



**SUPPLEMENTARY HUMAN DIMENSION
MEETING**

**“THE ROLE OF NATIONAL INSTITUTIONS AGAINST
DISCRIMINATION IN COMBATING RACISM AND XENOPHOBIA
WITH A SPECIAL FOCUS ON PERSONS BELONGING TO
NATIONAL MINORITIES AND MIGRANTS”**

FINAL REPORT

Vienna, 29 - 30 May 2008

TABLE OF CONTENTS

I. EXECUTIVE SUMMARY.....	2
II. RECOMMENDATIONS.....	8
III. SUMMARIES OF THE SESSIONS.....	11
SESSION 1: The role and mandate of National Institutions against Discrimination (NIADs) in combating racism and xenophobia.....	11
SESSION II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants	13
SESSION III: Good practices and effective policy responses in combating racism and xenophobia	15
IV. ANNEXES	17
ANNEX I. AGENDA.....	17
ANNEX II. ANNOTATED AGENDA.....	20
ANNEX III.....	25
Keynote Speech by Morten Kjærum, Director of the European Union Agency for Fundamental Rights.....	25
ANNEX IV: INTRODUCTORY SPEECHES TO WORKING SESSIONS.....	27
SESSION I: The role and mandate of National Institutions against Discrimination in combating racism and xenophobia.	27
Ms. Anne Gaspard, Executive Director of Equinet, The European Network of Equality Bodies.....	27
Mr. Jozef De Witte, Director, Centre for Equal Opportunities and Opposition to Racism (Belgium)	29
SESSION II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants	31
Mr. Vladimir Lukin, Human Rights Ombudsman of the Russian Federation.....	31
Ms. Pascale Charhon, Director, European Network Against Racism	33
SESSION III: Good practices and effective policy responses in combating racism and xenophobia	41
Ms. Marie-France Picart, Board Member of the High Authority to Fight Against Discrimination and for Equality, France (HALDE)	41
Ms. Naomi Churchill Earp, Chair of the United States Equal Employment Opportunity Commission (EEOC).....	45
ANNEX V: Opening remarks by Alcee L. Hastings President Emeritus of the OSCE Parliamentary Assembly.....	53
ANNEX VI: Opening remarks by Johanna Suurpää, Ombudsman for Minorities of Finland, Representative of the OSCE Chairmanship	56
ANNEX VII. Opening and Closing Remarks by Ambassador Christian Strohal, ODIHR Director.....	58
OPENING REMARKS	58
CLOSING REMARKS	61
ANNEX VIII. Side events.....	64
ANNEX IX. Recommendations from the Roundtable for Civil Society.....	66
ANNEX X. List of participants	72

I. EXECUTIVE SUMMARY

The first OSCE Supplementary Human Dimension Meeting (SHDM) in 2008 on “*The role of National Institutions against Discrimination in Combating Racism and Xenophobia with a Special Focus on Persons Belonging to National Minorities and Migrants*” took place on 29-30 May in Vienna.¹ The meeting brought together a total of 239 participants, including 54 representatives of 52 non-governmental organizations (NGOs).² A distinguished keynote speaker and group of moderators and introducers also participated.³

The OSCE participating States have repeatedly expressed concern about manifestations of racism, xenophobia, anti-Semitism, and other forms of intolerance, including against Muslims, Christians and members of other religions. The OSCE commitments provide that participating States should establish national institutions or specialized bodies to combat intolerance and discrimination as well as to develop and implement national strategies and action plans in this field. OSCE participating States have also committed themselves to take steps, in conformity with their domestic law and international obligations, to take steps against discrimination, intolerance and xenophobia against migrants and migrant workers.

This SHDM sought to examine the role of national institutions in responding to and combating racism and xenophobia, in particular where such cases involve persons belonging to national minorities and migrants and ways to overcome substantive challenges at the national and international level.

In addition to the Opening and Closing Sessions, the SHDM consisted of three Working Sessions:

- The role and mandate of National Institutions against Discrimination in combating racism and xenophobia;
- Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants;
- Good practices and effective policy responses in combating racism and xenophobia.

Prior to the Meeting, a Side Event entitled "roundtable for civil society" organized by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) took place. The aim of the roundtable was to enable civil society representatives to prepare recommendations to present at the Meeting.

Introductory remarks at the **Opening Session** were delivered by Ms. Johanna Suurpää, Ombudsman for Minorities of Finland and representative of the OSCE Chairman-in-Office, followed by Mr. Alcee L. Hastings, President Emeritus of the OSCE Parliamentary Assembly and Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR)⁴.

Representing the Chairman-in-Office, Ms. Suurpää noted that the Finnish OSCE Chairmanship highlights the importance of promoting human rights as well as combating all forms of

¹ Please see Annex I for the Agenda and Annex II for the Annotated Agenda of the Meeting.

² Please see Annex XI for the List of Participants.

³ Please see Annex III for the text of the keynote speech and Annex IV for texts of introductory speeches.

⁴ Please see Annex VII for the Opening Remarks of Ambassador Strohal

intolerance and non-discrimination as a natural part of a broad concept of security. She commented on the creation of national institutions to combat discrimination as a step forward but noted that in order to be credible, the institutions must be equipped with a realistic set of tools to effectively combat discriminatory practices. Such institutions must also be independent, have a broad enough mandate to both promote tolerance through positive action and initiate legal proceedings and possess adequate resources in order to investigate and follow-up case of discrimination. She also underlined the need for close co-operation between national institutions and civil society.

Mr. Alcee L. Hastings, President Emeritus of the OSCE Parliamentary Assembly, highlighted a series of hearings held by the Helsinki Commission on issues related to migrant and other minority communities that included discussions of experiences of women and people of African descent with racism and discrimination in Europe. He also described the United States Civil Rights struggle to overcome the legacies of slavery, segregation, the virtual extermination of Native Americans and other historic injustices. He stated that the U.S. has an important story to share with other countries that are only now just beginning to address issues of racism, discrimination, diversity, and related issues. He noted data collection and research, minority input and cultural competency as some of the important lessons that should be taken from the struggle of the U.S. to overcome racism.

The Director of the ODIHR, Ambassador Christian Strohal, highlighted the importance of the OSCE's Human Dimension events in providing an opportunity for a forthright exchange of views between a broad range of participants. He noted that NIADs have a crucial role to play in addressing racism and xenophobia, since these two phenomena present a major obstacle to the full enjoyment of human rights by marginalized groups including persons belonging to national minorities and migrants. He stressed that independence is a fundamental prerequisite for successful fulfilment of the role and mandate of National Institutions and highlighted some of the challenges they face related to their mandate and position within the structure of other governmental bodies and institutions. He ended by noting the importance of the meeting in enhancing the ability of the ODIHR, through its programmes and activities, to assist participating States in implementing their commitments in this field.

The keynote speech was delivered by Mr. Morten Kjærum, Director of the Danish Institute for Human Rights and Designated Director of the European Union Agency for Fundamental Rights (FRA). Mr. Kjærum focussed his presentation on the role played by NIADs and noted that these institutions provide a unique platform for dialogue for all actors in society since they work with a specific focus on the human rights of national minorities and migrants. He highlighted three dimensions underpinning the role of these institutions: the benefits bestowed by their composition, the advantages of the networks they have access to, and the advantage they gain from working within the human rights framework. He stating that the struggle to defeat racism calls for new actors and innovative strategies and that national human rights institutions are new actors in this field with a potential to expand the already existing tool box and provide a platform for constructive dialogue among social actors, authorities, the business sector and other actors engaged in the effective combating of racism and xenophobia.

Recommendations from the *Civil Society Roundtable Side Event*, which preceded the SHDM, were presented by Mr. Michael McClintock from Human Rights First.⁵

The Opening Plenary was followed by three working sessions.

⁵ Please see Annex X for the Civil Society Roundtable recommendations.

Session 1 on *The role and mandate of National Institutions against Discrimination in combating racism and xenophobia* was moderated by Ms Isil Gachet, Executive Secretary of the European Commission against Racism and Intolerance (ECRI). The introductory speeches were delivered by Mr. Jozef De Witte, Director of the Belgian Centre for Equal Opportunities and Opposition to Racism and Ms. Anne Gaspard, Executive Director of Equinet, The European Network of Equality Bodies.

This session explored how different models and mandates of national institutions affect their scope of activities, their effectiveness and the application of legal remedies.

In his presentation, Mr. De Witte outlined the structure and role of the Centre for Equal Opportunities and Opposition to Racism (CEEOR), using the seven key issues mentioned in ECRI's General Policy Recommendation No. 2 as a benchmark. He emphasized the importance of independence, both structurally and operationally. He also stressed that the job of fighting discrimination must not be left solely to NGOs but should be performed by a public authority with strong powers, although NIADs should work collaboratively with civil society.

Ms. Gaspard drew the participants' attention to the European Network of Equality Bodies – Equinet which consists of 28 members from 25 countries and aims to provide a platform for sharing expertise and good practices. Among potential challenges, she mentioned were the need for outreach to minority groups in order to make them aware of their rights and build public trust and awareness. She pointed out that most equality bodies act on both criminal and civil law and stressed the importance of reinforcing their role in both fields. In conclusion she raised the problem of data collection regarding racially-motivated acts.

The discussion centred on several topics including experiences of different States and how they have dealt with racism and discrimination. The French, Russian, U.S., Kazakh, Dutch, Turkish and Uzbek approaches were described. Participants noted that often the problem is not a lack of legislation, but rather effective implementation of it especially in cases where law enforcement officials fail to act on breaches of the law. It was also pointed out that many victims do not know their rights, or are unable to access them.

Session 2 on *Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants* was moderated by Ms. Isabelle Chopin, Deputy Director of the Migration Policy Group. The introductory speeches were delivered by Mr. Vladimir Lukin, Human Rights Ombudsman of the Russian Federation and Ms. Pascale Charhon, Director of the European Network Against Racism.

The aim of this session was to discuss how NIADs can overcome challenges in responding to racism and xenophobia. The session also served to highlight positive efforts and good practices undertaken in order to address these challenges. The first group of challenges identified was connected to the mandate and position of NIADs within the structure of other governmental bodies and institutions. Another set of challenges was related to the general atmosphere within society and the public perception of issues related to racism, discrimination and integration. The last group of challenges concerned the status and position of potential clients of NIADs.

Mr. Lukin acknowledged the difficult situation in the Russian Federation, being a multi-ethnic society which faces challenges in addressing minority and migration issues. He noted that the difficulty lies in the need for an effective fight against racial and ethnic discrimination and referred to the rise of nationalism and violence directed towards ethnic minorities. The gap

between legislation and its implementation was also outlined as well as the need for effective sanctions. In the fight against racism and xenophobia, he underlined that collaboration among various stakeholders and especially with civil society is crucial.

Ms. Charhon stated that the lack of independence of NIADs can hamper their ability to effectively address cases of racism and xenophobia. The importance of the Paris Principles, the ECRI recommendations and EU directive 2000/43 was underlined. She also describing the scope of potential NIADs' activities – that NIADs should be able to investigate complaints, bring cases to court and develop *amicus curiae* in court cases. She noted that some NIADs have used situation testing, a technique that is very helpful in assessing discrimination cases. She stressed that NIADs should also be able to undertake targeted research and make recommendations.

She stressed that assistance to victims is at the core of the role of NIADs, although it might be difficult to reconcile this function with the quasi-judicial power that some bodies have. Co-operation with civil society and the crucial need for dialogue between NIADs and both the public and the private sectors as well as with NGOs was recommended. The role of NIADs in raising awareness, and encouraging debate on issues relating to integration and migration was also mentioned.

The floor was then opened for discussion and many participants described the challenges that they are facing in their daily work. The discussion brought the following themes: education as one of the most effective instruments in order to fight racism and xenophobia; concern over the rise of extremism/nationalism, hate speech and violence; the difficult situation of minorities and indigenous people; the need for strengthened integration policies and migration laws; and the importance of increased collaboration between NIADs and other stakeholders, such as civil society.

Session 3 on *Good practices and effective policy responses in combating racism and xenophobia* was moderated by Ambassador Brendan Moran, Director of the OSCE Office of the High Commissioner on National Minorities. Introductory speeches were delivered by Ms. Marie-France Picart, Board Member of the High Authority to Fight Against Discrimination and for Equality, France (HALDE) and Ms. Naomi Churchill Earp, Chair of the United States Equal Employment Opportunity Commission (EEOC).

This session focused on possible ways to enhance the role and activities of NIADs. Presentations highlighted examples of good practices, policy initiatives, and effective responses to cases of racism and xenophobia.

In her presentation, Ms. Picart described the mandate and scope of activities of the HALDE in France and highlighted its dual role: to combat discrimination and to promote equality among all citizens. She noted that, despite being a relatively new institution, in the 30 months that it has existed, the HALDE has investigated more than 10,000 complaints. The HALDE has also extensive investigative powers enabling it to demand the submission of any document deemed useful and to hear witnesses, which gives it the means to solve the problem of proving discrimination.

Ms. Picart also stressed another important aspect of the HALDE's activities - if the HALDE actions signal the limitations of the law, it takes advantage of the individual cases submitted to it whenever possible to make general recommendations. These are directed at the Government in cases when legislation can be improved or at private individuals so that they can take measures to prevent the recurrence of discriminatory practices.

Ms. Earp outlined the roles and responsibilities of the United States Equal Employment Opportunity Commission. She noted that the Commission provides national leadership in enforcement and litigation activity: investigating, mediating, conciliating and litigating race and national origin discrimination complaints or charges. The Commission also contributes to the development of laws, policies and regulations related to race and national origin. It also provides outreach, education and technical assistance to employers, employees, stakeholders and the general public.

Ms. Earp also highlighted the importance of regional outreach and noted that the Commission has 53 field offices, which maximize its national impact, focusing on issues of particular importance to local and regional communities while also implementing national programs and initiatives. She recommended that NIADs ideally should consist of a strong, centralized organization that should show leadership, but also have regional branches in order to reach out to the groups directly affected by different forms of discrimination.

She concluded by mentioning a number of initiatives, which could be considered as good practices and replicated in other countries. In February 2007, the Commission launched the E-RACE (Eradicating Racism and Colorism from Employment) Initiative, an outreach, education and enforcement campaign implemented to advance the statutory right to a workplace free of race and colour discrimination.⁶ She also mentioned the Youth@Work Initiative, which was launched in September 2004 in order to teach teenagers about their workplace rights and responsibilities and help employers create positive work experiences for young adults.

Participants discussed the role of litigation and other tools available to NIADs in fulfilling their mandate and in ensuring effective co-operation with civil society, international organizations and international networks.

The closing remarks at the **Closing Plenary** were delivered by Ambassador Christian Strohal, Director of the OSCE Office for Democratic Institutions and Human Rights and Ms. Anastasia Crickley, Personal Representative of the OSCE CiO on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions and Chairperson of the National Consultative Committee on Racism and Interculturalism in Ireland.

The moderators of the working sessions gave a short overview of the main issues and recommendations that were discussed during the three sessions.

In her closing remarks Ms. Crickley highlighted the importance of data on discrimination and racism as a necessary prerequisite for drafting policies countering these phenomena. She thanked and commended the civil society representatives for their useful contributions and said that on the matter of definitions we 'should not fight too much where the comma goes'. She also addressed country delegations: 'to the participating States I would like to say, discrimination is a reality – a reality which was made very clear during the World Conference against Racism'. She also stressed that States should not confuse good practice with compliance and underlined the importance of independence of NIADs.

⁶ EEOC, *Meeting of February 28, 2007, to Launch E-RACE Initiative*, available at <http://www.eeoc.gov/abouteeoc/meetings/2-28-07/index.html> (last modified Apr. 10, 2007). See also EEOC, *The E-RACE Initiative*, available at <http://www.eeoc.gov/initiatives/e-race/index.html> (last modified Jan. 30, 2008).

Ambassador Strohal summarised the main outcomes of the meeting. First, he hoped that the meeting would result in an increased willingness by a larger number of OSCE States to establish and further strengthen NIADs. He noted that in establishing such bodies, there are many tools that States can look to including the UN Paris Principles, ECRI Policy Recommendation No. 9 and the EU Directive on Race Equality. He also encouraged the participants to look to the ODIHR's Tolerance and Non-Discrimination System (TANDIS) to access reports, guidelines and reports produced by other NIADs.

Ambassador Strohal also expressed his hope that the meeting helped to further facilitate co-operation between NIADs and that the recommendations from the Civil Society Roundtable Meeting will be used by NIADs to strengthen their co-operation with civil society.

He thanked the speakers, the participants, the Finnish Chairmanship, the Conference Services, the translators, and the ODIHR staff for their key role in the organization of the meeting.

II. RECOMMENDATIONS

This part of the report summarizes the recommendations arising from the three working sessions. These wide ranging recommendations made by delegations of OSCE participating States, international organizations and NGOs, were aimed at various actors, such as the OSCE participating States, OSCE Institutions and field operations, as well as other international organizations and NGOs.

These recommendations have no official status, are not based on consensus, and the inclusion of a recommendation in this report does not suggest that it necessarily reflects the views or policy of the OSCE. Nevertheless, they are a useful indicator for the OSCE to reflect upon how participating States are meeting their commitments to further strengthen the role of NIADs in combating racism and xenophobia.

Recommendations to the OSCE participating States:

- Those participating States that have not yet done so are encouraged to establish NIADs, in line with existing international norms, and to draw upon assistance offered by international organizations, such as the OSCE/ODIHR.
- When participating States intend to establish NIADs, involvement of NGOs, lawyers, human rights experts and academic institutions is crucial and should be ensured. Participating States should draw upon existing international and regional documents, such as the UN Paris Principles, General Policy Recommendations of ECRI and the European Union Directive on Race Equality.
- Mandates of NIADs should include monitoring and publicly reporting on violent hate crimes as well as tracking the implementation of OSCE commitments by governments.
- NIADs should be mandated to provide information and advice to relevant state bodies and institutions. Participating States should ensure that the advice of NIADs is taken into account in the formulation of public policy and, when necessary, translated into administrative and legislative measures.
- Participating States are encouraged to create special departments or units in their Ministries of Internal Affairs or Ministries of Justice or other appropriate Ministries tasked with monitoring the situation regarding hate crimes. Efforts are also needed to coordinate efforts with other ministries and to elaborate measures for further improvement of existing national anti-discrimination policies. Experts from non-governmental and international organizations should be invited to contribute to the work of these units.
- Participating States should ensure the independence of NIADs in three areas:
 - Composition of members of their governing bodies and structures;
 - Ability to conduct activities, investigation and litigation without political interference;
 - Funding should be approved annually by the parliament.

