criminal jurisdiction for online offences. One of the new paragraphs laid down the principle of proportionality, including determination of the offence, and the principle of *ne bis in idem*.

89. The Chair-Rapporteur introduced a new paragraph in section 15 relating to the right to a fair trial, containing numerous examples of clauses on respecting the fundamental right to a fair trial. In section 16, she drew the Ad Hoc Committee's attention to a revised paragraph containing several definitions of victims' rights based on existing international instruments. She suggested that those principles should be included in the draft additional protocol since they were considered to be generally accepted under international human rights law and were applied in most domestic jurisdictions.

90. In section 18 of the updated draft document, relating to prevention and promotion measures, the Chair-Rapporteur introduced the new paragraphs regarding existing gaps in the Convention relating to non-criminal measures that could complement criminal measures. Recalling the consensus that had emerged on that issue during discussions in the first week of the Ad Hoc Committee's session, she invited delegates to consider incorporating that aspect into the draft additional protocol. Lastly, the Chair-Rapporteur introduced the new section of the updated draft document, on the terminology to be defined in the context of criminal elements and to be integrated in the draft additional protocol. The Ad Hoc Committee would need further guidance from the legal experts on that subject and further discussion within the Ad Hoc Committee would also be needed.

91. At its 13th meeting, held on 31 July 2024, the Ad Hoc Committee continued its consideration of the updated draft document.

92. The representative of South Africa suggested inviting members of the Committee on the Elimination of Racial Discrimination to provide their views on the updated draft document.

93. The representative of Pakistan noted that the updated draft document constituted an important step in the Ad Hoc Committee's progress towards fulfilling its mandate. He supported the suggestion to address xenophobia in the draft additional protocol, since it constituted a gap in international hard law instruments. He noted that, since the misuse of emerging technologies posed new challenges that required a legal response, that should also be addressed in line with the principles of mutual respect and international cooperation.

94. Responding to the suggestion from the representative of South Africa, the Chair-Rapporteur recalled that the Chair of the Committee on the Elimination of Racial Discrimination was advising her in his capacity as an academic. Furthermore, that Committee had designated a focal point to follow the work of the Ad Hoc Committee. She would

welcome suggestions of more ways in which the Committee on the Elimination of Racial Discrimination could contribute to the work of the Ad Hoc Committee.

95. The representative of the Islamic Republic of Iran made comments and suggestions on sections 1 and 5 of the updated draft document, regarding the inclusion of marginalized groups. He suggested that, in section 5 (e), a clear differentiation be made between discrimination based on religion and discrimination based on belief, to ensure their appropriate consideration. He noted that, given the broad approach adopted in the draft document to discrimination based on religion or belief, it failed to address specifically insults to Islam or Muslim sanctities. He therefore suggested including consideration of Islamophobia as a genuine and independent ground of discrimination in the document rather than an aggravating factor, with a view to addressing the unique challenges and prejudices faced by Muslims globally.

96. The representative of the European Union suggested extending the mandate of the legal experts and called for a meaningful interactive dialogue with them at the fifteenth session of the Ad Hoc Committee. The work of the Ad Hoc Committee should not undermine protections that currently existed in the international framework. She requested clarification on some issues and suggested several areas in which further elaboration from the legal experts might be useful. She objected to the suggestion that Islamophobia be addressed as a distinct ground of discrimination in the draft additional protocol, noting that religion could be addressed intersectionally and that the right to freedom of religion must be considered in conjunction with the right to freedom of opinion and expression, both online and offline. She requested that the input from the legal experts in the Chair's updated draft document be made available before the fifteenth session. Alternatively, she suggested splitting that session into two parts of one week each, to be held on non-consecutive weeks to enable delegates to consult with their capitals and provide input during the second week of the session.

97. The Chair-Rapporteur explained the rationale of holding a two-week session. It was up to the Ad Hoc Committee to decide whether it wished to split the fifteenth session into two parts.

