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WORLD CONFERENCE AGAINST RACISM,  
RACIAL DISCRIMINATION, XENOPHOBIA  
AND RELATED INTOLERANCE

Preparatory Committee  
First session  
Geneva, 1-5 May 2000

Item 6 of the provisional agenda

### PREPARATORY MEETINGS AND ACTIVITIES AT THE INTERNATIONAL, REGIONAL AND NATIONAL LEVELS

#### Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the report of the expert seminar on remedies available to the victims of racial discrimination, xenophobia and related intolerance and on good national practices in this field, held in Geneva from 16 to 18 February 2000.

Annex

REPORT OF THE EXPERT SEMINAR ON REMEDIES AVAILABLE  
TO THE VICTIMS OF RACIAL DISCRIMINATION, XENOPHOBIA AND  
RELATED INTOLERANCE AND ON GOOD NATIONAL PRACTICES,  
GENEVA, 16-18 February 2000

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## I. INTRODUCTION

### A. Organization of the seminar

1. In paragraph 65 (b) of its resolution 1999/78, the Commission on Human Rights requested the United Nations High Commissioner for Human Rights to organize an international seminar of experts on the remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in that field. The seminar was organized and took place from 16 to 18 February 2000 at the Palais des Nations in Geneva.

### B. Participation

2. The list of experts who participated in the seminar, as well as of the States Members of the United Nations and the intergovernmental and non-governmental organizations that were represented by observers, is attached as appendix II to the present report.

### C. Opening of the seminar and election of officers

3. The seminar was opened by Ms. Mary Robinson, the United Nations High Commissioner for Human Rights. In her opening statement, the High Commissioner noted that while a number of international legal documents guaranteed the principle of non-discrimination on the basis of race, that right must be assured by effective recourse procedures and remedies at the national level. While she recognized that Governments had the main responsibility in combating racial discrimination, she noted that national institutions and NGOs had an important role to play. She added that it was important to look closely at new forms of racism, including racist activity on the Internet, and whether new remedies were necessary as a consequence. She also noted that the phenomenon of large-scale migration had frequently been accompanied by increased instances of racism and xenophobia, and that it was important to review the adequacy of recourse procedures in that regard. In concluding, the High Commissioner underlined the importance of disseminating information about good national practices and of coordinating strategies to overcome racial discrimination. The High Commissioner thanked the Government of Switzerland for making a financial contribution for the holding of the seminar.

4. Ms. Virginia Dandan was elected Chairperson-Rapporteur by acclamation.

### D. Agenda

5. At its first meeting, on 16 February 2000, the seminar adopted the following agenda (HR/GVA/WCR/SEM.1/2000/2):

1. Opening session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda.

- Point 1: Racial discrimination in economic, social and cultural life;
- Point 2: Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals; migrants; asylum seekers; refugees; minorities and indigenous peoples;
- Point 3: Racism on the Internet: legal and technical questions;
- Point 4: Common problems linked to all remedies available to victims of racial discrimination;
- Point 5: Action of national institutions: examples of good practices;
- Point 6: Reinforcement of regional and international mechanisms;
- Point 7: Conclusions and recommendations.

4. Closing session.

E. Documentation

6. The following background papers were prepared for the seminar at the request of the Office of the High Commissioner for Human Rights:

- HR/GVA/WCR/SEM.1/2000/2 Background paper prepared by the Secretariat;
- HR/GVA/WCR/SEM.1/2000/BP.1 Racial discrimination in economic, social and cultural life: background paper prepared by Mr. Luis Valencia Rodriguez;
- HR/GVA/WCR/SEM.1/2000/BP.2 Racial discrimination and vulnerable groups: some instances of light and shadow: background paper prepared by Ms. Virginia Dandan;
- HR/GVA/WCR/SEM.1/2000/BP.3 Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous people victims of racial discrimination: background paper prepared by Mr. Asbjørn Eide;
- HR/GVA/WCR/SEM.1/2000/BP.4 Racism on the Internet: legal and technical: background paper prepared by Mr. David Rosenthal;

- HR/GVA/WCR/SEM.1/2000/BP.5 Common problems linked to all remedies available to victims of racial discrimination: background paper prepared by Mr. Theodor van Boven;
- HR/GVA/WCR/SEM.1/2000/BP.6 Action of national institutions against racism: examples of good practices in Eastern Europe: background paper prepared by Mr. Jenö Kaltenback;
- HR/GVA/WCR/SEM.1/2000/BP.7 Action of national institutions: examples of good practices: background paper prepared by Mr. N. Barney Pityana;
- HR/GVA/WCR/SEM.1/2000/BP.8 The Discrimination Ombudsman in Sweden: background paper prepared by Mr. Frank Orton;
- HR/GVA/WCR/SEM.1/2000/BP.9 Reinforcement of international and regional mechanisms for individual complaints of racial discrimination: background paper prepared by Mr. Régis de Gouttes;
- HR/GVA/WCR/SEM.1/2000/BP.10 Hate on the Internet and the American legal system: background paper prepared by Mr. Mark Potok.

7. Working papers were also prepared by several participants and organizations. They were the following:

- HR/GVA/WCR/SEM.1/2000/WP.1 Renforcement des mécanismes régionaux et internationaux pour un meilleur suivi du contenu de l'éducation, prepared by l'Association mondiale pour l'école instrument de paix (French only)
- HR/GVA/WCR/SEM.1/2000/WP.2 Les moyens d'action des victimes contre la discrimination dans l'éducation: la problématique de la séparation des classes entre nationaux et étrangers, prepared by the Swiss Federal Commission against Racism (French only)
- HR/GVA/WCR/SEM.1/2000/WP.3 Le racisme sur Internet: quelques questions juridiques et techniques, prepared by the Swiss Federal Commission against Racism (French only)
- HR/GVA/WCR/SEM.1/2000/WP.4 International law: a remedy for environmental racism: an example: case of the United States, prepared by the Earthjustice Legal Defense Fund (English only)

HR/GVA/WCR/SEM.1/2000/WP.5 An independent body to redress complaints on discrimination based on race, colour, national or ethnic origin or religion, prepared by the Danish Board for Ethnic Equality (English only)

## II. THEMES OF THE SEMINAR

### A. Racial discrimination in economic, social and cultural life

8. At the first meeting, on 16 February 2000, Mr. Luis Valencia Rodriguez introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.1). He referred to the International Convention on the Elimination of All Forms of Racial Discrimination and indicated that that international instrument presupposed the existence of economic, social and cultural rights.

9. In the three decades of its existence, the Committee on the Elimination of Racial Discrimination, the monitoring body established under the Convention, had reached the conclusion that no State was immune to racially discriminatory practices, which often emerged as a reflection of traditions or age-old prejudices or as a result of the introduction of policies or ideologies based on chauvinistic nationalism. Other factors, however, also contributed to racial discrimination in the exercise of economic, social and cultural life, including socio-economic underdevelopment, segregation experienced by indigenous populations, racial conflicts giving rise to violence, and xenophobia against minority groups, undocumented immigrants, refugees and displaced persons.

10. Mr. Valencia Rodriguez noted that racial discrimination in housing remained a major problem, frequently resulting in the exclusion of ethnic minorities, migrants, refugees, the landless and indigenous communities, *inter alia*, from their right to adequate housing. Racial discrimination in the sale or lease of housing was practised by residents in neighbourhoods who do not want to live side by side with persons of a different racial group. Although international law and the national laws of many countries prohibited such discrimination, frequently such legislation was not enforced and individual acts of discrimination were often hard to detect, prove and punish.

11. Concerning racial discrimination in the field of health, Mr. Valencia Rodriguez noted that the Constitution of the International Health Organization stated that "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race". He added that the Committee on the Elimination of Racial Discrimination made inquiries concerning racial discrimination in health care when it examined reports.

12. Concerning racial discrimination in employment, he noted that the issue of equal pay for equal work had been aggravated on a racially discriminatory basis as a result of the globalization process. That process had created labour competition in domestic markets, with nationals and long-term residents wishing to retain their prerogatives while migrant workers were prepared to work under less favourable conditions. He also argued that racial discrimination in employment

occurred because some employers preferred to hire workers of a certain racial type, either because of discriminatory attitudes of the employer, or because of a perception by the employer that customers had a preference for dealing with employees of a certain racial group.

13. Concerning education, Mr. Valencia Rodriguez noted that segregated housing patterns led to discrimination in educational establishments since it reduced the possibility of contact between pupils belonging to different racial or ethnic groups. He also argued that racially discriminatory attitudes of parents often resulted in a concerted effort to ensure that their children did not attend schools which had a large number of pupils belonging to minority ethnic groups.