Recommendations to the OSCE, its Secretariat, Institutions and Field Missions:

- Joint statements by the ODIHR, ECRI and FRA addressing racism and intolerance such as the statement on 21 March, the International Day for the Elimination of Racial Discrimination, should be transformed into regular practice.
- The ODIHR should organize annual regional or OSCE-wide conferences and meetings with the involvement of civil society and government representatives working on anti-discrimination in order to discuss issues relating to combating racism and intolerance.
- The ODIHR should foster cooperation between governmental structures with genuinely independent institutions representing civil society.
- The ODIHR should consider elaborating guidelines concerning the role and functions of NIADs, based on ECRI's General Policy Recommendation No.2 and monitor implementation of the Guidelines by the OSCE participating States, paying special attention to the necessity for NIADs to have broad mandates.
- The OSCE should take the necessary steps to increase the capacity of civil society and to provide training on monitoring, reporting and documenting cases of discrimination.

Recommendations to NIADs:

- NIADs should give advice and analysis on implementation of OSCE tolerance and non-discrimination commitments, e.g. Ministerial Council Decisions on Tolerance and Non-Discrimination adopted in Maastricht (No.4/03), Sofia (No.12/04), Ljubljana (No.10/05), Brussels (13/06), Madrid (No.10/07) and Permanent Council Decisions 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, 607 on Combating Anti-Semitism, 633 on Promoting Tolerance and Media Freedom on the Internet; as well as conclusions and recommendations of the United Nations treaty bodies, special procedures and other international human rights mechanisms.
- NIADs should be established as centralised organisations with regional branches in order to reach out to the groups directly affected by different forms of discrimination.
- The mandates of NIADs should cover the following functions and responsibilities:
 - assistance to victims;
 - investigative powers and prerogatives;
 - the right to initiate, and participate in, court proceedings;
 - monitoring legislation and advice to legislative and executive authorities;
 - awareness-raising of issues of racism and racial discrimination among society;
 - promotion of policies and practices to ensure equal treatment, in line with the ECRI General Policy Recommendations No 2 and No 7.
- NIADs, in their strategic planning, should aim to promote equality through their involvement in the development of national policies, and not only combat discrimination. Through changing policies, practice and resources, NIADs have a remit to mainstream equality and substantially contribute towards the creation of intercultural societies.

- NGOs should be regarded as strategic and natural partners for NIADs and should be engaged in all relevant aspects of their work such as litigation, awareness-raising and education as well as legislative change.
- NIADs can benefit greatly from the support of, and collaboration with, international organisations and international networks; therefore such collaboration and co-operation should be strengthened.
- NIADs, as independent bodies and with links to civil society, should be more engaged in implementing preventive measures against discrimination.
- Effective coalitions should be built between NIADs, civil society and governmental authorities in order to ensure a common approach to efforts to combating racism and xenophobia.
- NIADs should undertake research and analysis concerning patterns of discrimination in the public and private sectors. In particular, they should focus on vulnerable groups and visible minorities. In order to make use of relevant experience and expertise, they should work together closely with civil society organisations that represent these groups.
- NIADs should conduct activities aimed at prevention of discrimination – public campaigns and awareness-raising activities.
- In order to provide effective assistance in dealing with individual cases, NIADs should have appropriate powers to obtain evidence and information, as well as to have recourse to the courts or other judicial authorities, if national laws permit so.
- NIADs should take steps to make their role known to victims groups and to actively intervene where discrimination is occurring.
- Strategic litigation is an important tool in combating discrimination but should be combined with outreach, education and professional training.
- NIADs have an important role to play in developing educational policies; in collaborating with both the governmental level (i.e. ministries of Education) and those representing minorities. NIADs should also develop policies/programmes in order to support outreach to youth.
- NIADs should undertake awareness-raising initiatives aimed at society in general and also increase their outreach to vulnerable groups and potential perpetrators of discrimination.
- NIADs should be more present, visible and recognized in condemning cases of discrimination or violence targeting minorities and immigrants which take place.
- NIADs should ensure that the law is properly implemented, and in cases where it is not, propose additional measures and legislative changes. NIADs also have an important role in collecting quantitative and qualitative data in order to formulate specific recommendations to the government.
- Exchange of experience and networking among NIADs is very important and therefore NIADs are encouraged to collaborate through mechanisms such as the network of equality bodies - EQUINET.

III. SUMMARIES OF THE SESSIONS

SESSION 1: The role and mandate of National Institutions against Discrimination (NIADs) in combating racism and xenophobia

Moderator: **Ms. Eva Smith Asmussen**
Chair, European Commission against Racism and Intolerance

Introducer: **Mr. Jozef De Witte**
Director, Centre for Equal Opportunities and Opposition to Racism (Belgium)

Anne Gaspard,
Executive Director of the European Network of Equality Bodies-Equinet

The discussion in Session 1 focused on different models of NIADs and cooperation between NIADs and other stakeholders.

Introducing the topic, Mr. Jozef de Witte outlined the structure and role of the Centre for Equal Opportunities and Opposition to Racism (CEEOR), using the 7 key issues mentioned in ECRI GP recommendation number 2 as a benchmark. He emphasized especially the importance of independence, both structurally and operationally. The job of fighting discrimination must not be left solely to NGOs but should be performed by a public authority with strong powers, although NIADs should work collaboratively with civil society.

Anne Gaspard, Executive Director of Equinet described how the network was created and why. It consists of 28 members from 25 countries. Equinet aims to provide a platform for sharing expertise and good practices. Among potential challenges were the need to outreach to minority groups to make them aware of their rights and build public trust and awareness. Most equality bodies act on both criminal and civil law and it is important to reinforce that. In her presentation she also raised the problem of data collection regarding racism. With its activities, Equinet supports genuine independence of European equality bodies and provides a platform for sharing of information and exchange of good practices.

After the presentations made by the introducers, the floor was open for interventions of the participants. Participants stressed that there is a need not only to act after an act of discrimination occurs, but also to prevent discrimination, especially against migrants. The NIADs, as bodies independent of government and with links to civil society, are well placed to perform this task, and should be encouraged to take on this role. Where there are growing tensions between different groups, NIADs should be aware of these issues. To help resolve them, they should make public statements with recommendations on how to move forward. The joint statement by ODIHR, ECRI and FRA on the International Day against Discrimination was mentioned as a good practice for international institutions.

The importance of coalition-building between NIADs, civil society and government was highlighted by some participants. This can be an important factor in making NIADs aware of, and responsive to, cultural diversity. NIADs need to reassure their users that they can understand the real problems of discrimination that people suffer. The importance of effective implementation of legislation was also raised.

The question of how to make it easier to report violations and to protect vulnerable groups was discussed. Violence and victimization of children in schools because of their race requires urgent action, and international collaborations of NGOs should be set up to deal with situations. NIADs must take steps to make their role known and to actively intervene where discrimination is occurring.

Another topic raised by several participants was the relationship between intolerance and democracy. Several participants noted that stopping xenophobia and discrimination can only be done with work both at local *and* national levels. In this context, the UNESCO project which sets up regional collaborations of cities committed to fighting discrimination can be an important initiative. Local offices where discrimination can be reported was cited as a good practice.

NIADs can work on strategic litigation but this is not the only tool available to fight discrimination. Outreach, education and professional training were identified as important supplementary tools.

The experience of different states and how they have dealt with discrimination, especially on the grounds of race, was discussed. The French, Russian, US, Kazakh, Dutch, Turkish and Uzbek approaches were described.

SESSION II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants

Moderator: **Ms. Isabelle Chopin**
Deputy Director, Migration Policy Group

Introducers: **Mr. Vladimir Lukin**
Human Rights Ombudsman of the Russian Federation

Ms. Pascale Charhon
Director, European Network Against Racism

The discussion in Session 2 focused on how NIADs can overcome challenges in responding to racism and xenophobia. The session also served to highlight positive efforts and good practices undertaken in order to address these challenges.

Ms Isabelle Chopin introduced the speakers and outlined the issues to be discussed.

In his presentation Mr. Vladimir Lukin acknowledged the difficult situation in the Russian Federation, a multi ethnic society faced with challenges regarding the treatment of minorities and migration. He stressed that the difficulty lies in the need for an effective fight against racial and ethnic discrimination. Even if nobody would openly encourage racism and xenophobia, one can see the rise of nationalism and violence directed towards ethnic minorities. The gap between legislation and its implementation was outlined as well as the need to have effective sanctions. He also noted that in the fight against racism and xenophobia collaboration among various stake holders and especially with civil society is crucial.

Ms. Pascale Charhon pointed out that the potential lack of independence of NIADs has some clear interference with their ability to realize their full potential and does affect their capacity to fully act on racism and xenophobia. She also underlined the importance of the Paris principles, the ECRI recommendations and the EU directive 2000/43. She stressed that NIADs should be able to investigate complaints, bring cases to court, develop amicus curiae in court cases. Some NIADs have used situation testing, a technique that could be developed and is very helpful in discrimination cases. NIADs should also undertake targeted research and make recommendations. Assistance to victims is at the core of their role, although it might be difficult to reconcile this function with the quasi-judicial power that some bodies do have. The cooperation with civil society and the crucial need for dialogue between with both the public and the private sectors as well as with NGOs was highly recommended. The role of NIADs in raising awareness, encouraging debate on issues relating to racism and xenophobia, integration and migration was also mentioned. Even if the EC Directive 200/43 is clearly excluding nationality as a protected ground, NIADs should work on integration and also on non-discriminatory aspects of integration and migration laws and policies.

The floor was then open for discussion and most participants were keen to relate to the situation on their national level, the challenges that they were facing and the main issues they have to deal with and work on daily.

Education was mentioned to be one of the most effective instruments in order to fight racism and xenophobia. Separation or segregation was mentioned as being the worst way to educate the youngest generation about tolerance. Within the education area, the role of language was mentioned many times, underlining the importance for minorities/migrants to be able to express themselves in their native language. Examples were given of specific countries where minority schools were properly part of the State education system. NIADs therefore have a role to play in developing educational policies, collaborating with both the governmental level (eg. ministries of Education) and those representing minorities. NIADs should also develop policies/programmes reaching out to the youth.

Rise of nationalist and xenophobic violence was mentioned by many of the participants. NIADs should therefore work on awareness-raising towards the society in general and also in reaching out to both vulnerable groups (such as local, religious communities) and potential perpetrators of such violence. The need for NIADs to be more present, visible and recognized when such events take place in condemning such events was stressed. As a counterbalance to such trends some participants proposed that NIADs should have a more active role in bringing cases to court, issuing binding decisions and mediation.

The difficult situation of minorities and indigenous people was underlined as well. NIADs should make sure that the laws are properly implemented, and where the laws are not sufficient to propose additional measures. That led to a discussion on the necessity for NIADs to make surveys/reports and to effectively monitor situations. NIADs have a responsibility in properly monitoring the implementation of laws and accompanying measures, collecting quantitative and qualitative data in order to be able to issue specific recommendations to the government. NIADs should start working on recommendations to properly collect data.

References were made to urge participating States that have not done so to sign/ratify some international instruments such as the CoE Framework Convention for the Protection of National Minorities and the European Charter for regional and minority languages.

Discussion took place on the definition of integration, the various possible ways to integrate, and what it does imply for both sides, namely the individual or the group that arrives in a given environment and the majority in the society. The more restrictive migration laws have been mentioned. NIADs should be working on integration as both anti-discrimination and integration are so closely interlinked.

At many occasions, it was repeated that cooperation and collaboration with the various stakeholders (whether governmental or from civil society) was crucial. The need to work with different communities could be achieved through different means, such as the creation of inter groups (like interfaith groups). Enforcement of rights is difficult and this is why all cooperation should be welcome, also with the local and regional assemblies and with other similar bodies. There is a need for NIADs to collaborate together through for example mechanisms such as EQUINET.

SESSION III: Good practices and effective policy responses in combating racism and xenophobia

Moderator: **Ambassador Brendan Moran**
Director, OSCE Office of the High Commissioner on National Minorities

Introducers: **Ms. Marie-France Picart**
Board Member of the High Authority to Fight Against Discrimination and for Equality, France (HALDE)

Ms. Naomi Churchill Earp
Chair of the United States Equal Employment Opportunity Commission (EEOC)

The discussion in Session 3 focused on good practices and effective policy responses in combating racism and xenophobia.

In her presentation, Ms. Picart described the mandate and scope of activities of the HALDE in France and highlighted its dual role: to combat discrimination and to promote equality among all citizens. She noted that, despite being a relatively new institution, in the 30 months that it has existed, the HALDE has investigated more than 10,000 complaints. The HALDE has also extensive investigative powers enabling it to demand the submission of any document deemed useful and to hear witnesses, which gives it the means to solve the problem of proving discrimination.

Ms. Picart also stressed another important aspect of the HALDE's activities - if the HALDE actions signal the limitations of the law, it takes advantage of the individual cases submitted to it whenever possible to make general recommendations. These are directed at the Government in cases when legislation can be improved or at private individuals so that they can take measures to prevent the recurrence of discriminatory practices.

Ms. Earp outlined the roles and responsibilities of the United States Equal Employment Opportunity Commission. She noted that the Commission provides national leadership in enforcement and litigation activity: investigating, mediating, conciliating and litigating race and national origin discrimination complaints or charges. The Commission also contributes to the development of laws, policies and regulations related to race and national origin. It also provides outreach, education and technical assistance to employers, employees, stakeholders and the general public.

Ms. Earp also highlighted the importance of regional outreach and noted that the Commission has 53 field offices, which maximize its national impact, focusing on issues of particular importance to local and regional communities while also implementing national programs and initiatives. She recommended that NIADs ideally should consist of a strong, centralized organization that should show leadership, but also have regional branches in order to reach out to the groups directly affected by different forms of discrimination

She concluded by mentioning a number of initiatives, which could be considered as good practices and replicated in other countries. In February 2007, the Commission launched the E-RACE (Eradicating Racism and Colorism from Employment) Initiative, an outreach, education and enforcement campaign implemented to advance the statutory right to a workplace free of race

and colour discrimination.⁷ She also mentioned the Youth@Work Initiative, which was launched in September 2004 in order to teach teenagers about their workplace rights and responsibilities and help employers create positive work experiences for young adults.

Participants discussed the role of litigation and other tools available to NIADs in fulfilling their mandate and in ensuring effective co-operation with civil society, international organizations and international networks

⁷ EEOC, *Meeting of February 28, 2007, to Launch E-RACE Initiative*, available at <http://www.eeoc.gov/abouteeoc/meetings/2-28-07/index.html> (last modified Apr. 10, 2007). See also EEOC, *The E-RACE Initiative*, available at <http://www.eeoc.gov/initiatives/e-race/index.html> (last modified Jan. 30, 2008).

IV. ANNEXES

ANNEX I. AGENDA

Day 1

29 May 2008

15.00 - 16.00

OPENING SESSION:

Opening remarks

Ms. Johanna Suurpää

Ombudsman for Minorities of Finland, Representative of the OSCE Chairman-in-Office

Ambassador Christian Strohal

Director of the OSCE/ODIHR

Mr. Alcee L. Hastings

President Emeritus of the OSCE Parliamentary Assembly

Keynote address

Mr. Morten Kjærum

Executive Director of the Danish Institute for Human Rights and Designated Director of the European Union Agency for Fundamental Rights

Presentation of report from the side event: roundtable for civil society

Mr. Michael McClintock

Advisor to the Fighting Discrimination Programme, Human Rights First

Technical information by the OSCE/ODIHR

16.00 - 18.00

Session I: The role and mandate of National Institutions against Discrimination in combating racism and xenophobia

Introducers:

Ms. Anne Gaspard

Executive Director of Equinet, The European Network of Equality Bodies

Mr. Jozef De Witte

Director, Centre for Equal Opportunities and Opposition to Racism (Belgium)

Moderator:

Ms. Isil Gachet

Executive Secretary, European Commission against Racism and Intolerance

Discussion

18.00

Reception by Chairman-in-Office

Day 2

30 May 2008

09.00 - 12.00

Session II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants

Introducers:

Mr. Vladimir Lukin

Human Rights Ombudsman of the Russian Federation

Ms. Pascale Charhon

Director, European Network Against Racism

Moderator:

Ms. Isabelle Chopin

Deputy Director, Policy Migration Group

Discussion

12.00 - 14.00

Lunch

14.00 - 16.00

Session III: Good practices and effective policy responses in combating racism and xenophobia

Introducers:

Ms. Marie-France Picart

Board Member of the High Authority to Fight Against Discrimination and for Equality, France (HALDE)

Ms. Naomi Churchill Earp

Chair of the United States Equal Employment Opportunity Commission (EEOC)

Moderator:

Ambassador Brendan Moran

Director, OSCE Office of the High Commissioner on National Minorities

Discussion

16.00 - 16.30	Break
16.30 - 17.30	<p>CLOSING SESSION: Reports by the Working Session Moderators</p> <p><i>Closing Remarks</i></p> <p>Ms. Anastasia Crickley Personal Representative of the OSCE CiO on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions and Chairperson of the National Consultative Committee on Racism and Interculturalism (Ireland)</p> <p>Ambassador Christian Strohal Director of the OSCE/ODIHR</p>
17:30	Close of Day 2

ANNEX II. ANNOTATED AGENDA

Tolerance and non-discrimination rank high among the priorities of the OSCE and participating States have repeatedly expressed concern about manifestations of racism, xenophobia, anti-Semitism, and other forms of intolerance, including against Muslims, Christians and members of other religions. In recent years, a significant number of OSCE high-level conferences were held which gave increased profile to the fight against intolerance and discrimination and led to further OSCE commitments by participating States to intensify their efforts in this regard.

The 2007 Madrid Ministerial Council Decision on tolerance and non-discrimination encouraged participating States to establish national institutions or specialized bodies to combat intolerance and discrimination as well as to develop and implement national strategies and action plans in this field.⁸ Although the majority of OSCE countries have in place national human rights or ombudsman institutions to deal with human rights violations in general, their mandates and capacity to deal more specifically with manifestations of racism and xenophobia vary.

Participating States have also committed to *‘protect migrants legally residing in host countries and persons belonging to national minorities, stateless persons and refugees from racism, xenophobia, discrimination and violent acts of intolerance and to elaborate or strengthen national strategies and programmes for the integration of regular migrants’*.⁹

Increasing ethnic and cultural diversity of societies is the inevitable consequence of migration. Increased migration means that a growing number of States have become or are becoming more multi-ethnic, and are confronted with the challenge of involving persons of different cultures, religions and languages. As Governments grapple with the new realities of their multi-ethnic societies, acts of discrimination and violence directed against migrants, refugees and other non-nationals continue to take place throughout the OSCE region.¹⁰

At the OSCE Ministerial Council in Sofia in December 2004, the OSCE participating States committed themselves to *‘take steps, in conformity with their domestic law and international obligations, against discrimination, intolerance and xenophobia against migrants and migrant workers’*, as well as to *‘consider undertaking activities to raise public awareness of the enriching contribution of migrants and migrant workers into society’*.¹¹ The issue of combating discrimination and acts of intolerance against migrants was discussed in the 2005 Human Dimension Seminar on “Migration and Integration”¹² Differences lie in the way authorities and civil societies act in order to prevent and combat discrimination and to ensure the harmonious integration of migrants into host societies.¹³

This SHDM will examine the role of national institutions in responding to and combating racism and xenophobia, in particular where such cases involve persons belonging to national minorities and migrants and ways to overcome substantive challenges at the national and international level.

