



**United Nations**

# **Report of the Committee on the Elimination of Racial Discrimination**

**Seventy-fourth session  
(16 February–6 March 2009)**

**Seventy-fifth session  
(3–28 August 2009)**

**General Assembly  
Official Records  
Sixty-fourth session  
Supplement No. 18 (A/64/18)**



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*Note*

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**Letter of transmittal**

28 August 2009

Sir,

It is with pleasure that I transmit the annual report of the Committee on the Elimination of Racial Discrimination.

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 173 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the past year, the Committee continued with a significant workload in terms of the examination of States parties' reports in addition to other related activities. The Committee also examined the situation of several States parties under its early warning and urgent procedures. Furthermore, the Committee examined several States parties under its follow-up procedure.

As regards subjects of general interest, the Committee continued its thematic discussion on the subject of special measures within the meaning of articles 1 (4) and 2 (2) of the Convention and adopted a general recommendation on this subject. In addition, the Committee also adopted a general recommendation on follow-up to the Durban Review Conference. The texts of these general recommendations Nos. 32 and 33 are reproduced in the relevant annex to this report.

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 53 States parties have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized.

Furthermore, only 43 States parties have so far ratified the amendments to article 8 of the Convention adopted at the Fourteenth Meeting of States Parties, despite repeated calls from the General Assembly to do so. These amendments provide, *inter alia*, for the financing of the Committee from the regular budget of the United Nations. The Committee appeals to States parties that have not yet done so to consider making the declaration under article 14 and ratifying the amendments to article 8 of the Convention.

The Committee remains committed to a continuous process of improvement of its working methods, with the aim of maximizing its effectiveness and adopting innovative approaches to combating contemporary forms of racial discrimination. The evolving practice and interpretation of the Convention by the Committee is reflected in its general recommendations, opinions on individual communications, decisions and concluding observations.

His Excellency Mr. Ban Ki-moon  
Secretary-General of the United Nations  
New York

At the present time, perhaps more than ever, there is a pressing need for the United Nations human rights bodies to ensure that their activities contribute to the harmonious and equitable coexistence of peoples and nations. In this sense, I wish to assure you once again, on behalf of all the members of the Committee, of our determination to continue working for the promotion of the implementation of the Convention and to support all activities that contribute to combating racism, racial discrimination and xenophobia throughout the world, including through follow-up to the outcome of the Durban Review Conference.

I have no doubt that the dedication and professionalism of the members of the Committee, as well as the pluralistic and multidisciplinary nature of their contributions, will ensure that the work of the Committee contributes significantly to the implementation of both the Convention and the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in the years ahead.

Please accept, Sir, the assurances of my highest consideration.

*(Signed)* Fatimata-Binta Victoire **Dah**  
Chairperson  
Committee on the Elimination  
of Racial Discrimination

## I. Organizational and related matters

### A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 28 August 2009, the closing date of the seventy-fifth session of the Committee on the Elimination of Racial Discrimination, there were 173 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the seventy-fifth session, 53 of the 173 parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 43 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 9 June 2009.

### B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2009. The seventy-fourth (1903rd to 1932nd meetings) and seventy-fifth (1933rd to 1972nd meetings) sessions were held at the United Nations Office at Geneva from 16 February to 6 March and from 3 to 28 August 2009, respectively.

4. The agendas of the seventy-fourth and seventy-fifth sessions, as adopted by the Committee, are reproduced in annex II.

### C. Membership and attendance

5. The list of members of the Committee for 2009 is as follows:

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Mahmoud <b>Aboul-Nasr</b>	Egypt	2010
Nourredine <b>Amir</b>	Algeria	2010
Alexei S. <b>Avtonomov</b>	Russian Federation	2012
José Francisco <b>Cali Tzay</b>	Guatemala	2012
Fatimata-Binta Victoire <b>Dah</b>	Burkina Faso	2012
Jens Hartig <b>Danielsen</b> <sup>1</sup>	Denmark	2010
Régis de <b>Gouttes</b>	France	2010
Ion <b>Diaconu</b>	Romania	2012

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Kokou Mawuena Ika Kana (Dieudonné) <b>Ewomsan</b>	Togo	2010
<b>Huang Yong'an</b>	China	2012
Anwar <b>Kemal</b>	Pakistan	2010
Dilip <b>Lahiri</b>	India	2012
Jose A. <b>Lindgren Alves</b>	Brazil	2010
Pastor Elias <b>Murillo Martinez</b>	Colombia	2012
Chris Maina <b>Peter</b>	United Republic of Tanzania	2012
Pierre-Richard <b>Prosper</b>	United States of America	2012
Linos-Alexandre <b>Sicilianos</b>	Greece (resigned with effect from 30 August 2009)	2010
Patrick <b>Thornberry</b>	United Kingdom of Great Britain and Northern Ireland	2010

#### D. Officers of the Committee

6. The Bureau of the Committee comprised the following Committee members in 2009:

Chairperson	Fatimata-Binta Victoire <b>Dah</b> (2008–2010)
Vice-Chairpersons	Alexei <b>Avtonomov</b> (2008–2010) Francisco <b>Cali Tzay</b> (2008–2010) Anwar <b>Kemal</b> (2008–2010)
Rapporteur	Linos-Alexandre <b>Sicilianos</b> (2008–2010)

#### E. Cooperation with the International Labour Organization, the Office of the United Nations High Commissioner for Refugees, the United Nations Educational, Scientific and Cultural Organization and the special procedures of the Human Rights Council

7. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),<sup>2</sup> both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

8. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations submitted to the International Labour Conference were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal

Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

9. UNHCR submits comments to the members of the Committee on all States parties whose reports are being examined when UNHCR is active in the country concerned. These comments make reference to the human rights of refugees, asylum-seekers, returnees (former refugees), stateless persons and other categories of persons of concern to UNHCR.

10. UNHCR and ILO representatives attend the sessions of the Committee and brief Committee members on matters of concern.

11. The Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples held a dialogue with the Committee in the morning of 14 August 2009.

## **F. Adoption of the report**

12. At its 1971st meeting (seventy-fifth session), on 28 August 2009, the Committee adopted its annual report to the General Assembly.

### *Notes*

<sup>1</sup> Seventy-fourth session only.

<sup>2</sup> *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/8718)*, chap. IX, sect. B.

## II. Prevention of racial discrimination, including early warning and urgent action procedures

13. The Committee's work under its early warning and urgent action procedure is aimed at preventing and responding to serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination. A working paper adopted by the Committee in 1993<sup>1</sup> to guide its work in this area was replaced by new guidelines adopted by the Committee at its seventy-first session, in August 2007.<sup>2</sup>

14. The Committee's working group on early warning and urgent action, established at its sixty-fifth session in August 2004, is currently comprised of the following members of the Committee:

Coordinator: Patrick Thornberry  
Members: José Francisco Cali Tzay  
Anwar Kemal  
Chris Maina Peter  
Ion Diaconu

15. During the reporting period, the Committee again considered a number of situations under its early warning and urgent action procedure, including in particular the following.

16. At its seventy-fourth session, the Committee considered information concerning a Government intervention in the Northern Territory of **Australia** aimed at improving the well-being of Aboriginal communities, which, however, had included measures affecting the autonomy of the communities concerned and involved the suspension of the Racial Discrimination Act. The Committee requested the Government of Australia to submit information on plans to elaborate redesigned measures and to reinstate the Racial Discrimination Act. At its seventy-fifth session, the Committee took note of the Government's timely response, submitted by note verbale dated 30 July 2009, and requested that further relevant information be included in the next periodic report of the State party.

17. At its seventy-fifth session, and following its previous communications to the Government of **Brazil** in relation to the situation concerning the Indigenous Land of Raposa Serra do Sol, the Committee decided to transmit a letter to the State party expressing its satisfaction at a recent decision by the Federal Supreme Court on Brazil on the question of land demarcation, which allows the Government to complete the removal of non-indigenous trespassers from the traditional lands of affected indigenous communities. The Committee also decided to request the Government to provide it with an update on the implementation of this decision.

18. By a letter dated 6 March 2009, the Committee requested information from the Government of **El Salvador** concerning the alleged lack of protection of the indigenous peoples of Cuxcutan and Chaparastique. In this regard, El Salvador was also requested to provide information on the implementation of recommendations contained in the concluding observations of the Committee adopted in 2006. El Salvador responded in a timely manner by a letter dated 21 April 2009.

19. Upon receiving reports concerning the impact of a cement plant project and related land expropriation plans on indigenous communities in San Juan Sacatepéquez in **Guatemala**, it was decided that this issue should be raised in the list of issues to be transmitted to the State party in advance of its meeting with the Committee at the seventy-sixth session in February 2010.

20. At its seventy-fourth and seventy-fifth sessions, the Committee further considered the impact of a number of dam construction projects on indigenous populations in north-east **India** and requested the State party to provide information in this regard. The Committee also decided to reiterate its call for the repeal of the Armed Forces Act (Special Powers) of 1958, applicable in the tribal areas of north-east India. At its seventy-fifth session, the Committee further considered reports on bauxite mining projects on the religious lands of indigenous peoples in the State of Orissa and decided to request information on steps taken to carry out consultations with the affected communities.

21. By a letter dated 6 March 2009, the Committee reacted to information on the alleged infringement of the rights of indigenous peoples in **Indonesia**, including in connection with the activities of palm oil companies and with allegedly discriminatory provisions in regulations to reduce emissions from deforestation, adopted within the framework of the United Nations Framework Convention for Climate Change, which reportedly ignore the property rights of indigenous peoples over their traditional lands. The Committee requested the Government of Indonesia to submit comments on measures taken to safeguard the rights of affected indigenous communities. At its seventy-fifth session, and in the absence of a response from the State party, the Committee decided to reiterate its request for information.

22. In the light of information received on the situation of the Hmong indigenous people in the **Lao People's Democratic Republic**, the Committee, on 6 March 2009, transmitted a letter to the Government expressing concern and requesting information to be provided by 1 August 2009. The Committee also requested information concerning the ongoing repatriation of Lao Hmong refugees from Thailand, and in particular with regard to their status, safety and well-being as returnees in the Lao People's Democratic Republic.

23. Following the receipt of a report claiming the exclusion of indigenous peoples' representatives from the constitution-making processes in **Nepal**, the Committee, on 6 March 2009, transmitted a letter to the Government of Nepal requesting information on measures taken to ensure the adequate participation of these peoples in the ongoing constitution-making process, and their full participation in political life. At the same time, Nepal was reminded that its seventeenth to nineteenth periodic reports had fallen due on 1 March 2008. At its seventy-fifth session, and in the absence of a response from the State party, the Committee decided to reiterate its request for information.

24. At the seventy-fourth session, the Committee further considered the situation of the indigenous communities of Ancomarca and Tarata in **Peru** and, by a letter dated 6 March 2009, requested the Government to take measures to guarantee their rights to the use of water. The Government provided its responses by note verbale dated 1 August 2009.

25. At its seventy-fifth session, the Committee considered issues related to the alleged negative impact of uranium extraction activities conducted by a French State company on the traditional lands of the Touareg people of **Niger**. The Committee decided to address letters to the Governments of Niger and France respectively to request information regarding this matter and on measures taken to obtain the prior informed consent of the affected communities with regard to ongoing and planned resource extraction activities in this area.

26. In the light of information concerning the potential impact of a hydroelectric dam project on the situation of certain indigenous communities in **Panama**, it was decided at the seventy-fifth session that this issue should be raised in the list of issues to be transmitted to the State party in advance of its meeting with the Committee at the seventh-sixth session in February 2010.

27. In the light of information alleging discrimination against Maasai pastoralists in a district of Western Arusha, **United Republic of Tanzania**, the Committee requested the

Government, by a letter dated 6 March 2009, to provide information on follow-up measures undertaken in respect of the recommendations adopted by the Committee on the previous periodic report of the United Republic of Tanzania.

*Notes*

<sup>1</sup> *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18)*, para. 18 and annex III.

<sup>2</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18)*, annex III.



### **III. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention**

#### **28. Azerbaijan**

(1) The Committee considered the consolidated fifth and sixth periodic reports of Azerbaijan (CERD/C/AZE/6) at its 1946th and 1947th meetings (CERD/C/SR.1946 and CERD/C/SR.1947), held on 11 and 12 August 2009. At its 1968th meeting (CERD/C/SR.1968), held on 26 August 2009, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the timely submission of the fifth and sixth joint periodic report of Azerbaijan (CERD/C/AZE/6), which has been prepared in conformity with the reporting guidelines. The Committee was encouraged by the attendance of the high-ranking delegation and expresses its appreciation for the opportunity to continue its dialogue with the State party. The Committee, while expressing its satisfaction with the updated information provided orally by the delegation, would have preferred the written replies in response to the list of issues to be submitted well in advance to allow timely translation into all the Committee's working languages.

#### **B. Factors and difficulties impeding the implementation of the Convention**

(3) While acknowledging the efforts of the State party to find a peaceful solution to the conflict over Nagorny Karabakh, the Committee is deeply concerned about the persistence of this conflict and its negative influence, at the national and regional levels, on the exercise and full enjoyment of the rights enshrined in the Convention, in particular by internally displaced persons.

#### **C. Positive aspects**

(4) The Committee commends the State party for the continuing process of bringing its domestic legislation into line with the provisions of the Convention and other human rights treaties. It welcomes the legislative, administrative and practical measures taken, as well as the constitutional amendments made, to improve the promotion and protection of human rights in the State party since the examination of the fourth periodic report, in particular:

(a) The "National Plan of Action for the Protection of Human Rights in the Republic of Azerbaijan", approved by decree of the Head of State of 28 December 2006, aimed at, inter alia, strengthening the dialogue between cultures and cooperation among religions, protection and further development of the cultural heritage of national minorities, development of legal awareness and the legal culture of the population, and the prohibition of discrimination;

(b) The amendment to article 25 of the Constitution to introduce the prohibition of the granting of privileges or denial of benefits to anyone on the basis of race, nationality, religion, language, sex or other grounds;

(c) The ratification by the State party in January 2009 of the Convention on the Rights of Persons with Disabilities and its Optional Protocol, as well as of the Optional

Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;

(d) The measures undertaken by the State party to simplify migration procedures, such as the presidential decree of 4 March 2009 on the application of the “single window” principle, the establishment by Decree 560 (2007) of the State Migration Service, the cancellation of entry-exit visas for foreigners and stateless persons who have received permission for temporary and permanent residence in the State party, and the preparation of a draft migration code, which the Committee hopes will be fully consistent with the rights recognized by the Convention and other international human rights treaties;

(e) The efforts undertaken by the State party to promote a culture of religious tolerance, as already emphasized in the report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her mission to Azerbaijan (A/HRC/4/21/Add.2);

(f) The reforms undertaken in the judiciary, and in particular the progress made during the reporting period, with regard to the amendment of the Judges Act, the adoption of the Judicial Council Act, the establishment of the statute of the Judges’ Selection Committee and the Code of Ethics for Judges;

(g) The activities carried out by the Ombudsperson’s Office to raise awareness with regard to provisions of the International Convention on the Elimination of All Forms of Racial Discrimination and the opening of regional offices of the Ombudsperson in different districts of Azerbaijan, namely in Quba, Sheki, Ganja and Jalilabad;

(h) The progress made in combating trafficking in human beings, through the adoption of the Law on Combating Human Trafficking in 2005, the amendment of the Criminal Code in 2005, the adoption of the National Plan of Action of the Republic of Azerbaijan on Combating Trafficking in Human Beings for the period 2009–2013 and the creation of a relief fund for victims of human trafficking.

#### **D. Principal subjects of concern and recommendations**

(5) While noting that significant progress has been made by the State party in protecting the economic, social and cultural rights of persons affected by internal displacement, as well as asylum-seekers and refugees, the Committee is still concerned that asylum-seekers, refugees and internally displaced persons continue to experience discrimination in the areas of employment, education, housing and health. The Committee notes with concern that internally displaced women and children remain in a particularly vulnerable and marginalized situation. The Committee further observes that, while the State party generally endeavours to comply with the standards of the Convention relating to the status of refugees, some asylum-seekers, including Russian citizens from Chechnya, are allegedly excluded from the refugee determination procedure of the State party.

**The Committee calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups of the population. The Committee requests the State party to include, in its next periodic report, information on measures taken in this regard, and draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens. Furthermore, the Committee requests the State party:**

(a) **To ensure equal opportunities for displaced persons, and to allow for their enhanced participation in the formulation of State policies and programmes concerning their interests, in particular with regard to the planning of new settlements, improved access to employment, housing, health care and quality**

education, and measures to encourage mixed schooling with local children. In this respect, it recommends that the State party pay special attention to the situation of women and children;

(b) To ensure that all refugees and asylum-seekers receive equal treatment and to remedy the difficulties encountered by some asylum-seekers, including Russian citizens from Chechnya, in accessing refugee status determination procedures and residence registration (*propiska*) in order to access employment, health, and other social and economic rights. The Committee also recommends that the State party consider granting a temporary form of protection for persons who are requesting refugee status under the 1951 Convention Relating to the Status of Refugees, but who nonetheless are in need of international protection during consideration of their request. The Committee also recommends that the State party provide training to public officials and law enforcement officers with the aim of avoiding any tendency towards discriminatory conduct.

(6) The Committee, while commending the efforts of the State party to reduce poverty, including through adoption of the Targeted State Social Assistance Act, which entered into force on 1 January 2006, remains concerned about significant disparities in the enjoyment of economic, social and cultural rights that persist in the State party and particularly affect ethnic groups in rural and remote mountainous areas (art. 5 (e)).

**The Committee recalls that a low level of economic and social development in areas inhabited by certain ethnic groups as compared with the rest of the population might be an indication of de facto discrimination, even if it is not the result of deliberate Government policies. The Committee therefore recommends that the State party conduct studies with a view to assessing and evaluating the level of enjoyment of economic, social and cultural rights by different ethnic groups and provide statistics disaggregated by ethnic group on political participation and the standard of living of the population in its next periodic report.**

(7) While acknowledging the efforts of the State party to combat human trafficking, including foreign victims, especially through adoption of the National Plan of Action on Combating Trafficking in Human Beings (2009–2013) and the creation of a relief fund for victims of human trafficking, the Committee is concerned that human trafficking remains a serious problem (art. 5).

**The Committee requests that the State party effectively implement the National Plan of Action to Combat Trafficking in Persons and ensure that the Law on Combating Trafficking in Persons is fully enforced and that perpetrators are effectively prosecuted and punished. It recommends that the State party address the root causes of trafficking by increasing its efforts to improve the economic situation of typical victim groups, in particular of women, thereby eliminating their vulnerability to exploitation and traffickers. The Committee also recommends that the State party take measures for the rehabilitation and social integration of victims of exploitation and trafficking.**

(8) The Committee, while recognizing the adoption of a wide range of anti-discrimination policies by the State party is concerned that a certain number of those policies and projects, such as the National Strategy on Increasing Transparency and Combating Corruption, the National Plan of Action to Combat Trafficking in Persons, the project on modernization of the justice and judicial system, as well as State programmes for the provision and realization of social and economic rights, have yet to be implemented or evaluated (art. 2).

**The Committee urges the State party to fully implement all anti-discrimination policies that have been adopted, to closely monitor and evaluate progress in**

**implementation of the Convention at national and local levels and to make an assessment of the impact of the measures already implemented in its next periodic report.**

(9) The Committee notes with concern the information provided by the State party that there have been very few complaints or court decisions concerning acts of racial discrimination during the reporting period. The Committee also notes that, among the high number of 42,260 applications from citizens received by the Ombudsperson during the reporting period, there were no complaints of racial discrimination (arts. 2 (1) (d) and 6).

**The Committee, considering that no country is free from racial discrimination, urges the State party to consider why there have been very few complaints of racial discrimination. Reiterating its previous concluding observations and recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party verify whether the low number of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination. The Committee requests the State party to provide in its next report updated information on complaints about acts of racial discrimination and on relevant decisions in penal, civil or administrative court proceedings. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.**

(10) The Committee is concerned that the application of articles 147, 148 and 283 of the Criminal Code regarding insult, defamation and incitement to racial, national and religious hatred has resulted in the sentencing of a number of journalists to long prison terms or the imposition of heavy fines for defamation (art. 5 (d)).

**While taking note of the information provided by the delegation that the issue of defamation and, in particular, the possibility of confining it to civil rather than criminal law, was the subject of extensive discussions within the Government and society at large, the Committee encourages the State party to ensure that the legislation on defamation and similar offences is brought into line with international treaties. The Committee calls upon the State party to reconsider its criminal legislation on defamation, especially articles 147, 148 and 283 of the Criminal Code, in order to ensure its conformity with the Convention, and requests the State party to provide in its next report updated information in this regard.**

(11) While taking note of the explanation given by the State party that information on nationality is neither indicated in the identity documents of individuals nor requested in applications for employment, the Committee nevertheless regrets the lack of up-to-date disaggregated statistical data regarding the de facto enjoyment by members of ethnic minorities, as well as by non-citizens, asylum-seekers and refugees, of the rights protected under the Convention.