14. Regarding racial discrimination in public establishments, he remarked that in many countries there were establishments, both public and private, which excluded persons belonging to racial or ethnic minority groups. Frequently that occurred in the context of invoking a consideration other than race or ethnic origin, such as clothing, personal appearance or language, even though the real reason was a racially discriminatory one. It occurred because anti-discrimination legislation was lacking, inadequate or not complied with.

15. In addressing racial discrimination in the field of culture, Mr. Valencia Rodriguez emphasized that Governments were under a duty not only to respect cultural events of all groups, but also to provide members of communities with adequate facilities to participate effectively in cultural activities. That right was more important in the case of minority groups for whom cultural events were essential to the preservation of their identify and particular characteristics.

16. In concluding, Mr. Valencia Rodriguez indicated that rights to housing and health on a non-discriminatory basis had not been accorded sufficient attention by the authorities of many States. He added that that type of discrimination was frequently linked to racial discrimination in employment. Remedies available to victims of racial discrimination included recourse to national institutions, reporting of violations to law enforcement officials, prompt and effective action by bodies responsible for the administration of justice, educational activities that focused on curbing and eliminating racial discrimination, and the activities of the media, which should promote understanding and tolerance.

17. Ms. Virginia Dandan introduced her paper (HR/GVA/WCR/SEM.1/2000/BP.2) also at the first meeting, on 16 February 2000, from the perspective of a member of the Committee on Economic, Social and Cultural Rights. She said that it was relatively rare to find in the reports that were submitted to her Committee an absence of laws or remedies to protect victims of racial discrimination. The principal problem, in her experience, was the lack of effective application of laws and remedies.

18. Ms. Dandan emphasized in particular the problems that refugees and asylum-seekers faced, and the potential for racism against them. She added that female refugee claimants should be handled with special sensitivity, and that emphasis should be put on developing a better understanding of the ways and means by which women are subjected to discriminatory treatment.

19. She also pointed out that vulnerable groups such as refugees and asylum-seekers, migrants, minorities and indigenous peoples were frequently ignorant of their legal rights, and that situation was frequently compounded by a lack of knowledge of the majority language. She advocated that human rights education programmes should have as wide a coverage as possible, in order to include most vulnerable groups.

20. Concerning particular problems experienced by indigenous peoples, she said that health and the criminal justice system remained two very large problems, and that remedial measures, including in particular adequate information dissemination concerning their rights, should be more widely available.

21. In considering the question of the effectiveness of remedies, Ms. Dandan was of the view that national human right institutions are frequently better equipped than courts in determining acts of discrimination, but that in many cases they do not offer effective guarantees of redress. She suggested that there should be better coordination between national human rights institutions and the courts to ensure that guarantees provided for by law are effectively made available.

22. Ms. Dandan also expressed the view that redress provided for by laws and other measures was frequently inaccessible or selectively applied. She suggested that remedies should be made accessible to all victims of racial discrimination and legal protection should be implemented with greater diligence.

23. In concluding, Ms. Dandan expressed her view that court decisions or government policies rarely made reference to international human rights standards, thus limiting the recognition of those norms in domestic law and their knowledge by the public. She recommended that Governments should take action to bring their national laws into conformity with human rights treaty obligations and that special training courses should be provided to judges and government officials.

24. In the discussion which followed, Mr. Abdel Fatah Amor, Special Rapporteur on religious intolerance, argued that often racial discrimination was aggravated by religious intolerance and xenophobia. National identity was frequently based on race and religion and was used as a basis for unity, which could compound racial discrimination towards minorities, hence the phenomena of Islamophobia, Arabophobia and Christianophobia, present in certain countries.

25. Mr. Eide noted that globalization was affecting the way racial discrimination was practised. Racial discrimination was frequently used as a tool in a competition for resources. Mr. Valencia Rodriguez expressed his view that globalization was exacerbating existing inequalities and making the protection of human rights more difficult.

26. Ms. Doris Angst Yilmaz, Director of the Federal Commission against Racism (Switzerland) made reference to her working paper (HR/GVA/WCR/SEM.1/2000/WP.2) and commented on the issue of immigration and education. She argued that public schools reinforce democracy and tolerance. Schools should practice integration, but have bilingual education if there are children from abroad. She also argued strongly against separate classes based on reasons of culture and ethnic origin, which was very dangerous, segregated teaching was a synonym of discrimination.



B. Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous peoples

27. At the second meeting, on 16 February 2000, Mr. Asbjørn Eide introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.3) and stated his view that one of the most fundamental issues was whether the judiciary, law enforcement agencies, and - where they existed - ombudspersons, human rights commissions and other public bodies - were genuinely impartial. He concluded that the record was mixed at best and that a pervasive problem was that the police and other security forces were often biased.

28. With regard to indigenous peoples, he noted that at the national level, the individual rights of indigenous peoples were in principle protected because they were entitled to all the rights of citizens in the country in which they lived, since they were usually citizens as well. Indigenous peoples were, however, frequently in a vulnerable position owing to a lower level of literacy and education and a weaker economic position in society, at least partially as a result of present or past discrimination.

29. Mr. Eide remarked that indigenous peoples were also afforded protection under the International Convention on the Elimination of All Forms of Racial Discrimination, at least in those States which had ratified that Convention. The Convention also allowed for special affirmative measures to be taken to ensure adequate development and protection of the rights of indigenous peoples, although such measures were to be discontinued when equality had been achieved.

30. In addition, indigenous peoples were afforded protection under the International Covenant on Civil and Political Rights. Under article 27 of that Covenant they were entitled to all the rights established under international law for persons belonging to national or ethnic, religious or linguistic minorities. As such they could not, *inter alia*, be denied the right to enjoy their own culture, to practise their own religion or to use their own language. Indigenous peoples were also protected by ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, which set out important protection with regard to land rights and autonomy, education, employment, training, social security, health and general policy towards indigenous peoples. He also mentioned the draft declaration on the rights of indigenous peoples which had been adopted by the Sub-Commission on Promotion and Protection of Human Rights and was currently under consideration in the Commission on Human Rights.

31. Mr. Eide then discussed remedies available to national, ethnic or linguistic minorities. Regarding institutions which administered remedies for minorities, it was important for the minorities themselves to be represented in such institutions. He then addressed the issue of remedies for collective rights, rights applicable only when enjoyed in the community of others. Remedies for collective rights were weak, mainly because of the reluctance of majorities fully to accept such rights. He made reference to international instruments protecting minority rights, including article 27 of the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities of 1992 and the European Framework Convention on the Rights of National Minorities of 1994.

32. In his discussion of migrants, Mr. Eide drew a distinction between regularized versus unaccounted and trafficked migrants. Regarding regularized minorities, he argued that on many occasions migrant workers suffered de facto discrimination even when protective legislation had been adopted. As a result, Governments had frequently been requested to put into effect policies relating to training, health care, housing, education and cultural development for migrants. He remarked that migrant workers faced a threat which was common to all aliens: the threat of expulsion which had serious consequences for their sense of security. International protection for migrants was provided in ILO Convention No. 97 (revised) on Migration for Employment and ILO Convention on Migrant Workers (Supplementary Provisions) (No. 143), but noted that neither had been widely ratified. He further noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, provided more extensive rights than the ILO Conventions, but had not yet entered into force because of an insufficient number of ratifications. At the European level, protection existed under article 19 of the Social Charter of the Council of Europe and the European Convention on the Legal Status of Migrant Workers (1977), but in both cases protection was limited to nationals of a contracting State Party authorized by another contracting State Party to reside in its territory to take up paid employment.

33. Mr. Eide said that unaccounted for and trafficked migrants faced a particularly difficult situation in that if they complained to the authorities of illegal exploitation they risked being expelled as illegal immigrants. Expulsion might also put them in difficult circumstances in their home country, particularly if they had been forced into prostitution or criminal activities. He argued that remedies should be devised which would bring them out of their condition of prostitution or other criminal or degrading circumstances and allow them to obtain education and adequate jobs. He also suggested that States should provide refuge and protection to victims of sexual exploitation and repatriate those who wished to return. Remedies should be developed which would make it possible for such persons to reveal their exploitative circumstances without risk, including the identification of the persons who engaged in exploitive trafficking.

34. In his comments about refugees, Mr. Eide said that there were two particularly serious problems: their situation while in refugee camps and the threat of expulsion. In some refugee camps there was inadequate food and housing, a breakdown of family and social structures, the loss of meaningful daily activity and, sometimes, a high rate of sexual and domestic violence against women and girls. It had been reported that in some cases neither the Office of the United Nations High Commissioner for Refugees (UNHCR) nor the Government concerned was able or willing to address those issues and that perpetrators of crimes were frequently not prosecuted and victims were not given meaningful compensation, if any at all.