⁸ See Permanent Council Decision 621 and Ministerial Council Decision No. 10/7, para. 10.

⁹ See Ministerial Council Decision No. 10/7, para. 7.

¹⁰ See ODIHR Report “Hate crimes in the OSCE region : incidents and responses - annual report for 2006”, p. 16-18, http://www.osce.org/publications/odihr/2007/09/26296_931_en.pdf

¹¹ See Ministerial Council Decision No. 12/4.

¹² Human Dimension Seminar on Migration and Integration: Consolidated Summary, http://194.8.63.155/documents/odihr/2005/07/15652_en.pdf

¹³ Id., p. 4-5, http://194.8.63.155/documents/odihr/2005/07/15652_en.pdf

Session I: The role and mandate of National Institutions against Discrimination in combating racism and xenophobia

National Institutions against Discrimination (NIADs) can play a vital role in combating racism and xenophobia. The importance of establishing such institutions and bodies by participating States has been recognised in OSCE commitments.¹⁴

While many OSCE participating States have established national institutions and specialised bodies dealing with racism, xenophobia and discrimination, there remains a need to discuss ways to strengthen these existing bodies and the question of establishing such bodies in cases where no such body exists. In strengthening and developing specialised bodies, OSCE participating States could draw upon existing international and regional examples such as the UN Paris Principles¹⁵, Policy Recommendations of the Council of Europe's European Commission against Racism and Intolerance (ECRI)¹⁶ or the European Union Directive on Race Equality¹⁷.

UN Paris Principles encourages Member States to establish or, where they already exist, to strengthen national institutions for the promotion and protection of human rights and to incorporate those elements in national development plans. A national institution shall be given as broad a mandate as possible, which shall be clearly set forth in a constitutional or legislative text, specifying its composition and its sphere of competence.

ECRI Policy Recommendation No. 2 on Specialised Bodies to Combat Racism, Xenophobia, Anti-Semitism and Intolerance outlines that specialised institutions should have the mandate to monitor the content and effect of legislation and advise legislative and executive authorities. They should not only provide aid and assistance to the victim but also have recourse to the courts and have the powers to obtain evidence and information on cases brought to their attention.

The European Union Directive on Race Equality establishes a requirement to create a specialised institution on racism within all Member States of the EU in order to offer assistance to victims of discrimination, to conduct independent surveys concerning discrimination and to publish reports on racism and discrimination.

Since NIADs are not the only actors engaged in combating racism and xenophobia, they also need to find ways to maximize their co-operation with civil society, academia and other state bodies and institutions in order to make their efforts in this field more successful. As part of their role in receiving, investigating and working to combat manifestations of intolerance, NIADs can form partnerships with different stakeholders and assist in establishing links between NGOs,

¹⁴ See Permanent Council Decision 621 (1, para. 12) and Ministerial Council Decision No. 10/7, para. 10.

¹⁵ The Paris Principles on National Institutions for the Promotion and Protection of Human Rights, http://www.info.gov.hk/info/eoc/annex6_e.pdf#search=%22Paris%20Principles%20%22

¹⁶ ECRI, General Policy Recommendation No 2 : Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level, 13 June 1997, http://www.coe.int/t/e/human_rights/ecri/1-ecri/3-general_themes/1-policy_recommendations/recommendation_n2/1-Recommendation_n%B02.asp#TopOfPage

¹⁷ European Council directive 2000/43/EC, 29 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, http://ec.europa.eu/employment_social/fundamental_rights/pdf/legisln/2000_43_en.pdf

representatives of migrant and minority communities and State institutions whilst maintaining their own independence.¹⁸

This session will also explore how different models and mandates of national institutions affect their scope of activities, their effectiveness and the application of legal remedies. Given the broad range of structures and frameworks within which NIADs operate, this session will identify those which proved to be effective and could be used as good examples by other States. One of the crucial issues related to the mandate of NIADs is that of independence. Stable financing, transparent appointment of management and clear overview procedures are some of the prerequisites for independent position, which is necessary if NIADs are to carry out their task in an impartial manner.

Issues to be discussed:

- What is the role of NIADs in combating racism and xenophobia?
- How can differences in mandate, function and structure of NIADs influence their outcomes and scope of activities?
- How is the independence and autonomy of NIADs reflected in their mandate?
- What are the differences in models of financing NIADs and what is the impact of different models to their position?
- How do variations in scope (specialised bodies dealing with racism/xenophobia vs. institutions dealing with discrimination and equality) influence the impact and areas of activities?
- Which are the most effective initiatives undertaken by NIADs in combating racism and xenophobia?
- What are effective examples of co-operation between NIADs and civil society?

Session II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants

There are three basic types of challenges NIADs have to overcome in responding to racism and xenophobia; each of them requires a different approach, which should respect the unique national context. The first group of challenges is connected to the mandate and position of NIADs within the structure of other governmental bodies and institutions. Another set of challenges is related to the general atmosphere within the society and the public perception of issues related to racism, discrimination and integration, which may include trends related to public discourse and the general attitude of the population to migrants and minority groups.

There are also challenges connected to the status and position of potential “clients” of NIADs, including persons belonging to national minorities and migrants who may be faced with structural barriers, which limit or even deny/prohibit their access to legal remedies against racism, xenophobia and discrimination. Such barriers are often related to the legal status of the person, insufficient knowledge of the official language, low awareness of their rights and protection mechanisms, mistrust in authorities and fear of secondary victimisation. However, many of these barriers can be overcome through outreach to victim groups, a pro-active approach and confidence-building measures.

¹⁸ This point was raised during the SHDM on Protection and Promotion of Human Rights: Responsibilities and Effective Remedies, held in Vienna on 12-13 July 2007, see: http://www.osce.org/documents/odihr/2007/10/27281_en.pdf

The aim of this session is to discuss how NIADs can overcome all of the abovementioned challenges and to identify positive efforts and good practices in addressing these challenges.

Issues to be discussed:

- What is the role and position of NIADs in the national framework of bodies and organisations fighting racism, xenophobia and discrimination?
- What steps can be taken to overcome barriers (such as legal status, language, lack of knowledge of remedies) for victims to access remedies for acts of discrimination?
- How can NIADs improve social awareness and engage the general public in efforts to combat racism and xenophobia and to promote mutual respect and understanding towards migrants and persons belonging to national minorities?
- How can NIADs effectively respond to racism, xenophobia and discrimination through litigation? What other means exist?
- What role can NIADs play in ensuring an adequate awareness by courts of the aims of anti-discrimination measures?
- How can the legal status of migrants influence the availability of effective legal remedies for such groups when they experience racism or xenophobia?
- How can NIADs effectively respond to racist and xenophobic public discourse?
- How NIADs strike a balance in their efforts to ensure pro-active and reactive approaches in responding to cases of racism and xenophobia?

Session III: Good practices of NIADs and effective policy responses in combating racism and xenophobia

During the 2005 Human Dimension Seminar on “Migration and Integration”, it was recommended that migrant interest groups should play a crucial role in awareness-raising on specific issues, capacity-building and consultation in decision-making on issues related to migrants.¹⁹ NIADs are in a position to facilitate such consultation and involvement of representatives of minority and migrant groups having regard to the difference in legal status between the two categories of persons. In the course of such consultations, different needs of different victim groups can be identified and reflected in action plans and other policy initiatives pursued by NIADs.

NIADs can also play an important role in the implementation of concrete measures to prevent the marginalisation and exclusion of migrants and refugees and to provide protection from racism, xenophobia, discrimination and violent acts of intolerance through the elaboration of a legal framework for the integration of migrants and refugees and the development of national strategies and programmes for their integration. It is therefore important that the unique independent position of NIADs, and their first-hand knowledge of the problems faced by national minorities and migrants, are utilised in the development of policies, national strategies and action plans targeting these communities.

¹⁹ Human Dimension Seminar on Migration and Integration: Consolidated Summary, p. 7. See: http://194.8.63.155/documents/odihhr/2005/07/15652_en.pdf

This session will therefore focus on how to enhance the activities of NIADs, in view of good practices, in preparation of policy initiatives, application of concrete activities and effective responses to cases of racism and xenophobia.

Issues to be discussed:

- How can NIADs effectively contribute to the drafting and implementing of national strategies, policies and action plans to combat racism/xenophobia, including those related to integration?
- How can interaction with other State institutions maximise the effectiveness of implementation of national strategies, policies and action plans?
- What are the good practices in recognising different needs of different victim groups and reaching out to marginalised groups?
- How can international legal standards be implemented by NIADs in combating racism and xenophobia?

ANNEX III.

- **Keynote Speech by Morten Kjærum, Director of the European Union Agency for Fundamental Rights**

(Written statement)

It is a great pleasure for me to be here today, to address this distinguished audience. It is timely and important that the OSCE is putting the issue of discrimination of national minorities and migrants onto the table just as we are witnessing an increase throughout Europe of racist activities. These activities include everything from discrimination in the labour market, violent attacks and hate crimes to racist media campaigns.

For a number of years, we have had specialized equality and non-discrimination bodies and national human rights institutions working to find modalities to fight racism and promote equal treatment and equal opportunities. A lot of lessons have been learned and it is of the utmost importance that we now commit ourselves to sharing our knowledge and experience. Together we should find new methods to ensure and enhance the protection of national minorities and migrants from exclusion and stigmatization.

I will focus my presentation today on the role played by national human rights institutions as they provide a unique platform for dialogue for all actors in society and because they work with a specific focus on the human rights of national minorities and migrants.

This particular type of institution emerged in many European countries during the last decade and in many countries they are regarded as an important component in the democratic structure of the state. National human rights institutions are established by law as independent organisations with a mandate to advise on and monitor human rights at the national level. This mandate is regulated according to the UN Paris Principles which were adopted by the GA in 1993.

According to the Paris Principles, a national institution has a special responsibility to “combat all forms of discrimination, in particular racial discrimination, by increasing public awareness, especially through information and education and by making use of all press organs”. To substantiate this, the international network of national institutions adopted the Copenhagen declaration in 2002 and the Santa Cruz declaration in 2006 to specify the particular role national institutions should play in order to combat racism and discrimination.

I would like to highlight three dimensions underpinning the role of these institutions: the benefits bestowed by their composition, the advantages of the networks they have access to, and the advantage they gain from working within the human rights framework.

According to the Paris Principles, national human rights institutions must have a pluralist representation of social forces in their governing structures either as commissioners or in the board of directors. This means that in most national institutions national or ethnic minorities, migrant groups or refugees are represented and have an equal voice together with other forces in society. This provides groups, which may have opposing views or who may even be in direct conflict with each other, a forum to discuss their particular problems within a human rights framework. There are a number recent examples of tensions between majority and minority populations dissipating in the meeting rooms of national institutions.

Secondly, national institutions have very closely knit regional and global networks which offer a valuable resource to assist migrants and national minorities who are in need of help. For example, when a person is being extradited, national institutions may be of assistance in the sending country if the extradition is problematic from a human rights perspective or they can provide help in the receiving country if there are particular protection issues at stake. The Danish Institute has been involved in a number of cases involving the extradition of trafficked women.

In other instances we see national institutions assisting their compatriots abroad such as the Moroccan national commission which is very active in different European countries and in some cases collaborates closely with the local national commission. A very important initiative, currently taking place, is the sequence of roundtables of national institutions from the Arab region and Europe. These roundtable meetings have multiple purposes but one of them is to address the issue of migration and the protection of migrants in these two regions.

The last issue I would like to raise regards the advantages of having a human rights framework to address racism. Attempts have been made to combat racism for decades, but, like a hardy weed, it keeps returning in different guises. Strategies and methodologies in this struggle have changed over time and one of the current trends is to approach racism within a broader context of discrimination. As such, these strategies target the reason why people tend to perceive fellow human beings in one dimension only focusing exclusively on their sex, race or religion, and not on their qualities as an individual, a unique human being with multiple identities.

Approaching discrimination as a horizontal phenomena with a common denominator in relation to gender, disability, sexual orientation, religion, race and ethnicity, may offer new, more profound and effective ways to combat racism and discrimination.

To illustrate this, the horizontal approach makes us see both the individual woman, the Roma person and the lesbian person as the same person and allows us to understand her experience of discrimination. As such this approach paves the way for better understanding and allows society to tackle multiple discrimination as well as the historic and societal causes for racism and xenophobia.

During the last few years, in a number of European countries, equality and equal opportunity institutions have begun to merge into human rights institutions. The EU Fundamental Rights Agency is a part of this trend, having been transformed from the European Monitoring Centre against Racism into a broader agency for human rights. This development offers an institutionalization of the horizontal approach to discrimination, however, it carries with it a specific challenge, which is not to lose sight of the particularities of each of the different grounds for discrimination and thereby create a superficial generalized strategy which only partly targets the problems involved.

In conclusion, I would like to underline that this important struggle to defeat racism constantly calls for new actors and innovative strategies. However, traditional specialized institutions and NGOs are still a vital element in the arsenal of the anti-racism movement. The national human rights institutions are new actors in this field with a potential to expand the already existing tool box and with the ability to function as a platform for constructive dialogue among social actors, authorities, the business sector and other actors engaged in the effective combating of racism and xenophobia.

Thank you for your attention.

ANNEX IV: INTRODUCTORY SPEECHES TO WORKING SESSIONS
SESSION I: The role and mandate of National Institutions against Discrimination
in combating racism and xenophobia.

- **Ms. Anne Gaspard, Executive Director of Equinet, The European Network of Equality Bodies**
 (From PPT presentation)

Equinet Network

- From a cooperation project to a structured network (2003-2007)
- Equinet established as a European Network of specialised equality bodies (2007)
- Brussels-based Equinet secretariat (operational 2008)
- PROGRESS Community Funding and Members contributions (since 2007)

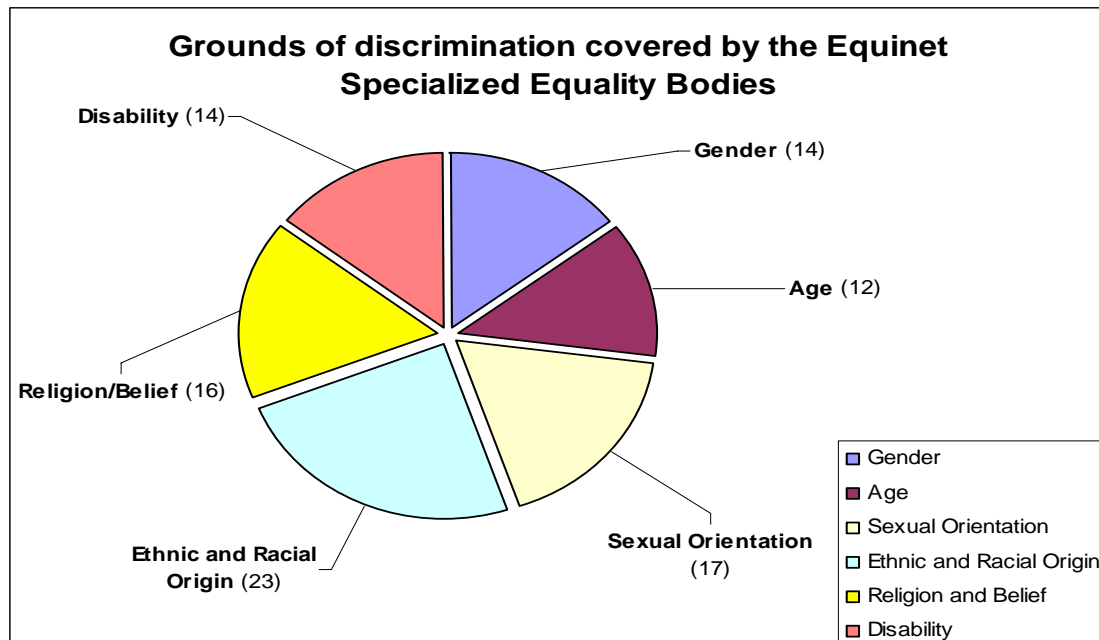
Equinet Members

- Network of specialized equality bodies (28 members from 25 countries in 2008)
- Specialised equality bodies on the basis of EC Equal Treatment Directives, in line with UN Paris Principles and ECRI Policy Recommendation on Specialised Bodies
- Diversity among national equality bodies in terms of mandate, grounds and experience

Equality Bodies

- Assistance to victims of discrimination
- Monitoring and reporting discrimination issues
- Promotion of equality
- Securing legal protection at the highest possible level

Discrimination Grounds



Equinet aims

- Cooperation / networking
- Exchange and sharing of practical experience, expertise and good practices
- Peer support
- Capacity-building and training
- Platform for dialogue with European institutions and stakeholders

Activities 2008

- Working groups:
 - Dynamic Interpretation (European Anti-Discrimination Law in Practice)
 - Policy formation
 - Promotion of equality
 - Strategic enforcement
- Training seminars:
 - Solving discrimination cases from a comparative law perspective (Sofia, June 2008)
 - Multiple discrimination (Rome, October 2009)
- Study on independence of equality bodies

Potential & Challenges

- Resources, Independence and status
- Awareness of rights and public information
- Access to minority groups and public trust
- Develop constructive partnerships and cooperation with civil society
- Capacity Building (internal and external)
- Same level of protection for all grounds of discrimination

THANK YOU

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- **Mr. Jozef De Witte, Director, Centre for Equal Opportunities and Opposition to Racism (Belgium)**
(From PPT presentation)

The presentation by Mr. Jozef de Witte, Director, Centre for Equal Opportunities and Opposition to Racism (Belgium), delivered to the Session 1 (*The role and mandate of National Institutions against Discrimination in combating racism and xenophobia*), from PPS

Outline

- The Centre for Equal Opportunities and Opposition to racism
- ECRI General Policy Recommendations #2
- The 7 issues to be discussed
- Conclusions

The Centre for Equal Opportunities and Opposition to racism (CEOOR)

CEOOR is a public service:

- Independent in accomplishing its missions
- Established by an Act of Parliament on February 15, 1993
- Responsibilities:
 - Promotes equal opportunities
 - Fights each form of discriminations
 - The focus is to find solutions to societal problems

The four objectives of the Centre

1. Complaints of victims of racism, discrimination, disrespect of one's rights as a foreigner
>> response or solution, suited for him/her and for society
2. Requests for information, guidance or training,
>> a suitable reply asap, a solution
3. Requests for policy advice
>> formulate advice to achieve solutions, on our own initiative or by government request
4. Contributing to knowledge by the general public of rights and duties, ...
>> public knows rights and duties, knows concepts as diversity and respect, knows the Centre and its missions

ECRI General policy recommendation #2

Seven principles for NIADs's good functioning

- (1) Terms of reference
- (2) Alternative forms of specialized bodies
- (3) Functions and responsibilities
- (4) Composition
- (5) Independence and accountability
- (6) Accessibility
- (7) Style of operation of specialized bodies

Seven issues to be discussed

Issue 1: role of NIADs's

- To help victims
- To formulate tailor-made advice to institutions

- To formulate general policy advice
- Awareness-raising of general public:
 - On rights
 - On the role of the NIADs

Issue 2: differences in mandate, influencing outcomes

Public service, but independent. advantages:

- Recognition
- Moral authority
- Facility to contact authorities

Issue 3: the independency

- Clearly in a legislative text
- Respected by government
- Applied by board of directors
- Applied by each and every member of staff
- Respected by media, ...
- Independency is not just given, it has to be fulfilled each and every day.