98. The representative of South Africa noted the added value of continuing the Ad Hoc Committee's interactive dialogue with the legal experts. She expressed the hope that the Ad Hoc Committee would be able to continue its engagement with them while awaiting the General Assembly's decision on hybrid participation. She suggested that the legal experts be requested to provide guidance on areas that might be exempt from the criminalization of hate speech, such as academic or scientific inquiry and artistic creativity.

99. The representative of Togo requested that the legal experts clarify whether the draft additional protocol would cover only criminal acts or also less serious offences.

100. The representative of the Gambia suggested that the use of digital technologies to perpetuate racism, xenophobia or related intolerance be considered as a distinct issue in the additional protocol, pursuant to further guidance from the legal experts. Racism in digital spaces could be addressed not only in the section on inter-State obligations, but also in the section on the main conduct to be criminalized, as a subset of hate speech.

101. The representative of Togo suggested requesting further information from the legal experts on the field of application of the different crimes addressed in the draft additional protocol, especially whether acts committed online were included.

102. Referring to the Guiding Principles on Business and Human Rights, the representative of the Islamic Republic of Iran stated that companies often acted arbitrarily and in accordance with the political agendas of their respective Governments. That sometimes resulted in acts of racial discrimination and violations of the right to freedom of expression directed against Muslims on social media platforms.

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

103. At its 14th meeting, held on 31 July 2024, the Ad Hoc Committee started considering and exchanging views on the draft conclusions and recommendations of the session, under agenda item 7.

104. The Chair-Rapporteur invited delegates to discuss the draft conclusions and recommendations, which reflected the debates in the Ad Hoc Committee during the session based on the Chair's updated draft document, while indicating the way forward. She introduced the two-page document containing the draft conclusions and recommendations, which contained both areas where minimum consensus had appeared and on which the legal experts – in the Chair's draft document – could start drafting provisions for consideration at the fifteenth session and areas and issues that needed further development and elaboration by the legal experts. The delegates' appreciation for the legal experts' advice was reflected in the draft conclusions and recommendations. The Chair-Rapporteur recommended that the collaboration and engagement be pursued, highlighting that a consensus seemed to have been reached on that point.

105. The representative of Pakistan provided comments on several issues and formulations and suggested adjustments in the draft conclusions and recommendations. He rejected the formulation on "discrimination based on religion or belief, including the notion of intersectionality" and requested reference to the formulation in paragraph 101 (e) in the conclusions and recommendations of the report of the Ad Hoc Committee's thirteenth session. He also requested additional time to consider the document to enable coordination among the OIC member States.

106. The representative of the Gambia suggested including references to the issue of reparations or compensation for victims of racist or xenophobic acts in the draft conclusions and recommendations, since consensus seemed to have been reached on that issue. He made other proposals for substantive and structural adjustments to the text.

107. The representative of the European Union made preliminary comments and suggestions and requested more time to review the draft conclusions and recommendations. She reiterated the position of the European Union that discrimination based on religion and belief was outside the scope of the Convention and could be considered in relation to racial discrimination only in the context of intersectionality as an aggravating factor. She agreed with the inclusion of reparations in the draft conclusions and recommendations.

108. The representative of Pakistan asked for the references to "hard and soft law" to be removed from the draft conclusions and recommendations.

109. The representative of Togo made general suggestions of issues to be included in the Chair's updated draft document and the draft conclusions and recommendations, such as jurisdictional guarantees, remedies and reparation.

110. The representative of Egypt made preliminary comments, concurring with those made by the representative of Pakistan, and requested more time to consult her capital on the draft conclusions and recommendations. She suggested several adjustments to the language used and stressed that the legal experts had provided guidance on different approaches to incorporating discrimination based on religion or belief in the draft additional protocol. She asked for the reference to intersectionality to be removed from the draft conclusions and recommendations and agreed with the suggestion to integrate the issue of reparations and redress.

111. At its 15th meeting, held on 2 August 2024, the Ad Hoc Committee continued its exchange of views on the draft conclusions and recommendations of the session. It continued to work by means of formal and informal consultations to reach consensus on unresolved substantive issues, terminology and the structure of the document.