**Recalling the importance of gathering accurate and up-to-date data on the ethnic composition of the population, the Committee requests that the State party provide the data obtained in the census conducted in April 2009 in its next periodic report. In this regard, it draws the State party's attention to paragraphs 10 to 12 of its guidelines on the form and content of reports (CERD/C/2007/1).**

(12) The Committee regrets the lack of information relating to the representation of the various ethnic groups in parliament and other elected bodies, as well as their participation in public bodies (art. 5 (c)).

**The Committee invites the State party to promote representation of the various ethnic groups in parliament and other elected and public bodies, and requests the State party to include relevant information in the next periodic report.**

(13) While taking note of ongoing discussions on the creation of an advisory council of national minorities, the Committee is concerned about the current absence of consultative structures for representatives of minorities in the State party that would allow for their active participation in the legislative process and strengthen the cooperation between public bodies and representatives of national minorities (art. 5 (f)).

**The State party should ensure that members of minorities enjoy their rights in full compliance with the Convention and taking also into account the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities. The State party should create a national consultative organ, including representatives of minorities, in order to better take into account their specific needs and to enable them to take part in the decision-making processes in respect of issues of interest and policies that affect them.**

(14) The Committee takes note of the reforms undertaken and the progress made in the modernization of the judicial system during the reporting period, in particular the application of the European Convention for the Protection of Human Rights and Fundamental Freedoms and of the jurisprudence of the European Court of Human Rights in the administration of justice. However, the Committee regrets that the International Convention on the Elimination of All Forms of Racial Discrimination and other international human rights treaties do not seem to have been taken into account to the same degree (art. 6).

**The Committee calls on the State party to take additional measures to disseminate information about the International Convention on the Elimination of All Forms of Racial Discrimination and the Committee's general recommendations, and to implement programmes for prosecutors, judges, the Ombudsperson and lawyers that cover all relevant aspects of the Convention. It further encourages the State party to monitor the results of such efforts and to include in its next periodic report detailed statistics on court cases in which the Convention was invoked.**

(15) The Committee is concerned at allegations of persistent hostile attitudes on the part of the general public towards ethnic Armenians living in Azerbaijan. The Committee notes with concern that the information provided by the State party in this regard contrasts with information received from numerous national and international non-governmental sources (art. 2).

**The Committee recommends that the State party take steps to prevent and combat hostile attitudes towards ethnic Armenians living in its territory, including through information campaigns and education of the general public. Furthermore, in the light of its general recommendation No. 19 (1995) on article 3 of the Covenant, the Committee encourages the State party to monitor all tendencies which may give rise to racial or ethnic de facto segregation and endeavour to combat the negative consequences of such tendencies.**

(16) The Committee, while noting the information provided by the delegation, remains of the view that measures taken to educate the public, law enforcement officials, members of political parties and media professionals on the provisions of the Convention could be strengthened (art. 7).

**The Committee suggests that the State party consider intensifying human rights education and training of law enforcement officers, teachers, social workers and public servants, and draws attention to its general recommendation No. 13 (1993) on**

**the training of law enforcement officials in the protection of human rights in that regard.**

(17) While welcoming the extensive information provided by the State party on measures to ensure the teaching of and in minority languages, the Committee is concerned that in spite of approximately 30,000 ethnic Armenians living on the territory of Azerbaijan, no information was provided by the State party as to whether education and instruction are provided in the Armenian language in schools (art. 5 (e)).

**The Committee recommends that the State party continue its efforts for the preservation and development of minority languages and encourages it to establish a public school network offering teaching of and in such languages, including the Armenian language. The State party is requested to provide information on this subject in its next report.**

(18) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination.

(19) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(20) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(21) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 63/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(22) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(23) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 5, 7 and 15 above.

(24) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 6, 9 and 10, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(25) The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports in a single document, due on 15 September 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 29. **Bulgaria**

(1) The Committee considered the fifteenth to nineteenth periodic reports of Bulgaria, submitted in a single document (CERD/C/BGR/19), at its 1906th and 1907th meetings (CERD/C/SR.1906 and 1907), held on 17 and 18 February 2009. At its 1926th meeting (CERD/C/SR.1926), held on 3 March 2009, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the periodic reports submitted as a single document by the State party and its replies to the list of issues, as well as the supplementary information provided orally by the delegation. The Committee found it encouraging that the delegation replied frankly and constructively to the questions and comments raised by the Committee members. The Committee welcomes the high quality of the document submitted by the State party, which was in keeping with the Committee's guidelines.

### **B. Factors and difficulties impeding the implementation of the Convention**

(3) While welcoming the progress made in strengthening democracy and the rule of law in Bulgaria, the Committee is aware of the efforts the State party must make, in particular to enhance the independence of the judiciary and eliminate corruption.

### **C. Positive aspects**

(4) The Committee notes with satisfaction that, in accordance with article 5, paragraph (4), of the Bulgarian Constitution, the Convention takes precedence over national law.

(5) The Committee welcomes the fact that the principle of equality and non-discrimination contained in article 6, paragraph (2), of the Bulgarian Constitution of 1991 now features in several national codes and laws.

(6) The Committee commends the quality of the criminal legislation in criminalizing acts of racial discrimination in Bulgaria.

(7) The Committee notes that the State party has established various bodies and institutions competent to combat discrimination, such as the Commission for Protection against Discrimination, the Ombudsman and the National Council for Cooperation on Ethnic and Demographic Issues.

(8) The Committee notes with satisfaction that the State party has taken measures and implemented programmes for the integration of persons belonging to minorities, for the upbringing and education of Roma children, for the promotion of the mother tongues of ethnic minorities, and for the prevention of discrimination by State officials and the police against persons from ethnic minorities.

(9) The Committee welcomes the information from the State party recalling that Bulgaria has already made the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and, in addition, has ratified the

Council of Europe Framework Convention for the Protection of National Minorities, having previously ratified the Convention for the Protection of Human Rights and Fundamental Freedoms.

#### **D. Concerns and recommendations**

(10) The Committee is unclear as to the meaning of the concept of “State unity” referred to in the report of the State party (para. 15).

**The Committee recommends that, in its next report, the State party provide more information and details on how this concept fits in with the need to respect the rights of persons belonging to minorities.**

(11) The Committee has taken note of the data provided by the State party on the ethnic composition of the population and the main minorities residing in Bulgaria. It is concerned, however, about the low representation of persons from certain minority groups, particularly Roma, in the various public administrations, the army and the police, which may be due to discriminatory practices during selection and recruitment.

**The Committee recommends that the State party take effective measures with a view to improving the representation of minority groups in the public services and preventing and combating all forms of discrimination in the selection and recruitment process in the administration, the army and the police. The Committee invites the State party to provide in its next periodic report information on the measures taken to this end (art. 5).**

(12) Noting that, for the implementation of article 2 of the Convention, the State party has set up various bodies and institutions to combat discrimination, the Committee is unclear as to the actual scope of action of such bodies in combating ethnic discrimination.

**The Committee recommends that the State party strengthen the role of such bodies and institutions, in particular the Commission for Protection against Discrimination, in receiving complaints, carrying out studies, applying penalties and assisting victims of acts of discrimination. The Committee further recommends that the State party provide supplementary information on the guarantee of the independence of the Ombudsman and the role of the National Council for Cooperation on Ethnic and Demographic Issues (art. 2).**

(13) The Committee is concerned about the former practice of placing Roma children in special schools reserved for children with disabilities.

**It recommends that the State party continue measures to integrate Roma children into mixed schools, in cooperation with civil society organizations.**

(14) The Committee has taken note of the measures aimed at promoting the teaching of the mother tongues of the various ethnic communities in Bulgaria.

**It recommends that the State party further develop structures and means for the teaching to ethnic communities in Bulgaria of their mother tongues.**

(15) The Committee is concerned about the specific obstacles encountered by Roma in respect of access to work, housing, health care and education.

**It recommends that the State party continue taking positive measures to improve the living conditions of Roma in respect of access to work, health care, housing and education within the framework of the Plan of Action for Roma Inclusion and the Decade for Roma Inclusion, in accordance with article 5 of the Convention and general recommendation No. 22 (2000) on discrimination against Roma (art. 5).**



(16) The Committee notes with concern that there are cases of ill-treatment and excessive use of force by the Bulgarian police against persons from minority groups, in particular Roma.

**Bearing in mind general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee encourages the State party to continue to take measures to combat abuse of authority and ill-treatment by the police against persons from minority groups, to ensure that such acts are effectively prosecuted and punished by the judicial authorities, and furthermore to continue integrating Roma into the police. The Committee recommends that the State party implement a methodology allowing the Ministry of the Interior to deal objectively with complaints directed against the police and to establish a fully independent body for this purpose. The Committee recommends that the State party provide information on the functioning of the specialized Human Rights Commission set up within the National Police Department, which is in charge of preventing and combating police brutality (art. 5).**

(17) The Committee notes that the criminal provisions relating to racist acts are still infrequently applied.

**The Committee would like the State party to provide it with precise court statistics on the complaints lodged, prosecutions brought and judgements rendered in respect of racist acts, as well as on the types of racist offence, on the victims of such offences and on recent trends in this area.**

(18) The Committee is concerned about reports of the propagation by certain organizations, press and media outlets and political parties, in particular the ATAKA party, of racist stereotypes and hatred towards persons belonging to minorities. It also expresses concern about acts of hatred and racism committed against members of minorities, in particular by neo-Nazi skinhead groups.

**The Committee recommends that the State party take effective measures to penalize organizations, press and media outlets and political parties that are guilty of such acts. It further recommends that the State party take measures to promote tolerance among ethnic groups (arts. 4 and 6).**

(19) The Committee is concerned about the fact that the Convention is not well known among the people responsible for applying the law, in particular those working in the judiciary, which explains why it is insufficiently applied by judges.

**The Committee recommends that the State party step up its efforts to make the Convention more widely known, in particular in the judiciary, through training courses and seminars, so as to foster its direct application by the courts (art. 7).**

(20) The Committee believes that the public should be better informed of the procedure provided under article 14 of the Convention. It suggests that the State party publicize more extensively the declaration made under article 14 of the Convention in the various languages used in the country.

(21) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(22) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites resolution 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures

with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(23) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when it incorporates the Convention into its domestic legal order, particularly with regard to articles 2 to 7 of the Convention. The Committee also urges the State party to include in its next report specific information on action plans adopted and other measures taken with a view to implementing the Durban Declaration and Programme of Action at the national level. In addition, the Committee encourages the State party to participate actively in the Durban Review Conference in 2009.

(24) The Committee recommends that the State party make its periodic reports public as soon as they are submitted, and that the Committee's concluding observations be similarly publicized, in the official languages and in the other languages used in the country.

(25) The Committee recommends that the State party consult widely with civil society organizations working to combat racial discrimination when it drafts its next periodic report.

(26) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the human rights treaty bodies at their fifth inter-committee meeting, held in June 2006 (HRI/GEN/2/Rev.4, sect. D).

(27) In accordance with article 9, paragraph 1, of the Convention and article 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 13, 15, 16 and 18 within one year of the adoption of the present concluding observations.

(28) The Committee recommends that the State party submit its twentieth and twenty-first periodic reports in a single document, due on 4 January 2012, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1), adopted by the Committee at its seventy-first session, and that it address all points raised in the present concluding observations.

### 30. **Chad**

(1) The Committee considered the tenth to fifteenth periodic reports of Chad, submitted in a single document (CERD/C/TCD/15), at its 1960th and 1961st meetings (CERD/C/SR.1960 and 1961), held on 20 and 21 August 2009. At its 1970th meeting (CERD/C/SR.1970), held on 27 August 2009, it adopted the following concluding observations.

## **A. Introduction**

(2) The Committee welcomes the State party's submission of its report, which has been prepared in accordance with the Committee's guidelines, and the resumption of its dialogue with the Committee after a lengthy 14-year gap. The Committee welcomes the additional information the State party has provided orally and in writing.

(3) The Committee welcomes the State party's high-level delegation and the open and constructive dialogue it has had with the delegation. It nevertheless urges the State party to observe the deadlines set for the submission of its next periodic report.

## **B. Factors and difficulties impeding the implementation of the Convention**

(4) The Committee notes that the State party has for some 30 years been undergoing an institutional and political crisis characterized by armed uprisings and intercommunity conflicts. It is particularly concerned at the impact of the Darfur crisis. Like the delegation itself, the Committee is concerned at the fragility of the peace in the interior and along the country's borders; this has impeded the full application of the Convention.

## **C. Positive aspects**

(5) The Committee welcomes the series of reforms undertaken by the State party with a view to improving its legislative and institutional framework, and in particular the adoption of the 31 March 1996 Constitution, revised on 15 July 2005, which devotes 32 articles to civil liberties and fundamental rights and in article 221 establishes that international treaties prevail over domestic law and may be directly invoked before the national courts.

(6) The Committee welcomes the State party's adoption of Act No. 06/PR/2002 of 15 April 2002, prohibiting female genital mutilation, early marriage, domestic violence and sexual violence; Act No. 16/PR/06 of 13 March 2006, on the orientation of the Chadian education system, which recognizes the right of everyone without distinction to education and training; Act No. 17/PR/01 of 31 December 2001, which recognizes equal access for all to civil service posts; Act No. 45/PR/94, on the Political Parties Charter, which prohibits intolerance, tribalism, regionalism, religious discrimination, xenophobia and incitement or recourse to violence in party political programmes and activities; Act No. 021/PR/2000 of 18 August 2000, on the Electoral Code; and the ordinance regulating associations.

(7) The Committee notes with interest the State party's establishment of the Ministry of Human Rights and the Promotion of Liberties in 2005, and of a national commission of inquiry into human rights violations in the State party during the events of February 2008.

(8) The Committee notes with interest the State party's commitment to a resumption of its dialogue with United Nations bodies and mechanisms, in particular the human rights treaty-monitoring bodies. The Committee also welcomes the State party's opening of a Permanent Mission to the United Nations Office at Geneva in order to follow human rights issues more closely, as recommended by the Committee in its previous concluding observations.

(9) The Committee notes with interest that the State party plans to organize a human rights forum in November 2009. It hopes that due attention will be paid to the need to ensure observance of the provisions of the Convention, and looks forward to the forum's conclusions.

## **D. Subjects of concern and recommendations**

(10) While taking note of the creation of a national commission of inquiry into the violations that occurred during the events of February 2008, the Committee is concerned at the lack of information from the State party on the investigations carried out and the sanctions and penalties incurred by the perpetrators, including members of the armed forces.

**The Committee encourages the State party, in the interests of national reconciliation, to persevere with the work now being done by the commission of inquiry and act on its recommendations that the guilty parties should be brought to trial and punished. The Committee also recommends that the State party should inform it of the results**

**obtained by the commission of any prosecutions and the decisions handed down by the competent courts.**

(11) The Committee takes note of the information provided by the State party on the justice reform. It is nonetheless concerned at the persistence of numerous dysfunctional aspects of the justice system, including corruption, impunity, interference by the executive in the administration of justice and the lack of training for judges.

**The Committee recommends that the State party should pursue its efforts to improve the judicial system, taking account of the conclusions of the justice summit held in 2003, by:**

- (a) Continuing with the clean-up of the judicial apparatus in order to restore public confidence and discourage people from resorting to traditional justice;**
- (b) Stepping up efforts to combat corruption in the justice system;**
- (c) Promoting the independence of the judiciary and judges;**
- (d) Providing training for judges; and**
- (e) Creating conditions conducive to access to and acceptance of judicial decisions, notably through publicity campaigns and awareness-raising programmes for the general public.**

**The Committee also recommends that the State party should complete the work of establishing a special judges training school, as mentioned in its oral replies.**

(12) The Committee notes with concern the difficulties hampering the effective functioning of the National Commission on Human Rights, related in particular to its lack of independence and lack of resources.

**The Committee recommends that the State party should take steps to ensure the effective functioning of the National Commission on Human Rights, in particular by:**  
**(a) speeding up the adoption of legislation aimed at giving it a constitutional basis; and**  
**(b) ensuring its independence and allocating the resources necessary for its effective operation in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134).**

(13) The Committee takes note of the existence of the National Office of the Ombudsman, one of whose duties is to resolve tensions between different communities. The Committee is, however, concerned at the effectiveness of the National Office of the Ombudsman, overlapping competencies with other institutions and its lack of resources.

**The Committee urges the State party to adopt the bill currently under consideration by the National Assembly in order to define the responsibilities of the National Office of the Ombudsman, provide adequate resources for it to operate and strengthen its capacities.**

(14) The Committee notes that both the Constitution and other State party legislation contain general provisions on equal rights and non-discrimination. However, the Committee is concerned at the lack of legislation incorporating the definition of discrimination contained in article 1 of the Convention. It is also concerned at the lack of a specific legal provision prohibiting and condemning racial and ethnic discrimination.

**The Committee is of the view that racial and ethnic discrimination exists or could exist in all societies, and recommends that the State party should take the necessary steps to adopt specific legislation prohibiting racial discrimination, or to amend existing legislation in order to bring it into line with article 2 of the Convention. The**

**Committee recommends that the State party should consider re-examining the discarded bill prohibiting discriminatory practices in the Republic of Chad, that it mentions in paragraph 164 of its report. The Committee also recommends that the State party should consider incorporating in its legislation the notion of racial discrimination as defined in article 1 of the Convention (arts. 1 and 2).**

(15) The Committee is concerned about the existence of a caste system in some ethnic groups of the State party, which leads to discrimination against certain categories of the population and serious violations of their rights, as mentioned by the State party in paragraph 152 of its report.

**The Committee recalls its general recommendation No. 29 (2002) on descent-based discrimination and recommends that the State party should (a) take specific measures to combat and abolish the caste system, including the adoption of specific legislation prohibiting descent-based discrimination; (b) take steps to raise public awareness and educate the population about the negative effects of the caste system and the plight of victims; and (c) provide the Committee with additional detailed information on the nature and extent of this problem (art. 3).**

(16) The Committee takes note with concern of the lack of specific legislation in the State party implementing the provisions of article 4 of the Convention.

**Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), which stipulate that the provisions of article 4 are mandatory and preventive in nature, the Committee recommends that the State party should adopt specific legislation, or introduce provisions in its existing legislation, giving effect to that article of the Convention (art. 4).**

(17) The Committee is concerned about customary practices in certain ethnic groups that prevent the enjoyment by one category of the population of its civil, political, economic, social and cultural rights, in particular women's right to inherit and to own property.

**The Committee recommends that the State party should (a) take measures to eradicate these customary practices, namely by raising awareness and educating the population concerned; and (b) adopt the Code on the Individual and the Family in order to enable women of the ethnic groups concerned to enjoy their rights, in particular the right to inherit and to own property (art. 5).**

(18) The Committee takes note that the Darfur crisis has triggered massive refugee movements in the east of the State party's territory, as well as internal displacement. The Committee remains concerned about the lack of security and the acts of discrimination and violence committed against these people, and about intercommunity tensions that may arise with respect to the host population.

**Recalling its general recommendations Nos. 20 (1996) and 22 (1996), the Committee recommends that the State party should continue its efforts to improve the protection of refugees and internally displaced people by (a) strengthening the activities of the National Refugee Commission; (b) pursuing efforts to adopt the draft bill on refugees mentioned in the State party's report; (c) pursuing its efforts to successfully integrate refugees in Chad; (d) facilitating access to justice for refugees and displaced people; (e) prosecuting and punishing those who commit acts of violence against them; (f) promoting the voluntary return of displaced people and the enjoyment of their property; and (g) fostering harmonious relations between refugees, displaced people and the population, in particular through campaigns to increase awareness about tolerance and inter-ethnic understanding. The Committee also recommends that the State party should take account of the findings of a study conducted by the United Nations Development Programme (UNDP) on the impact of refugees on host**

**communities, in particular with respect to land and farming (art. 5 (b) and (e) and art. 6).**

(19) The Committee notes that the Convention prevails over domestic law and may be directly invoked before the domestic courts. Nevertheless, the Committee regrets that the State party did not provide more examples of the application of the Convention's provisions by the courts.

**Referring to its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that the absence of complaints or judicial proceedings brought by victims of racial discrimination may reflect the non-existence of specific relevant legislation, ignorance of available remedies, fear of social disapproval or unwillingness on the part of the responsible authorities to institute legal proceedings. It recommends that the State party should include in its next periodic report statistics on:**

(a) **Legal proceedings instituted and sentences handed down for offences related to racial discrimination; and**

(b) **Compensatory measures decided upon by the courts as a result of such sentences. The Committee asks the State party to ensure that its domestic legislation contains appropriate provisions and to inform the public of all the available legal remedies in the area of racial discrimination (art. 6).**

(20) The Committee is concerned about the lack of information on steps taken to publicize the provisions of the Convention and their application, including training courses for members of the judiciary and the police, teachers, social workers and other civil servants.