35. Mr. Eide also briefly addressed the issue of racial discrimination in access to citizenship and the issue of the increase in the percentage of non-citizens under detention or imprisonment in industrialized countries. He argued that the denial of access to citizenship was de facto frequently directed against ethnic minorities, even when the legislation did not so mandate. The absence of clear international norms on the right to citizenship complicated the problem considerably. With respect to the issue of increased rates of detention, he argued that while non-citizens might actually be involved in drug trafficking and other criminal activities, the very fact that many non-citizens were visibly different made them more easily singled out for suspicion and degrading treatment. The latter circumstance might in fact lead to criminal

activity. Polite treatment by public authorities and law enforcement agencies might in itself be a crime prevention measure, which underscored the need for effective action whenever public authorities behave in a racially discriminatory manner.

36. In the discussion which followed, Mr. Maurice Glèlè Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, drew particular attention to the situation of asylum-seekers in camps and was of the view that more needed to be done to improve their situation.

37. Mr. Abdelfattah Amor, Special Rapporteur on religious intolerance, expressed his view that the remedies available to non-nationals were, in many cases, virtually non-existent. Even if there were recourse procedures, non-nationals were usually unaware of them. Mr. Valencia Rodriguez added that the situation of illegal immigrants was a vicious cycle. Because of the numerical limitations on immigration, many immigrants avoid those rules by coming to a State as tourists and staying on to look for work. In such a situation they had virtually no legal rights or protection. If they were caught, they were frequently put in prison or expelled, or both.

38. A representative of the non-governmental organization Earthjustice Legal Defense Fund made reference to the working paper submitted by his organization on environmental racism (HR/GVA/WCR/SEM.1/2000/WP.4). He argued that environmental discrimination could be an aggravating factor in situations of racial discrimination and requested that the environment should be discussed in the context of racial discrimination, just as employment, housing and other subjects were discussed.

39. A representative of the non-governmental organization Penal Reform International argued that those in detention or in prison should also be considered to be a vulnerable group. That group was frequently subject to a double penalty: they went to prison and then were often expelled.

### C. Racism on the Internet: legal and technical questions

40. At the third meeting, on 17 February 2000, Mr. David Rosenthal introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.4) and said that there were a number of legal and technical reasons why it had been so difficult to combat objectionable speech and activities on the Internet, even though it was illegal in many countries to publish racist speech. He summarized his findings as follows:

(a) Technology-only solutions were unlikely to solve the problem of racist content on the Internet, but could help to shield certain groups of users from a portion of objectionable and illegal materials available and also assist in identifying the people offering such material;

(b) In a number of countries it was possible to take legal action against persons who were supporting racist content by providing the Internet infrastructure necessary to access or spread such illegal content. However, such action against Internet providers was problematic for several reasons and should not be regarded as a viable, long-term solution unless it was focused against providers acting at the source of the illegal content, i.e. the Web site hosting provider;

(c) In some countries, racist and hate speech was protected by the right of freedom of speech and therefore might be freely published on the Internet. While in other countries such racist hate speech was regarded as a criminal offence, it was not possible for prosecutors in those countries to prosecute publishers of illegal online-content at its source because it originated from countries protecting hate speech by legal provisions guaranteeing freedom of speech;

(d) Self-regulatory schemes would not be able to stop any significant portion of racist content on the Internet, because of the decentralized structure of the Internet, unless codes of conduct were accepted and strictly followed by all major and international providers, including those telecommunications companies providing Internet connectivity to rogue providers specializing in hosting racist Web sites;

(e) Self-regulation was not an effective solution to the problem since the delicate decisions were passed on to the industry. Also, self-regulation schemes had some drawbacks since they lacked democratic justification, due process guarantees and supervision.

41. Mr. Rosenthal suggested the following strategies that could be used for combating and prosecuting racist activities on the Internet:

(a) Make self-regulation mandatory. Although a notable number of providers already forbade entities which published hate or racist speech from using their infrastructure, other providers allowed such use;

(b) Prosecute company executives of Internet providers allowing their infrastructure to be used to publish hate or racist speech when they were outside their own countries which protected such speech and within the jurisdiction of other countries which criminalized such speech;

(c) Provide a "safe haven" for providers who took part in a self-regulation scheme by shielding them from legal action as long as they acted within the parameters of the standard that was agreed upon;

(d) Persuade providers, including hosting, connectivity and domain-name providers, to obey a no-racism policy, including by convincing large corporations and other institutions to make such a no-racism policy a precondition of doing business with such providers;

(e) Support legal and political anti-hate initiatives;

(f) Limit racist speech geographically: providers could be either requested or mandated to limit access to racist speech to those countries which protected such speech under their freedom of speech guarantees;

(g) Require content identification which would allow the detection and filtering of racist speech more easily;

(h) Pursue civil actions against persons engaging in racist and hate speech.

42. Mr. Rosenthal indicated that any solution would have to satisfy diverging legal and political points of view and would necessarily result in compromise. He emphasized that, in any case, it would be important to study the effects of the methods described above in depth, since they could set dangerous precedents or under some circumstances could be abused by anti-democratic regimes for other purposes.

43. At the third meeting, on 17 February 2000, Mr. Mark Potok introduced his paper on hate on the Internet and the American legal system (HR/GVA/WCR/SEM.1/2000/BP.10), and gave an overview of the growth of racist hate speech on the Internet and the position of the courts in reaction to that development. He noted that whereas before substantial effort and money had been required to produce and distribute racist pamphlets that might reach several hundred people, today with a \$500 computer and negligible other costs, the same hate group could set up a well-produced Web site targeted at a potential audience in the millions. He claimed that the first true hate site, Stormfront, had been established in March 1995, and that it had been followed by a veritable explosion of hate sites which today in the United States numbered about 350. The approach of some hate sites had become less crude and more sophisticated in an attempt to reach out to university students. Other hate sites had incorporated entertainment features such as arcade-style games, chat rooms, bulletin boards, music and real-time videos. He added that a growing number of hate sites featured extremely racist and violent lyrics. Such music was normally not available in retail record shops, but it was offered for sale by racist hate sites - some 50,000 CDs of that type were sold annually in the United States. That kind of music could very effectively reach young people.

44. Mr. Potok said that the United States Supreme Court had issued a decision in June 1997 which indicated that the constitutional protection of freedom of speech was applicable to the Internet. The protection accorded was very broad and closer to that accorded to print media than broadcast media. The protection of print media did not permit prior censorship and allowed broad freedom to print virtually anything short of criminal threats, usually in the form of "incitement to imminent lawless action", or materials within the narrow legal definition of obscenity. Libel and fraud laws were nevertheless applicable. The broadcast media were more closely regulated in the United States because the courts had found that the public had an interest in the airwaves being regulated because of the limited number of broadcast frequencies available and the "invasive" nature of radio and television, i.e. a listener or viewer could be exposed to unexpected material. In its March 1997 decision, the United States Supreme Court had found the Internet to more closely resemble print media, seeing it as a "vast democratic forum" and not finding it "invasive" by reasoning that users rarely encountered objectionable material by accident and that such content was normally preceded by warnings.

45. In spite of that broad protection by the courts, Mr. Potok reviewed a number of cases in which the courts had found violations of the law by persons who had made threats over the Internet. He mentioned a case in September 1996 where a former student had sent an e-mail message to 62 Asian students which said, in part, "I personally will make it my life career to kill everyone of you personally. OK? That's how determined I am." He also mentioned a similar case in 1998 when the federal Government had successfully prosecuted the sender of an anti-Hispanic e-mail death threat sent to 67 students and employees of another university by an Asian-American student, as well as other cases involving threats of violence or death directed at

specific individuals. In one case involving implicit death threats on a Web site against doctors who provided abortions, the plaintiffs, an abortion rights group and several physicians who performed abortions, were awarded \$107.9 million in a civil case.

46. Mr. Potok then reviewed legislative initiatives to address racist hate sites. He mentioned an initiative at the federal level, unsuccessful to date, to force public libraries to use Internet filtering software capable of screening out hate and pornography sites on computers used by children; to require Internet service providers to offer such software to their customers free or at cost; and to make it a crime to “teach or demonstrate” how to make explosives and other destructive devices. He also cited the case of the state of Arizona, which had passed a law in 1999 mandating that public schools and libraries use filtering software. The institutions concerned would be required either to put such software on their computers or buy Internet access from providers that provided it.

47. Mr. Potok argued that software designed to filter out hate sites was unfortunately not very effective. It was both under- and over-inclusive and required a very large force of programmers and monitors. He also was of the view that it was unrealistic to think that parents could prevent their children from having access to the Internet or to provide the level of surveillance necessary to prevent them from using hate sites. He concluded that the most effective way to fight racism on the Internet was by education, both by parents and by schools. Ideas and falsehoods need to be combated with other ideas and facts. He warned that ignoring social ills like racism was not the solution to make them go away, but rather was a sure way to guarantee the spread of hate.