112. The Chair-Rapporteur indicated that the secretariat had incorporated the preliminary suggestions made at the 14th meeting into the draft conclusions and recommendations. She acknowledged that further discussion was required in some areas.

113. At the invitation of the Chair-Rapporteur, a member of the secretariat read out the revised text.

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

115. The Chair-Rapporteur emphasized that the final decisions on terminology depended on consensus within the Ad Hoc Committee. She proposed using a more general term to refer to the modalities of engagement with the legal experts, such as “to ensure their interactive participation” to encompass both their physical and online presence, to align with past practices, at least until the General Assembly had reached a decision on hybrid meetings. She noted that there were no objections to reinserting the phrase “to ensure their interactive participation” in paragraph 2 of the proposed conclusions and recommendations.

#### **IV. Adoption of the conclusions and recommendations**

116. At its 16th meeting, held on 2 August 2024, the Ad Hoc Committee continued the negotiations on the draft conclusions and recommendations. The Chair-Rapporteur invited delegates to finalize their consultations on the remaining terminology issues so that the Ad Hoc Committee could proceed with the final adoption of the text.

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

118. The Chair-Rapporteur invited the secretariat to provide delegates with copies of the revised conclusions and recommendations. She invited the Ad Hoc Committee to proceed with the final review for adoption. She thanked the delegates for their efforts and constructive engagement to reach consensus.

119. Once the delegates had adopted the conclusions and recommendations, the Chair-Rapporteur said that she would prepare the report of the Ad Hoc Committee at its fourteenth session, to be submitted to the Human Rights Council at its fifty-seventh session.

120. The representative of the Gambia, speaking on behalf of the African Group, thanked the Chair-Rapporteur for her stewardship of the Ad Hoc Committee and her commitment to the fulfilment of its mandate. The African Group expressed appreciation for the presentations from the legal experts and the contributions to the Chair’s updated draft document. The deliberations continued to highlight critical gaps in international law and the legal and moral imperative to address those gaps in order to tackle the recurrent challenges posed by contemporary forms of racism, racial discrimination, xenophobia and related intolerance, which were being further exacerbated by the use of technology. He recalled the African Group’s firm belief that the elaboration of complementary standards would strengthen the Convention, not weaken it. Furthermore, in order to facilitate substantial progress in that process, he called upon all States to engage constructively in the consideration of the Chair’s draft updated document and the conclusions and recommendations of the report of the Ad Hoc Committee and to participate actively in its fifteenth session and other processes of the Durban Declaration and Programme of Action.

121. The representative of South Africa said that her country aligned itself with the statement delivered by the Gambia on behalf of the African Group and thanked the Chair-Rapporteur for the sterling manner in which she had steered the deliberations of the fourteenth session, and the hard work put in and progress made to date, including the Chair’s updated draft document. She recognized the contributions of the legal experts and welcomed the recommendation for the legal experts to continue to support the Chair-Rapporteur, as well as their interaction with the Ad hoc Committee. She highlighted that the conclusions and recommendations reflected important elements and critical areas for clarification needed to move the process forward and to achieve enhanced protection of victims of racism and

contemporary forms of racism, racial discrimination, xenophobia and related intolerance, as underlined in the Durban Declaration and Programme of Action.

122. The representative of Pakistan, speaking on behalf of OIC, thanked the Chair-Rapporteur and the delegates, highlighting the importance and relevance of the work of the Ad Hoc Committee to address the challenges faced.

123. The representative of the Russian Federation thanked the Chair-Rapporteur for her guidance and leadership and noted the satisfaction of the Russian Federation with the outcome of the session and with the conclusions and recommendations.

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

125. The representative of Brazil thanked the Chair-Rapporteur for her excellent work in chairing the session. For Brazil, the fight against racism was a core policy domestically and internationally. The Ad Hoc Committee was a useful mechanism to advocate for the fight against racial discrimination.