Issue 4: the impact of models of financing

- “Sufficient” : ???
- If public service: to be fully funded by public funds
- Under direct control of the parliament

Issue 5: influence of scope on impact

Postulate: Broad scope = more impact

- More resources, human and financial
- Better known
- More seen as objective
- More learning from different grounds

Issue 6: most effective initiatives

- Case law
- Training
- Cooperation agreements
- Advice on preventive measures
- Local offices
- Round tables
- Awareness-raising of general public

Issue 7: cooperation with civil society

First of all: mutual respect for each role

- To elaborate concepts like “social cohesion”
- The evaluation of policies
- Consultation about disputed questions, like socio-economic monitoring

Conclusions

- Regarding CEOOR
- Regarding NIADs more generally

SESSION II: Overcoming challenges in responding to racism and xenophobia with a special focus on persons belonging to national minorities and migrants

- **Mr. Vladimir Lukin, Human Rights Ombudsman of the Russian Federation**
(Written statement)

The Role Of Human Rights Institutions In Combating Racism And Xenophobia

(summary of the speech)

1. Globalization stimulates the increase of migration, whereas the people's collective consciousness does not keep pace with this process.

2. Developed countries are gradually refusing from restrictions on immigration. The European Union serves a striking example to that, where the internal borders have long ago become fully transparent. Overwhelming majority of immigrants can be observed in developed countries. The UN estimates demonstrate that within the past 15 years the inflow of immigrants from the developing to developed countries accounted for at least 33 million people. Apparently, the real figure is significantly higher.

3. The dissolution of the USSR led to the creation of new states, which chose the easiest way in the search of their new identity, i.e. by identifying themselves solely based on their ethnicity/nationality. Even multi-ethnic Russia was affected by this trend, while in other post-Soviet countries it became a dominant one.

Moreover, in all post-Soviet countries the people having various ethnic origins received greater opportunities in moving beyond the areas of their compact residence. The territorial disproportions of economic development in post-Soviet area lead to replication of the aforementioned global trend - to a substantial flow of migration towards developed regions, and mainly, to Russia.

4. Nowadays it is hard to find a country, which legalizes discrimination on the basis of racial, ethnic or religious grounds. Neither it is possible to find a country, which would openly encourage racism and xenophobia. Or at least a country, which would deny the necessity of combating these terrible phenomena.

However, the problem lies in the fact, that quite often there is a substantial gap between fair laws and actual practice of their implementation. Furthermore, the community-based forms of racism and xenophobia can not be affectively addressed through legislation alone.

Another problem is that extremist ideas and xenophobic attitudes are nowadays commonly concealed as formally legitimate disagreement with the state's migration policy.

5. Everything that has been mentioned just now applies in full measure to the Russian Federation – a young democratic country with tragic past and largely controversial present, with rich and diverse culture and, unfortunately, not always democratic and tolerant traditions.

The Constitution of the Russian Federation guarantees the equality of rights and freedoms of man and citizen, regardless of sex, race, ethnicity, language, origin, property and official status, place of residence, religion, or belief, and membership in public associations. The laws prohibiting discrimination on the basis of race and ethnicity have been adopted, and criminal liability has been established for their violation.

6. However there is a considerable gap between anti-discriminatory legislation of Russia and the practice of its implementation. The conflicts based on national, racial, religious hatred occur in Russian society with a worrying regularity.

The role of national human rights institution in combating racism and xenophobia is complex and peculiar. In one hand, all conclusions and decisions made by the Ombudsman have a

recommendatory nature. On the other hand, the Ombudsman has unrestricted right both to carry independent investigations, and request the law enforcement bodies to provide detailed activity reports in the area of crime prevention and investigation of particular crimes. This can be done with a view to bring these reports, together with Ombudsman's own assessment of the content, as well as of any other racist or xenophobic crimes, to public awareness as widely as possible. Using its right to bring any information regarding the issues of racism and xenophobia to public judgment, the national human rights institution may become one of the main educators cultivating national, racial and religious tolerance in the state and inside the society.

The function of cultivating tolerance-based programmatic agenda has particular significance in every country, including Russia. Ultimately, it is understood that the problem cannot be solved solely by retaliatory and repressive measures, applied in accordance with the legislation to people found guilty in committing crimes motivated by racism and xenophobia. It is not only because responding to already committed crimes makes it impossible to start their effective prevention. The crimes motivated by racism and xenophobia are being committed, and propaganda of national, racial and religious hatred is generally generated by people belonging to national majority, or, so-called "indigenous" population. Whatever they do, they remain "local and friendly" to the majority of population, whereas their victims become "strangers". This is the exact reason why Russian courts, for example, have a tendency to often acquit Russian military officers, accused of crimes against Chechens, Ingushs and members of other national minorities. In Russia there also exists a phenomenon of day-to-day community-based xenophobia, without elimination of which it is difficult to count on success in combating racism and xenophobia in general. Since it is impossible to punish for pernicious habit of dividing people into "Russians" and "non-Russians", this habit can only be defeated by the measures of educatory nature. That is exactly what the main efforts of the national human rights institution should be targeted at.

- **Ms. Pascale Charhon, Director, European Network Against Racism**
(Written statement)

Ladies and Gentlemen and representatives of the OSCE participating states,

Let me first of all thank the OSCE for inviting me to this human dimension meeting on National Institutions against Discrimination in Combating Racism and Xenophobia, and giving me the opportunity to give the European Network against Racism's (ENAR) views on national Institutions against discrimination and combating racism. We are very pleased that the OSCE participating states and ODHIR acknowledge the important role that NIADs can play in protecting victims of discrimination. This supplementary meeting is an important one and we are looking forward to some fruitful discussions that can create momentum for achieving equality in practice.

The right to non-discrimination and equality before the law, including equal protection of the law without discrimination, constitutes a universal right recognised by various international, regional and domestic legal sources. Along with complementary non-legal mechanisms, these sources form the basis of human rights frameworks established to protect these rights.

We would like to assess from the civil society perspective the reality of the implementation of the UN Paris principles and the Council of Europe ECRI recommendation on specialized bodies and contrast it with our experience in promoting the right to non discrimination for ethnic and religious minorities and migrants on the territory of the European Union. Our analysis will strongly rely on the experience of the newly set up equality bodies within article 13 of the EU's race equality directive 2000/43, but linking it to the global context of the debate on non-discrimination, migration and integration, as these issues affect the protection of persons belonging to national minorities and migrants in an important manner.

Racism and ethnic discrimination remain persistent, evolving and pervasive social phenomena within the EU. Nowadays, the combined effect of discrimination based on race, ethnic origin, religion, nationality and legal status can result in people being denied the full enjoyment of their human rights. In adopting Article 13 of the Amsterdam Treaty in 1997 and the Race Equality and Employment Equality Directives, the EU and its Member States acted unanimously to combat discrimination on grounds of racial or ethnic origin, sexual orientation, age, disability and religion or belief. This was an important milestone, and there is clear evidence that EU-level protection has improved the lives of the ethnic and racial minorities in the EU. Nevertheless, this action was a milestone on a journey towards equal protection, not a final destination, and gaps remain. In recognising the need for "New Initiatives designed to prevent and combat discrimination outside the labour market" the European Union has made a significant step in recognising the existence of such gaps and the need for EU action to address this. The European Commission is currently planning a new directive to be proposed to the Council end of June and designed to prevent and combat discrimination outside the labour market. But legislation alone is not enough; combating racial discrimination requires the combined effort of legislators, policy makers, the judiciary, employers, educational institutions, the media, civil society and especially of national institutions against discrimination. It is now well recognised that NIADs or equality bodies are needed to promote the equal treatment of all persons without discrimination on one or more prohibited grounds including race and ethnic origin, religion or belief. The common objective is to achieve cultural change within society by promoting equality throughout society at large and in close interaction with those civil society partners that represent communities affected by discrimination. Equality bodies have the aim of securing the incremental implementation of

equality norms but also seek to change organisational policy and behaviour to reduce or eliminate underrepresentation, exclusion and institutional barriers to equal opportunities.

Looking at the situation of NIADs within the European Union, it is worth recognising the importance of the UN Paris principles on national institutions protecting human rights which have set the key norms for equality bodies to operate in international law. These principles include:

1. Independence guaranteed by statute and or constitution
2. Autonomy from government
3. Pluralism including in membership
4. A broad member based on universal human rights standards
5. Adequate resources and adequate power of investigation

The 1997 COE ECRI Recommendation on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance has also provided a series of principles for setting the frame of operation of specialised national bodies.

- Equality bodies should work towards the elimination of the various forms of discrimination and promote equality of opportunity and also have a role in monitoring the content and effect of legislation with respect to their relevance to the aim of combating racism, xenophobia, anti-Semitism and intolerance.
- They are to provide aid and assistance to victims, including legal aid, in order to secure their rights before institutions and the courts. They should hear and consider complaints and petitions concerning specific cases and seek settlements. In this context, they should also have appropriate powers to obtain evidence and information.
- They should provide information and advice to relevant bodies and institutions, including State bodies and institutions and issue advice on standards of anti-discriminatory practice in specific areas. They also have a role in promoting the awareness of the general public to issues of discrimination and to produce and publish pertinent information and documents.
- With regard to their independence, specialised bodies should be provided with sufficient funds to carry out their functions and responsibilities effectively. In setting up specialised bodies, Member States should ensure that they have appropriate access to governments, are provided by governments with sufficient information to enable them to carry out their functions and are fully consulted on matters which concern them.

As part of the EU's Racial Equality Directive adopted in 2000, a provision was introduced requiring all EU Member States to establish "bodies" to assist victims of racial and ethnic discrimination, to conduct surveys about the forms and prevalence of discrimination and to issue reports and recommendations. In the Preamble to the Racial Equality Directive, the EU legislator considered that "protection against discrimination based on racial or ethnic origin would itself be strengthened by the existence of a body or bodies in each Member State, with competence to analyse the problems involved, to study possible solutions and to provide concrete assistance to victims." [Recital 24]

What is the assessment of the situation in so far from our perspective? Generally, the ENAR Shadow reports that cover the situation of racism and xenophobia in the 27 members states of the EU have demonstrated that in many countries the introduction of national equality bodies was seen as a significant and positive step and perceived as an opportunity to advance the promotion of equality norms and enforcement of legislation through various mechanisms and procedures. Depending on the mandate of the Equality bodies, these can include:

- **Investigating complaints** as a neutral party and issuing legally binding or non-legally binding opinions.
- Taking action in their own name and **bringing a case to court** in their own right.
- Stimulating the use of **strategic litigation**. The role of equality bodies in encouraging strategic litigation can stimulate social change; ensure a better interpretation and/or, clarification of the law, document injustices, governmental accountability, change public attitudes and empower vulnerable groups. The advantages of strategic litigation are that a single case can achieve a wide social impact and a good use of limited resources; it can set a precedent and have an educational function, it can result in political pressure, influence public opinion. Equality bodies recognise the importance of this tool to increase their effectiveness and to provide an alternative route to the challenge of increasing caseloads.
- Equality bodies can also intervene as an ‘**amicus curiae**’ supporting associations and other entities in court cases.
- Some equality bodies have been led to use **situation testing**, a method aimed at establishing that a discriminatory practice exists, where a person with a specific characteristic is treated less favourably than another person without this specific characteristic in a similar situation. This is mentioned and permitted by law in Belgium, France and Hungary. It has been admissible as evidence in court in Belgium, Czech Republic, Denmark, Finland, France, Hungary, Ireland, the Netherlands and the United Kingdom. It is used by NGOs in Belgium, Czech Republic, France, Hungary, the Netherlands, Sweden, and is under development in Austria, Denmark, Finland, Ireland, Slovakia and the United Kingdom.
- Equality bodies have **powers of investigation** that can help them to look into a key issue, a sector or a theme and address systemic and structural discrimination in a thorough manner. They can also be entrusted as it is the case in the UK with quasi investigative powers related to the positive duties incumbent to public authorities in promoting race equality.
- They can also undertake **targeted research** as an essential tool in addressing structural discrimination.
- Finally the setting of the **European network of equality bodies (EQUINET)** is an important dimension that will allow equality bodies to cross fertilise experience, exchange ideas and develop ways and mechanisms to become more effective and instrumental in their work nationally.

If we undoubtedly recognise the role that equality bodies have played in advancing racial equality, we also need to address the deficiencies that still prevent equality bodies from realising their full potential.

In terms of mandate and independence, research by ENAR members shows that in most countries, equality bodies are committed to fulfilling their role in ensuring the effectiveness of the law. But their work may be undermined as a result of limitations in their powers and remit. ENAR members have concerns in some countries regarding the independence of equality bodies

and hence their ability to meet the requirements for independent advice, surveys and reports in the Race Equality Directive. Some equality bodies are located within Ministries; this raises serious questions surrounding their capacity to adopt a critical stance if government policies are having a discriminatory effect.

The Migration Policy Group study conducted on equality bodies notes that quite a number of equality bodies are not established on the basis of a constitutional or legal provision, which makes their position vulnerable to sudden changes in the policies of the government. In addition, a number of them have official ties with the government, in the sense that government officials are part of the (board of the) institution or otherwise have some say over the institution's policies, or can have some (undue) influence on the outcome of surveys or investigations (e.g. by way of their right to appoint or dismiss members of staff).

As far as unofficial contacts with the government and with NGOs are concerned, the same report notes that there is a dilemma: such contacts may on the one hand undermine the appearance of independence necessary to carry out the mandate of the body; on the other hand, they can be desirable in order to combine forces in the fight against discrimination. It appears that not all equality bodies are holding the balance appropriately.

Assistance to victims

Research has shown that in most countries the task of assisting victims is not only an official competence of one or more equality bodies, but is also actually exercised by them. The forms that assistance takes vary widely. ENAR members have noted that many equality bodies sometimes fall short of fulfilling the competence of support and independent assistance to victims of discrimination in bringing legal cases and pursuing their complaints, or do so in an extremely limited way. There is also concern in some member states about the emergence of conflicts between the quasi-judicial responsibility of some equality bodies and the mandate to support victims of discrimination to bring a claim.

Research has shown that 12 out of 30 equality bodies do not have a mandate to assist victims of racial and ethnic discrimination in some manner or other which means that these Member States appear not to be in compliance with the Directive. The fact that the other 18 equality bodies legally have the power to assist victims is no proof that they actually are in a position to do so. Besides, if more than two thirds of all equality bodies (22) have some power to hear and investigate complaints. It remains unclear what this mandate requires.

Conducting surveys and issuing recommendations

Although these competencies are included in the mandate of most equality bodies, very few surveys into the forms and prevalence of racial and ethnic discrimination have been done and very few reports and recommendations about these issues have been published. It seems that the two other competencies (assistance to victims and hearing and investigating individual complaints about discrimination) are taking up most of the money and time of the equality bodies, to the detriment of investigating the forms and causes of discrimination and making recommendations about how to structurally improve the situation.

Relationship with civil society

The situation here is uneven; some equality bodies have relationships in place through various mechanisms and structures while others have an approach which is still very much ad hoc. The fact that some equality bodies are being limited by their mandate or workload to take cases can give an additional impression of distrust at the level of the communities experiencing discrimination and the organisations that represent them.

The situation of migrants and national equality bodies

We would now like to specifically address the question of the situation of migrants and ethnic minorities in this debate. ‘Migrants’ are a diverse group with diverse backgrounds and migration histories, including third country nationals from outside the European Union and EU citizens from both ‘old’ and ‘new’ EU Member States. They can be refugees, asylum seekers, migrant workers, those who enter through family reunion, legally resident and long-established or undocumented immigrants. ENAR members have expressed concerns that European migration policy is increasingly becoming more restrictive, and focusing only on the economic contribution of migrants and less on human rights. Concerns are raised with regard to the negative impact restrictive migration policies can have on integration, including restrictions in the area of family reunion and access to citizenship. In addition counter-terrorism is deemed to be negatively impacting on migration policy, resulting in increasingly securitisation of the immigration policy agenda. In that context the extent of powers given to immigration officers, and the increasing role of the policy in immigration is also of serious concern.

Another problem consists in the fact that although, in principle, every person is entitled to the right to non discrimination regardless of his/her legal status, the effective exercise of rights can be, and is, undermined by differential treatment based on citizenship or immigration status. Third country nationals tend to suffer multiple discrimination, which can blur the distinction between ‘lawful’ differential treatment based on citizenship status and unlawful discrimination on the grounds prohibited by the European treaties. While the Race Equality Directive made important steps forward in protection against discrimination by applying the principle of non-discrimination on grounds of race and ethnic origin to third country nationals, the ENAR Shadow Reports demonstrate that the lack of protection against nationality discrimination on the one hand and the exclusion of immigration matters on the other have left third country nationals unprotected from such discrimination. They also demonstrate that this “sends a message that discrimination against third country nationals is acceptable”²⁰. ENAR has consistently highlighted this significant gap and called for the abrogation of Article 3.2 of the Race Equality Directive which allows for an unacceptable derogation from the principle of equal treatment, allowing ‘any difference in treatment’ arising from nationality and the legal status of third country nationals.