**The Committee recommends that the State party should provide more information on human rights education, and education in the Convention in particular, and on training courses specifically for members of the judiciary, police, teachers, social workers and other civil servants (art. 7).**

(21) Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties to which it is not already a party, particularly those whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(22) The Committee recommends that the State party should take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the outcome document of the Durban Review Conference, which was held in Geneva in April 2009, when it incorporates the Convention into its internal legal order. It urges the State party to include in its next periodic report specific information on plans of action adopted and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(23) The Committee recommends that the State party should continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, when preparing its next periodic report.

(24) The Committee notes that the State party is considering making the optional declaration under article 14 of the Convention and invites it to do so promptly.

(25) The Committee recommends that the State party should ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth

Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148, in which the General Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(26) The Committee recommends that the State party's reports should be made readily available to the public at the time of their submission, and that the Committee's concluding observations should be similarly publicized in the official languages and other languages commonly used in the State party, as appropriate.

(27) Noting that the State party submitted its core document in 1997, the Committee encourages it to submit an updated version, in accordance with the harmonized guidelines on reporting under the international human rights treaties, namely those relating to the common core document, as adopted at the fifth Inter-Committee Meeting of Treaty Bodies held in June 2006 (HRI/GEN/2/Rev.4).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 10, 12 and 18 above.

(29) The Committee also wishes to draw the State party's attention to the particular importance of recommendations 11, 14, 16 and 17, and asks it to include in its next periodic report detailed information on the concrete measures taken to implement those recommendations.

(30) The Committee recommends that the State party should submit its sixteenth, seventeenth and eighteenth periodic reports in a single document by 16 September 2012, taking into account the guidelines for the preparation of reports to the Committee on the Elimination of Racial Discrimination adopted at the Committee's seventy-first session (CERD/C/2007/1), and addressing all the issues raised in the present concluding observations.

### 31. Chile

(1) The Committee considered the fifteenth to eighteenth periodic reports of Chile, submitted as one document (CERD/C/CHL/15-18), at its 1950th and 1951st meetings (CERD/C/SR.1950 and 1951), held on 13 and 14 August 2009. At its 1965th meeting (CERD/C/SR.1965), held on 25 August, the Committee adopted the following concluding observations.

## A. Introduction

(2) The Committee welcomes the periodic report submitted by Chile. It appreciates the opportunity to renew its dialogue with the State party and expresses its gratitude for the open and frank dialogue with the high-level delegation, which comprised numerous experts in areas related to the Convention, and for the extensive and detailed oral and written responses to both the list of issues and the questions posed orally by Committee members.

(3) Noting the delay of over seven years in the submission of the report, the Committee invites the State party to respect the timetable set by the Committee for the submission of future reports.

## B. Positive aspects

(4) The Committee welcomes the State party's ratification in 2008 of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and, in 2005, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(5) The Committee welcomes the establishment of various institutions to promote and coordinate public policies on indigenous matters, including the National Indigenous Development Corporation (CONADI), the Ministerial Council for Indigenous Affairs and the indigenous units in ministries and regional administrations.

(6) The Committee notes with interest the action plan entitled "*Re-Conocer: a social pact for multiculturalism*", which sets out the main thrust of the State party's policy on indigenous matters for the coming years.

(7) The Committee notes with satisfaction the measures taken to integrate the traditional medicine of indigenous peoples in the State party's health-care system.

(8) The Committee notes with interest the actions aimed at the integration of migrants in the State party, such as the regularization of the migratory status of pregnant migrant women and access for migrant children to the public health-care and education systems.

(9) The Committee notes with satisfaction the efforts made by the State party, particularly since 2003, to reduce the gap in average income and socioeconomic conditions between indigenous and non-indigenous people.

(10) The Committee is pleased to learn that the Convention has been invoked before the domestic courts in the State party, and is especially interested to note that the Convention was expressly cited as one of the legal grounds for the judgement of the court of first instance in case No. RUC 0100037260 (CS No. 4-261).

(11) The Committee recognizes the valuable contributions made by Chile to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance. It takes particular note of the fact that Chile organized the Regional Preparatory Conference in Santiago in 2000, and of its active involvement in follow-up to the commitments made at the World Conference against Racism, including in areas relating to Afro-descendants.

## C. Concerns and recommendations

(12) While taking note of the legislative proposals in the area of racial discrimination, the Committee notes with concern that there is still no clear definition of racial discrimination in Chilean law (art. 1).

**The Committee recommends that the State party should step up its efforts to adopt the bill on racial discrimination submitted to parliament in 2005, and that it should ensure that a definition of racial discrimination that includes the elements set forth in article 1 of the Convention is incorporated into the Chilean legal system.**

(13) The Committee notes with interest the bill on the recognition of the Afro-descendant ethnic group in Chile.

**The Committee recommends that the State party should adopt the bill in question as soon as possible and in accordance with the relevant provisions of the Convention.**

(14) While noting the measures taken by the State party to establish a national human rights institution, the Committee notes that progress has been slow in the legislative process leading to its approval.



**The Committee recommends that the State party should make further efforts to expedite the establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), as contained in the annex to General Assembly resolution 48/134.**

(15) The Committee notes with concern that the Counter-Terrorism Act (No. 18.314) has been mainly applied to members of the Mapuche people for acts that took place in the context of social demands relating to the defence of their rights to their ancestral lands (art. 2).

**The Committee recommends that the State party: (a) reform the Counter-Terrorism Act (No. 18.314) to ensure that it is applied only to terrorist offences that deserve to be treated as such; (b) ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts of protest or social demands; and (c) put into practice the recommendations made in this regard by the Human Rights Committee in 2007 and by the Special Rapporteurs on the situation of human rights and fundamental freedoms of indigenous people, following their visits to Chile in 2003 and 2009. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)).**

(16) While noting the efforts made by the State party to undertake constitutional reform in the area of the rights of indigenous peoples, such as the consultations held with indigenous people, the Committee is concerned at the slow pace of this process and the fact that not all indigenous peoples have been adequately consulted on decisions related to issues that affect their rights (arts. 2 and 5).

**The Committee recommends that the State party: (a) step up its efforts to speed up the process of granting constitutional recognition to the rights of indigenous peoples and, to this end, conduct effective consultations with all the indigenous peoples, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention No. 169; (b) take the necessary measures to establish a climate of trust conducive to dialogue with indigenous peoples; and (c) take effective measures to involve indigenous peoples in the work on a human rights action plan and in all areas, including legislative proposals, that might affect their rights.**

(17) While noting with satisfaction the measures taken by the State party to guarantee the rights of migrants, the Committee is concerned that the economic and social rights of migrants and refugees are not fully guaranteed, and that migrants and refugees, especially Peruvians and Bolivians, are sometimes the victims of discrimination (arts. 2 and 5).

**The Committee recommends that the State party take effective legislative and other measures as necessary to guarantee equality for migrants and refugees in the exercise of the rights recognized in the Convention and that it should take into account for this purpose the results of the studies carried out by the Ministry of the Interior in 2007 and 2008.**

(18) The Committee notes with concern that, as pointed out by the State party, in recent years Chile has seen incidents of discrimination against and violent attacks on indigenous people and migrants, among others, by totalitarian groups. The Committee is concerned that racism, discrimination and xenophobia are not classed as criminal offences in Chilean law (art. 4).

**The Committee recommends that the State party: (a) speed up the adoption of the anti-discrimination bill that would make discriminatory acts punishable by law; (b)**

**step up its efforts to prevent and combat xenophobia and racial prejudice among the various groups in society, and also to promote tolerance among all ethnic groups; and (c) present in its next periodic report further information on investigations, indictments and sentences related to racially motivated offences, as well as on compensation obtained by the victims of such acts.**

(19) The Committee notes with concern the accusations of ill-treatment and abuse of members of the Mapuche people by the police during police raids and other operations. The Committee notes with dismay the death of a young Mapuche man, José Facundo Mendoza Collio, on 12 August 2009, as a result of police gunfire (art. 5 (b)).

**The Committee recommends that: (a) the State party investigate accusations of ill-treatment and abuse of indigenous people by some members of the armed forces; and (b) those responsible for such acts should be tried and punished and compensation granted to the victims or their families. The Committee also urges the State party to take prompt steps to prevent such acts, and in that regard recommends that it boost training for its armed forces in human rights, including the provisions of the Convention.**

(20) The Committee notes with concern the low level of participation in political life by the indigenous peoples and the poor representation of indigenous peoples in parliament (art. 5 (c)).

**In the light of its general recommendation No. 23 (1997) (para. 4 (d)), the Committee recommends that the State party redouble its efforts to ensure full participation by indigenous people, especially women, in public affairs, and that it take effective steps to ensure that all indigenous peoples participate in the administration at all levels.**

(21) The Committee notes the measures taken by the State party to transfer ancestral lands to indigenous peoples, but it is concerned about the slow progress made in demarcating lands and the lack of a specific mechanism for recognizing the right of indigenous peoples to the land and to their natural resources (art. 5 (d) (v)).

**The Committee recommends that the State party take the necessary measures to speed up the restitution of ancestral lands to indigenous peoples and that it establish a specific mechanism for recognizing the rights of indigenous peoples to lands and natural resources, in accordance with the Convention and the other relevant international standards. Specifically, the State party should ensure that land-purchasing policies conform fully with ILO Convention No. 169 and should consider increasing the budget of CONADI so that it is able to carry out its work properly.**

(22) While noting the measures taken by the State party to regulate investment in indigenous lands and indigenous development areas, the Committee notes with concern that indigenous peoples are affected by the exploitation of subsoil resources in their traditional lands and that in practice the right of indigenous peoples to be consulted before the natural resources of their lands are exploited is not fully respected.

**The Committee urges the State party to hold effective consultations with indigenous peoples on all projects related to their ancestral lands and to obtain their consent prior to implementation of projects for the extraction of natural resources, in accordance with international standards. The Committee draws the State party's attention to its general recommendation No. 23 (1997).**

(23) The Committee reiterates its concern about the situation of the Mapuche communities in the Araucanía region affected by activities that are harmful to the environment, health and their traditional ways of life, including the establishment of waste dumps and plans to set up sewage-treatment plants there (art. 5).

The Committee urges the State party to spare no effort to develop a specific policy, in line with international standards, to deal with the environmental impacts affecting indigenous peoples. To this end, the Committee recommends that scientific assessments should be carried out regularly. The Committee further recommends that the State party should amend its legislation on land, water, mining and other sectors so that it does not conflict with the Indigenous Peoples Act (No. 19.253) and ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests. The Committee urges the State party to take immediate steps to resolve the issue of the waste dumps established in Mapuche communities without their prior consent.

(24) The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular the Mapuche, are among the poorest and most marginalized groups (art. 5 (e)).

The Committee recommends that the State party take the necessary steps to assure effective protection against discrimination in various areas, particularly in employment, housing, health and education. It also calls on the State party to include in its next report information on the impact of programmes designed to guarantee economic, social and cultural rights to the indigenous population, as well as statistics on progress made in this regard.

(25) The Committee notes with concern that the ranking of the Convention in the domestic legal order is not clearly defined (art. 6).

The Committee recommends that the State party consider taking the legislative measures necessary to explicitly establish the Convention's precedence over domestic law.

(26) The Committee notes the lack of information on complaints of racial discrimination and on the follow-up to such complaints (arts. 6 and 7).

Referring to its general recommendation No. 31 (2005) (para. 5 (e)), the Committee recalls that the absence of cases may be due to the victims' lack of information about the existing remedies, and therefore recommends that the State party ensure that appropriate provisions are available in national legislation regarding effective protection and remedies against violation of the Convention and that the public at large is properly informed about their rights and the legal remedies available if these are violated, including the individual complaints procedure under article 14 of the Convention. The Committee further recommends that the State party provide information on future complaints and cases in its next periodic report.

(27) While noting the programmes implemented by the Department of Diversity and Non-Discrimination, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, as revealed by surveys carried out by the University of Chile (art. 7).

The Committee recommends that the State party take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among the various racial groups in the State party. The Committee further recommends that the State party reinforce information campaigns and educational programmes on the Convention and its provisions, as well as strengthen its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination.

(28) Taking into account the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments that it has not yet ratified.

(29) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in incorporating the Convention, particularly articles 2 to 7, into its domestic legal order. It also recommends that, in its next periodic report, the State party provide information on action plans and other measures adopted to implement the Durban Declaration and Programme of Action at the national level.

(30) The Committee recommends that, for the purposes of the preparation of its next periodic report, the State party undertake broad consultations with civil society organizations involved in human rights protection, particularly in the area of combating racial discrimination.

(31) The Committee recommends that the reports of the State party be made available to the public without delay at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official language and other languages in common use.

(32) Noting that the State party submitted its core document in 1999, the Committee encourages it to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(33) Pursuant to article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the Committee's recommendations contained in paragraphs 14, 19, 22 and 23 above, within one year of the adoption of the present concluding observations.

(34) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 15 and 24 above and asks it to provide detailed information in its next periodic report on the concrete steps taken to implement those recommendations.

(35) The Committee recommends that the State party submit its nineteenth to twenty-first periodic reports as a single document by 31 August 2012, taking into consideration the guidelines for the CERD-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention, adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain up-to-date information and answer all the points raised in the concluding observations.

### **32. China (including Hong Kong and Macau Special Administrative Regions)**

(1) The Committee considered the tenth to thirteenth periodic reports of China (CERD/C/CHN/13), including the Hong Kong Special Administrative Region (CERD/C/HKG/13) and the Macau Special Administrative Region (CERD/C/MAC/13), submitted in three documents by the respective authority, covering the reporting period from the tenth to thirteenth periodic reports, at its 1942nd and 1943rd meetings (CERD/C/SR.1942 and CERD/C/SR.1943), held on 7 and 10 August 2009. At its 1966th meeting (CERD/C/SR.1966), held on 25 August 2009, it adopted the following concluding observations.

## A. Introduction

(2) The Committee welcomes the submission of the tenth to thirteenth periodic reports of China, including the Hong Kong and Macau Special Administrative Regions, and the opportunity thus offered to resume the dialogue with the State party. It also expresses its appreciation for the constructive dialogue held with the large and competent delegation and the comprehensive written and oral responses provided to the list of issues and the questions posed by Committee members.

## B. Positive aspects

(3) The Committee welcomes the adoption of the National Human Rights Action Plan 2009–2010, which includes a chapter on the protection of the rights of ethnic minorities.

(4) The Committee notes with satisfaction the adoption of a range of laws at the national, provincial and local levels to protect the rights of minorities, in particular the revised Regional Ethnic Autonomy Law of the People's Republic of China of 2001 and the Rules of the State Council on the Implementation of that law adopted in 2005, as well as the Regulations on Ethnic Work in Cities and the Regulations on Ethnic Administrative Work.

(5) The Committee commends the State party for the adoption of a number of programmes and policies aimed at the advancement of minorities, including the 11th Five-Year Programme for the Ethnic Minority Cause, the Development Programme to Help Ethnic Groups with Relatively Small Populations (2005–2010), the Grand Strategy for the Development of China's West and the 11th Five-Year Programme for Action on Prosperity Promotion in Border Areas.

(6) The Committee notes with appreciation the rate of economic development and the adoption of policies and programmes aimed at achieving an equal level of development in all regions, including the autonomous provinces largely inhabited by ethnic minorities.

### Hong Kong and Macau Special Administrative Regions

(7) The Committee welcomes the adoption of the Race Discrimination Ordinance (Chapter 602 of the Laws of Hong Kong), which entered into force in 2009.

(8) The Committee notes with satisfaction the adoption of Law 6/2008 on the Fight Against Trafficking in Persons, as well as Law 1/2004, establishing the Legal Framework on the Recognition and Loss of Refugee Status, in the Macau Special Administrative Region.

## C. Concerns and recommendations

(9) The Committee notes the lack of disaggregated statistical data regarding the socioeconomic status of members of ethnic minorities, non-citizens, asylum-seekers and refugees.

**In accordance with its general recommendation No. 8 (1990) and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its request that the State party include, in its next periodic report, updated and detailed statistical data on the socioeconomic situation of the population, disaggregated by ethnic groups and nationalities. In this regard, it recalls the importance of gathering accurate and up-to-date data on the ethnic composition of the population.**

(10) While taking note of article 4 of the State party's Constitution, stipulating that all ethnic groups in the State party are equal, the Committee reiterates its concern that the domestic legislation of the State party does not contain a definition of racial discrimination in full conformity with the definition set out in article 1 of the Convention, as it does not include a prohibition of discrimination on the grounds of descent and national origin (art. 1).

**The Committee recommends that the State party adopt a comprehensive definition of racial discrimination, fully in accordance with article 1, paragraph 1, of the Convention, prohibiting discrimination on the basis of race, colour, descent, or national or ethnic origin. In this regard, the Committee especially draws the State party's attention to its general recommendation No. 30 (2004) on discrimination against non-citizens.**

(11) While noting the State party's information on legislation at the national, provincial and local levels aimed at protecting the rights of minorities, the Committee reiterates its concern that the State party has not adopted a comprehensive anti-discrimination law to protect individuals from racial discrimination (art. 2).

**The Committee recommends that the State party adopt a comprehensive law, at the national level, on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention.**

(12) The Committee, taking into account that the National Human Rights Action Plan is set to end in 2010, notes the lack of information regarding the extension of the duration of this plan (art. 2).

**The Committee encourages the State party to extend the Action Plan beyond 2010, to consider including specific provisions on the elimination of racial discrimination and to promote its full implementation.**

(13) The Committee, acknowledging the information provided by the delegation concerning natural migration within the State party, notes with concern reports according to which the system of incentives granted to work and settle in the autonomous minority regions may result in substantive changes in the demographic composition that impact negatively on local traditions and cultures in these regions (arts. 2 and 5).

**The Committee reiterates its previous recommendation that any policies or incentives offered that may result in a substantial alteration of the demographic composition of autonomous minority areas be reviewed.**

(14) While noting the ongoing reforms of the national household registration system (*hukou*), the Committee is concerned at the de facto discrimination against internal migrants in the fields of employment, social security, health services and education that indirectly result from that system, which also affects members of ethnic minorities, and in particular women (arts. 5 (a) and 2).

**The Committee recommends that the State party implement its decision to reform the *hukou* system and ensure that internal migrants, in particular members of ethnic minorities, will be able to enjoy the same work, social security, health and education benefits as long-time urban residents.**

(15) While acknowledging the information provided by the State party on the revision of its legislation regarding administrative detention and "re-education through labour", the Committee is concerned at reports that in practice effective judicial control of these measures is limited and that the application of these laws may disproportionately affect members of ethnic minorities (art. 5 (a) and (b)).

The Committee calls upon the State party to take effective measures with a view to ensuring that the application of administrative detention and “re-education through labour” is used restrictively and subject to full judicial control in line with international human rights standards, and that these practices are not disproportionately applied to members of ethnic minorities. It requests the State party to provide, in its next periodic report, information, including statistics disaggregated by ethnic group, on cases in which these measures were administered, and on appeals lodged, if any. In this regard, the Committee also draws the State party’s attention to the universal periodic review procedure and in particular recommendation 31 (see A/HRC/11/25), which enjoyed the support of the State party. In the light of the section in the National Human Rights Action Plan regarding the prohibition of illegal detention, it also encourages the State party to consider the complete abolition of such laws, as recommended by the Committee against Torture (CAT/C/CHN/CO/4, para. 13).

(16) While noting that the State party is in the process of drafting a refugee law, the Committee reiterates its concern that asylum-seekers from the Democratic People’s Republic of Korea continue to be systematically refused asylum and forcibly returned (art. 5 (b)).

**The Committee recommends that the State party adopt legislation relating to refugee status as soon as possible. Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee calls upon the State party to take all necessary legal and policy measures to ensure that all asylum-seekers have the merits of their individual cases considered by an independent and impartial authority.**

(17) While noting the information provided by the State party regarding the events in the Tibet Autonomous Region in March 2008, as well as the events in Urumqi, Xingjian Uighur Autonomous Region, in July 2009. It regrets the loss of life, including among the State party’s Armed Forces and police, and the suffering of all victims. While it recognizes the State party’s duty to maintain public order, the Committee is concerned at reports alleging the disproportionate use of force against ethnic Tibetans and Uighurs respectively and the important number of their detentions (art. 5 (a) and (b)).