126. In closing the session, the Chair-Rapporteur invited delegates to continue making progress towards the elaboration of a draft additional protocol, in accordance with the Ad Hoc Committee's mandate. They should not lose sight of the ultimate aim, which was to draw up a modern, high-quality text containing the highest standards, to ensure that people could have adequate remedies and solutions when they faced racial discrimination in any form. She expressed the hope that the Ad Hoc Committee would move to the next stage in the discharge of its mandate, which remained key for millions of people across the globe who were expecting the Ad Hoc Committee to deliver and contribute to the elimination of all forms of racial discrimination, racism, xenophobia and related intolerance.

## V. Conclusions and recommendations

127. **The Ad Hoc Committee takes note with appreciation of the Chair's updated draft document on the scope, structure, terms and elements of the draft additional protocol to the International Convention on the Elimination of All Forms of Racial Discrimination criminalizing acts of a racist and xenophobic nature, prepared pursuant to paragraph 11 of Human Rights Council resolution 54/27. The Ad Hoc Committee takes note of the additional inputs and advice provided by legal experts during the session on elements and issues listed in paragraph 101 of the Ad Hoc Committee's report on its thirteenth session.<sup>3</sup>**

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

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

- (a) **The list of acts of a racist and xenophobic nature, including but not limited to those listed in article 4 of the Convention, to be criminalized, taking into account the threshold of each act;**
- (b) **Elements of the personal jurisdiction of the draft additional protocol;**
- (c) **Proposed definitions of acts of a racist and xenophobic nature as mentioned in subparagraph (a) above, with elements for their criminalization;**

<sup>3</sup> A/HRC/54/65.

(d) Proposed definitions of other terms and notions that could be integrated into the draft additional protocol and guidance on their suitability or lack thereof in the context of the draft additional protocol;

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

(f) Elements of draft provisions on the explicit prohibition and possible criminalization of acts of a racist and xenophobic nature to be listed in accordance with paragraph (a) above committed by a State, and pursuant to articles 2 (1) (a), (b) and (c) and 4 (c) of the Convention;

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

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

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

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

130. The Ad Hoc Committee requested further development and clarification of the following issues:

(a) Definition of profiling in criminal law, elements for the criminalization of racial profiling and objective and reasonable grounds on which the crime or offence of racial profiling would be excluded;

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

(c) Different options for grounds on which xenophobia could be prohibited and criminalized, including as a separate ground under the notion of foreignness;

(d) Concrete options for addressing in the draft additional protocol discrimination based on religion or belief, taking into consideration the intersectionality of various forms of discrimination as aggravating factors;

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

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

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

## Annex I

## Programme of work

<i>Monday 22 July</i>	<i>Tuesday 23 July</i>	<i>Wednesday 24 July</i>	<i>Thursday 25 July</i>	<i>Friday 26 July</i>
No meeting	Item 4 continued Presentation by Michał Balcerzak, Professor, Faculty of Law, Department of Human Rights, Nicolaus Copernicus University, Poland	Item 4 continued Discussion on para. 101 (d)	Item 4 continued Discussion on para. 101 (e)	Item 4 continued Discussion on para. 101 (h)
	Discussion on para. 101 (b)	How xenophobia and racial profiling can be addressed in the additional protocol, including their linkages with contemporary forms of racism	How issues of discrimination on the grounds of religion and belief could be addressed in the additional protocol, including issues of the intersectionality of various forms of discrimination as aggravating factors	Inputs on how to address the extraterritorial obligations of States for acts of a racist and xenophobic nature committed online, with a view to encouraging international cooperation between States and also with social media providers and relevant enterprises/non-State actors
	The scope of possible conducts to be criminalized, on the basis of article 4 of the Convention, while also looking into the question of how issues of participation in racist organizations, racial profiling and xenophobia should be addressed in the additional protocol	Joanna Botha, Professor of Public Law, Faculty of Law, Nelson Mandela University	Li-ann Thio, Provost Chair Professor, Faculty of Law, National University of Singapore	Li-ann Thio, Provost Chair Professor, Faculty of Law, National University of Singapore
	Joanna Botha, Professor of Public Law, Faculty of Law, Nelson Mandela University, South Africa		Fatsah Ouguergouz, Visiting Professor of Law, Graduate Institute of International and Development Studies, Geneva	Discussion on para 101 (g)

10 a.m.–1 p.m.