48. In the discussion that followed, Mr. Shimon Samuels, the European Director of the Simon Wiesenthal Center provided a brief explanation of the work of his organization and what it was doing to monitor racist hate speech on the Internet. Mr. Eide remarked that there was a great danger when human rights activists involved in combating racism were identified by name and address on the Internet and that issue should be addressed by the World Conference against Racism. A representative of the Government of Turkey stated that a number of international instruments prohibited racist speech and that that was applicable to the Internet. A representative of Portugal stated that hate speech should be criminalized.

49. Ms. Jöel Sambuc, Vice-Chairperson of the Federal Commission against Racism (Switzerland) referred to her working paper (HR/GVA/WCR/SEM.1/2000/WP.3) and stated her view that racist activity on the Internet should be subject to the same rules that were applicable to other forms of racist activities. A number of international instruments which made racist activities illegal were equally applicable to such activities when they took place on the Internet.

50. A representative of the non-governmental organization Save the Children advocated that the World Conference against Racism should give special attention to children and young people. They were often targets for recruitment by the far right and hate groups.

D. Common problems linked to all remedies available to victims of racial discrimination

51. At the fourth meeting, on 17 February 2000, Mr. Theodor van Boven introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.5) by stating that while remedies for the victims of

racial discrimination were the principal responsibility of States, it was important that international cooperation and international monitoring be used as supplementary tools, especially with a view to ensuring that national measures met the requirements of relevant international standards. In that regard, he mentioned the international norms contained in the International Convention on the Elimination of All Forms of Racial Discrimination, and the relevance of article 6 thereof, which dealt with effective protection and remedies, as well as just and adequate reparation or satisfaction. However, in law and in actual practice, effective remedies were scarce or unavailable where victims belonged to the most destitute and marginalized groups of society.

52. There were a number of requirements that deserved special attention to ensure the efficiency of recourse procedures, notably:

- (a) Easy accessibility, especially for those likely to be victims of racial discrimination, for both citizens and non-citizens, for individuals as well as groups;
- (b) Initiation of complaints should be simple and flexible and should be available to victims and, as appropriate, authorized public agencies or third parties;
- (c) Dissemination of information concerning the availability of remedies, including recourse procedures, should be widespread;
- (d) Investigations should cover individual cases, as well as situations which indicated a pattern or practice of racial discrimination;
- (e) All stages of the procedures should be expeditiously handled;
- (f) Interim measures should be ordered to avert or prevent irreparable damage;
- (g) Legal aid and assistance should be provided for victims of racial discrimination and, where appropriate, the services of an interpreter should be made available;
- (h) Reparation should be awarded for material and moral damage and suffering;
- (i) The impartiality and independence of organs dealing with complaints should be assured.

53. Mr. van Boven also referred to the role of specialized bodies in combating racial discrimination and indicated the importance of certain factors, including their composition, independence, accountability and accessibility. He then mentioned some of their functions and indicated their potential preventive and remedial effects:

- (a) Monitoring the content and effect of legislation and executive acts and making proposals, where necessary, for improving legislation;
- (b) Advising the legislative and executive authorities with a view to improving regulations and practice;

- (c) Providing aid and assistance to victims, including legal aid;
- (d) Having recourse to the courts or other judicial authorities as appropriate;
- (e) Hearing and considering complaints concerning specific cases and seeking amicable settlements or binding and enforceable decisions;
- (f) Providing information and advice to relevant bodies;
- (g) Issuing advice on standards of anti-discriminatory practice in specific areas;
- (h) Promoting and contributing to training of certain key groups;
- (i) Promoting the awareness of the general public on issues of racial discrimination.

54. Mr. van Boven then addressed the types of remedies available and made reference to the draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International Humanitarian Law. The fundamental types of remedies were the following:

- (a) Restitution, including the restoration of liberty, family life, citizenship, return to one's place of residence, and restoration of employment or property;
- (b) Compensation for any economically assessable damage resulting from physical or mental harm, lost opportunities, material damage and loss of earnings, harm to reputation or dignity, and costs required for legal or expert assistance, medication and medical services;
- (c) Rehabilitation, including medical and psychological care, as well as legal and social services;
- (d) Satisfaction and guarantees of non-repetition aimed at (i) cessation of continuing violations; (ii) verification of facts which should be fully and publicly disclosed; (iii) an official declaration or judicial decision restoring the dignity, reputation and legal rights of the victim; (iv) apology, including public acknowledgement of the facts and acceptance of responsibility; (v) judicial or administrative sanctions against persons responsible for the violations; (vi) commemoration and paying of tribute to the victims; (vii) inclusion in human rights training and in history books of an accurate account of wrongs committed; and (viii) various policies and measures to avert the recurrence of violations.

55. Mr. van Boven then argued that most patterns and practices of racial discrimination were linked to structural patterns of injustice which required structural solutions. Victims of racial discrimination were frequently the most underprivileged; they lacked education, were ignorant of the law and they mistrusted the courts. He also mentioned the special situation of undocumented workers who, even if they were aware of any remedies, feared intimidation, retaliation or expulsion.



56. He also made reference to the victims of trafficking, and in particular trafficked women and children. In addition to racial discrimination, such persons might be subject to physical and psychological violence, starvation, forced use of drugs and alcohol, burning with cigarettes, rape, isolation in dark rooms, being beaten and threats to themselves or their families. Remedies were hardly of any avail as national policies frequently criminalized the trafficked victims rather than the traffickers.

57. Mr. van Boven also addressed the issue of collective rights and affirmative action in reference to the situation of peoples who had been victimized over a period of years, or even centuries. He made reference to the victims of the slave trade and their descendants, indigenous peoples who had been marginalized and who had lost most of their land rights and rights relating to natural resources and the protection of their environment, and the situation of the Roma.

58. He argued that when collective rights were involved, the lodging of individual claims with a view to obtaining reparation appeared to be of limited utility. More effective results were possible through taking special measures to provide opportunities for self-development and advancement to groups which, following a long period of persistent racial discrimination, had been denied such opportunities. In the context of indigenous peoples, he referred to the General Recommendation XXII, adopted by the Committee on the Elimination of Racial Discrimination, and underlined the importance of States recognizing and protecting the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, when they had been deprived of them without their free and informed consent, of taking steps to return those lands and territories. General Recommendation XXII provided that if that was not possible, the right to restitution should be substituted by fair compensation, which should as far as possible take the form of lands and territories.

59. In the discussion which followed, Mr. Valencia Rodriguez argued that public awareness of remedies was frequently lacking and that States should take additional measures to enhance public awareness. Mr. Eide stated his view that national laws needed to be adapted to provide better remedies for violations of economic, social and cultural rights. He added that a focus on remedies other than those of a judicial character was also important.

#### E. Action of national institutions: examples of good practices

60. At the fifth meeting, on 18 February 2000, Mr. Barney Pityana introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.7) by noting that national institutions had evolved into key instruments for the development and application of human rights. That had increasingly been accepted by the international community in the 1990s. In the future, combating racial discrimination would be more difficult as it would be expressed less and less in crude forms of colour discrimination, but rather would be combined with class and other material conditions. He also argued that strategies of denial of racism had become more elaborate. Frequently a different meaning was given to a set of facts to avoid an acknowledgement of racism.

61. In discussing his own country's experiences, he said that the South African Human Rights Commission had been inaugurated in October 1995. The powers of the Commission included investigation and reporting on the observance of human rights as well as the power to take appropriate steps to secure appropriate redress when human rights had been violated.

62. Mr. Pityana recalled that the South African Human Rights Commission had convened a national conference on human rights in May 1997 at which the following proposals had been made:

(a) The Government should ratify the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The Government should enact legislation declaring all forms of racism and racial discrimination an offence punishable by law;

(c) The Government should establish a monitoring mechanism on racism in the police, prisons, civil service and the courts;

(d) The South African Human Rights Commission should institute a National Racism Barometer and publish details of anti-racism practice in schools, the civil service, commerce and industry, and report regularly on the index of racism in society;

(e) The Commission should establish a hotline to offer counselling to victims of racial discrimination;

(f) All public and private institutions should be required to undertake an annual racism audit by an independent evaluator;

(g) All institutions participating in State tenders should satisfy the racism audit or the equity audits required under the Employment Equity Act, 1998.

63. Mr. Pityana noted that subsequent to those proposals, the Government of South Africa had ratified the International Convention on the Elimination on All Forms of Racial Discrimination and that the South African Human Rights Commission had cooperated with the Government in preparing equality legislation. The Commission had undertaken a national survey on racial discrimination and integration in schools and a national inquiry into racism in the media. The Commission had also been involved in a campaign to raise public awareness about immigration and refugee policy, and to inform the public and immigrants, asylum-seekers and refugees about their rights. He added that the Commission planned to establish a national institution for education and training in human rights.