**The Committee calls upon the State party to ensure that those detained in connection with the above events are guaranteed humane treatment while in custody and fair trial standards according to international law, including access to a lawyer of their choice, presumption of innocence, and handing down of proportionate sentences on those found guilty. The Committee further recommends that the State party carefully consider the root causes of such events, including inter-ethnic violence, and the reasons why the situation escalated.**

(18) The Committee welcomes the measures taken by the State party to ensure fair and adequate representation of minorities in the administration, police force and the military. Notwithstanding the data provided by the State party on the participation of ethnic minorities, including women, in public service and in decision-making positions in political life, the Committee is concerned about the continuing underrepresentation of minorities, particularly of minority women, in public life (art. 5 (c)).

**The Committee recommends that the State party intensify its efforts aimed at fair and adequate participation of all minority groups in public service, including the military, and political life. It also recommends that the State party encourage minority women to become more active in public life and draws the State party’s attention to general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination. The Committee requests the State party to provide, in its next periodic report, more**

**detailed information on the representation of ethnic minorities in public life, with an indication of the representation in higher-level positions.**

(19) Despite the delegation's assurance that lawyers can exercise their profession freely and in accordance with the Lawyers Law, the Committee notes with concern reports on the harassment of defence lawyers taking up cases of human rights violations, especially those introduced by members of ethnic minorities. In this regard, it also notes that the National Human Rights Action Plan expresses the State party's intention to revise or amend any laws incompatible with the Lawyers Law (art. 5 (d)).

**The Committee calls upon the State party to take all appropriate measures to ensure that lawyers can exercise their profession freely, in law and in practice, and to promptly and impartially investigate all allegations of harassment, intimidation, or other acts impeding the work of lawyers. In line with the chapter on the right to a fair trial in the National Human Rights Action Plan, it recommends that the State party revise all laws and regulations that are inconsistent with the Lawyers Law and international standards.**

(20) Notwithstanding the assurances provided by the State party's delegation, the Committee remains concerned about reports that members of some minority groups do not fully enjoy the freedom of religion (art. 5 (d)).

**Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party ensure the respect for the right of members of all ethnic groups to freely enjoy the freedom of religion.**

(21) While welcoming the measures taken to eliminate economic development disparities between different regions, the Committee notes that the western provinces and regions that are inhabited by the most numerous minorities continue to be economically underdeveloped. However, it also reiterates its previous observation that economic growth in minority regions, ipso facto, is not tantamount to the equal enjoyment of economic, social and cultural rights in accordance with article 5 (e) of the Convention (art. 5 (e)).

**The Committee recommends that the State party continue to intensify its efforts aimed at creating conditions for sustainable development in the western areas and to eliminate economic and social disparities between the regions. It also requests that the State party provide further information on the enjoyment of economic, social and cultural rights by all ethnic groups of the State party and the effectiveness of the measures taken to ensure that all minority groups benefit from the economic growth. At the same time, it reiterates its recommendation that the State party take all necessary steps to fully ensure the promotion of and respect for local and regional cultures and traditions.**

(22) The Committee has taken note of the State party's policy of bilingual education for ethnic minorities, including the range of bilingual teaching models. It is however concerned at reports that in practice Mandarin is the sole language of instruction in many schools in the autonomous minority provinces, especially in the secondary and higher levels of education. While noting with appreciation the increase in school enrolment rates in minority regions and the various measures adopted to enable access to education for members of ethnic minorities, it reiterates its concern about remaining disparities for ethnic minority children in accessing education, which is often linked to the availability of teaching in Mandarin only (art. 5 (e)).

**The Committee recommends that the State party intensify its efforts to ensure the implementation of legislation and policies on bilingual education at all education levels, taking into account the relevant recommendations of the Forum on Minority Issues of 15 and 16 December 2008 (see A/HRC/10/11/Add.1). It also recommends that**



the State party ensure that special measures adopted to promote access to education of children of ethnic minorities, such as scholarships or lower entry qualification, are available in practice. It also requests the State party to provide detailed information, including disaggregated statistics on enrolment in primary, secondary and higher education of members of ethnic minorities, in its next periodic report. In this regard, the Committee also draws the State party's attention to the universal periodic review procedure and in particular recommendation 16 (see A/HRC/11/25), which enjoyed the support of the State party.

(23) The Committee regrets that the State party did not provide more detailed information on illiteracy among different minority groups and the measures taken by the State party to target those groups that are most affected. It remains concerned at reports of high illiteracy rates among some ethnic minorities (art. 5 (e)).

**The Committee calls upon the State party to strengthen its measures in the short and medium terms to implement measures to reduce illiteracy among ethnic minorities, especially in rural areas. The Committee recommends that the State party provide more information on illiteracy rates among the different ethnic groups and between men and women in its next periodic report.**

(24) While noting the wide range of measures and policies adopted by the State party to improve access to health care and services, the Committee is concerned that persons belonging to ethnic minorities often face obstacles in accessing health care and services (art. 5 (e)).

**The Committee recommends that the State party continue intensifying its efforts to address the persistent health disparities affecting persons belonging to ethnic minorities, in particular by addressing the obstacles that currently prevent or limit their access to affordable and adequate health care, taking into consideration the difficulties posed by their geographical location. In this regard, the Committee also draws the State party's attention to the universal periodic review procedure and in particular recommendation 20 (see A/HRC/11/25), which enjoyed the support of the State party.**

(25) Despite the laws and policy measures adopted by the State party to improve employment rates among ethnic minorities, such as quotas and targeted recruitment, the Committee is concerned about the high rate of unemployment among members of ethnic minorities (art. 5 (e)).

**The Committee recommends that the State party strengthen its measures to increase employment opportunities for members of ethnic minorities, in particular by focusing on professional training and by providing language training, and to ensure the effective implementation of its legislation in this regard, in particular the Employment Promotion Law of 2007. At the same time, the Committee encourages the State party to intensify its efforts to combat prevailing stereotypes concerning ethnic minorities.**

(26) The Committee notes the lack of information on complaints of racial discrimination and the absence of court cases regarding racial discrimination (arts. 6 and 4).

**The Committee, considering that no country is free from racial discrimination, calls upon the State party to examine why there have been only a few judicial cases in this regard. It recommends that the State party verify if the scarcity of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or lack of attention or sensitivity to cases of racial discrimination on the part of the authorities. The Committee also draws the State party's attention to**

**its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.**

#### **Hong Kong and Macau Special Administrative Regions**

(27) The Committee expresses its concern about the definition of racial discrimination given in the Hong Kong Special Administrative Region Race Discrimination Ordinance, which is not completely consistent with article 1 of the Convention as it does not clearly define indirect discrimination with regard to language, and it does not include immigration status and nationality among the prohibited grounds of discrimination (art. 1 (1)).

**The Committee recommends that indirect discrimination with regard to language, immigration status and nationality be included among the prohibited grounds of discrimination in the Race Discrimination Ordinance. It recalls its general recommendation No. 30 (2004) on non-citizens.**

(28) The Committee is concerned that the Hong Kong Special Administrative Region Race Discrimination Ordinance only covers certain Government activities and exercise of its powers in its scope of application, i.e. employment, education, and the provision of goods and services (art. 2).

**The Committee recommends that all Government functions and powers be brought within the scope of the Race Discrimination Ordinance. It also recommends the adoption of an equality plan with a view to ensuring the effective implementation of the law and that the Equal Opportunities Commission is strengthened.**

(29) While noting the planned legislative framework for torture claimants in Hong Kong Special Administrative Region, the Committee is concerned that the State party has not adopted a refugee law as such, including a screening procedure of asylum claims (art. 5 (b)).

**The Committee recommends the adoption of a law on refugees, with a view to establishing a comprehensive procedure for the screening of individual asylum claims. It furthermore recommends that the rights of asylum-seekers to information, interpretation, legal assistance and judicial remedies be guaranteed. The Committee also encourages the renewed consideration of the ratification of the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.**

(30) Despite the adoption of legislative measures aimed at combating discrimination in the Hong Kong Special Administrative Region, the Committee reiterates its concern at the situation of migrant workers, and in particular domestic migrant workers. It notes with concern that the “two-weeks rule” (whereby domestic migrant workers have to leave Hong Kong within two weeks upon termination of contract) continues to be in force, as well as the live-in requirement, and that migrant workers may be subject to longer working hours, and shorter rest and holiday periods (art. 5 (e)).

**The Committee recommends that effective measures be taken to ensure that domestic migrant workers are not discriminated against. It calls for repeal of the “two-weeks rule” as well as the live-in requirement and for the State party to adopt a more flexible approach to domestic migrant workers in relation to their working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. The Committee also draws attention to its general recommendation No. 30 (2004) on discrimination against non-citizens.**

(31) Despite the provision of a Supplementary Guide to the Chinese language curriculum, the Committee is concerned that no official education policy for teaching Chinese as a second language for non-Chinese-speaking students with an immigrant background in Hong Kong has been adopted (art. 5 (e)).

**The Committee recommends that a policy on Chinese teaching for non-Chinese-speaking students from immigrant backgrounds be developed in consultation with teachers as well as the communities concerned. Efforts to improve the quality of Chinese language education for immigrant children should be intensified.**

(32) While welcoming the adoption of new legislation on trafficking, the Committee is concerned that trafficking in persons continues to be a serious problem in the Macau Special Administrative Region, bearing in mind that victims are often women and children belonging to ethnic minorities, or non-citizens (art. 5 (b) and (e)).

**The Committee recommends the reinforcement of measures to adequately prevent, combat and punish human trafficking, especially of non-citizens. It expects to receive, in the next periodic report, detailed statistical information in this regard, including on protection and reparation provided to the victims.**

(33) Notwithstanding the explanation provided by the delegation, the Committee notes with concern that migrant workers are excluded from the social welfare system in the Macau Special Administrative Region (art. 5 (e)).

**The Committee recommends that relevant legislation be amended with a view to extending social welfare benefits to all workers, including migrant workers.**

(34) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(35) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(36) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(37) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

(38) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(39) The Committee encourages the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(40) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information,

within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12 15, 19, and 30 above.

(41) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 14, 21 and 28 above and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(42) The Committee recommends that the State party submit its fourteenth, fifteenth and sixteenth periodic reports in a single document, due on 28 January 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

### 33. **Colombia**

(1) The Committee considered the tenth to the fourteenth periodic reports of Colombia (CERD/C/COL/14), submitted in one document, at its 1948th and 1949th meetings (CERD/C/SR.1948 and 1949), held on 12th and 13th August 2009. At its 1968th meeting (CERD/C/SR.1968), held on 26 August 2009, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the submission of the tenth to the fourteenth periodic reports and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the frank and sincere dialogue held with the delegation and the efforts made to provide responses to many questions raised in the list of issues and posed by Committee members during the dialogue.

(3) Noting that the report was eight years overdue, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

#### **B. Positive aspects**

(4) The Committee welcomes the State party's continued collaboration with the Office of the High Commissioner for Human Rights (OHCHR) since the establishment of a field office in the country in 1997.

(5) The Committee notes as positive the engagement of the State party with special rapporteurs, special representatives and working groups of the Human Rights Council and the numerous visits by such human rights mechanisms.

(6) The Committee notes the commitments pledged by the State party to promote equal rights of Afro-Colombians and indigenous peoples during the process of universal periodic review of the Human Rights Council and encourages the State party to fulfil these commitments.

(7) The Committee welcomes the human rights provisions in the Constitution which enshrine the principles of non-discrimination, recognize ethnic and cultural diversity and provide that the State should undertake measures in favour of discriminated or marginalized groups in order to achieve equality in practice. The Committee furthermore notes the extensive legal framework adopted to promote the rights of Afro-Colombians and indigenous peoples.

(8) The Committee welcomes the jurisprudence of the Constitutional Court and its extensive references to international human rights standards.

(9) The Committee notes the successive national development plans (CONPES) which contain provisions on differentiated measures in favour of disadvantaged ethnic groups and communities and recognition of their specific needs.

(10) The Committee welcomes the policy of affirmative action in favour of ethnic groups reflected in the specific constituencies for their representation in the two chambers of parliament, as well as the election of members of these groups at the regional and local level.

(11) The Committee notes with satisfaction the recognition of the Roma community and the commitment to protect their human rights.

### **C. Factors and difficulties impeding the implementation of the Convention**

(12) The Committee takes note of the armed conflict and situation of violence by armed groups, whose main victims are civilian populations, in particular Afro-Colombians and indigenous peoples.

### **D. Concerns and recommendations**

(13) While noting that the State party recognizes the persistence of racial discrimination and its historical causes which have resulted in marginalization, poverty and vulnerability of Afro-Colombians and indigenous peoples, the Committee is concerned that there is no general provision forbidding discrimination on grounds of race. Furthermore, the Committee is concerned that legislation to incriminate acts of racial discrimination is not in full conformity with article 4 of the Convention. The Committee regrets to learn that draft anti-discrimination legislation has recently failed to gain the necessary political support in Congress.

**The Committee recommends that the State party enact legislation in order to give full effect to the provisions in the Constitution on non-discrimination expressly forbidding discrimination on grounds of race and to ensure that effective remedies are available to enforce such legislation. Furthermore, the Committee reiterates its recommendation that the State party should enact specific penal legislation in accordance with article 4 of the Convention.**

(14) The Committee is particularly concerned about the continuation of acts of serious violations of human rights against Afro-Colombians and indigenous peoples, including killings, extrajudicial executions, forced recruitment and enforced disappearances in the context of the armed conflict. The Committee notes that while illegal armed groups bear significant responsibility for violations, reports continue to indicate the direct involvement or collusion of State agents in such acts and that members of the Armed Forces have publicly stigmatized Afro-Colombian and indigenous communities.

**The Committee urges the State party to intensify its efforts to protect Afro-Colombian and indigenous communities against serious human rights violations and take all possible measures to prevent such violations in the context of the armed conflict. The Committee recommends that the State party ensure that members of the Armed Forces comply with the Permanent Directive of the Armed Forces No. 800-07 of 2003, avoid stigmatization of Afro-Colombian and indigenous communities, guarantee the effective and strict compliance with adopted policies and regulations and ensure that**

**any acts of violations of human rights are promptly investigated and, when necessary, punished.**

(15) While the Committee is aware of efforts taken by the State party to prevent violations, such as the establishment of the Early Alert System (SAT) and the adoption of different protection programmes, the Committee remains concerned about threats against and killings of Afro-Colombian and indigenous leaders. The Committee is furthermore concerned about the absence of civilian authorities to protect and assist the local population in areas taken up by the military.

**The Committee recommends that the State party strengthen the Early Alert System (SAT) by ensuring proper allocation of material, human and financial resources and implementing on a timely basis their alerts, and ensure that civilian authorities, including at departmental and municipal levels, are involved in the coordination of preventive measures. The Committee urges the State party to intensify measures to protect the security of Afro-Colombian and indigenous leaders and in this regard pay particular attention to the precautionary and provisional protection measures (*medidas cautelares y medidas provisionales*) ordered by the Inter-American human rights system. Given their valuable role in preventing violations, the Committee recommends that the State party increase resource allocations for the community defenders of the Human Rights Ombudsman's Office (*defensores comunitarios de la Defensoría del Pueblo*) and expand the programme in order to cover the most vulnerable Afro-Colombian and indigenous communities.**

(16) The Committee is concerned about information provided by the State party indicating continued massive and large numbers of individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and indigenous peoples among the displaced, and over reports that assistance may be denied due to restrictive interpretations of the applicable standards. The Committee is especially concerned that humanitarian assistance and protection measures for the displaced remain inadequate and that compliance with Constitutional Court decision T-025 of 2004 has been insufficient and unduly delayed. The Committee is concerned that women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.

**The Committee recommends that the State party, as a matter of priority, allocate additional human and financial resources in order to comply with Constitutional Court decision T-025 of 2004 and the follow-up orders (*Auto 092 of 2008, Autos 004 and 005 of 2009*). While recognizing efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (Decree 250 of 2005) with differentiated assistance measures, the Committee recommends that the State party intensify these efforts to ensure the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and indigenous women and children. The Committee recommends that the State party focus on ensuring that national policies are sufficiently funded and carried out at departmental and municipal levels and that safe return for the displaced to their original lands is facilitated.**

(17) The Committee notes that Law 975 of 2005 and Decree 1290 of 2008 provide for reparations for victims who have suffered violations by armed groups. While welcoming the State party's recognition of victims' right to reparations, the Committee regrets that insufficient information is available on how this right has been implemented in relation to Afro-Colombian and indigenous victims.

**The Committee recommends that the State party ensure the effective implementation of reparations, including restitution of lands, in the framework of Law 975 of 2005**

and Decree 1290 of 2008 with due regard to Afro-Colombian and indigenous victims and that special attention be paid to women and children. The Committee notes that, regardless of the perpetrator, reparations should be implemented without discrimination.

(18) The Committee is concerned that, despite national policies on special measures, in practice Afro-Colombians and indigenous peoples continue to face serious challenges to the enjoyment of their rights and remain victims of de facto racial discrimination and marginalization and continue to be particularly vulnerable to human rights violations. The Committee is concerned about structural causes which perpetuate discrimination and exclusion from access to socioeconomic rights and development, including in the areas of employment, housing and education. In particular, the Committee is concerned that policies on special measures are not accompanied by adequate resource allocations, including at the departmental and municipal levels, and that their implementation is not effectively monitored.

**The Committee recommends that the State party combat discrimination and effectively implement special measures in order to ensure that Afro-Colombians and indigenous peoples are guaranteed full and equal enjoyment of human rights. The Committee, while noting the existence of various national policies on special measures in a number of areas, is concerned that these policies give inadequate attention to the structural causes which have resulted in the exclusion from access to socioeconomic rights and development. The Committee recommends that the State party increase to the extent possible resource allocations for policy implementation, including at the departmental and municipal levels, and ensure that they are monitored in an effective and transparent manner. Furthermore, while noting efforts such as the creation of the Comisión Intersectorial para el Avance de la Población Afrocolombiana, Palenquera y Raizal in 2007, the Committee underlines the importance of consultation with relevant communities in the elaboration of relevant development plans and affirmative action policies.**

(19) While noting as a positive development the State party's recognition of collective land ownership for Afro-Colombian and indigenous communities, the Committee is concerned about the significant obstacles they face in exercising their rights to land, including violence against their leaders and forced displacement. The Committee furthermore notes that the formal process for claiming collective land titles is unduly bureaucratic and that numerous cases are still pending a final decision. The Committee is concerned about reports indicating the fraudulent acquisition by other persons and the occupation of their territories by armed groups with lucrative interests in cultivating illicit crops and monocultures, in particular palm plantations, which damage the soil and threaten the food security of the affected communities. The Committee is concerned that the case of the Curvaradó and Jiguamiandó communities is paradigmatic in this regard and regrets that the State party has not complied with the related decisions of the Inter-American Court of Human Rights and the recommendations of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organization.

**The Committee recommends that the State party ensure that collective land ownership of Afro-Colombian communities and indigenous peoples is recognized, respected and can be exercised in practice by reducing bureaucratic claims procedures and by taking effective measures to protect communities from violations when attempting to exercise their rights. The Committee also recommends that the State party pay particular attention to the restitution of land titles to displaced Afro-Colombian and indigenous communities, and urge it to comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the ILO**

**Committee of Experts in relation to the communities of Curvaradó and Jiguamiandó and ensure that similar cases do not recur.**

(20) The Committee, while noting efforts of the State party to conduct consultations with affected communities, is nevertheless concerned that the right to prior consultation and consent is frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or monoculture.

**The Committee recommends that the State party adopt and implement in a concerted manner legislation which regulates the right to prior consultation in accordance with ILO Convention No. 169 and relevant recommendations of the ILO Committee of Experts, in order to ensure that all prior consultations are undertaken in a manner which respects the free and informed consent of the affected communities. The Committee recommends that the State party seek technical advice from OHCHR and ILO for this purpose.**

(21) While noting as positive the recognition by the State party of the jurisdiction of indigenous justice systems, the Committee is concerned that the administration of criminal justice does not take adequate measures to protect the rights of Afro-Colombians and indigenous peoples and that perpetrators of violations commonly enjoy impunity. The Committee is concerned that the Office of the Prosecutor General (Fiscalía General de la Nación) does not maintain comprehensive data on the ethnicity of victims and the outcome of investigations of related cases. Furthermore, the Committee is concerned that legal advice is insufficient and not always provided in indigenous languages.

**The Committee draws the States party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, the Committee recommends that the State party ensure that the Office of the Prosecutor General (Fiscalía General de la Nación) document and maintain comprehensive data on the ethnicity of victims and perpetrators. The State party is encouraged to reinforce the provision of legal advice and ensure that adequate interpretation in court proceedings is provided in indigenous languages. The Committee recommends that the State party pay particular attention to the conditions of detention of Afro-Colombian and indigenous persons, large numbers of whom are in prison. Furthermore, the Committee urges the State party to guarantee that remedies are effective, independent and impartial and that victims receive just and adequate reparation.**

(22) While recognizing efforts by the State party to provide culturally sensitive health care coverage for indigenous peoples, the Committee is concerned that life expectancy and health indicators are considerably lower for Afro-Colombians and indigenous peoples, while maternal and infant mortality as well as chronic malnutrition rates are significantly higher compared to the mestizo population. The Committee is concerned about the lack of adequate and accessible health services among these communities and about insufficient data on health indicators and on related policy measures to improve them.