	<i>Monday 22 July</i>	<i>Tuesday 23 July</i>	<i>Wednesday 24 July</i>	<i>Thursday 25 July</i>	<i>Friday 26 July</i>
		Mark Drumbl, Class of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University School of Law			Inputs on victims' rights and on issues related to equal access to justice and the right to remedy
					Béatrice Bonafé, Professor of International Law, Sapienza University, Rome
	Item 1	Item 4 continued	Item 4 continued	Item 4 continued	
	Abdoul Thioye, Chief a.i. Rule of Law, Equality and Non-discrimination Branch, Office of the United Nations High Commissioner for Human Rights	Discussion on para. 101 (c)	General discussion and exchange of views	Discussion on para. 101 (f)	
	Item 2	The application of the concept of intersectionality and the question of whether to include aggravating factors or other possible grounds of discrimination		Inputs on legal safeguards concerning the criminalization of acts of a racist and xenophobic nature, including the principles of legality, necessity and proportionality, equal access to justice and the right to fair trial	
3-6 p.m.	Election of the Chair	Fatsah Ouguergouz, Visiting Professor of Law, Graduate Institute of International and Development Studies, Geneva		Béatrice Bonafé, Professor of International Law, Sapienza University, Rome	
	Item 3				
	Adoption of the programme of work				
	General statements				
	Item 4				
	Discussion on para. 101 (a) (continued)				

	<i>Monday 22 July</i>	<i>Tuesday 23 July</i>	<i>Wednesday 24 July</i>	<i>Thursday 25 July</i>	<i>Friday 26 July</i>
	<p>The relationship between and the role of criminal law and civil law in the context of fighting acts of a racist and xenophobic nature, including with regard to prevention, early warning, urgent and early actions, education, mediation, reconciliation and rehabilitation</p> <p>Li-ann Thio, Provost Chair Professor, Faculty of Law, National University of Singapore</p> <p>Mark Drumbl, Class of 1975 Alumni Professor of Law and Director of the Transnational Law Institute, Washington and Lee University School of Law, United States of America</p>				
	<i>Monday 29 July</i>	<i>Tuesday 30 July</i>	<i>Wednesday 31 July</i>	<i>Thursday 1 August</i>	<i>Friday 2 August</i>
10 a.m.–1 p.m.	Item 5  Discussion on defining additional terms and norms, para. 101 (i)	Item 6  Discussion on the Chair's updated draft document	Item 6 continued  Discussion on the Chair's updated draft document	Holiday at the United Nations Office at Geneva	Item 7 continued  Conclusions and recommendations of the session
3–6 p.m.	Item 5 continued  Discussion on defining additional terms and norms, para. 101 (i)	Item 6 continued  Discussion on the Chair's updated draft document	Item 6 continued  General discussion and exchange of views  Item 7  Conclusions and recommendations of the session	Holiday at the United Nations Office at Geneva	Item 8  Adoption of the conclusions and recommendations of the fourteenth session

## Annex II

### List of participants

#### Member States

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

#### Intergovernmental organizations

Council of Europe

European Union

#### National human rights institutions

National Independent Human Rights Commission of Burundi

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

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

Fondation pour l'étude des relations internationales et du développement

International Human Rights Commission Relief Fund Trust

Iranian Association for United Nations Studies

Ligue camerounaise des droits de l'homme

Nonviolence International

Sikh Human Rights Group

Society for Development and Community Empowerment

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

Foundation for Environmental Protection in Tanzania

International Organization for the Oneness of the Arab Peoples

Prime Minister Youth Programme

United Nations Foundation

#### Other entities

OneGoal Initiative for Governance

Saffron Walden County High

University of Geneva