The ENAR submission to the European Commission assessing the EU’s Framework Employment Equality Directive found that: “ENAR members have noted that, discrepancies in the protection of the rights of migrant workers have a direct relationship to how migrants experience discrimination in the labour market, while on the other hand national labour market laws and regulations directly affect, and in some cases prevent, migrant workers from enjoying protections granted by anti-discrimination legislation.”²¹

In this context, ENAR believes it is essential that national equality bodies should engage more clearly in the debate around migration and integration and provide a safe space for third country nationals to claim their right to non-discrimination and be supported in protecting this process.

Because of the situation pictured above, ENAR’s 2006 shadow report on racism in Europe found that third country nationals, and especially undocumented migrants and asylum seekers, are particularly vulnerable to racism across Europe. It found that there were a number of manifestations of racism and discrimination affecting migrants, including lack of access to

²⁰ ENAR Shadow Report 2005

²¹ ENAR assessment of the transposition of Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation into national law, submitted to the European Commission December 2005.

employment and vulnerability to exploitation on the labour market, lack of access to social housing and deplorable conditions in reception and detention centres, lack of access to healthcare due to lack of residence status.

Migration and integration have been the subject of an important debate across the European Union in the last years, and immigration policies are currently high on the EU agenda. Within this context, the link between migration and demographic change is increasingly being explored. It is clear that migration can be part of the response to Europe's demographic challenges; but there is a real danger that the current discourse sees migration as a utilitarian and short-term solution to demographic change whereby migrants will come to Europe for a few years, contribute to the economy, and leave before they become a 'burden'. In addition, positive integration measures are undermined by a discourse centred on control of "illegal immigration" that sees migration (and migrants) as a problem to be solved. In this context it is necessary to highlight the importance of promoting diversity and recognising the positive role of migration in European society. It is essential to change the often negative perception of migrant populations into a positive perception, and to highlight migrants' contribution to host societies. Part of this is recognising the breadth and depth of wealth creation from international migration and placing this into the context of the socio-cultural enrichment resulting from migration that opens up host societies.

Integration policy has emerged as a key area of activity for the European Union in recent years. There have been a number of important initiatives in recent years, not least the adoption in 2004 of the 11 Common Basic Principles on Integration followed in 2005 by the adoption of a framework for the integration of third-country nationals in the EU. One of the principles of the CBC recognize that integration is a two-way process. All actors must engage in this issue, not only the migrant population. But many of the policy approaches to date have failed to recognise that anti-racism and the fight against discrimination are an important element of integration strategies. ENAR's policy seminar 'Promoting integration', which took place in March 2007, found that the lack of policy coherence between the areas of migration, integration, social inclusion and anti-discrimination has in many cases led migrants to fall through the gap left by such a vacuum, exposing them to social exclusion and discrimination, and concluded that there needs to be more policy coherence between these areas.

For a win-win solution to be achieved, a number of actions must be taken. Equality bodies, policy and decision makers must adopt a holistic and coherent approach to integration and migration and recognise that anti-discrimination and social inclusion are prerequisites for successful integration strategies. In addition, the approach to integration and migration policies should be firmly grounded in a rights-based approach, which mainstreams equality and non-discrimination across all EU policy areas, including immigration. There is also a clear need to see greater policy coherence and equality and non-discrimination mainstreaming. The fundamental right to equal treatment of third country nationals must be respected. It is also crucial to reinforce consultation with civil society and stakeholder participation in the decision making process. Finally, the successful integration of migrants will not be achieved without celebrating diversity and taking a positive approach to migration, highlighting the positive contributions which migrants make to host societies and the value of such diversity for European societies.

Building on the 'access to rights approach' which secures everyone's rights to equal access to rights and resources, self-expression, individual development and civic participation, a comprehensive and coherent policy framework must be developed that is tailored to the experiences and needs of ethnic and religious minorities and that is built into all policy areas of the EU through a progressive use of equality mainstreaming and human rights impact assessment

procedures as well as the effective use of data as a tool to comprehensively identify issues of racism and discrimination and problem areas.

At a time when the EU institutions are considering a new programme for the design of EU policies in the area of justice and home affairs after 2010, it is crucial that national bodies to combat discrimination can proactively engage together with civil society and contribute to define the frame of reference for an EU approach to migration that respects a rights based approach and is non discriminatory. The promotion of migrants' rights is fundamental to anti-racism. Denial of rights to third country nationals affects a significant proportion of Europe's ethnic and religious minorities. Similarly, the tone of the debate in the public discourse and the media often crosses the line into racism, leads to stereotyping and stigmatisation of migrants, and creates a climate of fear and suspicion towards all ethnic and religious minorities, affecting the social cohesion and diversity of Europe.

As a conclusion, we would like to stress the following points:

- Specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level can make a concrete contribution in a variety of ways to strengthening the effectiveness of the range of measures taken in this field and to providing advice and information to national authorities. The inclusion in the Race Equality Directive of a requirement to establish a National Equality Body was one of the most welcome aspects of the legislation. In putting in place this requirement there was an explicit recognition that more than basic legislation was needed, and that there was a real need to engage in supporting activities to realise equality in practice.
- Member states should ensure that equality bodies broaden their mandate and mission so that they be in full compliance with the UN Paris principles and the COE ECRI General Policy Recommendation on specialised bodies to combat racism, xenophobia, anti-Semitism and intolerance at national level.
- National equality bodies have an important role to play in raising awareness of anti-discrimination legislation and rights. The 2007 Eurobarometer on discrimination in the EU showed that there is little awareness of anti-discrimination law and rights: 39% of respondents did not know that racial discrimination in hiring new employees is against the law. There is therefore a key opportunity for national equality bodies to improve this situation.
- National equality bodies also have to be proactive in undertaking research on issues for which further action is needed at policy level, for instance in the field of positive action, data collection or multiple discrimination.
- The relationship between national equality bodies and civil society needs to be improved. A strategic cooperation in critical areas such as support to victims and action-research should stand at the core of the relationship. EQUINET can have a crucial role as facilitator of such relations.
- National equality bodies have not yet used their potential in encouraging a positive debate on issues relating to anti-discrimination, integration and migration. In particular, they should use the CPBs on integration adopted by the EU in 2004 as a benchmark

against which the efforts of member states in the field of integration can be monitored and enhanced. This could have a triggering effect in ensuring that non-discrimination stands at the core of the policies affecting migrants and ethnic minorities within the EU.

SESSION III: Good practices and effective policy responses in combating racism and xenophobia

- **Ms. Marie-France Picart, Board Member of the High Authority to Fight Against Discrimination and for Equality, France (HALDE)**
(Written statement)

Ladies and Gentlemen,

On behalf of the Board and our President, I should like to thank you for inviting the High Authority against Discrimination and for Equality (HALDE) to speak at this meeting devoted to the role of national institutions against discrimination in combating racism and xenophobia.

It is an honour for me to represent the High Authority before your institution, an organization which since 1992 has helped to ensure full respect for human rights and fundamental freedoms, to observe the rule of law, to promote the principles of democracy and to encourage tolerance at all levels of society.

Indignation on its own is clearly insufficient as a response to the persistence of racism and xenophobia. The frequency and recurrence of these phenomena show that they are more deep-rooted, demanding that we take steps in advance to combat the impact of prejudice and stereotypes more effectively. Any legal solution must always be accompanied by educational and social measures aimed at promoting a genuine culture of human rights.

In order to achieve these goals, we must fight to ensure that human dignity is respected. The “human element” should simply (but is it really that simple?) be made the central focus in every sense of the word and we should embrace the thoughts of St. Exupéry in “The Little Prince”: “He who is different to me does not impoverish me — he enriches me”.

The High Authority

Established in 2004 to combat discrimination and promote equal opportunities, the High Authority against Discrimination and for Equality falls within the scope of European directives. It is an independent body invested with the competence to deal with all forms of direct or indirect discrimination prohibited by law in the French Republic or in violation of an international agreement duly approved or ratified by France.

As its name implies, it has a dual mission: to combat discrimination and to promote equality among all citizens.

It is a collegial body composed of 11 members appointed by presidential decree for a period of five years and is currently headed by Mr. Louis Schweitzer. An advisory committee consisting of 18 members assists the High Authority in its work. All the members of the committee — representatives of civil society, the business world and the public authorities — play a role in the fight against discrimination. The committee is currently chaired by the President of the National Advisory Commission for Human Rights (CNCDH).

When she was invited to the Warsaw meeting for the first time in May 2005, Ms. Marie-Thérèse Boisseau, Vice President of the High Authority, presented the missions, prospects and hopes embodied in this institution. As we are about to submit our report for 2007 to the highest State authorities, it is an opportune moment to present to you the High Authority's main thrusts today.

Although France has legislative instruments to penalize discrimination, there are few prosecutions, and this in turn contributes to a feeling of impunity. Discrimination has long since become trivialized; bad habits persist while victims give up in the face of the difficulty of establishing proof.

The main role of the High Authority is first to make victims who contact it understand that they should have the courage to speak out, put aside their customary fear and not let themselves be forgotten.

Within the framework of the law we insist first of all that the human being is the focus of our actions on a daily basis and that an objective and practical approach is used.

In your specific field, a person who practises discrimination can be prosecuted as soon as he or she discriminates against another person simply on the grounds that that person does or does not belong to a particular ethnic group, nation, race or religion.

In the 30 months that it has existed, the High Authority has been able to make the point that it is possible to ensure that the law is better respected. Since its inception, it has investigated more than 10,000 complaints.

In 2007, it recorded 6,222 complaints, 53 per cent more than in 2006. The workplace, where more than 50 per cent of complaints arise, is still the environment in which discrimination is encountered most, and a person's origins is still the first reason for discrimination, followed by disability and health issues.

The High Authority has extensive investigative powers enabling it to demand the submission of any document deemed useful and to hear witnesses, which gives it the means to solve the problem of proving discrimination. Depending on the nature of the disagreement and the victim's decision, it can propose a range of solutions, including settlement fines or compensation for victims under the supervision of the public prosecutor's office and, if necessary, with involvement of the media. In 2007, 87 per cent of the cases presented to courts resulted in positive action and all settlements were approved. Mediation was more frequent, with compensation running in some cases to several hundreds of thousands of euros. Some 279 cases were settled amicably — in other words the mere intervention by the High Authority was sufficient to enable a solution to be found.

Lastly, the use of discrimination tests, which the Penal Code has confirmed as an acceptable form of proof, is another preventive measure to help rectify certain kinds of discriminatory behaviour before it produces victims.

The fight against impunity

Even if the High Authority's actions signal the limitations of the law, it takes advantage of the individual cases submitted to it whenever possible to make general recommendations.

These are directed at the Government in cases when legislation can be improved or at private individuals so that they can take measures to prevent the recurrence of discriminatory practices.

Decisions concerning “Travellers”

The collegial body asked the advisory committee for its view on the discrimination that “Travellers” are subject to. The report drawn up by the working group confirmed that Travellers suffer discrimination as a result of legislation in force as well as the behaviour of individuals and that this occurs in all spheres of daily life. The High Authority then made some recommendations: on the issue of the right to vote it recommended that the requirement that a person should be attached to a municipality for three years be revoked since persons of no fixed abode require attachment of only six months. It invited the Government to take immediate and specific measures to allow all Travellers not in possession of a national identity card to be issued one without mention of origin; it also recommended to the Minister of National Education that the Ministry should estimate the level of school attendance of children and recall the legal framework and the right of every child to attend school within a municipality. Lastly, a demand was made for the full and effective application of “Besson’s law” with respect to stopping places. A number of issues are still under study concerning access to goods and services, which shows how much still needs to be done.

Penalization and recommendations are not enough.

Considerable information and awareness-raising work has been carried out by means of communication and thematic publications, especially targeting persons who are not aware of being discriminatory, with the aim of changing their behaviour and prejudices.

Action to promote equality

The launch of a diversity charter in October 2004 marked the beginning of an awareness within companies of the need to react in a society that is likely to see changes in its demographic balance and an international, competitive environment that forces them to be more performance-oriented.

The High Authority has therefore taken upon itself the task of assisting in the move from commitment (the charter) to ongoing performance evaluation (a framework for action and awareness). In doing so, it has relied on the knowledge of discriminatory processes it has gained from the investigation of complaints and on its ability to bring professionals together in multidisciplinary working groups.

1. The framework for action and awareness responds to needs voiced and assists in assessing and pursuing a policy of equality promotion over a period of several months.

This collection of best practices already implemented in 250 large companies has been extended to employment agencies, the public sector and real estate experts and should also be applied to small and medium-sized enterprises. Individual or monitoring activities have also been introduced into other sectors such as education, public services, goods and services.

In 2007, housing was given emphasis and activities were carried out to explain to property-holders and real estate agents how to rent without discrimination, in particular, on the basis of ethnic origin.

2. Two tools have been created and put online, providing an opportunity to find out about discrimination law and above all about stereotypes and misrepresentations, by means of a set of questions and answers aimed at employers and the general public. A re-evaluation of stereotypes and prejudices can be brought about effectively by mobilizing stakeholders from all sectors.
3. Training to communicate. The High Authority participates in the implementation of training programmes. It contributes by developing training content and offers assistance on the issue of discrimination in collaboration with its partners in the public and private sector.

In this manner it has helped to improve complaint investigation by conducting information campaigns for magistrates, lawyers, the police force and the gendarmerie.

Eighteen conventions have already been concluded between the High Authority and the Centre against Discrimination, Racism and Anti-Semitism (CEDRA), the National Centre for Pedagogical Documentation (CNDP), the National Information Centre for Women's and Family Rights (CNIDFF), the National Council of the Bars, the Directorate-General of the National Gendarmerie, the Directorate-General of the National Police, the Ministry of Defence, the National Employment Agency (ANPE), the National Commission for Information and Liberty (CNIL), the National Housing Federation (FNAIM) and numerous regional groups.

4. Action at the regional level. Commitments become reality when direct communication with women and men is sought. To get closer to the grassroots, four delegations were deployed in the regions of Nord Pas-de-Calais and Provence-Alpes-Côte d'Azur, as well as on Réunion and Martinique, and 20 local counterparts have already been identified, with the aim of establishing a network of 100 local counterparts by the end of 2009.
5. Action at the European level. The year 2007 presented the High Authority with an opportunity to strengthen European relations when the French Government entrusted it with the task of co-ordinating the European Year of Equal Opportunities for All. Consultations with civil society have been accorded an important position in our country, the aim being to reach out to both the urban and rural public, those who slip through the institutional net. Three major sectors, those of employment, education and housing, were covered in this manner.

Concluding remarks

Ladies and Gentlemen,

Nearly 60 years have passed since the General Assembly of the United Nations adopted the Universal Declaration of Human Rights in Paris.

It is my firm belief, nevertheless, that civil education remains relevant as a means of helping to ensure real life-long equality of opportunity for women and men, respect for equal rights and dignity for all people in all circumstances as well as the rejection of all forms of exclusion, in France and elsewhere.

The more our Republican pact is enriched by cultural and personal diversity, the more it will promote laicity, that is to say, respect for the right to individual beliefs, opinions and differences, in this way permitting the sharing and reciprocal exchange of cultural wealth and ethical values.

- **Ms. Naomi Churchill Earp, Chair of the United States Equal Employment Opportunity Commission (EEOC)**
(Written statement)

I. Introduction

Good afternoon! It is a pleasure to participate in this conference and learn about the international approaches to combating racism and xenophobia. Conferences like these demonstrate that despite our differences—in geography, history, and culture, to name a few—we share a common objective: eradicating discrimination and promoting equal opportunity. And it seems clear to me, based on the discussions from earlier today and yesterday, that our similarities outweigh our differences.

I'd like to take the next few minutes to share the American approach to combating racism and other forms of discrimination in the employment context. I look forward to hearing your thoughts and your approaches as well.

II. EEOC overview

I have the privilege of serving as the Chair of the United States Equal Employment Opportunity Commission, or EEOC. EEOC's mandate is to enforce the federal anti-discrimination statutes relating to discrimination in the workplace and to oversee and coordinate all federal equal employment opportunity regulations, practices and policies in the United States.

The federal laws prohibiting employment discrimination are:

- Title VII of the Civil Rights Act of 1964 (Title VII), which prohibits employment discrimination based on race, color, religion, sex, or national origin;
- the Equal Pay Act of 1963 (EPA), which protects men and women who perform substantially equal work in the same establishment from sex-based wage discrimination;
- the Age Discrimination in Employment Act of 1967 (ADEA), which protects individuals who are 40 years of age or older;
- Title I and Title V of the Americans with Disabilities Act of 1990 (ADA), which prohibit employment discrimination against qualified individuals with disabilities in the private sector, and in state and local governments;
- Sections 501 and 505 of the Rehabilitation Act of 1973, which prohibit discrimination against qualified individuals with disabilities who work in the federal government;
- the Civil Rights Act of 1991, which, among other things, provides monetary damages in cases of intentional employment discrimination; and
- Title II of the Genetic Information Nondiscrimination Act of 2008 (GINA), which prohibits, among other things, employment discrimination against individuals based on genetic information.²²

²² GINA was signed into law on May 21, 2008, and becomes effective in November 2009.

EEOC uses a multi-faceted approach to combat racism and other forms of illegal discrimination. The Commission provides national leadership in enforcement and litigation activity: investigating, mediating, conciliating and litigating race and national origin discrimination complaints or charges. The Commission also contributes to the development of laws, policies and regulations related to race and national origin. Finally, the Commission provides outreach, education and technical assistance to employers, employees, stakeholders and the general public. These efforts provide information about employment rights and responsibilities, recent cases and emerging trends.

We have 53 field offices throughout the country. The field office structure enables us to maximize our national impact, focusing on issues of particular importance to local and regional communities while also implementing national programs and initiatives. We also work with 98 state and local Fair Employment Practice Agencies (FEPAs) and 64 Tribal Employment Rights Organizations (TEROs).

III. Race and national origin statistics

Before I provide some details about our enforcement, education, and policy efforts, I'd like to share some statistics. These numbers and trends underscore the importance of eradicating employment discrimination based on race and national origin.

• Race statistics

Race remains the most frequently cited basis in discrimination charges, as it has since the Commission's inception.²³ In fiscal year 2007, 37% of charges alleged race discrimination or harassment.²⁴ Some recent cases litigated by the Commission involve conduct that is blatant and unfortunately all-too familiar: the presence of nooses and use of racial slurs in the workplace.²⁵ We have filed several cases on behalf of young workers subjected to egregious racial harassment.²⁶ EEOC has also litigated cases involving race-based selection processes, in which

²³ EEOC, *Charge Statistics*, available at <http://www.eeoc.gov/stats/charges.html> (last modified Feb. 26, 2008).