**The Committee recommends that the State party, in close consultation with the affected communities, devise a comprehensive strategy to guarantee that Afro-Colombians and indigenous peoples are provided with quality health care. The implementation of such a strategy should be ensured by adequate resource allocations, the active participation of departmental and municipal authorities, the collection of indicators and transparent progress monitoring. Particular attention should be paid to improving access to health care for Afro-Colombian women and children. The Committee underlines the importance of linking targeted measures to improve the standard of living, including improved access to clean water and sewage systems, to health indicators.**



(23) The Committee, while noting efforts to provide a culturally sensitive education policy (*etnoeducación*) for Afro-Colombian and indigenous children, remains concerned that the State party still does not provide free primary education and that illiteracy rates remain significantly higher among Afro-Colombian and indigenous children.

**The Committee reiterates the recommendations of the Committee on the Rights of the Child of 2006 (CRC/C/COL/CO/3, paras. 77 and 95) and recommends that the State party strengthen its education policy (*etnoeducación*) and guarantee both in law and practice that Afro-Colombian and indigenous children are provided with free primary education. Strategies should be devised in close consultation with the affected communities, receive adequate resource allocations and involve departmental and municipal authorities. Gender perspectives should be duly considered in such educational policies.**

(24) The Committee notes that the State party has increased efforts to compile relevant data on the situation of ethnic groups and indigenous peoples. The Committee notes however that the information available on the percentage of the population that identifies itself as Afro-Colombian varies considerably and notes that the results from the census of 2005 differ from those of other population surveys.

**The Committee recommends that the State further improve its compilation of information on the situation of ethnic groups in the economic, social and cultural fields. The Committee also recommends that the State party ensure that future census questions are formulated in a manner that permits and encourages self-identification of persons belonging to ethnic or indigenous groups. The Committee recommends that the State party consult with relevant communities on measures to improve data collection and also during the planning for and carrying out of the next census.**

(25) The Committee is concerned about reports that certain indigenous peoples, especially in the Colombian Amazon, are on the brink of extinction as a result of the armed conflict and related consequences.

**The Committee urges the State party to find political and legal solutions to protect the existence of these peoples and the exercise of their human rights.**

(26) The Committee is concerned about reports of cases of discrimination regarding the access of members of ethnic groups to places open to the general public.

**The Committee recommends that the State party adopt and enforce legislation to give full effect to article 5 (f) of the Convention in the public as well as in the private sphere.**

(27) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified.

(28) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(29) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights

protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(30) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

(31) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the concluding observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(32) Noting that the State party submitted its core document in 1997, the Committee encourages it to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(33) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 17, 18 and 25 above.

(34) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 15, 16 and 20 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(35) The Committee recommends that the State party submit its fifteenth and sixteenth periodic reports in a single document, due on 2 October 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 34. **Congo**

(1) The Committee considered the initial report and the second to ninth periodic reports of the Congo, submitted in a single document (CERD/C/COG/9), at its 1908th and 1909th meetings (CERD/C/SR.1908 and 1909), held on 18 and 19 February 2009. At its 1923rd meeting (CERD/C/SR.1923), held on 2 March 2009, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission by the Congo of its initial report and the establishment of a dialogue with the State party. It commends the honesty it has demonstrated in recognizing certain situations that have had an effect on the Congo.

(3) The Committee expresses its satisfaction at the additional information provided orally and in writing, and welcomes the constructive and frank dialogue it enjoyed with the State party delegation.

(4) Noting that the report was submitted nearly 20 years late, the Committee urges the State party to respect the deadline set for the submission of its next periodic report.

## **B. Factors and difficulties impeding the implementation of the Convention**

(5) The Committee notes that the State party is now in a phase of reconstruction following a difficult period of armed conflict, and is concerned that the fragility of the peace both inside the country and at its borders has been preventing full implementation of the Convention.

## **C. Positive aspects**

(6) The Committee notes with satisfaction that, according to the preamble to the 2002 Constitution, international human rights instruments that have been ratified by the State party, including the International Convention on the Elimination of All Forms of Racial Discrimination, are an integral part of the State party's national legislation.

(7) The Committee notes with interest that a National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009–2013) has been prepared and adopted with the participation of civil society and United Nations agencies.

(8) The Committee takes note with interest of the bill on the promotion and protection of the human rights of indigenous peoples, which was inspired by the United Nations Declaration on the Rights of Indigenous Peoples.

(9) The Committee notes with satisfaction the activities carried out by the State party in observance of the International Day of the World's Indigenous Peoples and the holding of the International Forum for Indigenous People of Central Africa on the initiative of the State party.

## **D. Issues of concern and recommendations**

(10) The Committee notes that the information transmitted by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and asylum-seekers, is incomplete. The Committee recalls that information on demographic composition enables both the Committee and the State party to better assess the implementation of the Convention at the national level.

### **The Committee:**

**(a) Recommends that the State party conduct a census and transmit in its next report the disaggregated statistical data obtained therefrom. It also recommends that the State party ensure that the census questionnaire contains relevant questions that will make it possible to obtain a clearer picture of the ethnic and linguistic make-up of the population, including indigenous peoples;**

**(b) Invites the State party to submit data on asylum-seekers, refugees and displaced persons in order to enable it to assess the extent, distribution and impact of their movements.**

(11) While taking note of article 8 of the Constitution, which establishes the principles of equality and non-discrimination, the Committee is concerned by the fact that although the State party acknowledges the presence of inter-ethnic tensions in the country, there is currently no definition of racial discrimination in domestic law that corresponds to the definition contained in article 1 of the Convention.

**The Committee encourages the State party to rapidly undertake a reform of its legislation, particularly the Criminal Code, with a view to introducing specific legislation on racial discrimination that implements the provisions of the Convention,**

**including a legal definition of racial discrimination that is fully consistent with article 1 of the Convention (art. 1).**

(12) The Committee regrets that it has not received sufficient information on the mandate and current operations of the National Human Rights Commission, and is particularly disturbed by the question of that institution's resources, independence, mandate, areas of jurisdiction and effectiveness.

**The Committee recommends that the State party provide detailed information on the resources, independence, mandate, areas of jurisdiction and outcome of the activities of the National Human Rights Commission and ensure that it is fully consistent with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex). The Committee invites the State party to take steps to ensure that the National Human Rights Commission is accredited by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (arts. 2 and 6).**

(13) The Committee notes with concern the reports of violence, abuse of power and cruel, inhuman and degrading treatment by the "eco-guards" of the project for the management of the ecosystems adjacent to the Ndoki National Park directed at the indigenous peoples of the Congo's northern region. It regrets that these allegations did not give rise to judicial proceedings.

**The Committee urges the State party to conduct thorough official investigations into any allegation of violence, abuse of power and cruel, inhuman or degrading treatment directed at indigenous peoples in particular, and to bring any perpetrators to justice and ensure that they are punished. The Committee would like to have information on this subject in the State party's next periodic report (arts. 4 and 5 (b)).**

(14) The Committee notes with concern that the rights of indigenous peoples, and of the Pygmies in particular, to own, develop, control and exploit their lands, their resources and their communal territories are not guaranteed and that concessions are granted in respect of indigenous peoples' lands and territories without prior consultation.

**The Committee recommends that the State party take urgent and adequate measures to protect the rights of indigenous peoples, and especially of the Pygmies to land, and, in particular:**

(a) **To establish the forest rights of indigenous peoples in domestic legislation;**

(b) **To record Pygmy ancestral lands in the property register, in consultation with the indigenous peoples concerned;**

(c) **To ensure that the interests of the Pygmies as well as environmental protection needs are taken into account in land use and ensure that the Pygmies are consulted before any concessions are granted;**

(d) **To provide for domestic remedies in the event of violations of indigenous peoples' rights; and**

(e) **To redouble their efforts to consult with indigenous peoples in the administration of their lands, waters and forests. To this end, the Committee invites the State party to take into account its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5).**

(15) The Committee is concerned at the marginalization and discrimination to which the Pygmies are subjected in terms of access to justice and the enjoyment of their economic,

social and cultural rights, in particular access to education, health and the labour market. The Committee is especially concerned by reports of domination, discrimination and exploitation to which the Pygmies are subjected, at times including modern forms of slavery.

**The Committee:**

(a) Encourages the State party to redouble its efforts to ensure the full enjoyment by indigenous peoples of their economic, social and cultural rights and, in particular, invites it to take steps to guarantee their rights to education, health, employment and equitable working conditions, inter alia through the establishment of a labour inspection mechanism;

(b) Urges the State party to intensify its efforts to make indigenous peoples aware of their rights under the Convention;

(c) Strongly recommends that the State party accelerate the adoption of the bill on the promotion and protection of the rights of indigenous peoples; and

(d) Invites the State party to provide it with information on the implementation of the National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009–2013) in its next periodic report (art. 5).

(16) The Committee takes note with concern of the low representation of indigenous peoples in political life owing to their low educational level. The Committee regrets that, to date, no indigenous person has ever been elected to political office.

**The Committee recommends that the State party endeavour to ensure the full participation of indigenous peoples in public affairs at all levels. It invites it to review its electoral legislation with a view to encouraging political parties to involve indigenous peoples more fully in political activities (art. 5 (c)).**

(17) The Committee notes with concern that the level of registration of births among indigenous people is low and that some indigenous people lack identity documents.

**The Committee recommends that the State party redouble its efforts to ensure that all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents. The Committee encourages the State party to bring civil status registration centres closer to the communities where indigenous people live (art. 5 (d)).**

(18) The Committee notes with concern the unequal enjoyment of economic, social and cultural rights by citizens and non-citizens, in particular refugees and asylum-seekers from Angola, the Democratic Republic of the Congo and Rwanda, and the difficulties they encounter in acquiring refugee status.

**Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee invites the State party to redouble its efforts to improve the situation of refugees and asylum-seekers, in particular by strengthening its asylum system and the national institutions working in this area, including the National Refugee Assistance Committee, the Refugee Status Eligibility Commission and the Refugee Appeals Commission. The State party is invited:**

(a) To establish an effective procedure for determining refugee status;

(b) To contemplate the adoption of a law on asylum; and

(c) To take all necessary and effective steps to ensure the successful integration of refugees in the Congo (art. 5 (e)).

(19) While noting the State party's claims that the Convention enjoys supremacy over domestic legislation and that its provisions can be invoked directly before the national courts, the Committee regrets that, as the State party has noted, the Congolese courts have never heard any cases relating to acts of racial discrimination.

**The Committee requests the State party to include in its next periodic report statistical data on proceedings initiated and judgements rendered in respect of offences related to racial discrimination. It reminds the State party that the absence of any complaints or legal proceedings brought by victims of racial discrimination may indicate the absence of any specific legislation in the matter, an ignorance of the remedies available, fear of social disapproval or a lack of will on the part of the authorities responsible for initiating proceedings. It requests the State party to endeavour to ensure that national legislation contains appropriate provisions and to inform the public of all available legal remedies in the area of racial discrimination (art. 6).**

(20) The Committee is concerned at the lack of information on measures taken to disseminate information on the Convention, and particularly on training courses for members of the judiciary and law enforcement officers, "eco-guards", teachers, social workers and other officials on the provisions of the Convention and their implementation.

**The Committee recommends that the State party provide information on human rights education in school curricula and on specific training courses on the provisions of the Convention intended for members of the judiciary, law enforcement officers, "eco-guards", teachers, social workers and other officials (art. 7).**

(21) While taking note of the efforts undertaken jointly by the State party and the Office of the United Nations High Commissioner for Refugees to promote peaceful coexistence between Rwandan refugees and the local population, the Committee remains concerned at the inter-ethnic tensions that persist in the north of the country.

**The Committee invites the State party to step up its efforts to promote harmonious relations between refugees and the various ethnic and cultural groups living in the north of the Congo, specifically through campaigns to foster awareness of tolerance and inter-ethnic understanding (art. 7).**

(22) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(23) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance when it incorporates the Convention into its internal legal order, in particular the provisions of articles 2 and 7 of the Convention. In addition, it urges the State party to include in its next periodic report specific information on plans of action adopted and other measures taken to implement these two texts at the national level. The Committee also encourages the State party to participate actively in the Durban Review Conference in 2009.

(24) The Committee notes that the State party is considering making the optional declaration provided for in article 14 of the Convention and invites it to do so promptly.

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and approved by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 63/243, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic

ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(26) The Committee recommends that the State party should make its periodic reports available to the public as soon as they are submitted and to disseminate in similar fashion the concluding observations of the Committee in all official and national languages and, where possible, in the principal minority languages.

(27) The Committee recommends that the State party carry out a wide-ranging consultation of civil society organizations when preparing the next periodic report.

(28) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, namely those relating to the common core document as adopted at the Fifth Inter-Committee Meeting, held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(29) Pursuant to article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to inform it of the action it has taken to follow up the recommendations contained in paragraphs 12, 13, 14 and 15 (c) during the year following the adoption of the present concluding observations.

(30) The Committee recommends that the State party submit its tenth and eleventh periodic reports in a single document no later than 30 March 2012, taking into account the guidelines for the preparation of reports to the Committee on the Elimination of Racial Discrimination adopted at the Committee's seventy-first session (CERD/C/2007/1), and to discuss in that document all the issues raised in the present concluding observations.

### 35. Croatia

(1) The Committee considered the sixth to eighth periodic reports of Croatia (CERD/C/HRV/8), submitted in one document, at its 1920th and 1921st meetings (CERD/C/SR.1920 and CERD/C/SR.1921), held on 26 and 27 February 2009. At its 1929th meeting (CERD/C/SR.1929), held on 5 March 2008, it adopted the following concluding observations.

#### A. Introduction

(2) The Committee welcomes the submission of the sixth to eighth periodic reports by the State party. It also expresses its appreciation for the frank and constructive dialogue held with the high-level delegation and the comprehensive written and oral responses provided to the list of issues and the questions posed by Committee members.

#### B. Positive aspects

(3) The Committee welcomes the adoption of new laws which aim to implement various provisions of the Convention, especially the adoption of the Anti-Discrimination Act (2009), the Constitutional Act on National Minorities (2002), and the Act on the Right to Legal Assistance (2008).

(4) The Committee notes with appreciation the establishment of a range of institutions for the promotion of human rights, in particular minority rights, such as the Councils for National Minorities as well as the Government Office for Human Rights. The Committee particularly welcomes the establishment of the Office of the Ombudsman as the national human rights institution of the State party and the broadening of its mandate to become the main body for the suppression of discrimination, but notes information about the lack of adequate funds.

(5) The Committee reiterates its appreciation for the enhanced cooperation by the State party with the International Criminal Tribunal for the Former Yugoslavia.

(6) The Committee welcomes the introduction of human rights training programmes and courses for public officials, including law enforcement officers and members of the judiciary, which, inter alia, aim to raise awareness of the prohibition of racial discrimination.

(7) The Committee welcomes the information that the Convention is incorporated into the domestic law of the State party and that international law prevails over domestic law in the State party.

(8) The Committee notes with satisfaction that the State party has ratified most United Nations core human rights treaties as well as Protocol No. 12 to the European Convention on Human Rights and Fundamental Freedoms, concerning non-discrimination as a general norm in the field of human rights.

(9) The Committee notes with appreciation that the State party consulted with organizations of civil society working in the area of human rights protection in connection with the preparation of its periodic report.

### C. Concerns and recommendations

(10) The Committee appreciates the data collected by the State party on the ethnic composition of its population, but regrets the lack of information as to how such data are gathered and the criteria on which they are based, in particular whether these are in line with the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention (identification with a particular racial or ethnic group).

**The State party should, in its next periodic report to the Committee, provide information on its methods of data collection, including whether and how they reflect the principle of self-identification.**

(11) The Committee notes the information provided on the procedures for monitoring local authorities with regard to the application of laws and other measures concerning the prohibition of racial discrimination. It notes, however, information about the reluctance of some local authorities to implement laws and governmental policies on non-discrimination, in particular with regard to returnees (art. 2).

**The Committee recommends that the State take concrete measures to ensure full implementation of the non-discrimination legislation and policies, especially at the local level, with a view to eliminating all instances of de facto discrimination. The State party should also provide the Committee with information on the steps taken in this respect.**

(12) While welcoming the adoption of a definition and prohibition of hate crime in the State party's criminal law and the information provided by the delegation that a new penal code is currently being drafted, the Committee reiterates its concern that many cases of violence against members of minorities are not prosecuted and the perpetrators are not punished. The Committee also remains concerned about the absence of a law prohibiting racist organizations, as required by article 4 (b) of the Convention. It also notes that only a few complaints have been submitted and eventually led to convictions under article 174 of the current Criminal Code (arts. 4 and 6).

**The Committee encourages the State party to reinforce its measures for the prevention and prosecution of all cases of hate crimes and other ethnically motivated**



violence, in particular with a view to providing the victims with effective and fair remedies. It recalls its general recommendation No. 15 (1993) on article 4 of the Convention, according to which all provisions of this article are of mandatory character. The Committee recommends that the State party ensure that its new criminal law is comprehensive and in full compliance with the provisions of article 4 of the Convention, declaring illegal and prohibiting organizations that promote and incite racial discrimination. The State party should strengthen its efforts aimed at educating local civil servants and law enforcement officials with regard to non-discrimination, and the Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

(13) In spite of the adoption of a law on the right to legal assistance, the Committee notes with concern reports on difficulties in obtaining legal aid, especially for members of minorities, due to the complexity of the procedures and functioning of local administrative and judicial bodies.

**The Committee recommends that the State party take the necessary measures to make legal aid available on easier terms to all members of all ethnic groups, so as to ensure that justice is accessible to all.**

(14) The Committee, while expressing appreciation for the measures adopted by the State party to eliminate discrimination against the Roma communities, such as the Action Plan for the Decade of Roma Inclusion and the National Roma Programme, continues to be concerned about the discrimination faced by members of the Roma minority in their enjoyment of human rights, in particular in the fields of education, employment, housing, citizenship and political participation. The Committee also notes the apparent reluctance of members of the Roma minority to identify themselves as such on the occasion of national data-gathering exercises (arts. 5 and 2).

**The Committee, drawing attention to its general recommendation No. 27 (2000) on discrimination against Roma, reiterates its recommendation that the State party continue to pay attention to the situation of the Roma minority and intensify its efforts to eliminate discrimination against it. In particular, the State party should ensure equal access to quality education by Roma children, including through teaching in Romani, prevent de facto segregation of Roma pupils, and take further measures to combat stereotypes. It should also ensure effective implementation of its policies aimed at higher employment rates for Roma, adequate political representation at all levels and equal access to citizenship and housing. The Committee also encourages the State party to create such conditions for members of the Roma minority as are conducive for them to identify themselves as such.**

(15) Welcoming the information that a number of war crimes trials that were held in absentia will be reviewed and that a significant number of such cases in which perpetrators were not identified are being investigated again, the Committee notes the commitment of the State party to investigate war crimes independently of ethnic identity. Notwithstanding, it expresses concern about reports alleging the persistent differential treatment of perpetrators of Serb and of Croat origin (art. 5 (a)).

**The Committee recommends that the State party strengthen its efforts to ensure that all war crimes trials conducted at the national level are carried out fairly and in a non-discriminatory manner and that all cases of war crimes are effectively investigated and prosecuted, irrespective of the ethnicity of the victims and the perpetrators involved.**

(16) The Committee welcomes the measures taken by the State party to ensure fair and adequate representation of minorities in central, regional and local administration, the

police force and the judiciary and notes the results achieved so far, such as the election of a member of the Roma minority to the national parliament. Notwithstanding all these efforts, the Committee is concerned about the continuing underrepresentation of minorities in the judiciary (art. 5 (c)).

**The Committee encourages the State party to take further measures aimed at fair and adequate representation of all minority groups in all public bodies, including the judiciary and the human rights coordination bodies at county level. It also invites the State party to take measures with a view to encouraging minority women to become more active in public life.**

(17) The Committee notes the information provided by the State party on access to citizenship. However, it reiterates its concern that some ethnic groups, in particular persons of Roma, Serb and Bosniak origin, continue to face difficulties in obtaining the documentation necessary to acquire citizenship (art. 5 (d) (ii) and (iii)).

**The Committee recommends that, in order to ensure that access to citizenship is granted on a non-discriminatory basis, the State party remove any administrative and other obstacles and assist persons whose access to obligatory documentation is limited, such as persons of Roma, Serb and Bosniak origin.**

(18) The Committee notes with concern that Roma girls tend to be married at an early age in spite of the legal provisions prohibiting such early marriages (art. 5 (d) (iv)).