64. In his concluding remarks, he said that a national institution straddled the divide between government and society. Although a national institution frequently had quasi-judicial powers and should have enough power to carry out its functions, in his opinion it was important that its recommendations should be only advisory in character and that it should not try to be a substitute for the courts and impede access to the courts by those who wished to see redress in a judicial forum.

65. Also at the fifth meeting, on 18 February 2000, Mr. Frank Orton introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.8) on the Discrimination Ombudsman (DO) in Sweden. The DO had three tasks: to take on individual cases, to present opinions on legislative matters and to try to change public opinion and make it more tolerant. The competence of the DO was not

limited to public administration, or only to employment matters, but included society at large. The only exclusion from the competence of the DO was the privacy of the family. The DO, however, had very limited legal powers which meant that the tools at the disposal of the DO were essentially good ideas and persuasive arguments, as well as criticism. Those tools were effective, as most persons and institutions would prefer to avoid being referred to as discriminatory, racist or xenophobic.

66. Mr. Orton indicated that there were three groups in Sweden which could be referred to as ethnic minorities: the Saami who resided in the north of the country and who had traditionally engaged in reindeer-herding; the Roma population; and a special group of Finns who lived in a particular area in northern Sweden. With respect to the Saami, he noted that the DO had tried to promote knowledge about the condition of the Saami and their culture, including through the school curriculum, in museums and in public libraries. There had also been an effort to promote higher self-esteem among the Saami with respect to their language, their traditional clothes and their culture. The DO had acted to promote a dialogue between the Saamis and various agencies and associations in Swedish society and also to encourage the Saami to cooperate with other groups in Sweden having similar interests, as well as with indigenous peoples in other countries.

67. Concerning the Roma, the DO had undertaken a long-term strategy of confidence building, after coming to the conclusion that the Roma had an ingrained mistrust of public agencies and institutions. The DO had tried to gain a better understanding of the needs of the Roma and what was essential to them in terms of preserving their culture, their language and their identity.

68. Mr. Orton then turned to the issue of immigrants, which generated by far the largest portion of the workload of the office of the DO. Immigrants constituted approximately 11 per cent of Swedish society and were not a homogenous group: around one third came from other Nordic countries, about one third from other European countries and about one third from the rest of the world. Some were well educated or had specialized skills, while others did not; some had been in Sweden for a long time, while others had been there a short time.

69. The DO had adopted a multi-faceted strategy to address the problems experienced by immigrants, including a focus on education and awareness raising, as well as mobilizing good forces in society to help combat racism, e.g. unions, employers' organizations, commercial associations, the military, the church. Mr. Orton also made reference to special projects undertaken by the DO, such as one to combat discriminatory attitudes in the employment market by contacting Swedish employers and persuading them that it was in their own interest to give immigrant job applicants a fair chance; awareness raising in Swedish society as a whole by conducting a survey on how immigrants perceived they were discriminated against; by contacting restaurant associations to enlist their assistance to ensure that restaurants did not engage in racial discrimination, and by sponsoring school projects in the framework of essay contests at the secondary level to stimulate a discussion on racial discrimination.

70. Also at the fifth meeting, on 18 February 2000, Mr. Jenö Kaltenbach introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.6) on the action of national institutions in Eastern Europe. He said that whereas in Western Europe racism was related mainly to immigration, in Eastern Europe it was closely associated with the issue of minorities. Traditional minorities played a

much more substantial role in Eastern European societies. The significant exception was the Roma minority: discrimination against them was similar to traditional patterns of racial discrimination in Western Europe. Political parties in Eastern Europe were frequently organized along ethnic lines, he remarked, with such affiliation dominating or significantly influencing the political systems and, in some cases, even relations between States.

71. Mr. Kaltenbach stated that political representation and ethnic autonomy were both fundamental questions. The best solution from the perspective of minorities was the provision of guaranteed mandates in legislation for minority parties. He cited the case of Slovenia where, despite the small number of people belonging to the Italian and the Hungarian minorities, both communities had a guaranteed mandate. Romania was also cited as a good example; there each of the 15 ethnic groups had a guaranteed mandate, and Croatia seven guaranteed minority mandates. In Poland, they did not have a guaranteed mandate, but the representation of minorities was provided for by applying preferential conditions in elections by providing an exemption from the minimum vote requirement imposed on other parties for entry into parliament. He indicated that in other States in Eastern Europe, there was no preferential system at all, but the composition of the population ensured that minority groups were represented.

72. There were two forms of minority self-governance in Eastern European countries: local autonomy and personal autonomy. Under local autonomy minority communities participated in the administration of local public affairs under the general rules of local governments. Personal autonomy was a system that had been established in Hungary, where there was a separate law on the rights of minority communities which entitled them to set up local and national self-governments through separate elections.

73. Mr. Kaltenbach indicated that several types of institutions had been established for minority communities. One such type of institution was the consultative body which involved minority representatives. Another was the ministry or a governmental authority to address minority affairs. A third type of institution was the ombudsperson or national human rights institution. Mr. Kaltenbach indicated that the primary problem with consultative organizations was their lack of power, while the essential problem of specialized ministries or government authorities was their lack of independence. Hence, he was of the conclusion that the ombudsperson solution was the best.

74. The first ombudsperson in Eastern Europe had been elected in Poland. Since then other ombudspersons or like institutions, e.g. human rights centres or commissions, had been established. Normally, such institutions were characterized by general competencies, rather than functions which concentrated on issues of racism and minority issues. In his view, cases relating to minorities or racism were not frequently treated by such institutions, and he therefore concluded that those organizations had more of a potential than a predominant role in dealing with issues of this type.

75. Mr. Kaltenbach noted that an exception to that situation was the Hungarian Parliamentary Commissioner for the Rights of National and Ethnic Minorities, who had been elected by Parliament in 1995 and whose primary mandate was the protection of minority rights. This ombudsperson was entirely independent of the public administration in terms of legal status, budget and personnel. The person had a wide range of powers regarding the inspection of affairs

pertaining to public administration and the practices of Government. The person might undertake mediation, and with the exception of voting, might participate in the work of Parliament, including the initiation of legislation.

76. According to his caseload, the Roma were the most affected group, comprising between 60 to 68 per cent of cases filed. Complaints were directed mainly against local governments, followed by the police and the courts. The recommendations of the ombudsperson were accepted 75 to 80 per cent of the time by governmental institutions.

77. In evaluating the results of his office, Mr. Kaltenbach indicated that a major achievement had been the continuous publicity his office had given to minority issues, and that consequently public attitudes had been affected positively. There had also been a positive evolution in the tone of the media in its reporting on minority issues. He added that the implementation of legal regulation had improved as well, because the public administration was now aware that there was an institution which would intervene in the event of infringement of the law. He also remarked that the contribution of his office to the legislative drafting process in the Hungarian Parliament had also had a positive effect in protecting minority rights.

78. Other achievements he noted were in the employment field, where his office had investigated complaints and found that deficiencies in labour regulations had allowed discrimination against the Roma. His office had made proposals on that subject which had been accepted. His office had also undertaken a survey on "special schools" in the educational system and found that the children, of whom a large percentage were Roma, entering such schools stood a very poor chance in life and that their future was, in practice, unfavourably predetermined by their attendance at such schools. His office had submitted recommendations to the Ministry of Education, most of which had been accepted, including the fundamental premise that education was a strategic issue and one of the preconditions for the integration of the Roma population in Hungarian society.

79. Turning to the more general question of education and minorities, he pointed to two distinct areas: the education of national minorities and the education of the Roma ethnic minority. He noted that, in Romania, Slovakia and Hungary, the law entitled minority groups to establish and maintain cultural and educational institutions, including education in the minority languages at all levels. A child belonging to a minority could receive school education in his or her own native language, a bilingual school or in the language of the majority, according to the wish of the parent. He added that, in Hungary, there existed a special curriculum to assist Roma students. At some universities, information on the history and culture of the Roma had been introduced in the curriculum, and training programmes had been provided for teachers. In Romania, a preferential system facilitating access by Roma students to higher education had been established at one university.

80. Mr. Kaltenbach also underlined that training aimed at the promotion of tolerance for cultural and ethnic diversity was highly desirable, and vital for police and prison officials to eradicate abuses, particularly against members of the Roma community.

81. In the discussion which followed, a representative of the Government of the Netherlands stated that his country was attempting early intervention on issues of racism. Anti-discrimination offices had been established and cooperation to combat racism was being pursued between the Ministry of the Interior, the Ministry of Justice and non-governmental organizations.

82. The representative of the European Commission against Racism and Intolerance said that ombudspersons and national human rights institutions were efficient institutions for sensitizing public opinion and had important educational functions. National institutions generally should work to protect the rights of minorities and migrants, they should provide legal assistance to victims of racial discrimination and should monitor the implementation of anti-discrimination legislation by Governments. He added that it was important for national institutions to keep their independence and that they should be accessible to victims of racism.