²⁴ *Id.*

²⁵ See, e.g., Press Release, EEOC, EEOC Obtains \$1 Million for Black Man Choked With Hangman's Noose by White Co-Workers (Mar. 21, 2006) (announcing the settlement of a case in which co-workers and managers called a Black employee a "monkey" and the N-word and choked him with a noose), available at <http://www.eeoc.gov/press/3-21-06.html> (last visited July 24, 2006); Press Release, EEOC, Lithia Car Dealership to Pay \$562,500 for Race Bias Against Black Salesman Targeted by Manager (Mar. 16, 2006) (discussing a case in which a manager allegedly informed a Black employee that he would not tolerate "B-P" ("black people") and stated that he'd previously terminated "some of you people"), available at <http://www.eeoc.gov/press/3-16-06.html> (last visited July 24, 2006). The harassment increased after the employee filed an internal complaint. *Id.* See also Press Release, EEOC, Cracker Barrel to Pay \$2 Million for Race and Sexual Harassment at Three Illinois Restaurants (Mar. 10, 2006) (describing a case in which Black employees were reportedly referred to as "spear chucking porch monkey," "you people," and "ghetto"; required to wait on Black customers whom White servers refused to assist; and assigned to serve customers in the smoking sections), available at <http://www.eeoc.gov/press/3-10-06b.html> (last visited July 24, 2006); Press Release, EEOC, Consolidated Freightways to Pay \$2.75 Million for Racial Harassment of African Americans (Jan. 12, 2005) (resolving a case in which twelve Black dockworkers were subjected to nooses, assault, intimidation, racially offensive graffiti, and property damage), available at <http://www.eeoc.gov/press/1-12-05.html> (last visited July 24, 2006).

²⁶ In one case, the male supervisor of a 19-year-old Black woman allegedly subjected her and other non-White employees to racial slurs, boasted about his skinhead activities, stated that Whites were the superior

minority candidates are prevented from applying or are removed from the pool of viable selectees.²⁷ In some instances, employers appear to purposefully disregard or reject minority applicants based on their race. In other cases, minorities have been denied promotions or certain assignments.²⁸ The trends in race discrimination resulted in the development of policy guidance and outreach programs, which I will address shortly.

- **National origin statistics**

The number of national origin-related charges has fluctuated over the past 15 fiscal years, increasing to a record high of 9,396 (11.4% of our total charges) in fiscal year 2007.²⁹ Furthermore, in the wake of the September 11, 2001 attacks, the Commission and state and local FEPAs have observed an increase in charges of religion and/or national origin-based harassment and discrimination made by individuals who are or are perceived to be Muslim, Arab, South Asian, or Sikh.³⁰ Specifically, between September 11, 2001 and March 11, 2008, the Commission received 1,016 charges alleging post-9/11 backlash employment discrimination.³¹ Many of these charges included allegations of harassment or termination.³² The charges and resulting lawsuits have arisen from a variety of establishments across the nation. EEOC has enhanced its outreach to the Muslim, Arab, South Asian, and Sikh communities and to employers as a result of these charges.

IV. Enforcement and litigation efforts

race, flashed White power signs, claimed that he had a Confederate flag hanging outside his home, displayed his tattoos (which included a swastika and White Power gang symbols), and announced that he wanted to have a picture of a black lynching victim tattooed to his forehead. The Assistant Manager allegedly said that he was aware of the supervisor's attitude and admitted that he, himself, was racist. The Charging Party was suspended and then terminated shortly after she reiterated her concerns to management. Press Release, EEOC, EEOC and Carl's Jr. Settle Racial Harassment, Retaliation Case (Dec. 14, 2005). In another case, an 18-year-old Black male was repeatedly harassed by his White male supervisor, who directed racial slurs at him, told racially offensive jokes, hid his safety gloves, placed stink bombs under his work station, and told him that vending machines do not take "crack money." The Charging Party stated that he was terminated because of his race. The Commission's investigation revealed a pattern of discrimination and harassment against Black employees at that facility. Press Release, EEOC, EEOC Settles Racial Discrimination Lawsuit Against Thyssenkrupp Elevator (Oct. 28, 2005).

²⁷ See, e.g., Press Release, EEOC, Georgetowne Place to Pay \$650,000 to Settle EEOC Race Discrimination Lawsuit (June 22, 2005) (announcing the settlement of a case in which the hiring manager allegedly directed subordinates to code job applications submitted by minorities and refused to hire minorities for a period of at least nine years), available at <http://www.eeoc.gov/press/6-22-05.html> (last visited July 9, 2006).

²⁸ Press Release, EEOC, FedEx Freight to Pay \$500,000 for Racial Bias (Oct. 24, 2005) (resolving a case in which a trucking company allegedly denied promotions and assignments to qualified Black employees because of their race), available at <http://www.eeoc.gov/press/10-24-05.html> (last visited July 9, 2006).

²⁹ EEOC, *Charge Statistics*, available at <http://www.eeoc.gov/stats/charges.html> (last modified Feb. 26, 2008).

³⁰ EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, available at <http://www.eeoc.gov/facts/backlash-employee.html> (last modified May 14, 2002).

³¹ EEOC Fact Sheet: *Backlash Employment Discrimination Charges Related to the Events of 9/11/2001* (last modified Mar. 11, 2008).

³² See *id.* (noting that of the 1,012 charges resolved between September 11, 2001 and March 11, 2008, 603 charges allege discharge and 427 charges allege harassment). Four charges remained unresolved as of March 11, 2008. See also EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs under the Equal Employment Opportunity Laws*, available at <http://www.eeoc.gov/facts/backlash-employee.html> (last modified May 14, 2002).

As the lead federal agency responsible for combating employment discrimination, the EEOC has authority to enforce the law by investigating charges of discrimination, making findings of reasonable cause, engaging in conciliation to resolve violations voluntarily and informally, and initiating enforcement lawsuits in federal court if necessary. EEOC acts not only to obtain specific relief for victims of discrimination, but also to vindicate the public interest in ensuring that workplaces are free of discrimination. The EEOC's litigation program thus seeks to shape the development of clear legal principles in the public interest.

- **Systemic discrimination**

The EEOC's goal is to use our litigation to attain the widest possible impact. We accomplish this by seeking relief that will benefit the harmed parties and prevent the recurrence of discrimination. We also litigate large, complex cases involving systemic discrimination, cases in which the alleged discrimination has a broad impact on an industry, profession, company or geographic area. While these cases are resource-intensive to litigate, they have great potential to pay enormous dividends in the long run. When we secure resolutions that bring about positive changes in the workplace, these changes benefit all employees, not just those receiving direct relief.

A strong litigation program assists us in achieving the early resolution of charges during the administrative enforcement process. Furthermore, publicizing our litigation victories has both educational and deterrent value, enhancing public awareness of EEOC and increasing voluntary compliance with federal employment laws.

- **Mediation**

While we are proud of our litigation program, litigation is a last resort in the EEO process. We encourage employers to work with us to resolve disputes promptly and effectively. Through our Universal Agreement to Mediate program, EEOC partners with employers to mediate all eligible charges filed against the employer, prior to an agency investigation or litigation. UAMs may be local, regional or national. Because mediation is voluntary, the employer or the charging party may opt out of mediation on a particular charge even when a UAM has been signed. Employers and charging parties alike have expressed satisfaction with the mediation process: according to one independent study, 96% of employers and 91% of charging parties would use the mediation program again if necessary.³³

V. Outreach and education programs

We vigorously enforce the law and seek redress for individuals who have been subjected to illegal discrimination. However, we also understand the importance of proactive prevention—preventing discrimination from arising in the first place. To that end, we provide outreach and education to the public, sharing information about the laws, their rights and their responsibilities. We also provide advice and technical assistance to stakeholders, including employers, civil rights organizations, and fellow agencies.

We have implemented several work groups and initiatives to examine specific employment issues and develop potential solutions.

³³ <http://www.eeoc.gov/mediate/mcd-intro.html>.

Several initiatives and groups are dedicated to race and national origin issues:

- **E-RACE Initiative**

In February 2007, the Commission launched the E-RACE (Eradicating Racism and Colorism from Employment) Initiative, an outreach, education and enforcement campaign implemented to advance the statutory right to a workplace free of race and color discrimination.³⁴ Under the E-RACE Initiative, EEOC will identify specific issues, criteria and barriers that contribute to race and color discrimination in the workplace; explore strategies to improve the administrative processing and litigation of race and color discrimination claims; and enhance public awareness of the persistence of race and color discrimination in employment. EEOC will also partner with employee advocates, state and local human rights commissions, human resources professionals, and employer groups to address racial disparities in the workforce and promote meaningful participation by and inclusion of employees of all races.³⁵

- **Asian American Pacific Islander Work Group**

The Asian American Pacific Islander Work Group, implemented in October 2007, focuses on problems confronted by Asian Americans in the federal workforce, with a particular emphasis on the employment of Asian Americans in leadership positions, the development of special emphasis programs related to the Asian American community, and the apparent disparity between the level of perceived discrimination and the number of discrimination complaints filed by Asian Americans.

- **Hispanic Work Groups**

The Hispanic Strategies Group and Hispanic Work Group were developed to address federal sector employment issues confronting the Hispanic community, with a focus on federal sector employment, leadership development, hiring and retention. The Hispanic Strategies Group, implemented in 2005, promotes equal opportunities for Hispanic or Latino employment in the federal workforce by developing relationships with Hispanic/Latino organizations, leaders and employees; providing guidance and training to Hispanic/Latino federal employees on EEO matters; and collaborating with agencies to identify EEO problems and solutions in the areas of participation, advancement, recognition and retention. The group also works to enhance the recruitment of Hispanic/Latino students to the federal government and to establish a network of students and Hispanic/Latino professionals in government by establishing a mentor-mentee program, organizing panel discussions, and providing job search workshops. The Hispanic Work Group was launched last week, and is in the process of developing specific action items.

- **Post 9/11 efforts**

While no specific group has been formed at the EEOC, EEOC has acted in response to the events of September 11, 2001. EEOC and the Department of Justice and Department of Labor issued a

³⁴ EEOC, *Meeting of February 28, 2007, to Launch E-RACE Initiative*, available at <http://www.eeoc.gov/abouteeoc/meetings/2-28-07/index.html> (last modified Apr. 10, 2007). *See also* EEOC, *The E-RACE Initiative*, available at <http://www.eeoc.gov/initiatives/e-race/index.html> (last modified Jan. 30, 2008).

³⁵ *See* EEOC, *E-RACE Goals and Objectives*, available at <http://www.eeoc.gov/initiatives/e-race/goals.html> (last modified Jan. 30, 2008).

“Joint Statement Against Workplace Bias in the Wake of September 11 Attacks.”³⁶ The statement reaffirmed the federal government’s commitment to upholding laws, regulations and executive orders mandating workplace nondiscrimination. The statement also noted the government’s determination to prevent and redress workplace harassment and discrimination directed at individuals who are, or are perceived to be, Arab, Muslim, Middle Eastern, South Asian or Sikh.

EEOC hosted a Commission meeting on “Employment Discrimination in the Aftermath of September 11.” During the meeting, representatives of Arab, Muslim, Sikh, Middle Eastern, and South Asian groups, employers and EEOC Commissioners discussed ways to augment communication and collaboration among the EEOC, businesses, and affected ethnic and religious communities to address backlash issues. In addition, the Commission continued to conduct outreach and education programs regarding religion and national origin-based discrimination for employers and employees, as well as for the Muslim, Arabic, Middle Eastern, South Asian and Sikh communities.

- **Local and regional efforts related to race and national origin**

In addition to national efforts, EEOC field offices throughout the country work with local stakeholders and community members on race and national origin issues of regional importance.

For example, offices in our Phoenix and San Francisco districts have conducted outreach to the Native American community, and offices in our New York and San Francisco Districts have partnered with the Asian American community, to address relevant employment issues and trends.

Offices in our San Francisco District have partnered with the Southern Poverty Law Center and California Rural Legal Assistance to address issues confronted by migrant farm workers. Offices in our Atlanta District have partnered with local Historically Black Colleges and Universities to conduct training, outreach and educational seminars to provide students with the information and tools needed to compete in the workplace.

Our Las Vegas office has partnered with the local police department to combat illegal trafficking of individuals from Thailand, Mexico and other countries. Our Honolulu office has partnered with the Department of Interior, Department of Labor, and National Labor Relations Board to eradicate sweatshop conditions in the Northern Marianas Islands affecting workers from the Philippines and China.

We also have broad-based programs that include components related to race and national origin issues.

- **Systemic Initiative**

For example, our Systemic Initiative, implemented in April 2006, ensures that EEOC has a coordinated, strategic approach to cases involving patterns or practices, policies, or class discrimination which has a broad impact on industries, professions, companies or geographic regions. This fiscal year alone, more than \$51 million has been recovered through three litigation settlements, two of which involved race or national origin allegations: *EEOC v. Walgreen Co.* (S.D. Ill.), a lawsuit alleging race discrimination against African Americans in assignment and

³⁶ <http://www.eeoc.gov/press/11-19-01-js.html>.

promotion of retail managers and pharmacists, on behalf of a nationwide class estimated at 10,000 individuals; and *EEOC v. B & H Foto & Electronics, Inc.*, (S.D.N.Y.), a lawsuit alleging national origin discrimination in wages, fringe benefits, and promotion of Hispanic warehouse employees.

- **Youth@Work Initiative**

Our Youth@Work Initiative, launched in September 2004, was implemented to teach teenagers about their workplace rights and responsibilities and help employers create positive work experiences for young adults. While not specifically focused on race and national origin issues, information about these bases is included in outreach presentations. As current participants in and future leaders of American business, government, and society, high school and college students must understand the danger of prejudice and bias—both conscious and implicit—and the importance of tolerance and respect to avoid engaging in unlawful behavior in the workplace.

While the initiative was initially intended to benefit young workers, employers, and educators, we've found that (1) employers have used the Youth@Work website to train their adult workforce; and (2) teens have shared Youth@Work material and information with their parents, particularly when the parents are recent immigrants or don't speak English as their first language.

- **Freedom to Compete Initiative**

Our Freedom to Compete Initiative, launched in 2002, is an outreach, education and partnership program designed to educate the workforce, deter discrimination and harassment, and promote legal compliance and sound employment practices. The Freedom to Compete award recognizes employer best practices that reflect an abiding commitment to access and inclusion in the workplace. Several winners were recognized for programs that help racial and ethnic minorities compete, advance and succeed in the workplace.

- **Communications strategies**

As discussed earlier, we use a variety of communications strategies to educate employers and employees about the law. We often issue press releases when we file lawsuits, settle cases, issue policy guidance or implement new initiatives. We seek out media opportunities with ethnic, foreign language, and minority news outlets to better reach underserved communities and diverse stakeholder groups. In addition, we have partnered with high-profile athletes and celebrities to publicize the importance of equal employment opportunities. For example, we have developed public service announcements featuring Olympic athletes addressing the importance of equal employment opportunities and renowned musician Wynton Marsalis addressing the value of diversity and the danger of discrimination in the workplace. Because we act in the public interest, it is important to ensure that the public is informed about our enforcement efforts and emerging employment issues and trends.

VI. Policy Development

In addition to enforcement and educational efforts, EEOC contributes to the development and implementation of strategies, policies and plans to combat racism and other forms of illegal discrimination. We identify specific topics that merit additional study or work; work with fellow agencies, external focus groups, and subject matter experts to develop a particular policy or approach; and issue the strategies or policies to the public in a format that is thorough, easy to understand, and consistent with legal and administrative precedent.

- **Race and Color Discrimination Compliance Manual chapter**

In April 2006, the Commission issued a new Compliance Manual section on race and color discrimination.³⁷ The Race and Color Discrimination Compliance Manual chapter addresses Title VII coverage; evaluation of employment decisions; recruitment, hiring, and promotion; diversity and affirmative action; harassment, bias, and retaliation; and remedies. The Manual also identifies best practices for employers seeking to promote equal employment opportunities and prevent discrimination and harassment based on race and color.

- **National Origin Discrimination Compliance Manual Chapter**

We have also developed a compliance manual section regarding national origin discrimination. The National Origin Discrimination Compliance Manual chapter addresses statutory coverage, assessment of employment decisions; harassment; language issues including accent discrimination and fluency requirements; citizenship-related issues; and retaliation.

- **Post 9/11 fact sheets**

In response to the events of September 11, 2001, we developed fact sheets regarding workplace rights and employer responsibilities concerning the employment of Muslims, Arabs, South Asians and Sikhs.³⁸ The documents provide information about Title VII coverage, hiring and discharge, harassment, religious accommodation, temporary assignments, background investigations, and additional resources.

VII. Conclusion

According to American civil rights leader Martin Luther King, Jr.: “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”³⁹

We live in a global society; advances in technology, communication and business have transformed the world into an interconnected web, an “inescapable network of mutuality, tied in a single garment of destiny.” Understanding the problems confronted by other nations and sharing potential solutions and best practices from our own country’s experience can only strengthen our institutions and our respective approaches to combating racism and xenophobia and enhance interpersonal and international interactions.

³⁷ *EEOC Compliance Manual § 15: Race and Color Discrimination*, available at <http://www.eeoc.gov/policy/docs/race-color.html> (last modified May 1, 2006); EEOC, *Questions and Answers About Race and Color Discrimination in Employment*, available at http://www.eeoc.gov/policy/docs/qanda_race_color.html (last modified May 16, 2006).

³⁸ EEOC, *Questions and Answers About the Workplace Rights of Muslims, Arabs, South Asians, and Sikhs Under the Equal Employment Opportunity Laws*, available at <http://www.eeoc.gov/facts/backlash-employee.html> (last modified May 14, 2002); *Questions and Answers About Employer Responsibilities Concerning the Employment of Muslims, Arabs, South Asians, and Sikhs*, available at <http://www.eeoc.gov/facts/backlash-employer.html> (last modified Mar. 21, 2005).

³⁹ Letter from Birmingham Jail (April 16, 1963).

ANNEX V: Opening remarks by Alcee L. Hastings President Emeritus of the OSCE Parliamentary Assembly

Good afternoon, it is an honor to be here. As many of you know, I am the immediate past President of the Organization for Security and Cooperation in Europe's Parliamentary Assembly. In that capacity and as a member of the Parliamentary Assembly, I have worked to ensure that the OSCE focuses on combating all forms of intolerance. I would like to thank Ambassador Strohal and all of those at ODIHR who have contributed to this work.

Recently, the Helsinki Commission held a series of hearings on issues related to migrant and other minority communities that included discussions of women's and African descendants' experiences with racism and discrimination in Europe. Given some of the alarming findings of those hearings and the worrying developments with the Roma population in Italy and even South Africa, this Meeting is certainly timely and well overdue.

At last years OSCE Bucharest High Level Conference on Combating Discrimination, I gave a speech detailing the United States Civil Rights struggle that gave birth to a number of the laws that ensure equal rights for all Americans regardless of race, origin, religion, or gender.