**The Committee recommends that the State party ensure the effective implementation of its laws concerning the legal age of marriage in consultation with the communities affected and undertake awareness-raising campaigns among the groups concerned regarding the illegality of such marriages. It draws the State party's attention to its general recommendation No. 27 (2000) on discrimination against the Roma, as well as general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.**

(19) The Committee notes the commitment expressed by the delegation of the State party to enable the remaining refugees of the war to return to the State party if they wish to do so, including by solving their housing problems and creating conditions for their reintegration into society. Notwithstanding this commitment, it continues to be concerned about a substantial number of unresolved cases of returnees, in particular with regard to the restitution of property and tenancy rights (art. 5 (e)).

**The Committee reiterates its recommendation of 2002 that the State party intensify its efforts aimed at facilitating the return and reintegration of refugees, especially returnees who belong to the Serbian minority, by adopting and implementing fair and transparent measures for their sustainable return. In particular, the State party should ensure the implementation of its policies and laws to solve all outstanding housing issues faced by property owners and former tenancy rights-holders by the end of 2009, as envisaged. The State party should create conditions under which returnees of all ethnic origins can opt for a permanent stay.**

(20) The Committee, while welcoming the measures taken by the State party to eliminate disparities between the different regions of the State party with a view to ensuring a sustainable return of refugees and other displaced persons, notes that the "areas of special State concern" continue to be economically underdeveloped (art. 5 (e)).

**The Committee recommends that the State party continue to intensify its efforts aimed at creating conditions for a sustainable development of "areas of special State concern", which are inhabited by the most numerous minorities, including Serb and Roma minorities, by eliminating economic and social disparities between regions. In particular, the State party should ensure the effective implementation of the Act on**

**Regions under Special State Care and proceed with the adoption of the regional development strategy legislation.**

(21) The Committee, while welcoming the measures taken to foster understanding between the ethnic groups present in the State party and to promote an environment of tolerance, including the education of public officials at all levels, is concerned about reports on societal prejudice against certain minority groups, such as the Roma and Serb minorities. It is also concerned at reports of rising ethnic tension in a neighbouring country within the former Yugoslavia and notes that historically ethnic tensions within the former Yugoslavia have had the ability to spread throughout the region (art. 7).

**The Committee encourages the State party to strengthen its efforts aimed at the promotion of inter-ethnic harmony and tolerance among the public at large. In that context, it also recommends that the State party take all appropriate steps to ensure that any rising ethnic tension in a neighbouring country does not migrate into Croatia.**

(22) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(23) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to continue to participate actively and comprehensively in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

(24) The Committee encourages the State party to proceed with the preparation of the optional declaration provided for in article 14 of the Convention.

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly 63/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(26) The Committee recommends that the reports of the State party be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and national languages.

(27) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted at the Fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 19, and 20 above.

(29) The Committee recommends that the State party submit its ninth and tenth periodic reports in a single document, due on 12 October 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

### 36. Ethiopia

(1) The Committee considered the seventh to sixteenth periodic reports of Ethiopia (CERD/C/ETH/7-16), submitted in one document, at its 1958th and 1959th meetings (CERD/C/SR.1958 and 1959), held on 19 and 20 August 2009. At its 1969th meeting (CERD/C/SR.1969), held on 27 August, it adopted the following concluding observations.

## A. Introduction

(2) The Committee welcomes the submission of the seventh to sixteenth periodic reports by the State party. In view of the lengthy period since the submission of its sixth report (CERD/C/156/Add.3) in 1988, the Committee encourages the State party to ensure the timely submission of its periodic reports in the future.

(3) The Committee welcomes the efforts made by the State party to comply with the Committee's guidelines for the preparation of reports. It regrets, however, that the report does not contain sufficient information regarding the practical application of the Convention, that the written responses provided to the list of issues prepared by the Committee's rapporteur were only submitted on the day of the examination of the report and that they do not fully address all the issues raised.

## B. Factors and difficulties impeding the implementation of the Convention

(4) The Committee notes that the State party has faced several challenges in recent years, including serious economic hardship, famine, internal unrest and conflicts with neighbouring States, which have resulted in a very large number of internally displaced persons and refugees.

## C. Positive aspects

(5) The Committee acknowledges with appreciation that the State party continues to host a large number of refugees from countries within the region, including the Sudan, Kenya and Somalia.

(6) The Committee welcomes the 1994 Constitution, which reflects the importance accorded, in the legal order of the State party, to the prohibition on racial discrimination, including during times of national emergency.

(7) The Committee expresses its appreciation for the recognition, under the Constitution, that every nation, nationality and people in Ethiopia has the right to speak and to develop its own language, as well as for policies promoting the various national languages at the national level.

(8) It appreciates the recognition of the rights of vulnerable persons, particularly women and children, and their explicit protection in the Constitution.

(9) The Committee notes with appreciation the allotment of seats in the parliament to minority groups, as well as the recognition of these groups under the Constitution.

(10) The Committee takes note of the State party's statement that the Convention is directly applicable in its courts.

#### **D. Concerns and recommendations**

(11) While noting that article 25 of the Constitution of the State party provides for the equality of all persons before the law and for their entitlement, without any discrimination, to equal protection of the law, the Committee notes that the State party's legislation is not fully in conformity with the Convention (arts. 1, 2 and 4).

**The Committee recommends that the State party adopt specific legislation on racial discrimination implementing the provisions of the Convention, including a legal definition of racial discrimination in line with article 1 of the Convention. In this regard, the Committee urges the State party to take into account general recommendation No. 7 (1985) on legislation to eradicate racial discrimination as well as general recommendation No. 15 (1993) on article 4 of the Convention.**

(12) The Committee welcomes the State party's information that the application of religious and customary laws practised by some ethnic groups is subject to the consent of the concerned individuals or groups. Nevertheless, it notes that the State party has not provided adequate information on the measures taken to ensure that the application of these laws does not result in de facto racial discrimination against members of certain ethnic groups. In this regard, the Committee is concerned about the special vulnerability of women in such settings, particularly with regard to their ability to decide freely their preferred choice of legal regime in the process of litigation (art. 2).

**The Committee urges the State party to ensure that all citizens are enabled to exercise their free choice of legal system to govern their personal affairs, particularly marginalized and vulnerable persons such as women in traditional societies. The Committee requests that the State party provide, in its next periodic report, information on the status of religious and customary laws and the steps taken to guarantee that persons potentially subject to such legal systems are able to exercise free choice in relation to their application.**

(13) The Committee notes that political parties in the State party are largely structured on ethnic lines. The Committee is concerned that these arrangements, in the specific circumstances of the State party, have the potential to contribute to an increase in ethnic tension.

**The Committee recommends that the State party encourage the development of integrationist multiracial organizations, including political parties, in line with the provisions of article 2.1 (e) of the Convention.**

(14) Recognizing the role played by civil society in combating racial discrimination, the Committee is concerned that the Charities and Societies Proclamation (2009), to a large extent, curtails freedom of association in that: (a) charities established by nationals of the State party under its laws are not allowed to receive more than 10 per cent of their funds from foreign sources, including international agencies and nationals living abroad; (b) charities established by residents under the State party's law with an exclusively Ethiopian membership are barred from taking part in the advancement of human and democratic rights, the promotion of gender equality and the promotion of the efficiency of the justice and law enforcement services; and (c) heavy penalties have been provided for violation of this law (art. 2).

**The Committee recommends that the State party consider reviewing this legislation to ensure that due consideration is given to the important role of civil society**

**organizations in the promotion and protection of human rights, including in the area of racial discrimination.**

(15) The Committee is concerned that, notwithstanding the long history of the State party's commitment to fight racial segregation, there are reports that castelike forms of racial discrimination persist on its territory, mainly affecting marginalized racial and ethnic minorities (art. 3).

**The Committee recommends that the State party undertake a study of the spread and causes of the problem of castes and implement a strategy to eliminate it. The State party is further requested to provide information in its next periodic report on the results of its efforts to this effect. The Committee urges the State party to take into account general recommendation No. 29 (2002) on descent-based discrimination.**

(16) While welcoming the State party's information that certain harmful traditional practices, such as female genital mutilation and the abduction of girls and young women for marriage, are prohibited by legislation, the Committee remains concerned at the prevalence of these practices in some communities (art. 5).

**The Committee recommends that the State party reinforce the measures adopted to eradicate harmful traditional practices through awareness-raising strategies, among other methods, and in consultation with communities engaging in these practices. The Committee further recommends that the State party include detailed information in its next periodic report on the extent of these practices and on the impact of measures taken to address them.**

(17) The Committee is concerned about the occurrence of sporadic ethnic conflicts in the State party and, particularly, at reports of human rights violations committed by members of the military against the Anuak population in Gambella in December 2003. While noting the delegation's statement that measures to ensure accountability were taken, the Committee is concerned at reports that these human rights violations were not thoroughly investigated (art. 5).

**The Committee recommends that the State party:**

**(a) Enhance its efforts to address the root causes of ethnic conflicts on its territory; and**

**(b) Take the necessary steps, in the event of future ethnic conflicts, to prevent the targeting of civilians by the military and to promptly and thoroughly investigate reports of human rights violations in this context.**

(18) While taking note of the State party's information that it has enacted legislation to ensure the protection of refugees, the Committee is concerned at the lack of detailed information on the extent to which refugees enjoy the rights set out in article 5 of the Convention. Similarly, the State party has provided insufficient information on the human rights situation of the internally displaced persons scattered in many parts of the country (art. 5).

**The Committee recommends that the State party ensure that refugees and other vulnerable persons, such as internally displaced persons, enjoy their rights under national law as well as the various international legal instruments to which it is a party. Furthermore, the State party is requested to provide, in its next periodic report, detailed information on the human rights situation of refugees and internally displaced persons on its territory, particularly in relation to article 5 of the Convention.**

(19) The Committee notes the absence of information on legislative and other measures taken by the State party to ensure the protection of the rights of racial and ethnic groups.

**The Committee recommends that the State party take all the necessary steps to ensure that all persons belonging to racial and ethnic groups are able to fully exercise their rights under the Convention. The Committee recommends that the State party pay particular attention to the legislative, constitutional and other measures which must be taken at the level of the federal regions in order to give effect to the rights of these groups.**

(20) While noting the establishment in the State party of the Commission for Human Rights and the Institution of the Ombudsman, the Committee regrets the absence of detailed information regarding the competencies and effectiveness of these institutions. The Committee notes, with respect to both institutions, the lack of clarity regarding the nature of the remedies available. The Committee is also concerned that the Commission for Human Rights has no specific department or unit dealing with issues, complaints and cases relating to racial discrimination and that it has offices only in the major cities, rendering it largely inaccessible to persons residing in rural areas. In addition, the two institutions have made insufficient attempts to publicize their activities in order to inform the public of the remedies available in the event of human rights violations, including those relating to racial discrimination (art. 6).

**The Committee recommends that the State party:**

(a) **Provide, in its next periodic report, detailed information on the competencies and effectiveness of the activities of the Commission for Human Rights and the Institution of the Ombudsman;**

(b) **Strengthen the Commission for Human Rights in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), adopted by General Assembly resolution 48/134, and provide it with adequate resources;**

(c) **Disseminate more widely information on the existence of the Commission for Human Rights and the Institution of the Ombudsman, particularly their mandate to investigate violations of human rights; and**

(d) **Ensure the effective accessibility of the Commission for Human Rights to persons living in rural or other peripheral areas.**

(21) The Committee notes that the Convention has not been translated into the working language of the Federation or any other language used in the federal regions, thereby limiting the possibility for judges and legal practitioners to refer to and apply it.

**The Committee recommends that the State party translate the Convention into the working language of the Federation and other languages used in the federal regions.**

(22) The Committee also notes the absence of information on any court cases involving allegations of racial discrimination or in which the provisions of the Convention were invoked (arts. 6 and 7).

**The Committee recommends that the State party provide, in its next periodic report, information on court cases involving racial discrimination as well as any jurisprudence involving an interpretation of the provisions of the Convention.**

(23) The Committee notes the lack of information on the extent to which human rights education, including on equal rights and non-discrimination, is integrated into school curricula as well as the absence of information on the use of the media in this area (art. 7).

**The Committee encourages the State party to include human rights education in school curricula and to enhance its efforts to improve human rights education in broader society with a view to promoting understanding and tolerance among all**

**racial and ethnic groups. Particular attention should also be paid to the role of the mass media in the these respects.**

(24) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(25) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(26) The Committee urges the State party to consult with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(27) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

(28) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 62/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(29) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the working and other commonly used languages, as appropriate.

(30) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 14, 21 and 23 above.

(31) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 18, 20 and 22 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(32) The Committee recommends that the State party submit its seventeenth to nineteenth periodic reports in a single document, due on 23 July 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

**37. Finland**

(1) The Committee considered the seventeenth to nineteenth periodic reports of Finland (CERD/C/FIN/19), submitted in one document, at its 1918th and 1919th meetings



(CERD/C/SR.1918 and 1919), held on 25 and 26 February 2009. At its 1929th meeting (CERD/C/SR.1929), held on 5 March, it adopted the following concluding observations.

## **A. Introduction**

(2) The Committee welcomes the timely submission of the State party's report, which has been prepared in conformity with the reporting guidelines, and its comprehensive written replies to the list of issues as well as the oral presentation and further clarifications given in responses to the questions posed orally by the Committee, which show further progress in the implementation of the Convention. It commends the efforts by the State party to address the issues raised by the Committee in its previous concluding observations.

(3) The Committee appreciates the frank and open dialogue with the delegation headed by the Director of the Ministry for Foreign Affairs and composed of experts from different ministries, as well as a Member of Parliament, and the State party's frank acknowledgment of the existence of racial discrimination within segments of Finnish society.

(4) The Committee notes with appreciation the State party's close collaboration with civil society in the elaboration of the report.

## **B. Positive aspects**

(5) The Committee welcomes the adoption of the Non-Discrimination Act of 2004 whose purpose is to foster and safeguard equality and to enhance the protection provided by law to victims of discrimination in cases that fall under the scope of the Act.

(6) The Committee welcomes the establishment of the National Discrimination Tribunal, a permanent and independent body promoting legal protection, as well as the strengthening of the institution of the Ombudsman for Minorities, both institutions supervising compliance with the provisions of the Non-Discrimination Act of 2004 from the viewpoint of ethnic origin. It also welcomes the fact that, as of 1 January 2008, the Ombudsman for Minorities and the National Discrimination Tribunal were transferred to the Ministry of the Interior as independent authorities.

(7) The Committee welcomes the adoption by parliament, as orally stated by the delegation, of an amendment to the Aliens Act which will allow holders of a temporary permit (so-called B permit) to be granted a work permit.

(8) The Committee notes with appreciation the State party's accession to the 1961 Convention on the Reduction of Statelessness and the State party's ratification of Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms.

(9) The Committee notes with appreciation that the Penal Code was supplemented in 2003 with a provision criminalizing participation in the activity of a criminal organization which aims at ethnic agitation against a certain population group, as well as with a provision for racist motives to be taken into account as an aggravating factor allowing for more severe punishment.

(10) The Committee commends the State party for having designed an intervention programme for the prevention of bullying at school (which frequently affects children of minority and immigrant backgrounds), which will be introduced in all comprehensive schools in 2009–2011.

(11) The Committee welcomes the adoption, in May 2008, of the Internal Security Programme, which aims at improving the security of immigrants and ethnic minorities, as

well as reducing violence, combating organized crime and preventing cybercrime and Internet-related risks.

### C. Concerns and recommendations

(12) While taking note of the information regarding certain ethnic groups and of the explanations given by the delegation with regard to legislative provisions preventing the State party from identifying ethnic groups in a census or otherwise drawing a distinction between citizens on the grounds of ethnic, linguistic or religious origin, the Committee expresses concern regarding the lack of statistical data in the report of the State party on the ethnic composition of its population.

**In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information from targeted social surveys conducted on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, so as to be able to evaluate the situation of its population in the economic, social and cultural fields. The State party should also provide the Committee with information on the ethnic composition of the prison population.**

(13) The Committee takes note of the explanations given in paragraphs 74 and 75 of the State party's report and its replies to the lists of issues (p. 10 of the written replies) according to which an amendment to the Act on the Sámi Parliament is not warranted at present and that the Sámi Parliament considers that the definition of "Sámi" should be discussed at the Nordic level in order to find a common definition. The Committee reiterates its opinion, however, that the State party's approach to the definition of who may be considered a Sámi and thus fall under the relevant legislation established in favour of the Sámi, as defined by the Act on the Sámi Parliament and the specific interpretation provided thereon by the Supreme Administrative Court, is too restrictive.

**The Committee reiterates its recommendation that the State party give more adequate weight to self-identification by individuals concerned, as indicated in the Committee's general recommendation No. 8 (1990).**

(14) While appreciating the State party's acknowledgement that the prevailing legal uncertainty surrounding the question of Sámi land rights is potentially harmful to inter-ethnic relations in the areas concerned, the Committee reiterates its concern about the limited progress achieved in resolving Sámi rights issues and the State party's failure to adhere to International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (arts. 5 (d) (v), 5 (e) (vi) and 6).

**The Committee once again draws the State party's attention to general recommendation No. 23 (1997) on the rights of indigenous peoples which, inter alia, calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee renews its appeal to the State party to find an adequate settlement of the land dispute together with the Sámi people and its recommendations that it adhere to ILO Convention No. 169 as soon as possible. It recommends that the State party take effective measures to ensure that the so-called study on land rights in Upper Lapland result in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also encouraged to continue negotiations with relevant ministries and the Sámi Parliament on the establishment of**

**a new preparatory body in charge of reaching a solution for the land use rights issue in the Sámi Homeland.**

(15) The Committee notes that the State party has adopted measures to combat racist and xenophobic attitudes among the young through, inter alia, the allowance of grants to support projects for the promotion of multiculturalism and anti-racist works and awareness-raising measures directed at both teachers and students in basic and secondary level education. The Committee also notes that school-specific curricula include the prevention of bullying. However, it remains concerned at the persistence of racist and xenophobic attitudes among many sectors of the population.

**The Committee encourages the State party to continue its efforts to monitor all tendencies which may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies. It also recommends that the State party continue to promote, at all levels of education, general awareness of diversity and multiculturalism and expand its programme aimed at prevention of bullying, which affects disproportionately pupils from an immigrant background by hampering their integration into society. It further encourages the State party to target Finn adults in its strategies to combat racist and xenophobic attitudes.**

(16) The Committee notes the State party's continuous efforts to combat racist propaganda and the spread of racist and xenophobic material on the Internet. These include, inter alia, the reform of the legislation on the freedom of expression in 2004, which authorizes the release of information identifying the sender if the message, prima facie, is likely to constitute a criminal offence. They also include the adoption in May 2008 of the Internal Security Programme and the setting up of an Internet crime-reporting system. The Committee remains concerned, however, about the persistence of this problem.

**The Committee encourages the State party to continue its efforts at the national and international levels to combat contemporary manifestations of racial discrimination, such as racist propaganda on the Internet, and to find ways and means to block the use of the Internet for racist purposes. The Committee requests the State party to proceed with the process of ratification of the Additional Protocol to the European Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through use of computers, as indicated in its seventeenth, eighteenth and nineteenth periodic reports.**

(17) The Committee expresses concern about de facto segregation in housing encountered by both immigrants and Roma (art. 3).

**The Committee recommends that the State party ensure compliance with the law against discrimination in the allocation of housing and in its next periodic report supply information on the measures taken to address such segregation.**

(18) While welcoming the efforts made by the State party to eliminate discrimination against the Roma, such as the nominations of contact persons for Roma in local employment offices and the training of local employment staff on the Roma culture and ethnic equality, the Committee remains concerned about the limited enjoyment by members of the Roma community of the rights enshrined in the Convention, especially the rights to education, employment, housing and access to public places. The Committee is particularly concerned about the high rate of unemployment among the Roma people, owing to the fact that they lack basic education (arts. 2, 5 and 6).

**In the light of its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party strengthen its efforts to increase the level of education of members of Roma communities, inter alia by raising awareness about the possibility for Roma children to receive instruction in their**

**mother tongue, and by further promoting the recruitment of Roma teachers. It also encourages the State party to increase employment opportunities for Roma, including by training unemployed Roma for the labour market, as well as ensuring that they have equal access to housing and public places. The State party should also increase its efforts to combat negative attitudes and prevailing stereotypes concerning Roma, in particular among employers.**

(19) The Committee notes the State party's continued commitment to the integration of persons of foreign origin. Nevertheless, it remains concerned that despite such efforts, de facto discrimination against persons of foreign origin, including Somalis, persists in a number of areas. It is particularly concerned about the lower employment rate among persons of immigrant origin, especially women, and the difficulties that persons with an immigrant background and aliens continue to face when trying to access service places, such as bars and restaurants. While noting with appreciation the publication of instructions for ensuring equal treatment in client services, the Committee remains concerned at the obstacles faced by immigrants to subscribe to contractual services such as insurance policies and mobile phone services (art. 5 (e) and (f)).