#### F. Reinforcement of regional and international mechanisms

83. At the sixth meeting, on 18 February 2000, Mr. Régis de Gouttes introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.9). He began his presentation by looking at three major mechanisms for individual complaints concerning racial discrimination:

(a) The mechanism provided under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which allowed communications to the Committee on the Elimination of Racial Discrimination (CERD). He noted that of the 155 States parties to the Convention, only 29 had accepted the procedure under article 14 which allowed for individual complaints;

(b) The mechanism provided under the first Optional Protocol to the International Covenant on Civil and Political Rights which allowed communications to the Human Rights Committee. He noted that of the 142 States parties to the Covenant, 93 had accepted the Optional Protocol;

(c) The mechanism provided for under the Convention for the Protection of Human Rights and Fundamental Freedoms which allowed individual complaints or petitions to be submitted to the European Court of Human Rights. That procedure was applicable to the 41 States which were members of the Council of Europe.

84. Mr. de Gouttes remarked that only the International Convention on the Elimination of All Forms of Racial Discrimination was entirely devoted to the subject of racial discrimination. The two other international instruments contained only limited provisions regarding racial discrimination, within the wider general principle of non-discrimination.

85. In comparing the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant of Civil and Political Rights, Mr. de Gouttes remarked that they were both United Nations international instruments of a universal character, organized and functioning in similar ways. However, CERD worked in the specific field of discrimination on the basis of race, colour, descent, or national or ethnic origin, while the Human Rights Committee had a more general mandate of civil and political rights. He noted that while the Human Rights Committee was limited by the Covenant to civil and political rights generally,

the language of the Convention prohibited racial discrimination not only with respect to civil and political rights, but also with respect to economic, social and cultural rights. He noted that, in practice, the Human Rights Committee had only rarely considered cases involving racial discrimination in its individual complaints procedure, while CERD had to date received 17 individual complaints.

86. Mr. de Gouttes then briefly compared the individual complaints procedures under the International Convention on the Elimination of All Forms of Racial Discrimination with those of the European Convention on Human Rights in the area of racial discrimination. He noted that of the 155 States parties to the former Convention, 34 were also member States of the Council of Europe and therefore parties to the European Convention. Of the 29 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination which had accepted the individual complaints procedure, a large number, 18, were member States of the Council of Europe.

87. In comparing the two international instruments, Mr. de Gouttes found that the scope of the International Convention on the Elimination of All Forms of Racial Discrimination was broader geographically with 155 States parties, and the composition of CERD, the body responsible for monitoring the Convention reflected that geographic diversity. That Convention was broader in substantive terms since it covered civil, political, economic, social and cultural rights, while the European Convention prohibited racial discrimination in the framework of civil and political rights. The European Convention did not establish a general right to protection against racial discrimination, rather it established a principle of non-discrimination on the ground of race in the enjoyment of the rights recognized and protected by the European Convention. Hence, in order to establish a violation of the European Convention, there had to be a violation of the prohibition of racial discrimination in conjunction with the violation of a substantive right protected by the European Convention.

88. Mr. de Gouttes also pointed out that the monitoring bodies of the two international instruments were quite different. The European Convention was monitored chiefly by a supranational judicial body, the European Court of Human Rights, whose decisions were binding and which was a standing body consisting of 41 judges from each of the Council of Europe member States. In contrast, the monitoring body of the International Convention, CERD, was made up of 18 independent experts elected for four-year terms by States parties from among their nationals, who served in their personal capacity. In contrast to the judicial nature of the European Court of Human Rights, CERD was more a political body in its organization, composition and functions.

89. Concerning remedies, Mr. de Gouttes noted that the European Convention provided for the award of financial damages against a State and for "just satisfaction" to be awarded to the injured party and that those remedies of the European Court of Human Rights were binding. On the other hand, the power of CERD was limited to making recommendations and suggestions to the State party, and publishing in its annual report to the General Assembly a summary of the communication together with those recommendations and suggestions.

90. In the consideration of individual complaints, Mr. de Gouttes was of the view that CERD allowed itself more discretion than the European Court of Human Rights. The European Court

had found a violation of racial discrimination in only a small number of cases, notably concerning the right to respect for family life, the right to respect for property, the right to education and gender equality. He considered that one reason why violations of the European Convention did not result in more findings of racial discrimination was that the provision prohibiting racial discrimination always had to be established in conjunction with the violation of a substantive right, and the violation of the substantive right might be sufficient in itself for a finding in favour of the petitioner. He also noted that there might also be divergences between the European Court of Human Rights and CERD on some substantive issues concerning racial discrimination

91. In concluding, Mr. de Gouttes said that it was important to continue with efforts to secure universal recognition of the optional individual complaints mechanism under the International Convention. It was also important that the general public be better informed about the individual complaints procedure under that Convention and that efforts in that regard should be requested of States parties, anti-racist non-governmental organizations, lawyers and legal associations. Lastly, he felt it useful to repeat that the procedures for individual complaints to CERD and the European Court of Human Rights were complementary.

### III. RECOMMENDATIONS AND CLOSING OF THE SEMINAR

92. At its sixth meeting, on 18 February 2000, a preliminary summary of recommendations was orally presented by Ms. Virginia Dandan, Chairperson/Rapporteur. It was agreed that she would take into consideration the contributions from other expert colleagues and prepare a final set of recommendations to be attached to the report on the seminar to the Preparatory Committee at its first session. The final set of recommendations is contained in appendix I.

93. Ms. Mary Robinson, United Nations High Commissioner for Human Rights, addressed the seminar at its closure on 18 February 2000. She welcomed the fact that the seminar had given attention to particularly vulnerable groups, who were frequently the most marginalized, the poorest, the least educated and who often had the least faith in and access to official recourse procedures. She also said she was pleased that recourse procedures for non-citizens, migrants, asylum-seekers and refugees, indigenous peoples, aliens, children and young people and women had also been examined. With regard to the Internet, she noted that opinions had sometimes differed during the seminar on approaches to the subject, but that it was important that there had been agreement that education was an essential tool in combating racism and hate activities transmitted on the Internet and by other means. With regard to the discussion at the seminar of ombudspersons and national institutions, her Office was strongly committed to continuing its work for the establishment of such institutions where they did not exist, and for their reinforcement where they already existed. She added that those institutions were particularly effective when they were independent and had adequate resources and powers to assist victims of racial discrimination.



## Appendix I

### RECOMMENDATIONS OF THE SEMINAR

#### Introduction

1. In recent years the world has witnessed the upsurge of racism, racial discrimination, xenophobia and intolerance. This has given rise to the necessity for the international community to be more vigilant and to use the international instruments at its disposal to curb these evils which are emerging in all countries. There is an urgent need for Governments of all States to recognize and understand fully the serious consequences of this increase in racial discrimination, and to express their political determination in clear and precise terms in support of the efforts of the international community to combat discriminatory practices. In this regard, resolute and effective cooperation between Governments constitutes a sine qua non for the success of the international struggle against racial discrimination.
2. In the efforts and activities to combat racism, racial discrimination, xenophobia and related intolerance, the International Convention on the Elimination of All Forms of Racial Discrimination, the work of the Committee on the Elimination of Racial Discrimination (CERD), as its monitoring body, and the work of the Special Rapporteur on contemporary forms of racism should take central place.
3. In all policies and measures to combat racism and racial discrimination, the perspective of the victim must be the guiding principle, with particular attention and concern for women and children, who are often victims of multiple forms of discrimination.

#### Point 1: Racial discrimination in economic, social and cultural life

4. International human rights instruments contain extensive requirements for the availability of effective remedies. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should call on all States to become parties to all these instruments and to implement them in good faith in their national legal and administrative order.
5. International instruments such as the International Covenants on Human Rights, the ILO Discrimination Convention (Employment and Occupation), the UNESCO Convention against Discrimination in Education and, most prominently, the International Convention on the Elimination of All Forms of Racial Discrimination enjoin all States to take all necessary measures to combat racial discrimination in civil, political, economic, social and cultural life and to ensure that all practices which have the effect of creating or perpetuating racial discrimination are brought to an end. Accordingly, seminars should be organized at the regional and sub-regional level to promote those measures.
6. For the purposes of effectively combating racism, racial discrimination, xenophobia and related intolerance in the economic, social and cultural fields, both in the public and in the private sector, it is recommended that States introduce general and comprehensive

anti-discrimination legislation which provides protection against discrimination on the basis of race, colour, national or ethnic origin, religion and gender, and also provides remedial relief in the form of civil damages.