Two U.S. 'national institutions' that aided the struggle at that time were the U.S. Commission on Civil Rights and the Civil Rights Division within the Department of Justice, both created in 1957. Public investigations by the Commission into racial discrimination in voting rights, education, and housing coupled with a dedicated group of civil rights attorneys working on behalf of the United States government helped set the stage for our historic Civil Rights Act of 1964 and its implementation.

The Civil Rights Act not only made racial discrimination and segregation illegal, but laws that followed governing voting, housing, and other rights, changed many U.S. government institutions and their roles in addressing the needs of all Americans.

Over the years these laws have been translated into action and, for lack of a better word, 'mainstreamed' throughout our system so that the U.S. now has a plethora of 'national institutions' to address the legacies of the virtual extermination of Native Americans, slavery, legal segregation, and other historic injustices. Most states now have state civil rights or human rights commissions or offices similar to the Civil Rights Commission.

The US Census Bureau and other US agencies also collect data disaggregated by race, ethnicity, and other factors allowing analyses of how groups are fairing in U.S. society.

Given the multiple effects of racism and discrimination, there is no single government office that can fully address the problem. Data often assists in directing where government initiatives should be targeted. Whether its combating health disparities through our Health Department or assisting minorities with small business loans at our Small Business Administration, there are a network of offices and agencies specifically charged with reaching underserved communities.

I am pleased that the Chair of our Equal Opportunity Employment Commission, Ms. Naomi Churchill Earp is here to discuss the work at her agency and some of the challenges of combating employment discrimination in the 21st century, including the recent E-RACE initiative.

Many government institutions also have internship and other professional mentorship programs to assist in the hiring of minorities and others with the goal of ensuring that US institutions reflect the diversity of American society. I personally have provided internship opportunities to African Americans and others in my Congressional offices and can proudly say that as a result of it and aggressive recruitment strategies, my offices are truly a microcosm of America's diversity where African Americans, Latinos, Jews, gays, and others can be found. Offices lacking diversity are truly a disservice to us all.

This year the United States boasted an African-American, female, and Latino presidential candidate. For close to two decades, minorities such as Secretaries Rice and Powell, Latin American Attorney General Alberto Gonzales, the daughter of Lebanese migrants Education Secretary Donna Shalala, and many others have graced leadership roles in government agencies.

Make no mistake. This was not an overnight process. The decades of U.S. government institutions fighting discrimination, recruiting from diverse communities, providing education and training opportunities for minorities coupled with efforts from the civil society and private sector were critical to these gains. Creating environments where the racist and prejudiced beliefs of some Americans were challenged and ultimately disproved through direct experiences with minorities working in these and other government institutions were also a vital component.

Any visit to a U.S. city will tell you that this is not the whole story. Despite African Americans and Latinos making up close to 30% of the United States population and over 12% of the U.S. population being foreign born, when you walk into government buildings, racial and ethnic minorities are often domestic workers or secretaries, not managers. This pattern is similarly reflected in the private sector.

Symptomatic of continuing problems in other areas, racial minorities, including Native Americans have higher unemployment rates, incarceration rates, perform more poorly in school, live in poorer areas, and have greater health problems and death rates than White Americans. Hate crimes are also rising.

And like in many European countries, anti-migrant sentiments in the US have trivialized the actual positive contributions both documented and undocumented migrants are making in the forms of bringing needed skills, revitalizing communities, and paying taxes. Though increased language courses, educational opportunities and ultimately a good plan for integration is needed in the US, we must at the same time address the very real problems of racism and discrimination affecting migrant communities. We must also note the very real problem of racial profiling that has increasingly become a problem for Muslim and recent migrant populations in the wake of 9/11. The alarming treatment of the Roma in Italy attests to the urgency of facing the problem of racism in addition to integration in all of our countries.

One could surmise from the problems I detailed that the initiatives of US national institutions have been unsuccessful. That assessment would be wrong. In a clear case of politics usurping rights, these institutions have tragically been under attack for the last decade.

While symbolically supporting diversity with high level appointments of minorities, behind closed doors, our current administration has underfunded, downsized, and mismanaged these institutions to the point where a number of the historic gains of the US Civil Rights Movement are now unrecognizable. While many experts with years of expertise are still present in many of these institutions and elsewhere, their impact has been lessened.

I am working to ensure that this changes with our next President. But I also consider this a painful lesson. Efforts to support government initiatives to fight racism must constantly be sustained or the successes of the past can easily be erased by those who would prefer a return to the old status quo.

Other lessons that should be taken from our struggle to combat racism are:

1. data collection and research is critical to identifying a problem and targeting solutions;
2. no single institution can do the job. Data and research should assist in determining which institutions and whether new institutions should be involved and how;
3. minority input at all levels is critical to the development and implementation of any successful strategy to combat racism and discrimination and training opportunities and retention strategies should be developed to sustain minority involvement; empowering underserved communities to represent themselves, should be a central goal in addition to assisting victims of racism and discrimination;
4. cultural competency or training that includes an understanding of the effects of racism and discrimination are a must for all working at the institutions and especially those that will be working directly with the affected communities;
5. addressing other issues is no substitute for addressing the real problem. If the problem is racism and xenophobia, that should be the focus.

Lastly, learn from the experiences of others. The US government has partnered with a number of countries to provide technical assistance in data collection, affirmative action programs, community policing, and in many other areas to combat racism. One recent example is the joint action plan to eliminate racial and ethnic discrimination and promote equality signed by the US and Brazil in March.

It is my hope that as the OSCE continues to work on these issues, the multitude of US experts trained to combat racism whether within or outside of our government institutions can be considered a resource for the OSCE region. I would be happy to facilitate such partnerships in our common struggles to combat racism and discrimination. Thank you.

ANNEX VI: Opening remarks by Johanna Suurpää, Ombudsman for Minorities of Finland, Representative of the OSCE Chairmanship

Mr. Chair,
Excellencies,
Ladies and gentlemen,

It is a great pleasure to address this OSCE human dimension meeting on behalf of the Finnish OSCE Chairmanship of 2008. I would like to start with a word of thanks to Ambassador Strohal and his excellent staff at the Office for Democratic Institutions and Human Rights for the good co-operation in organising this meeting. And as this is Ambassador Strohal one of your last OSCE human dimension meetings as ODIHR director, I would like to extend a great thank you for your leadership and human rights vision.

This two-day meeting provides an opportunity to take OSCE's review of the implementation of existing commitments a step further, in particular in relation to the role of national institutions in combating racist and xenophobic acts faced by national minorities and migrants.

The Finnish OSCE Chairmanship highlights the importance of promoting human rights as well as combating all forms of intolerance and non-discrimination as a natural part of a broad concept of security. The participating States have committed themselves to a wide range of ambitious goals to ensure the promotion of tolerance and non-discrimination in the OSCE area. The principle of equality and non-discrimination was one of the building blocks of the CSCE process already in 1975 and this commitment has been repeatedly reaffirmed by the participating States. Racial and ethnic hatred, anti-Semitism and discrimination on any grounds have been explicitly condemned by the participating States – an inheritance not to be compromised.

The OSCE has an effective network of institutions and actors in promoting tolerance and non-discrimination. It is the complementarity of different kinds of expertise and actors, which helps the OSCE to make a difference. And, in practice, it is the participating States which bear the primary responsibility for realising the goals and priorities they have set for themselves, including within the OSCE framework but also with regard to other human rights standards. Political declarations need to be turned into targeted measures on the ground. This means that decision-makers as well as local authorities need to be sensitized to the different aspects of discrimination.

Mr Chairman,

The creation of national institutions to combat discrimination is a step forward. The mandates and structures of such national institutions may well vary from one country to another - surely there is no perfect model for all. However, in order to be credible, the institutions must be equipped with a realistic set of tools to effectively combat discriminatory practices.

The experiences of my own country Finland firstly underline the importance of independence: an independent organisation or ombudsman can be relied upon by all to effectively supervise the legality of the actions of the authorities and others in the society. Secondly, the mandate of the institution should be broad enough and encompass both possibilities to promote tolerance through positive action and, if need be, also initiate legal proceedings in cases involving discrimination or incitement to racial hatred. Thirdly, the national institutions should have adequate resources to be able to investigate alleged cases of discrimination, and to ensure appropriate follow-up. A

national institution can according to our experience also influence the attitudes prevailing in the society through raising issues related to equality and the human rights of all individuals.

No doubt, we can all further strengthen our tools and improve our performance in combating discrimination. For instance in Finland, the number of immigrants is on the increase, and the practice of the Ombudsman for Minorities has brought up cases including discrimination in the labour market and the service sector, for instance. The Finnish Equality Act is presently being revised from the point of view of further strengthening the anti-discriminatory measures. Also, we aim to bring the different grounds for discrimination - ethnic origin, gender, religion, sexual orientation or any other such grounds - more on an equal footing, and thus ensure adequate attention to cases involving multiple discrimination.

One test for how well a national institution is doing, I believe, is to consult the views of the civil society and especially organisations representing groups often falling victims of discrimination. Indeed, close co-operation between any national institution and the civil society is crucial - both from the point of view of detecting cases of racism and discrimination as well as from the point of view of enhancing mutual respect and understanding in our societies. Overall, the role of NGOs and Human Rights Defenders should never be under-estimated in the promotion and protection of human rights: practical experience shows to the contrary. Therefore, the Finnish Chairmanship highly values the active participation by NGOs in this meeting.

This meeting offers an excellent opportunity to exchange best practices and challenges in implementing OSCE commitments, and the role national institutions against discrimination can play in this regard. Indeed, we are here to learn from each other and I look forward to the contributions of all participants.

Thank you.

ANNEX VII. Opening and Closing Remarks by Ambassador Christian Strohal, ODIHR Director

OPENING REMARKS

Excellencies,

Ladies and Gentlemen,

Allow me to warmly welcome you all to this Supplementary Human Dimension Meeting, on “*The role of national institutions against discrimination in combating racism and xenophobia with a special focus on persons belonging to national minorities and migrants*”. As the name suggests, we have gathered here to examine the role of national institutions within participating States in responding to and combating racism and xenophobia, in particular where such cases involve persons belonging to national minorities and migrants and to discuss ways to overcome substantive challenges faced by National Institutions at the national and international level.

I would like to welcome especially the participation of representatives of National Institutions, OSCE institutions and field missions, the Personal Representatives of the Chairman in Office our partner international organisations and a significant number of civil society representatives.

At the outset, I would like to extend my gratitude and appreciation to the Finnish OSCE Chairmanship for having chosen this important topic and to welcome the Ombudsman for Minorities of Finland, Representative of the OSCE Chairman-in-Office, Ms. Johanna Suurpää and ask her to open this Meeting.

National Institutions against discrimination have a crucial role to play in addressing racism and xenophobia. These two phenomena present a major obstacle to the full enjoyment of human rights by marginalized groups including migrants and national minorities. Through their independent position, and their first-hand knowledge of the problems faced by national minorities and migrants, National Institutions can play a key role in the development national strategies and action plans aimed at addressing the needs of these communities.

I would also like to highlight the excellent work being done by many National Institutions in the area of combating racism and xenophobia, such as development of practical tools assisting victims of discrimination, or their active involvement in the drafting of governmental policies dealing with these issues. Many examples of existing practical initiatives have already been submitted by National Institutions to the ODIHR and are now published on TANDIS, our Tolerance and Non-Discrimination Information System website. Currently there are 100 National Specialised Institutions, nine International specialised institutions and 21 initiatives included within the TANDIS website. A summary of this information has been made available for this meeting. I would like to use this opportunity to encourage all National Institutions to use TANDIS and to regularly send us your good practices and reports so that we can make them available for other National Institutions throughout the OSCE region.

One of the fundamental prerequisites for successful fulfilment of the role and mandate of National Institutions is their full independence from the government in accordance with the *Paris Principles*. Their independent position should be reflected in three aspects:

- legislation establishing such institutions
- funding
- composition of their governing structures

Since National Institutions are not the only actors engaged in combating racism and xenophobia, they also need to find ways to maximize their co-operation with civil society, academia and other state bodies and institutions in order to make their efforts in this field more successful.

I would like to underline particularly the important role that civil society organisations have in combating racism and xenophobia. They often serve as the first contact points for victims from migrant or national minority groups and therefore their active involvement and co-operation should not be under-estimated. Their relevance to this meeting was also the reason for a special side event - roundtable for Civil Society, which was organised before this meeting. I welcome the recommendations resulting from this event, which will be presented shortly.

National Institutions are faced with three basic types of challenges in responding to racism and xenophobia:

The first group of challenges is connected to the mandate and position of National Institutions within the structure of other governmental bodies and institutions.

- Are they able to influence the formulation and implementation of policies related to national minorities and migrants?
- Are they able to effectively participate and contribute to the drafting of such policies?

Another set of challenges is related to the general societal atmosphere and the public perception of issues related to racism, discrimination and integration. We will discuss how National institutions have been able to develop effective strategies and programmes in order to address intolerant public attitude towards migrants and minority groups as well as their efforts to promote mutual respect and understanding.

The last group of challenges is connected to the status and position of potential “clients” of National Institutions, including persons belonging to national minorities and migrants who may be faced with structural barriers, which limit or even deny/prohibit their access to legal remedies against racism, xenophobia and discrimination.

On the subject of remedies, National Institutions against discrimination can play a dual role - they can help the individual both by hearing complaints and by assessing them in their wider context. It is only after hearing individuals, that National Institutions can translate individual cases into general action: action to improve the system, the legislation, the practices and the policies that lie beneath instances of racism and xenophobia encountered by national minorities and migrants.

National Institutions can play an important role in the implementation of concrete measures to prevent the marginalization and exclusion of migrants and refugees and to provide protection from racism, xenophobia, discrimination and violent acts of intolerance. This can be achieved through the elaboration of a legal framework for the integration of migrants and refugees and also through the development of national strategies and programmes for their integration.

In the course of this session we will discuss how National Institutions can effectively contribute to the drafting and implementing of strategies and policies to combat racism/xenophobia and

national, including those related to integration. We will also discuss how interaction with other State institutions can further support implementation of national policies and strategies.

Ladies and Gentlemen,

Before handing over to Alcee Hastings – President Emeritus of the OSCE Parliamentary Assembly, I would like to welcome our keynote speaker Mr. Morten Kjærum. We are very delighted to have Mr. him at this meeting in his new capacity as the new director of the European Agency for Fundamental Rights as well as his past role as the executive director of the Danish Institute for Human Rights and member of the United Nations Committee on the Elimination of Racial Discrimination. His presence here underlines the importance given by the ODIHR to enhanced co-operation among inter-governmental organizations active in this field. Mr. Kjærum was also present at the first inter-agency meeting here in Vienna in 2004, involving four major international organizations dealing with racism and xenophobia - namely European Commission against Racism and Intolerance, the UN Committee on Elimination of Racial Discrimination, the ODIHR and now his organization, the FRA.

For us at the ODIHR, this meeting will certainly prove most useful. The best practices shared today and tomorrow will enhance the ability of our programmes and activities to assist participating States more effectively in implementing their commitments in this field.

I wish us all a productive meeting, and encourage you to speak out freely and with concrete recommendations in mind.

Thank you.

CLOSING REMARKS

Excellencies,
Ladies and Gentlemen,

This was a very productive meeting. I will not elaborate on the key issues that have been so well summarized by the moderators of the three working sessions on the role and mandate of National Institutions, challenges they face and good practices shared.

We have witnessed that national minorities and migrants are becoming an easy target for hate crimes and discrimination due to their marginalised position in many OSCE states. We have also heard how, based on the structural barriers that minorities and migrants often face, their access to legal remedies is often limited.

National Institutions against discrimination are in a unique position to bridge the gap between these groups and the rest of society and to facilitate their access to existing protection mechanisms against discrimination and racism. However, in order to do so, they should have sufficient capacity to assist victims.

But their role should not be limited just to helping individual victims of discrimination and racism. National Institutions also have the possibility to shape national policies and action plans addressing racism and xenophobia and to identify necessary structural changes aimed at preventing discrimination and intolerance.

We have also learned how National Institutions Against Discrimination can speak out effectively against racist or xenophobic public discourse targeting national minorities or migrant groups. Some speakers also noted the early warning role that National Institutions can have in working with governments and civil society to prevent acts of intolerance from escalating into larger acts of violence and conflict.

The ability of National Institutions to act independently, without fear of restrictions by state authorities if they challenge policies or state inaction is especially critical. The independent position of National Institutions is therefore key to the successful and effective fulfilment of their mandate and role within society.

Many speakers during our meeting noted the diversity in mandates of National Institutions, particularly in terms of their degree of independence, their sources of financing, and their role and influence in policy development. It has also been noted that in some cases, there are differences in the way National Institutions address the issue of racism and xenophobia and apply different approaches to different victim groups. Finally, we have learned about the different ways in which National Institutions interact with government, civil society and the general public.

During this meeting, we also heard much about successful initiatives and good practices of National Institutions, including public awareness campaigns, training programmes for police, and educational programmes to prevent discrimination and promote a greater appreciation for diversity.

As President Alcee Hastings said at the opening session, enough has already been said about the importance of combating discrimination. It is important that this meeting leads to more than that, but to concrete outcomes. Let me take a moment to identify a few of the key results from this meeting:

Firstly, we hope that this meeting will result in an increased willingness by a larger number of OSCE States to establish and further strengthen National Institutions against Discrimination, in line with the commitment they made under the 2007 Ministerial Council Decision. In developing such bodies, States can take advantage of existing international and regional examples such as the UN Paris Principles, ECRI General Policy Recommendation No. 9 and the EU Directive on Race Equality. States can also look to the ODIHR's Tolerance and Non-Discrimination Information System to access reports, tools and guidelines produced by other National Institutions Against Discrimination. We hope that the practical examples presented during this meeting will inspire more States to establish and further strengthen such Institutions.

A second outcome we expect from this Meeting is increased co-operation between National Institutions Against Discrimination. Meetings such as this one are good opportunities to network, and we hope that you have been able to exploit this SHDM to identify good practices. The rich recommendations from yesterday's civil society roundtable contain many suggestions on how National Institutions can strengthen their partnerships with civil society in assisting victims of discrimination and in working to affect change at the policy level.

Finally, I hope this meeting helped find solutions for national minorities and migrants to overcome structural barriers and to gain access to legal remedies.

We now not only have a wealth of useful recommendations, but also a clearer picture of regional and international standards as well as available tools and resources. What is now needed is the commensurate political will, on the part of OSCE States, to actively support and strengthen position of National Institutions Against Discrimination and strengthen their dialogue and cooperation with governments and civil society.

I want to thank all speakers, moderators and rapporteurs, participants, and especially those from national institutions and NGOs, for your input and contributions and for carrying messages forward. A word of thanks to the interpreters for helping us understand these messages.