**The Committee recommends that the State party intensify its efforts to combat discrimination against persons of foreign origin. In particular, the State party should further improve the effectiveness of its legislation and policies aimed at eliminating discrimination in the labour market and improving employment opportunities for persons with immigrant backgrounds. The State party is invited to provide additional information, in its next periodic report, on the revision process of the Integration Act, which is aimed at providing a customized integration plan to persons who are likely to stay in Finland for more than a year.**

(20) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(21) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee further encourages the State party to participate actively and comprehensively in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

(22) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in its official and national languages.

(23) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(24) The Committee invites the State party to update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(25) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 16 and 19 above.

(26) The Committee recommends that the State party submit its twentieth, twenty-first and twenty-second periodic reports in a single document, due on 13 August 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

### 38. Greece

(1) The Committee considered the combined sixteenth to nineteenth periodic reports of Greece, submitted in a single document (CERD/C/GRC/19), at its 1944th and 1945th meetings (CERD/C/SR.1944 and 1945), held on 10 and 11 August 2009. At its 1963rd meeting (CERD/C/SR.1963), held on 24 August, it adopted the following concluding observations.

## A. Introduction

(2) The Committee welcomes the submission of the State party report, the replies to the list of issues, as well as the supplementary information provided orally by the delegation. The Committee found it encouraging that the delegation replied frankly and constructively to the questions and comments raised by Committee members. The Committee welcomes the high quality of the State party's report, which is in line with the Committee's guidelines.

## B. Positive aspects

(3) The Committee welcomes the adoption of Law 3304/2005 on the "Implementation of the principle of equal treatment regardless of race or national origin, religion or other beliefs, disability, age or sexual orientation" in 2005.

(4) The Committee welcomes the amendment to paragraph 3 of article 79 of the Criminal Code in 2008, which provides that the commission of an offence motivated by ethnic, racial or religious hatred constitutes an aggravating circumstance.

(5) The Committee welcomes the establishment of the Committee for Equal Treatment and the new responsibilities assumed by the Greek Ombudsman for the promotion of the principle of equal treatment in the public sector.

(6) The Committee welcomes the "Integrated Action Programme for the social integration of Greek Roma" and the Law of 2005 for the integration of third-country nationals legally residing in the Hellenic territory, and acknowledges the importance of the special measures and other positive steps already taken.

(7) The Committee welcomes the recent ratification by the State party of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, as well as the ratification of both Optional Protocols to the Convention on the Rights of the Child.

### C. Concerns and recommendations

(8) The Committee takes note of the explanation by the State party of the reason why only Greek citizens belonging to the Muslim minority in Thrace, as determined by the Treaty of Lausanne of 1923, fall within the scope of the term “minority”, and are recognized as such.

**The Committee, referring to its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and recalling its general recommendation No. 20 (1996) on article 5 of the Convention, calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups within the scope of the Convention. The Committee recommends that the State party conduct research with a view to effectively assessing and evaluating the incidence of racial discrimination in the country, with particular focus on discrimination based on national or ethnic origin, and take targeted measures to eliminate such discrimination.**

(9) The Committee notes that the Muslim minority of Thrace is composed of Turkish, Pomak and Roma ethnic groups, and that the Government wishes to ensure their right to use their own languages.

**The Committee asks the State party to include in its next report information on measures taken to protect the human rights of these groups and their right to identity.**

(10) The Committee is concerned that the State party is not effectively implementing legal provisions aimed at eliminating racial discrimination and in particular those relating to prosecution and punishment of racially motivated crimes.

**The Committee calls upon the State party to ensure the effective implementation of all legal provisions aimed at eliminating racial discrimination and that racially motivated crimes are effectively prosecuted and punished. The Committee further requests the State party to provide in its next report updated information concerning the application by courts of criminal law provisions punishing acts of racial discrimination, such as those contained in Law 927/1979. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.**

(11) The Committee is concerned about reports on the propagation by certain organizations and media outlets of racist stereotypes and hate comments against persons belonging to different ethnic and racial groups.

**The Committee recommends that the State party take effective measures to penalize organizations and media outlets that are guilty of such acts. It further recommends that the State party concretely ban neo-Nazi groups from its territory and take more effective measures to promote tolerance towards persons of different ethnic origins.**

(12) The Committee is concerned about reported cases of ill-treatment of asylum-seekers and illegal immigrants, including unaccompanied children.

**The Committee recommends that the State party take more effective measures necessary to treat asylum-seekers humanely and to reduce as much as possible the period of detention of asylum-seekers, in particular children.**

(13) The Committee notes with concern information on cases of ill-treatment and excessive use of force by Greek police against persons belonging to vulnerable groups, in particular the Roma.

**With reference to general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system,**

**the Committee encourages the State party to take further measures to combat the abuse of authority and to prevent the ill-treatment of people belonging to different racial and ethnic groups by the police, to ensure that such acts are effectively prosecuted and punished by the judicial authorities, and to integrate more members of the Roma community into the police.**

(14) Bearing in mind the intersectionality of ethnicity and religion, the Committee is concerned about information on certain specific difficulties encountered by Muslims belonging to different ethnic groups to practise their religion.

**The Committee recalls the State party's obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent or national or ethnic origin, in accordance with article 5 (d) of the Convention.**

(15) The Committee is concerned about the obstacles encountered by some ethnic groups in exercising the freedom of association, and in this regard takes note of information on the forced dissolution and refusal to register some associations including words such as "minority", "Turkish" or "Macedonian", as well as of the explanation for such refusal.

**The Committee recommends that the State party adopt measures to ensure the effective enjoyment by persons belonging to every community or group of their right to freedom of association and of their cultural rights, including the use of mother languages.**

(16) While acknowledging the important special measures already adopted for the social integration of the Roma, the Committee is concerned about obstacles encountered by Roma persons with regard to access to work, housing, health care and education.

**The Committee recommends that the State party undertake an evaluation of the results of the "Integrated Action Programme for the social integration of Greek Roma" in consultation with the respective communities, and adopt adequate measures to effectively improve the living conditions of the Roma, in accordance with article 5 of the Convention and general recommendation No. 27 (2000) on discrimination against the Roma.**

(17) The Committee is concerned about the alleged limited access to quality minority education for the Turkish-speaking minority in Western Thrace.

**The Committee recommends that the State party improve the quality of education for the vulnerable ethnic groups and the Muslim minority, including through the training of teachers belonging to these groups, to ensure that there is a sufficient number of secondary schools, and to create preschools that teach in the mother tongue of their students.**

(18) The Committee notes the sharing of competence between the Office of the Ombudsman, the Committee for Equal Treatment and the Labour Inspectorate (para. 253 of the State party's report).

**As the Office of the Ombudsman is the only independent body, the Committee recommends that the State party consider giving it overall powers to receive complaints of racial discrimination, while cooperating with the other bodies when examining them.**

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(20) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(21) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(22) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

(23) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/11. In this connection, the Committee cites General Assembly resolution 63/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(24) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(25) Noting that the State party submitted its core document in 2002, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12 and 13 above.

(27) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 10, 11 and 18 and requests that the State party provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(28) The Committee recommends that the State party submit its combined twentieth and twenty-first periodic reports in a single document, due on 18 July 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

### 39. **Montenegro**

(1) The Committee considered the initial report of Montenegro (CERD/C/MNE/1), at its 1924th and 1925th meetings (CERD/C/SR.1924 and 1925), held on 2 and 3 March 2009. At its 1930th and 1931st meetings (CERD/C/SR.1930 and 1931), held on 5 and 6 March, it adopted the following concluding observations.



## A. Introduction

(2) The Committee welcomes the timely submission of the initial report submitted by Montenegro as well as the written replies to its list of issues in due time before the session, supplemented by the comprehensive answers and explanations provided in response to the Committee's questions. The Committee expresses appreciation for the presence of a high-level delegation from Montenegro during its consideration of the report and the frank and constructive dialogue between the Committee and the delegation.

## B. Positive aspects

(3) The Committee welcomes the many legislative and administrative measures taken by the State party to establish a framework for the promotion and protection of human rights, and in particular the elimination of discrimination in areas of relevance to the Convention, including the adoption of:

(a) The new Constitution in 2007, which incorporates a broad prohibition of discrimination by banning direct and indirect discrimination based on any ground, provides for positive measures as well as provides that international treaties have precedence over domestic law;

(b) The Law on Asylum in 2006, the establishment of the Asylum Office and the State Asylum Appeals Commission in 2007; and

(c) The Law on Employment of Aliens in March 2007, which provides avenues for fair employment of recognized refugees and persons granted subsidiary protection under the Law on Asylum.

(4) The Committee welcomes the establishment of a range of institutions for the promotion and protection of human rights, including the Ministry for Human and Minority Rights Protection and the Office of the Protector of Human Rights and Freedoms (Ombudsman).

(5) The Committee welcomes the adoption of the Judicial Reform Strategy for the period 2007–2012 with the objective of improving its independence and autonomy and building its efficiency, as well as the training programmes for law enforcement officials, prison staff, judges and prosecutors.

(6) The Committee notes with satisfaction the adoption of the action plan for the implementation of the "Decade of Roma Inclusion 2005–2015", as well as the "Strategy for the Improvement of the Position of Roma, Ashkali and Egyptian Populations (RAE) in Montenegro for the period 2008–2012".

(7) The Committee takes note with appreciation that Montenegro has succeeded to all of the international human rights instruments previously binding upon Serbia and Montenegro. The Committee also notes the ratification of the Rome Statue of the International Criminal Court in October 2006 as well as International Labour Organization Convention No. 111 on Discrimination (Employment and Occupation) in 2006.

## C. Concerns and recommendations

(8) While the Committee welcomes the information contained in the initial report on statistics relating to the ethnic composition of the State party, the Committee notes the limitations in the 2003 census and wishes to receive additional information on the characteristics and particular situation of the various ethnic minorities.

**In keeping with its general recommendation No. 8 (1990) and with paragraphs 10 to 12 of the guidelines for the CERD-specific reports to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1), the Committee requests the State party to include in its next periodic report disaggregated data on educational, social, economic and employment levels.**

(9) The Committee takes note of the continued lack of a general law aimed to give effect more specifically to the provisions of article 2, paragraph 1, of the Convention, though it is encouraged by the information provided that the State party is in the process of finalizing such legislation (art. 2).

**The Committee urges the State party to expedite its efforts to adopt the law on non-discrimination embodying all the provisions of article 2 of the Convention.**

(10) The Committee is concerned at the slow pace of harmonization of existing laws with the more forward-looking 2007 Constitution (art. 2).

**The Committee urges the State party to accelerate its efforts in bringing its internal laws, such as the 2006 Law on Minority Rights and Freedoms, into accordance with the provisions of the 2007 Constitution and the Convention.**

(11) The Committee has noted the lack of reference to the Convention in Montenegrin human rights jurisprudence, and of public applications for redress under the Convention's provisions. This may be due to the fact that the Convention is not well known among the public and people responsible for applying the law, including the judiciary (arts. 2, 6 and 7).

**The Committee recommends that the State party intensify its efforts to make the Convention better known to the public and the public administration, particularly the judiciary, and promote the application of its provisions and redress mechanisms through the Montenegrin courts and administrative system, as appropriate.**

(12) The Committee notes that the report submitted by the State party does not contain sufficient information on the practical implementation of the legislative and administrative measures adopted to eliminate racial discrimination covered by the Convention (art. 2).

**The Committee requests the State party to prepare its next periodic report in accordance with the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session and to include in it information on progress made and obstacles encountered, in implementing the rights enshrined in the Convention.**

(13) The Committee is concerned at the limited human and financial resources allocated to the Protector of Human Rights and Freedoms to effectively and independently fulfil his/her mandate (art. 2).

**The Committee recommends that the State party allocate adequate financial and human resources to enable the Protector's Office to independently and effectively carry out its mandate. It also encourages the State party to enhance its awareness-raising campaigns with regard to the Protector's functions in order to facilitate the access of persons belonging to ethnic minorities to its services.**

(14) The Committee is concerned at the lack of disaggregated data on members of minority groups employed in the central and local State bodies, in the police force as well as the judiciary (art. 5 (c)).

**The Committee recommends that the State party take the necessary measures to collect disaggregated statistical data that would allow for an assessment of the representation of the various minority groups in public bodies and institutions. The Committee requests that the State party include such information, in accordance with**

**the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session, in its next periodic report.**

(15) The Committee is concerned at the difficulties experienced by a large number of “displaced persons” from Croatia and from Bosnia and Herzegovina and “internally displaced persons” from Kosovo in accessing, inter alia, employment, health insurance, social welfare and property rights because of their uncertain legal status. The Committee notes with interest ongoing efforts to bring about an early and durable solution to this problem (art. 5).

**The Committee recommends that the State party accelerate its efforts to resolve the uncertain legal status of “displaced persons” from Croatia and from Bosnia and Herzegovina and “internally displaced persons” from Kosovo, including through grants of citizenship, long-term residence, or refugee status, as appropriate. The Committee recommends that the State party ratify the 1961 Convention on the Reduction of Statelessness.**

(16) The Committee acknowledges the various measures to advance the situation of the Roma. However, the Committee is concerned that, despite compulsory school education and the various measures undertaken by the State party such as the Roma Education Initiative, which introduced Roma assistants in some schools, a disproportionately large number of Roma children are not enrolled in schools, have high dropout rates and do not complete higher education. The Committee is also concerned at the large number of Roma from Kosovo who face problems in accessing education due to their lack of proficiency in Montenegrin as well as lack of documents (art. 5 (e) (v)).

**The Committee recommends that the State party continue to address the various factors responsible for the low level of education among the Roma with a view to improving enrolment and completion of their education. It also recommends that the State party continue its efforts to facilitate the integration of minority pupils into mainstream education, including by providing language support in preschool education.**

(17) The Committee is concerned that socioeconomic and living conditions of the Roma continue to be precarious and discriminatory in the spheres of education, employment, health care and social welfare (art. 5 (e)).

**The State party should implement stronger special measures targeting the Roma community to enable them to have practical access to education, employment in the public administration, health care and social welfare in a non-discriminatory manner, paying due attention to general recommendation No. 27 (2000) on discrimination against Roma.**

(18) The Committee, referring to its general recommendation No. 31 (2005) on racial discrimination in the administration and the functioning of the system of criminal justice, remains concerned at the continued allegations of police brutality and ill-treatment and lack of prompt and impartial investigations of such cases with respect to disadvantaged ethnic groups, particularly Roma, being particularly targeted for such abuses (arts. 5 (b) and 6).

**The Committee recommends that the State party ensure that all such allegations of ill-treatment and police brutality are documented, independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.**

(19) The Committee notes the information provided by the State party’s delegation with regard to the four war crimes cases before the Montenegrin courts (art. 6).

**The Committee encourages the State party to strengthen its efforts to ensure that investigations of long-standing war crimes are expeditiously completed as a demonstration of Montenegro's commitment to suppress ethnically motivated crimes.**

(20) The Committee, while welcoming the measures taken to foster the understanding between the ethnic groups present in the State party and to promote an environment of tolerance, including the education of public officials at all levels, remains concerned at reports of rising ethnic tensions in a neighbouring country within the former Yugoslavia. The Committee notes that, historically, ethnic tensions within the former Yugoslavia have been able to spread throughout the region (art. 7).

**The Committee encourages the State party to strengthen its efforts aimed at the promotion of inter-ethnic harmony and tolerance among the public at large. In this context, the Committee recommends that the State party take all appropriate steps to ensure that any rising ethnic tensions in a neighbouring country within the former Yugoslavia do not migrate into Montenegro.**

(21) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(22) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to continue to actively participate in the Preparatory Committee of the Durban Review Conference, as well as in the Durban Review Conference in 2009.

(23) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 63/243, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(24) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission and that the concluding observations of the Committee with respect to these reports be similarly publicized and disseminated in the official and national languages.

(25) The Committee recommends that the State party consult with civil society organizations working in the area of human rights protection, in particular those combating racial discrimination, in connection with the preparation of its next periodic report.

(26) The Committee encourages the State party to submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide, information within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 10 and 15.

(28) The Committee recommends that the State party submit its second and third periodic reports in a single document due on 3 June 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 40. **Pakistan**

(1) The Committee considered the fifteenth to twentieth periodic reports of Pakistan (CERD/C/PAK/20), submitted in one document, at its 1910th and 1911th meetings (CERD/C/SR.1910 and 1911), held on 19 and 20 February 2009. At its 1927th and 1928th meetings (CERD/C/SR.1927 and 1928), held on 4 March, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the combined fifteenth to twentieth periodic report and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the frank and sincere dialogue held with the delegation and the efforts made to provide responses to many questions raised in the list of issues and posed by Committee members during the dialogue.

(3) Noting that the report was almost 10 years overdue when submitted, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

### **B. Positive aspects**

(4) The Committee notes the commitments pledged by the State party, in particular with regard to the establishment of an independent national human rights institution and its commitment to promote equal rights of minorities, during the process of the universal periodic review of the Human Rights Council, and encourages the State party to fulfil them.

(5) The Committee notes with appreciation the constitutional provisions and other legislation aimed at establishing equality between all citizens of the State party, as well as the institutional framework for the protection of human rights, including the establishment of the Ministry of Minority Affairs as well as the National Commission for Minorities. The Committee also welcomes the special measures put in place to advance the equal enjoyment of rights by members of minority groups, such as reserved seats in the federal as well as provincial legislatures.

(6) The Committee notes with appreciation the State party's intention to ratify the amendments to article 8, paragraph 6, of the Convention.

(7) The Committee welcomes the ratification by the State party of the International Covenant on Economic, Social and Cultural Rights in 2008. It also welcomes the State party's signing of the International Covenant on Civil and Political Rights and invites the State party to proceed with the process for the ratification and incorporation of the Covenant into domestic law.

### **C. Concerns and recommendations**

(8) The Committee reiterates its concern about the lack of disaggregated statistical data in the report of the State party regarding the ethnic composition of its population and on the

enjoyment by members of ethnic minorities, including non-citizens, of the rights protected under the Convention.

**The Committee recommends that the State party provide it with data on the ethnic composition of the population. The collection of such data should preferably be based on self-identification by the individuals concerned, and carried out in accordance with the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and with paragraphs 10 and 11 of the guidelines for the submission of CERD-specific reports, approved at its seventy-first session (CERD/C/2007/1). The Committee wishes to emphasize that such information will permit a better assessment of the implementation of the Convention by State party, and wishes to receive such information in the State party's next periodic report.**

(9) The Committee reiterates its regret about the paucity of information on the Federally Administered Tribal Areas (FATA) and the North-West Frontier Province (NWFP), including the economic and social situation prevailing therein. It notes with concern that the laws of the State party are not applicable in these provinces to the same extent as in the other parts of the territory.

**The Committee urges the State party to ensure that its national laws, including in particular legislation relevant to the implementation of the Convention and other human rights instruments ratified by the State party, are applicable in its entire territory, including FATA and NWFP. It also reiterates its request that the State party provide more specific information regarding the socioeconomic situation in FATA and NWFP, as well as data on the ethnic and linguistic groups living therein.**

(10) While appreciating the State party's laws for the protection of recognized religious minorities, the Committee reiterates its concern about the absence of similar protection for relevant ethnic or linguistic groups. It welcomes the delegation's acknowledgment of the intersectionality, to a certain extent, of ethnicity and religion in the State party (art. 1).

**The Committee reiterates its recommendation that the State party broaden its understanding and constitutional definition regarding minorities, so as to take into account all the grounds of discrimination included in article 1, paragraph 1, of the Convention.**

(11) Notwithstanding the existing legislation aimed at ensuring the principle of non-discrimination in the State party, the Committee reiterates its concern that no comprehensive anti-discrimination law has been adopted. It also expresses concern about the lack of information on concrete measures taken to implement the existing anti-discrimination laws and special measures, in spite of reports of persisting de facto discrimination against members of certain minority groups (art. 2).

**The Committee recommends that the State party adopt a comprehensive law on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, taking into consideration all elements of the Convention. It also wishes to receive detailed information on the measures taken to implement anti-discrimination legislation with a view to eliminating de facto discrimination.**

(12) While the Committee welcomes the steps taken by the State party to address caste-based discrimination, such as a range of development schemes and the appointment of a member of a scheduled caste as adviser to the Sindh Province Senate, it is concerned that the State party has not yet adopted a law prohibiting discrimination on the basis of caste. It is further concerned about the lack of information in the State party's report on concrete measures taken to combat caste-based discrimination. The Committee is also concerned

about the persisting de facto segregation of and discrimination against Dalits regarding their enjoyment of all economic, civil, political, and social rights (arts. 2, 3 and 5).