7. Racial discrimination in economic, social and cultural life is often practised by private institutions, groups and individuals, particularly with regard to the enjoyment of such rights as the right to work and access to employment, the right to housing, the right to health, the right to social security, the right to education and the right to access to places and services intended for the use of the general public. It is therefore essential that States bring to an end racial discrimination by any person, group or organization as provided for in article 2.1 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination. The need for measures to this effect is even more pressing in situations where the role of the State is declining and privatization is tending to affect adversely the realization of economic, social and cultural rights without discrimination on the basis of race, colour, national or ethnic origin, religion and gender.

8. The United Nations should prepare and publicize a systematic collection of national anti-discrimination legislation, in particular with a view to informing those in authority and the public at large of legal means to combat racial discrimination in private relationships, including any available legal and other remedies.

9. At the national level, Governments should undertake public information campaigns on the rights and procedures relating to remedies available to individuals or groups who are victims of racial discrimination, especially the most vulnerable. The objective of these campaigns is to ensure and facilitate access to recourse procedures of varied natures - criminal, civil, administrative or mediation procedures.

10. Public authorities and private institutions should widely disseminate information regarding economic, social and cultural rights as rights to be enjoyed by everyone, without discrimination on the basis of race, colour, national or ethnic origin, in accordance with article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this respect, the indivisibility and the interdependence of economic, social and cultural rights and of civil and political rights should always be kept in mind.

11. The various remedies available to victims of racial discrimination in economic, social and cultural life should include recourse to national institutions, which can play an important role in disseminating information about measures of protection against discrimination and in advising victims of remedies available to them; to law enforcement officials who are responsible for carrying out measures for curbing discrimination and protecting the victims; to prompt and effective action on the part of authorities responsible for the administration of justice; to educational activities through which racial prejudice or practices can be curbed; and to the enduring activities of the media which should promote understanding, tolerance and the basic principles of non-discrimination.

12. Remedies must be available against discrimination in the area of economic, social and cultural fields as well as in the civil and political fields. Such remedies must include procedural mechanisms of recourse against decisions, which constitute or may lead to violations, and of material reparations whenever violations have occurred.

13. When permissible derogations are made in times of emergency threatening the life of the nation, effective remedies must continue to exist against violations of non-derogable rights.

14. When abnormal situations occur where the rule of law breaks down at the national level, it is of particular importance for the international community to take measures to provide, wherever possible, material remedies for the victims.

15. The crucial role of education, in particular human rights education, in the prevention and eradication of all forms of intolerance and discrimination should be underlined. In this regard, it is important to reinforce the anti-discrimination component of the curricula and to improve educational materials on human rights, in order to shape attitudes and behavioural patterns based on the principles of non-discrimination, mutual respect and tolerance.

16. In recognition of the right to education as a basic human right, without which the realization of all other rights is impeded, special efforts are needed to prevent and eliminate discrimination in education and to ensure access to education at all levels without any exclusion, limitation or preference on the basis of race, colour, sex, language, religion, national or ethnic origin or other grounds.

Point 2: Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous people

17. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should give priority attention to the need for effective remedies for victims of violations among the most vulnerable groups, taking into account the special difficulties these groups face.

18. The enjoyment of economic, social, cultural, civil and political rights should be ensured, in law and in practice, for persons belonging to vulnerable groups, including indigenous peoples and those who suffer discrimination because of structural reasons, for example, descendants of slaves, the Roma, etc. Furthermore, countries that take measures to improve the lives of such vulnerable groups should be provided financial and technical assistance so that they can continue their efforts.

19. The situation of victims of racial discrimination among vulnerable groups such as non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous populations should be given sufficient emphasis in order to raise public awareness of their plight.

20. Indigenous peoples, minorities, migrants, refugees, asylum-seekers and other non-nationals face special problems more often than other victims of violations do. For this reason, special efforts must be made to provide remedies which can be applied more effectively in relation to their particular situation and their special rights.

21. The establishment of national institutions against ethnic discrimination, covering also migrants and other non-nationals, would be an effective mechanism to provide legal aid as well as non-judicial remedies for the victims.

22. Maximum diligence is required to ensure that members of law enforcement agencies are free from ethnic or racial bias against vulnerable groups, and that they perform their duties with impartiality and with sensitivity for the special problems these groups face.

23. Special efforts should be made to include in human rights education information regarding the availability of special remedies which apply effectively to the particular situation of vulnerable groups and which are meaningful with regard to their special rights.

24. Effective remedies should be made available for violations of the collective as well as the individual rights of indigenous peoples, in line with the provisions contained in ILO Convention (No. 69) on Tribal and Indigenous Peoples in independent countries.

25. Similarly, remedies should be made available to members of national or ethnic, religious or linguistic minorities, to address violations of their collective as well as their individual rights.

26. Indigenous peoples and minorities should participate both in the establishment and in the operation of remedial mechanisms for their special protection.

27. States are called upon to adopt special measures for indigenous peoples and minorities, who should enjoy equality in law and in fact, as set out in article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, and remedies should also be available in cases where such special measures are not implemented.

28. Governments are requested to provide reception and information facilities for migrant workers, to implement policies relating to training, health and housing, and to undertake educational and cultural development programmes for them. Existing remedies for migrant workers at the international and regional levels should be made more accessible to them. Judicial remedies should be developed and enforced (art. 83, Migrant Workers Convention) and free legal aid must be provided for migrant workers under the same conditions provided for nationals (art. 19, Social Charter of the Council of Europe).

29. Women and children become vulnerable to trafficking because of social inequality and the vast economic disparity within States and between rich and poor States, even though considerable efforts have gone into standard-setting to combat this evil. States should undertake to provide refuge and protection for victims of sexual exploitation, including prostitution and trafficking, and to repatriate those who desire to be repatriated. Remedies need to be developed so that such persons will be able to reveal and bring to light without any risk to themselves, the exploitative circumstances behind their situation.

30. Special attention should be given to violations of refugees in refugee camps and detention centres. In these places, women and girls who are bereft of effective remedies for their protection often face particular problems. Under these circumstances, women and girls are often subjected to sexual or other assaults.

31. Asylum-seekers face increasing problems because of stringent non-admission policies in most developed countries. In addition, because of the imposition of stricter border controls by neighbouring States to which refugees may alternatively seek to escape, their right to asylum becomes even further restricted. Remedies should be made available for such persons who are unable to make use of their right to seek asylum.

32. Effective remedies should be established for the protection of non-national residents, who often suffer discrimination in obtaining access to citizenship. International standards should be developed to ensure equality in access and maintenance of citizenship, in line with recommendations made by the International Law Commission and contained also in the European Convention on Nationality of 1997.

33. Effective remedies should be made available for asylum-seekers, who are often victims of unnecessary and prolonged detention and who suffer unacceptable conditions while they are detained.

34. The lack of remedies for non-nationals who are imprisoned in developed countries and whose number has steeply increased is far more obvious than for those who are not in those circumstances. Visible aliens are more easily singled out for suspicion and may often have fewer resources to defend themselves against unjustified prosecution. Continuous social discrimination and degrading treatment generates anger and hatred, which eventually lead to criminal acts. The behaviour of public authorities and law enforcement agencies is in itself an effective crime-preventing measure and demonstrates the necessity for establishing effective remedies so that public authorities do not behave in a discriminatory and derogatory way.

35. An appeal is issued for international cooperation, which could either be bilateral or multilateral, so that all States which make a request, particularly those in transition to democracy, can receive information and training on recourse procedures that could be put in place and made available to victims of racial discrimination.

### Point 3: Racism on the Internet: legal and technical questions

36. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should reaffirm the principle of the applicability of international human rights instruments with regard to racist acts on the Internet, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

37. Governments are called upon to take adequate measures, including legislation, to ensure that the Internet is not used as a means of disseminating racist ideas and illegal behaviour of a racist character, while equally ensuring that adequate safeguards are adopted to protect freedom of expression.

38. Public authorities, schools and communities should strengthen efforts to provide education and information aimed at combating the dissemination of racist ideas, which are an infringement of human dignity, equality and freedom.
39. Regional preparatory conferences for the World Conference should explore and address the question of how to use the Internet to counteract racism and to prevent its use by racist hate groups for propagating racial hatred.
40. The recommendation adopted by the seminar on the role of the Internet held in Geneva in 1997 is reaffirmed, according to which the States Members of the United Nations should continue cooperation and establish international juridical measures in compliance with their obligations under international law, especially the International Convention on the Elimination of All Forms of Racial Discrimination, to prohibit racism on the Internet while respecting individual rights, such as freedom of speech.