Let me also thank the Finnish Chairmanship for their strong support. Finally, let me thank Jo-Anne Bishop and her dedicated team from our TND Department, in particular Daniel Milo and Floriane Hohenberg, for the hard work they put into preparing this meeting as well as to the tireless colleagues in our Human Dimension meetings team for the logistical work. We at the ODIHR look forward to a continued partnership with authorities, National Institutions and NGOs to support the implementation of the recommendations made today.

As this is my last SHDM as ODIHR Director, let me add only a few words at the end. I was privileged during my time as Director to host 16 Supplementary human Dimension Meetings, 5 HDIMs and 5 Human Dimension Seminars. I am convinced of the value of these meetings, in particular of the crucial added value brought to the table by civil society representatives. It is the contribution of NGOs that brings true reality into the otherwise quite hermetically closed Hofburg. It is only with such reality checks, however unpleasant the messages may be, that true implementation review can take place. It has been a pleasure and an honour to work with many of you and I can only urge you to remain in close contact with the ODIHR so that we can continue to benefit from your contributions.

ANNEX VIII. Side events

The Helsinki Document of 1992 (Chapter IV) called for increasing the openness of OSCE activities and expanding the role of NGOs. In particular, in paragraph (15) of Chapter IV the participating States decided to facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs, and to provide encouragement to NGOs organizing seminars on CSCE-related issues. In line with this decision, NGOs, governments, and other participants are encouraged to organize side meetings on relevant issues of their choice.

The opinions and information shared during the side event convened by participants do not necessarily reflect the policy of the OSCE/ ODIHR.

Thursday, 29 May

<u>Time:</u>	09.00 – 13.00
<u>Venue:</u>	Bibliotheksaal
<u>Title:</u>	“Roundtable for Civil Society”
<u>Convenor:</u>	ODIHR
<u>Language:</u>	English

Summary: **Background**

In 2006 and 2007, the OSCE human dimension events related to tolerance and non-discrimination were preceded by civil society meetings where participants formulated recommendations to the OSCE participating States and to the OSCE institutions. These meetings gave civil society the opportunity to discuss current issues and priorities related to the topics of the OSCE conferences, to inform governments of the results of their activities, to share best practices and to engage in coalitions and networks across the region. Building on the important role of such meetings, the Supplementary Human Dimension Meeting on The Role of National Institutions against Discriminations in Combating Racism and Xenophobia with a Specific Focus on Persons belonging to National Minorities and Migrants will be preceded by a Roundtable for Civil Society

Purpose of the Side Event

- To provide civil society with an opportunity to prepare recommendations, which will be presented at the opening of the Supplementary Human Dimension Meeting;
- To discuss current issues and priorities related to the role of national institutions against discriminations;
- To exchange information on best practices;
- To facilitate and enhance coalition-building across diverse communities and civil society groups throughout the OSCE region;

Programme

Following the opening session, a keynote speaker will highlight existing issues and priorities regarding the role of national institutions against discrimination focusing on their relationship with civil society. The questions that could be addressed during the thematic session are following:

- What are the prospects and challenges of partnerships between national institutions and civil society?

- Which challenges face national institutions in fulfilling all aspects of their mandate including legal support work, assistance to victims and monitoring, awareness-raising, and promotion of policy and legal reform?
- How can national institutions best identify and tackle systemic and structural discrimination?
- How can national institutions increase their effectiveness with regard to particularly vulnerable groups?

Friday, 30 May

Time: 12.15 – 14.00
Venue: Ratsaal
Title: “Is the right to asylum undermined by racism and xenophobia?”
Convenor: UNHCR/ ODIHR
Language: English, Russian

Summary: The right to asylum and the principle of non-refoulement are well established and non-derogable. Governments are obliged to ensure fair and effective asylum procedures and adequate conditions of reception. In practice the latter includes access to free legal and social counseling freedom of movement, accommodation and the enjoyment of civil rights.

In the past decade, asylum systems have come under great pressure. Several reports highlighted the inadequate conditions and abuses asylum seekers and refugees are sometimes subjected to. Governments have sometimes failed to take adequate steps to prevent and respond to this. In some cases, their policies such as restrictive immigration policies, and increasingly narrow interpretations of states’ obligations towards refugees contribute to the problem

The public discourse surrounding the terms ‘asylum seeker’ and ‘refugee’ has changed from evoking empathy, respect and a sense of obligation to evoking distrust and aggression. Populist rhetoric that use pejorative language such as ‘bogus asylum seekers’; and scapegoating asylum seekers and migrants as the cause of unemployment, and social problems all play a part in creating a hostile reception environment.

This side event will explore the gap between States’ duties to protect the right to asylum and the practical impact of their policies on asylum seekers and refugees: Which policies and mechanisms have they put in place to ensure protection from racism, xenophobia and discrimination of this particular group? How can policies and practices be improved to ensure better protection?

This event brings together leading experts on asylum and refugee issues to discuss the need for a concerted effort to address racism and xenophobia against asylum seekers/refugees and the role national institutions and actors can play in this.

ANNEX IX. Recommendations from the Roundtable for Civil Society

On 29 May 2008 the Office for Democratic Institutions and Human Rights of the OSCE (OSCE/ODIHR) gathered civil society representatives from across the OSCE region in Vienna to discuss the role of national institutions against discrimination in combating racism and xenophobia, exchange information on the best practices and facilitate and enhance coalition-building across diverse communities and civil society groups throughout the OSCE region. Participants of the Roundtable discussed prospects for partnerships between national institutions and civil society and challenges national institutions face in fulfilling all aspects of their mandate, including legal support work, assistance to victims and monitoring, awareness-raising, and promotion of policy and legal reform. Participants also deliberated on how national institutions can best identify and tackle systemic and structural discrimination and how they can increase their effectiveness with regard to particularly vulnerable groups.

Introduction

- We are grateful to the Chairmanship and the ODIHR for initiating an NGO roundtable to prepare recommendations for the Supplementary Human Dimension Meeting (SHDM);
- We welcome the opportunity for civil society representatives to make introductory speeches, and in particular to present the conclusions and the recommendations of the Civil Society Roundtable during the opening session of the SHDM;
- We recommend that this initiative be institutionalized in future OSCE human dimension meetings;
- We acknowledge existence of numerous specialised institutions for combating racism and xenophobia in the OSCE region, some of which fulfil the terms set out in the Council of Europe and European Union Guidelines. At the same time we encourage those participating States that have not yet done so to establish such specialised institutions in line with existing international norms and drawing upon assistance offered by international organizations, including OSCE and ODIHR;
- We call upon OSCE participating States to be more responsive to and ensure implementation of recommendations issued by international organizations;
- We recommend to all OSCE participating States to create special departments or units in their Ministries of Internal Affairs or Ministries of Justice or other appropriate Ministries. These units should be tasked to monitor the situation with hate crimes, coordinate efforts of other ministries to combat racism and xenophobia and elaborate measures for further improvement of existing national anti-discrimination policies. Experts from non-governmental and international organizations should be invited to contribute to the work of these units;
- We acknowledge the value of highlighting and exchanging the best practices on combating racism and xenophobia, in particular those relating to the functioning of National Institutions against Discrimination (NIADs).

Mandates, functions and responsibilities of NIADs:

1. We recognise that when participating States intend to establish NIADs, involvement of NGOs, lawyers, human rights experts and academic institutions is crucial and should be ensured, and participating States should draw upon existing international and regional documents, i.e. the UN Paris Principles, General Policy

Recommendations of the European Commission Against Racism and Intolerance (ECRI) and the European Union Directive on Race Equality;

2. We recommend that the mandates of NIADs should cover the following functions and responsibilities: assistance to victims; investigative powers and prerogatives; the right to initiate, and participate in, court proceedings; monitoring legislation and advice to legislative and executive authorities; awareness-raising of issues of racism and racial discrimination among society and promotion of policies and practices to ensure equal treatment, in line with the ECRI General Policy Recommendations No 2 and No 7;
3. NIADs should give advice and analysis on implementation of OSCE tolerance and non-discrimination commitments, i.e. Ministerial Council's Decisions on Tolerance and Non-Discrimination adopted in Maastricht (No.4/03), Sofia (No.12/04), Ljubljana (No.10/05), Brussels (13/06), Madrid (No.10/07) and Permanent Council Decisions 621 on Tolerance and the Fight against Racism, Xenophobia and Discrimination, 607 on Combating Anti-Semitism, 633 on Promoting Tolerance and Media Freedom on the Internet; as well as conclusions and recommendations of the United Nations treaty bodies, special procedures and other international human rights mechanisms;
4. Mandates of NIADs should include the tracking of the implementation by governments of their OSCE commitments and should be expanded to include monitoring, reporting and addressing the issue of hate motivated violence. It is recommended that legal, psychological and medical assistance to victims should be provided by these bodies, as well as they have a possibility to track cases through the criminal justice system;
5. NIADs should encourage harmonization of hate crime data collection and analysis by different public and private entities with due regard to the highest international standards on privacy and data collection;
6. Composition of NIADs should foresee equal representation of civil society, including vulnerable groups, in order to ensure inclusion of their views in functioning of NIADs;
7. In turn NIADs should provide training at all levels of government, in particular institutions responsible for education, building on the civil society expertise available in the design and implementation of this training;
8. NIADs should also work towards ensuring that the formal education system is free of discrimination and is conducive to tolerance and multi-cultural co-existence. This will enhance the integration of minorities;
9. Independent bodies and ombudsman institutions dealing with discrimination should cooperate closely in order to assure common standards, complementary efforts and equal protection for those facing discrimination;
10. When relevant, NIADs should reach out to local municipalities and local governments in order to ensure consistent implementation of existing national anti-discrimination policies;
11. Participating States should provide the financial resources required by NIADs to operate effectively and with autonomy. We stress the importance of NIADs's autonomy and independence from government bodies if they are to effectively fulfil their mandate;

12. OSCE participating States should ensure that by supporting NIADs with enhanced funding they do not correspondingly limit resources available to NGOs. NIADs should not be seen as substitutes for NGOs but rather as partners engaged in complementary activities;
13. Specialised bodies can provide valuable support to NGOs and grassroots organisations in carrying out strategic litigation with a view to support for victims and long term benefits in the fight against discrimination. Specialised bodies legal expertise and financial support can complement the work of local and nationally based NGOs and grassroots organisations that work directly with people who have experienced discrimination and racism and have built up relationships and trust with them;
14. In setting up NIADs, participating States should ensure that they have appropriate access to all parts of government and are fully consulted on matters which concern them. The charters or legislative foundations for NIADs should ensure they have the prerogative to seek and receive all official information necessary for the fulfilment of their mandates, including criminal justice and relevant national security data, ensuring their capacity to carry out informed analysis, public reporting, and to make policy recommendations;
15. We call upon participating States to extend the mandates of NIADs to address all forms of discrimination, including religious intolerance and sexual orientation bias;
16. Recognizing, the overlaps that exist between racial and religious discrimination, migration and nationality, the mandate of NIADs should provide a safe space to address all forms of discrimination independently from the legal status of a victim of discrimination;
17. We urge States to ensure that the mandates of NIADs take into account the intersection of multiple forms of discrimination, in particular the relation of racism and xenophobia, religious intolerance and ethnicity, and the double-discrimination of racism and gender-bias;
18. NIADs should reaffirm importance that civil society plays in combating racism and xenophobia and supporting the victims of racial discrimination, and should sustain programmatic cooperation with civil society.

Analysis, legislative and policy advice

19. NIADs should monitor the content and effect of primary and secondary legislation pertaining to tolerance and non-discrimination with the view to formulating policy advice and amendments to legislative and administrative measures;
20. NIADs should be entitled to provide information and advice to relevant state bodies and institutions. Participating States should ensure that the advice of NIADs is taken into account in the formulation of public policy in particular migration and integration policy and, when necessary, translated into administrative and legislative measures;
21. In order to fulfil the monitoring and advisory aspect of their mandate, NIADs should have access to criminal justice data, including data concerning violent hate crimes and incidents, and have the authority to publish findings and recommendations based on this information;

22. NIADs should be proactive in undertaking research on issues for which further action is needed at policy level, i.e. in the field of positive action, data collection or multiple discrimination;
23. NIADs should undertake targeted research and analysis concerning patterns of discrimination in the public and private sectors. In particular they should focus on vulnerable groups, such as migrants, Roma and Sinti, Muslim, Jewish, LGBT groups and other visible minorities; and should, in order to make use of relevant experience and expertise, work together closely with civil society organisations that represent these groups.

Awareness-raising

24. We acknowledge that work of NIADs on public awareness-raising regarding discrimination and education for tolerance and human rights should be informed by results of their monitoring and reporting work;
25. In order to enhance the relevancy of awareness-raising campaigns, NIADs should cooperate with civil society organisations, in particular representing vulnerable groups such as migrants, people of African origin, Roma and Sinti, Muslims, Jews, LGBT persons and other minorities;
26. NIADs's have a role to play in informing and training the news media about the background to minority issues, thus preventing one-sided negative and provocative reporting and encouraging a more balanced media coverage in relation to minorities;

Case work

27. NIADs should be mandated to provide aid and assistance to victims of various forms of discrimination, including its most extreme forms, such as hate-motivated violence, to include legal aid, in order to secure their rights before state institutions and the courts;
28. In order to provide affective assistance on individual cases, NIADs should have adequate resources and adequate power of investigation (i.e. appropriate powers to obtain evidence and information), as well as to have recourse to the civil and criminal courts or other judicial authorities, if national laws permit so;
29. NIADs should be entitled to consider complaints concerning individual cases and to seek settlements either through amicable conciliation or, within the limits prescribed by the law, through binding and enforceable decisions;
30. We note that NIADs's work on individual cases may affect their monitoring and reporting role, and therefore we encourage NIADs to find effective ways to accommodate both of these functions;
31. When identifying larger patterns of discrimination and analyzing violent hate crimes and incidents, NIADs should also draw upon on data collated from reports by police and other government sources such as the judiciary and the courts, local NGOs, and the media;
32. NIADs should incorporate analysis of individual cases into their general monitoring and advisory role, taking into account privacy and confidentiality rules;

33. NIADs should ensure that their work on individual cases assists in identification of larger patterns of discrimination, and vice versa.

Vulnerable groups

34. NIADs should acknowledge the unique characteristics of manifestations of intolerance and discrimination against vulnerable groups such as migrants, people of African origin, Roma and Sinti, Muslims, Jews, LGBT persons and other minorities, including by means of:
- coordinating and cooperating closely with officers, departments, and specialized units in governmental bodies and ministries concerned with vulnerable groups;
 - coordinating and cooperating closely with civil society groups representing vulnerable groups such as migrants, people of African origin, Roma and Sinti, Muslims, Jews, LGBT persons and other minorities, and creating appropriate structures and programmes to address these phenomena;
 - ensuring representation of vulnerable groups among staff of NIADs;
 - launching targeted awareness-raising campaigns, in cooperation with the minority groups;
 - supporting targeted monitoring and encouraging reporting and registration of hate-motivated incidents against vulnerable groups;
 - informing migrants about available remedies against discrimination, while improving channels of information through which migrants can safely and confidentially report incidents of discrimination, including discrimination in the form of hate crime and other criminal violence;
 - addressing problems of access to justice for those who have no legal status;
35. NIADs's in their strategic planning should aim to promote equality in the development of national policies, and not only combat discrimination as it arises. This is of particular relevance in the development of migration and integration policies. Through equality proofing policies, monitoring practice and procedural developments and targeting resources NIADs's have a remit to mainstream equality and substantially contribute towards the creation of intercultural societies. A proactive role is required in this;
36. In developing and applying anti-terrorism and anti-extremism policies and laws OSCE participating States should be guided by their human rights obligations and should take into account existing recommendations and guidelines of international organisations, including the ODIHR Manual on Human Rights and Anti-Terrorism.

NGOs and civil society

37. We stress the importance for civil society of the systematic collection of quantitative and qualitative data on combating racism and xenophobia;
38. We recognise the role of NGOs in monitoring, reporting, and advocacy on discrimination and in gathering and recording information through victim surveys;

39. We highlight the importance of sustained partnerships between NIADs and civil society, in particular, when developing complaints mechanisms, gathering information, and liaising with affected communities;
40. Such partnerships should include the provision of financial support to NGOs in implementing activities aiming at preventing and combating racism and xenophobia, including through the collection and analysis of qualitative and quantitative data, as well as monitoring and documenting cases. This could take the form of an exchange between NGOs and NIADs, with NGOs providing data, case studies and expertise to NIADs without becoming (politically) dependant on them.

OSCE and Other International Organizations

41. International organizations should take the necessary steps to raise the capacity of and train NGOs and organizations of people affected or exposed to discrimination and racism in advocacy, monitoring, reporting and documenting cases of discrimination;
42. International organizations should encourage participating States to strengthen state institutions that provide a first recourse to the victims of racism and xenophobia. This should include support for the capacity of the courts, state prosecution services, and police to address civil and criminal cases of discrimination, as well as for institutions such as ombudsman institutions, anti-discrimination commissions, and specialized social services at the national, regional or municipal level that provide material and legal support to victims;
43. ODIHR should organise annual regional or OSCE-wide conferences and meetings with involvement of civil society and government representatives working on anti-discrimination in order to discuss issues relating to combating racism and intolerance;
44. ODIHR should foster cooperation between governmental structures with genuinely independent institutions representing civil society;
45. ODIHR should consider elaborating Guidelines concerning the functions and prerogatives of NIADs based on the ECRI General Policy Recommendation No.2 and monitoring implementation of the Guidelines by the OSCE participating States, paying special attention to the necessity for NIADs to have broad mandates;
46. We recommend the establishment of an international voluntary fund for civil society organisations working towards combating racism and discrimination.

ANNEX X. List of participants

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Opening Remarks

Amb. Christian

STROHAL

Opening and Closing Remarks

Mr. Alcee L.

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Opening Remarks

Mr. Morten

KJAERUM

Keynote address at the Opening Session

Mr. Michael	MCCLINTOCK	Presentation of report from the side event: roundtable for civil society
Ms. Anne	GASPARD	Introducer at the Session I
Mr. Jozef	DE WITTE	Introducer at the Session I
Ms. Isil	GACHET	Moderator of the Session I
Mr. Vladimir	LUKIN	Introducer at the Session II
Ms. Pascale	CHARHON	Introducer at the Session II
Ms. Isabelle	CHOPIN	Moderator of the Session II
Ms. Marie-France	PICARD	Introducer at the Session III
Ms. Naomi	EARP	Introducer at the Session III
Amb. Brendan	MORAN	Moderator of the Session III
Dr. Anastasia	CRICKLEY	Closing Remarks