Point 4: Common problems linked to all remedies available to victims of racial discrimination

41. It is essential that effective remedies, judicial and otherwise, be available to victims of racial discrimination, in fulfilment of the requirements of international human rights norms. More emphasis must be given to making remedies and recourse procedures more widely known.
42. In order to enhance the effectiveness of recourse procedures, such processes should be easily accessible, expeditious and not unduly complicated. Legal aid and other forms of assistance should be provided.
43. Victims of racial discrimination are entitled to reparation in its different forms, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Monetary and non-monetary forms of reparation are equally important in rendering justice to victims of racial discrimination. Non-monetary forms of reparation include measures such as verification of the facts and their public disclosure; official declarations or judicial decisions that restore dignity and rebuild reputation; acknowledgment of the facts and acceptance of responsibility; and the commemoration and the payment of tribute to the victims.
44. The highest priority should be given to addressing the virtual absence of effective remedies for the most marginalized victims, notably victims of trafficking, undocumented workers, victims of entrenched and persistent discrimination such as indigenous peoples, the Roma and the descendants of slaves. International instruments and other national and international acts must urgently address these issues by taking legal and other measures to ensure protection and assistance, to provide reparation, including civil damages and rehabilitation of the victims and survivors.
45. Special measures should be taken, in accordance with article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, to ensure the development and protection of the most disadvantaged racial groups or of persons belonging to these groups, for the purpose of guaranteeing for them the full and equal enjoyment of human rights and fundamental freedoms.

46. There is a need to make the justice and police system, as well as other public officials responsible for application of the law, more sensitive to the plight of victims of racial discrimination and to issues related to racism, racial discrimination, xenophobia and related intolerance. For this purpose, high priority must be given to human rights education and training for law enforcement officials, especially the police and members of the judiciary. In this regard, sanctions should be applied to public officials charged with applying the law who do so in a discriminatory manner, including singling out particular ethnic groups in the population.
47. Victims of racial discrimination and the general public should be better informed of their rights and of recourse procedures available, including those available at the international level. Such information should include information concerning the role of the State and its institutions, NGOs and the legal community.
48. Closer cooperation should be promoted between law enforcement officials, the judiciary and the public at the community level in order to facilitate understanding on issues relating to racial discrimination.
49. National legislation prohibiting racial discrimination, as well as related judicial practices, should be reconsidered with regard to the level of proof necessary to establish what constitutes acts of racial discrimination, often difficult to establish in certain countries. In allegations of racial discrimination, the onus of proof must rest with the respondent to rebut the allegation made by the victim of racism.
50. While action against racism will principally be determined in terms of the rules of civil procedure, in the event of any action punishable under criminal law, evidence of racist motivations/intention should be considered as an aggravating circumstance.

Point 5: Action of national institutions: examples of good practices

51. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should encourage States to establish independent national human rights institutions with adequate resources to carry out their functions. States should also be encouraged to establish special institutions or to enable human rights institutions to have a special mandate to combat racism and racial discrimination.
52. The World Conference should encourage States to support actively the activities in this field of the High Commissioner for Human Rights and similar activities carried out by regional bodies.
53. National institutions should monitor the implementation of national legislation prohibiting racial discrimination and report to Parliament.
54. It is recommended that legislation give a role to national institutions to undertake alternative methods of resolution of disputes by conciliation and mediation and, where necessary, to represent victims in the courts or before other bodies.

55. National institutions should undertake educational programmes to raise public awareness of racism and to disseminate information on the regional and international remedies available to victims of racial discrimination. Training should also be provided to judges and law enforcement officers concerning applicable international human rights instruments relating to racism, and that training should include guidance on the practical implementation of such provisions in their daily work.

56. While it is recognized that national human rights institutions play an important role as watchdogs, it should be stressed that critical and constructive NGOs play an important role as watchdogs in relation to the national human rights institutions as well.

57. National institutions from the five geographical regions should be represented and should actively participate in the preparations for the World Conference and in the World Conference itself.

Point 6: Reinforcement of regional and international mechanisms

58. Efforts should be continued in order to extend and to achieve universal recognition of the individual complaints procedure that is available under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this regard a new appeal should be made to States parties to persuade them to make the optional declaration under the Convention.

59. Increased efforts should be undertaken to inform the public of the existence of the complaints mechanism under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, with the assistance of States parties, NGOs and bar associations.

60. It is recommended that the usefulness of the complementary nature of the complaints procedures of CERD and of the European Court of Human Rights be affirmed, so that victims of racial discrimination can have at their disposal a wider choice of international recourse procedures.

61. It is recommended that CERD should institute a follow-up procedure with respect to individual communications, similar to the procedure which exists for the Human Rights Committee. It is also recommended that the CERD secretariat be given additional resources for the processing of an increasing number of individual complaints.

62. International and regional bodies are encouraged to collect data from national human rights institutions regarding specific countries and to disseminate directly to the national human rights institutions, decisions, statements and other relevant information of direct bearing on the country in question.

63. Better coordination should be established between the various regional and international mechanisms that provide remedies to victims of racial discrimination.

64. Efforts should be undertaken to promote a better knowledge of the activities and the jurisprudence of regional and international mechanisms that are available for victims of racial discrimination.



Appendix II

LIST OF PARTICIPANTS

Experts

- Mr. Luis Valencia Rodriguez, member, Committee on the Elimination of Racial Discrimination;
- Ms. Virginia Dandan, Chairperson, Committee on Economic, Social and Cultural Rights;
- Mr. Asbjørn Eide, member, Sub-Commission on the Promotion and Protection of Human Rights;
- Mr. David Rosenthal, international lawyer;
- Mr. Mark Potok, Southern Poverty Law Center;
- Mr. Theodor van Boven, law professor;
- Mr. Barney Pityana, Chairperson, South African Human Rights Commission;
- Mr. Jenö Kaltenback, Ombudsman and Parliamentary Commissioner for National and Ethnic Minority Rights;
- Mr. Frank Orton, former Ombudsman of Sweden and former chairperson of the European Commission against Racism and Related Intolerance;
- Mr. Régis de Gouttes, member, Committee on the Elimination of Racial Discrimination;
- Mr. Maurice Glèlè Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;
- Mr. Abdel Fatah Amor, Special Rapporteur on religious intolerance.

States Members of the United Nations represented by observers

Angola, Albania, Argentina, Armenia, Austria, Bangladesh, Belgium, Brazil, Brunei Darussalam, Bulgaria, Burundi, Canada, China, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Eritrea, Ethiopia, Finland, France, Germany, Guatemala, Haiti, Holy See, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Kuwait, Latvia, Libyan Arab Jamahiriya, Malaysia, Monaco, Morocco, Mozambique, Nepal, Netherlands, Pakistan, Philippines, Poland, Portugal, Qatar, Russian Federation, Rwanda, Slovakia, Slovenia, Spain, South Africa, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United States, United Kingdom, Uruguay, Zimbabwe.

United Nations bodies, specialized agencies and intergovernmental organizations

Office of the United Nations High Commissioner for Refugees  
International Labour Organization  
United Nations Educational, Scientific and Cultural Organization  
Council of Europe  
European Commission against Racism and Intolerance  
International Organization for Migration

Non-governmental organizations

Amnesty International, Agencia Latinoamericana de Información, Asian Students Association, Association internationale des juristes, Association of World Citizens, Association for World Education, Baha'i International Community, Board Ethnic Equality, Caritas Internationalis, Centre for Organization, Research and Education, Commission on Equal Treatment, Confédération internationale des syndicats libres, Commission for Racial Equality, Earthjustice Legal Defense Fund, Espace Afroaméricain, European Union of Public Relations, Fédération internationale des ligues des droits de l'homme, Federal Union of European Nationalities, Foundation for Aboriginal and Islander Research Action, France Libertés: Fondation Danielle Mitterrand, Franciscans International, International Association against Torture, International Association of Schools as Instruments of Peace, International Council of Jewish Women, International Commission of Jurists, International League for Human Rights, International Movement against All Forms of Discrimination and Racism, International Police Association, International Possibilities Unlimited, International Save the Children Alliance, International Service for Human Rights, International Young Catholic Students, International Organization of Indigenous Resource Development, Internet Centre and Anti-racism Europe, Magenta Foundation, National Aboriginal and Islander Legal Services, Na Koa Ikaika o Kalahui Hawaii, Nillei Japanese Journal, Nord-sud XXI, Nord-sud, Penal Reform International, Russian Association of Indigenous Peoples of the North, Save the Children, Searchlight, Simon Wiesenthal Center, Te Kawau Maro, United Nations Watch, Woman's International League for Peace and Freedom, World Federation of Democratic Youth, World Federation of United Nations Associations, World Jewish Congress, World Union of Catholic Women, Worldview International Foundation, World Vision International.

National institutions

Parliamentary Commissioner for the Rights of National and Ethnic Minorities (Hungary)  
Danish Parliamentary Ombudsman  
Defensor del Pueblo (Spain)  
Human Rights Ombudsman of Slovenia  
Provedoria de Justicia (Portugal)  
Equal Treatment Commission (The Netherlands)

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