**The Committee refers the State party to its general recommendation No. 29 (2002) on descent-based discrimination, and recommends that the State party adopt legislation aimed at the prohibition of caste-based discrimination and take effective and immediate measures to ensure its effective implementation. The State party is also invited to provide, in its next periodic report, statistical data on persons belonging to scheduled castes in the territory of the State party, including their enjoyment of all rights protected under article 5 of the Convention.**

(13) The Committee notes the information provided by the delegation of the State party on the envisaged establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex) by July 2009 (art. 2).

**The Committee encourages the State party to proceed with the envisaged plans to establish a national human rights institution in accordance with the Paris Principles, as scheduled.**

(14) The Committee remains concerned about the lack of information on the implementation of article 4 of the Convention, in particular with regard to the obligation of the State parties to prohibit racist organizations (art. 4).

**The Committee recommends that information regarding the implementation of article 4, in particular 4 (b), is made available in the next periodic report to the Committee, detailing its efforts to prohibit and suppress racist organizations.**

(15) While taking note of the strain imposed on the national and provincial resources by the mass influx of refugees in Pakistan, in particular large numbers of refugees from Afghanistan, and also noting the cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR), the Committee is concerned that the State party has not acceded to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and that it has not yet adopted any specific refugee legislation (art. 5 (b)).

**The Committee recommends that the State party consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol and enact a comprehensive legal framework governing the reception and treatment of refugees and related categories of persons.**

(16) While taking into account the efforts of the Government to address the problems of the Baluchi Community, the Committee expresses concern about reports on the situation in Baluchistan regarding acts of violence against foreigners and Baluchi civilians, including Baluchi women (art. 5 (b)).

**The Committee reminds the State party of its duty to protect all persons under its jurisdiction, and particularly urges the State party to take the necessary measures to ensure that all acts of violence are prosecuted and that victims have access to effective remedies.**

(17) Notwithstanding the measures taken by the State party, such as the amendments to the Criminal Law Act 2004 and the Protection of Women Act 2006, the Committee expresses concern about acts of violence against women, especially those of minority background (art. 5 (b)).

**In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party ensure the effective implementation of the laws aimed at protecting women from violence and**

**provide information on the measures taken and their results in its next report. It also encourages the State party to adopt the bill on domestic violence without delay.**

(18) The Committee welcomes the steps taken by the State party to ensure adequate political participation of minorities, such as the reservation of seats for minority members in the National Assembly, as well as the introduction of quotas to admit members of minorities to Government services. However, the Committee notes that minorities are comprehended by the State party exclusively as religious minorities other than Muslims, and that no specific policy or legislative framework appear to exist to ensure appropriate representation of all ethnic groups (arts. 5 (c) and 2, para. 2).

**The Committee encourages the State party to provide information on the representation of ethnic groups in Government and public services in its next periodic report. The Committee further urges the State party to legislate and mainstream the existing policy on the provision of adequate political participation of all ethnic groups.**

(19) The Committee, acknowledging the complex relationship between ethnicity and religion in Pakistan, notes the State party's commitment to freedom of religion and the safeguards established therefor. That notwithstanding, it expresses concern about reported infringements of the right to freedom of religion and the risk that blasphemy laws may be used in a discriminatory manner against religious minority groups, who may also be members of ethnic minorities (art. 5 (d) (iv)).

**The Committee recalls the State party's obligation to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without any discrimination based on race, colour, descent or national or ethnic origin, in accordance with article 5 (d) of the Convention.**

(20) While welcoming the mandate assigned to the National Finance Committee to reassess the allocation of national resources between the provinces, the Committee notes with concern the current unequal economic and social development between the different provinces and therefore the different ethnic groups in the State party (art. 5 (e)).

**The Committee urges the State party to expedite the measures aimed at introducing a fair distribution of national resources among different provinces, and thereby ethnic groups.**

(21) While welcoming the steps taken to abolish the practice of bonded labour, including the adoption of the Bonded Labour System Abolition Act, the Committee is concerned about the persistent existence of bonded labour in the State party, which appears to be related to, inter alia, the unequal distribution of land. It also expresses concern that this practice mainly affects marginalized groups such as scheduled castes (art. 5 (e) (i) and (iv)).

**The Committee urges the State to intensify its efforts to implement the laws and programmes adopted to put an end to bonded labour and discrimination against marginalized groups such as the scheduled castes. It further encourages the State party to carry out the national survey on this practice without delay and to continue cooperation with the International Labour Organization in combating this phenomenon.**

(22) The Committee welcomes the policy permitting provincial assemblies to authorize the promotion and official usage of minority languages and that minority languages may be used in legal proceedings as interpreters are available during judicial proceedings. It notes, however, the paucity of information regarding the status of languages, including the use of minority languages before State authorities and courts of law. It is also concerned that minority languages may not be used in the educational system to an extent commensurate to the proportion of the different ethnic communities represented in the student body (art. 5 (e) (vii)).



**The Committee recommends that the State party provide information on the law permitting provincial assemblies to authorize the use and promotion of languages other than Urdu and English, including examples of provinces where linguistic minorities can use their language before State authorities and courts. The State party should also aim to preserve minorities' languages and culture by, inter alia, encouraging and promoting the use of mother tongues in the fields of education and in the media. It invites the State party to include, in its next periodic report, detailed information regarding the use of ethnic minority languages.**

(23) The Committee remains concerned about the lack of information on the implementation of article 6 of the Convention regarding the establishment of effective judicial protection and remedies against acts of racial discrimination and mechanisms to seek reparation for damages suffered from such acts (art. 6).

**The Committee reiterates its recommendation that the State party include, in its next periodic report, comprehensive information on the legislative and other measures adopted as well as the mechanisms established to provide effective remedies and reparation to victims of racial discrimination. It should also include information as to how the public at large is informed about the legal remedies available against violations of the Convention.**

(24) The Committee notes with concern the lack of information on the steps taken to comply with article 7 of the Convention regarding measures taken with a view to combating prejudices which lead to racial discrimination and to promoting tolerance and friendship among its ethnic groups (art. 7).

**The Committee recommends that the State party provide in its next periodic report information on article 7 such as measures taken to eradicate the social acceptance of racial and ethnic prejudice, e.g. by intensifying public education and awareness-raising campaigns, incorporating the educational objectives of tolerance and respect for other ethnicities, as well as instruction on the culture of all minorities in the State party, and ensuring adequate media representation of issues concerning all ethnic and religious minorities, with a view to achieving true social cohesion among all ethnic groups, castes and tribes of Pakistan.**

(25) The Committee encourages the State party to proceed with the ratification of International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

(26) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(27) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to participate actively in the Durban Review Conference in 2009.

(28) The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention and invites the State party to consider doing so.

(29) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the observations of the Committee

with respect to these reports be similarly publicized and disseminated in the official and national languages.

(30) The Committee recommends that the State party continue to consult with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(31) The Committee invites the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the Fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(32) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 9, 13, and 21 above.

(33) The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document, due on 4 January 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 41. **Peru**

(1) The Committee considered the fourteenth to seventeenth periodic reports of Peru, submitted as one document (CERD/C/PER/14-17), at its 1934th and 1935th meetings (CERD/C/SR.1934 and 1935), held on 3 and 4 August 2009. At its 1963rd and 1964th meetings (CERD/C/SR.1963 and 1964), held on 24 August 2009, the Committee adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the periodic report submitted by Peru, despite the 10-year delay in submission. It also welcomes the replies to the list of issues transmitted by the State party in advance of its delegation's visit. On the other hand, the Committee considers that the report does not address adequately or in sufficient detail all the provisions of the Convention. The Committee acknowledges receipt of some of the additional information and replies to questions and concerns raised by the experts, which the delegation had agreed to provide in writing.

(3) The Committee welcomes the fact that the State party designated a high-level delegation to submit, elaborate on and discuss the report. The Committee also appreciates the information provided in relation to the cases submitted under its early warning procedure.

### **B. Positive aspects**

(4) The Committee notes with satisfaction the establishment of the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) on 16 April 2005 as a decentralized public body enjoying financial, operational, administrative and organizational independence. It notes that INDEPA is responsible for promoting and monitoring compliance with national policies and coordinating with regional Governments in carrying out projects and programmes to promote, defend, investigate and assert the

rights of the Andean, Amazonian and Afro-Peruvian peoples and their “development with identity”. It further notes that INDEPA is a specialized public body recognized as a leader in promoting, protecting, defending and coordinating the cultural, economic and social development of the Andean, Amazonian and Afro-Peruvian peoples, thereby strengthening their cultural identity.

(5) The Committee notes with satisfaction that INDEPA participates in and organizes working groups aimed at raising the awareness of Government officials and the population in general regarding the importance of developing intercultural and inclusive public policies to protect the Afro-Peruvian people, and that it also participates in technical support activities with relevant non-governmental organizations.

(6) The Committee notes with satisfaction the celebration of Afro-Peruvian Culture Day on 4 June of each year, as well as the establishment of the first museum of Afro-Peruvian culture in recognition of the significant contribution of the Afro-Peruvian community to the country’s identity.

(7) The Committee notes with satisfaction efforts to combat racial discrimination in Peru, such as legislation protecting consumers from discrimination and forbidding discrimination in job advertisements.

(8) The Committee welcomes the action taken by the State party in electoral matters, such as introducing participation quotas for indigenous peoples and laws governing municipal and regional elections that require quotas for persons of indigenous origin on party lists of candidates for the posts of mayors and municipal councillors and for seats on regional councils.

(9) The Committee welcomes the bill on the consultation and participation of indigenous peoples in environmental matters, which aims to ensure that any infrastructure projects or works that might affect the rights of indigenous peoples have the prior, free and informed consent of these peoples and that national legislation is adapted in order to provide for the right of indigenous peoples, recognized in the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), to prior, free and informed consultation.

### C. Concerns and recommendations

(10) Bearing in mind that the 1993 Constitution recognizes and protects the ethnic and cultural diversity of the Peruvian nation, the Committee remains concerned that a high proportion of persons among the indigenous peoples and Afro-Peruvian communities continue to suffer in practice from racism and structural racial discrimination in the State party.

**The Committee recommends that the State party combat racial discrimination by drawing up a comprehensive national policy against racism and racial discrimination. The Committee also calls on the State party to include in its next report indicators on the enjoyment by the various indigenous peoples and Afro-Peruvian communities of the rights guaranteed in the draft Constitution, disaggregated by urban or rural population, age and sex.**

(11) The Committee takes account of the fact that the State party promotes and guarantees the protection of the individual and collective rights of indigenous peoples established as campesino communities in the Andes or as native communities in the Amazon region. The Committee notes furthermore that for the purposes of implementing the rights enshrined in ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples, the authorities in the State party consider the categories

“campesino communities” and “native communities” as belonging to the category “indigenous peoples” as it is currently used in international human rights law and which the indigenous peoples want to appear in the Constitution. In addition, the Committee expresses concern for the situation and rights of the indigenous peoples and Afro-Peruvian communities not yet established as campesino or native communities. The Committee takes note of the efforts of the State party to adopt a framework law on indigenous peoples.

**The Committee recommends that the State party continue to promote the urgent adoption of a framework law on the indigenous peoples of Peru covering all communities, while endeavouring to equate and harmonize terminology in order to ensure the effective protection and promotion of the rights of all indigenous peoples and Afro-Peruvian communities.**

(12) The Committee notes the State party’s proposal to replace the 1994 ethnolinguistic map with a new one that was submitted to Congress on 9 February 2009. In addition, the Committee notes with satisfaction that the updated information contained in this map will enable the State party to develop public policies reflecting the needs of the various ethnic and linguistic population groups of Peru. While the Committee welcomes the statistical data on the ethnic make-up of the State party contained in the periodic report, it has noted limitations in the preparation of the 2007 national census. It therefore requests additional information on the characteristics and specific situation of the various ethnic groups, and emphasizes the need for information on the use of native languages and the situation of Afro-Peruvian communities.

**The Committee recommends that the State party continue to improve its census methodology to reflect the ethnic complexity of Peruvian society, bearing in mind the principle of self-identification, in keeping with the Committee’s general recommendation No. 8 (1990) and with paragraphs 10–12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). In this context, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population. The Committee further recommends that special emphasis be placed on obtaining updated information on the Afro-Peruvian community and on the use of the native languages of Peru.**

(13) The Committee notes with concern the gradual decline in the use of native indigenous languages occurring in Peru, as reflected in the 2007 national census. It considers that the bilingual education initiatives taken by the State party should be an opportunity to consolidate the use of two languages rather than lose the native language in favour of Spanish.

**The Committee recommends that the State party find out why the use of indigenous languages has declined, in order to develop an appropriate response. It recommends the speedy adoption of the bill on the preservation and use of the native languages of Peru, since it has already been approved by the Committee on Andean, Amazonian and Afro-Peruvian Peoples, the Environment and Ecology. The Committee also recommends the urgent adoption of the bill on the translation and dissemination of legislation in the official languages, since all legislation adopted by the State party will affect the entire population of Peru.**

(14) While noting the positive steps taken by the State party in this area, the Committee reiterates its concern at the considerable tension, even leading to violence, generated in the country by the exploitation of the subsoil resources of the traditional territories of the indigenous peoples. The Committee also notes that in some cases the right of indigenous peoples to be consulted and to give their informed consent prior to the exploitation of natural resources in their territories is not fully respected in practice. It further expresses

concern at the negative impact on health and the environment of companies' extractive activities conducted at the expense of the exercise of the right to land and the cultural rights of the indigenous peoples concerned.

**The Committee urges the State party to adopt the bill on the consultation and participation of indigenous peoples in environmental matters, taking into account the Committee's general recommendation No. 23 (1997) (para. 4 (d)), in which it urges States parties, to ensure with reference to indigenous peoples "that no decisions directly relating to their rights and interests are taken without their informed consent". In the light of that general recommendation, the Committee urges the State party to consult the communities of the indigenous peoples concerned at each step of the process and to obtain their consent before plans to extract natural resources are implemented.**

(15) The Committee expresses deep concern at the violence triggered by conflicts between projects aimed at the exploitation of natural resources and the rights of indigenous peoples, such as that which occurred in Bagua on 5 and 6 June 2009. The Committee notes the positive steps taken by the Government of Peru to alleviate the violence related to events in Bagua, such as repealing decrees Nos. 1081 and 1094 and launching an investigation into the facts. The Committee welcomes the visit to Peru from 17 to 19 June 2009 by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, and his ensuing recommendations.

**The Committee urges the State party to follow the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, following his visit to Peru, and to take urgent steps to set up an independent commission that includes indigenous representatives to carry out a thorough, objective and impartial investigation. It also recommends that the commission's findings should feed into the State party's discussions concerning the bill on the consultation and participation of indigenous peoples in environmental matters and the relevant regulations for the mining and oil sectors submitted by the Ministry of Energy and Mines. The Committee looks forward to receiving information on the proceedings, establishment, findings, conclusions and recommendations of the commission. Likewise, it supports the Special Rapporteur's appeal to the indigenous persons and peoples concerned to make their demands and hold their demonstrations in a peaceful manner, respecting the human rights of others.**

(16) The Committee expresses concern at the limited enjoyment of economic, social and cultural rights by indigenous peoples and Afro-Peruvian communities, in particular with regard to housing, education, health and employment, despite the economic growth in the State party.

**The Committee recommends that the State party take the necessary steps to achieve effective protection from discrimination against the indigenous peoples and Afro-Peruvian communities in various domains, in particular, employment, housing, health and education. The Committee also requests that the State party include information in its next report on the impact of programmes aimed at giving effect to the economic, social and cultural rights of the indigenous population, as well as statistical data on progress in this regard.**

(17) The Committee expresses concern at the low profile of the Afro-Peruvian communities in Peru, as reflected in, for example, the scant information provided about them in the national report, in the national census and in public policies relating to all areas of public life in the country.

**The Committee urges the State party to carry out a study on the Afro-Peruvian population that would enable the State party to identify its needs and draw up**

**effective plans of action, programmes and public policies relating to all areas of the public life of the Afro-Peruvian communities.**

(18) While the Committee takes note of the progress made recently in efforts to combat illiteracy within the indigenous and Afro-Peruvian population, it continues to be concerned at the illiteracy rate among the indigenous peoples and Afro-Peruvian communities. Furthermore, while the Committee welcomes efforts to establish a bilingual educational system, it is concerned at the shortcomings in applying the intercultural bilingual system in practice.

**The Committee encourages the State party to take action in the short and medium term to implement effective measures that will reduce illiteracy among indigenous people and Afro-Peruvians. Also, the next report of the State party should include specific data on the percentage of indigenous people and Afro-Peruvians who have access to primary, secondary and university education.**

(19) The Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Peruvian communities in the media, including stereotyped and demeaning portrayals of those peoples and communities in television programmes and in the press. The Committee is also concerned at the evidence of racial discrimination in everyday life and at information it has received on acts of racial discrimination committed by Government officials.

**The Committee recommends that the State party take appropriate steps to combat the racial prejudice that leads to racial discrimination in the media, both in public and private channels and in the press, as well as in everyday life. The Committee also recommends that, in the area of information, the State party foster understanding, tolerance and friendship among the various racial groups in the State party, including through the adoption of a media code of ethics that would commit the media to showing respect for the identity and culture of the indigenous peoples and Afro-Peruvian communities.**

(20) The Committee stresses that the sustainable management of natural resources is a complex task and takes note of the State party's efforts to improve its legislation and practice in this area, particularly in relation to water resources. In this context, the Committee welcomes the information provided by the State party on the construction of four new wells in the community of Ancomarca, a case that was considered under the early warning procedure. However, the Committee expresses concern at the impact that the management of catchment basins may have on the wetland areas of Peru and on the way of life of indigenous peoples.

**The Committee recommends that the State party's water management policy should take into account the needs and wishes of the communities likely to be affected by the policy. The Committee also reiterates its appeal to the State party to guarantee the use and enjoyment of water by the residents of the community of Ancomarca and to provide compensation for the damage and harm suffered by this community.**

(21) The Committee takes note of the information provided by the State party on the implementation of the Dorissa Agreement concerning the Achuar people affected by oil-drilling in the Río Corrientes area.

**The Committee encourages the State party to make every possible effort to ensure that the Dorissa Agreement is implemented without delay and to prevent similar cases from occurring in future oil-drilling projects.**

(22) The Committee notes the importance of ensuring that INDEPA has the necessary financial and human resources to perform its valuable work.

**The Committee recommends that INDEPA be strengthened by providing it with the necessary financial and human resources to perform its valuable work.**

(23) The Committee expresses its concern at the conflicts that may arise as a result of the lack of consensus with regard to national policy on the part of Peruvian society as a whole, in all its multicultural and multi-ethnic diversity, in particular in the areas of education, development projects and environmental protection.

**The Committee recommends that the State party conduct a participative, inclusive process aimed at determining which vision of the nation best represents the ethnic and cultural diversity of a country as rich as Peru, since a shared and inclusive vision can guide the State party in drawing up public policies and development plans.**

(24) The Committee expresses its concern at the lack of information on legal actions and penalties for acts of racial discrimination.

**The Committee recommends that, in its next periodic report, the State party provide more complete information and statistics on legal actions and penalties for acts of racial discrimination.**

(25) Given the indivisibility of all human rights, the Committee encourages the State party to consider ratifying all international human rights instruments that it has not yet ratified.

(26) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted on 8 September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the final document of the Durban Review Conference held in Geneva in April 2009, when incorporating the Convention into its domestic legal system. The Committee requests that the State party include in its next periodic report specific information on plans of action and other measures it has taken with a view to implementing the Durban Declaration and Programme of Action at the national level.

(27) The Committee recommends that, in conjunction with the preparation of its next periodic report, the State party continue to consult and expand its dialogue with civil society organizations engaged in the defence of human rights, in particular those engaged in combating racial discrimination.

(28) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, which were adopted on 15 January 1992 during the Fourteenth Meeting of States Parties and endorsed by the General Assembly in resolution 47/111. In this regard, the Committee cites General Assembly resolution 63/243, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General in writing of their agreement to the amendment.

(29) The Committee recommends that the reports of the State party be made available and accessible to the public at the time of their submission, and that the concluding observations of the Committee concerning these reports also be published in the official language of the country and in other commonly used languages, as appropriate.

(30) Taking note of the fact that the State party submitted its core document in 1994, the Committee encourages the State party to submit an updated version of that document, in conformity with the compilation of guidelines on the form and content of reports to be submitted by States parties to the international human rights treaties (HRI/GEN/2/Rev.4, sect. I).

(31) In accordance with article 9, paragraph 1, of the Convention and with rule No. 65 of its amended rules of procedure, the Committee requests the State party to provide

information, within one year of the adoption of these concluding observations, on the implementation of the recommendations included in paragraphs 12, 17 and 20 above.

(32) The Committee also draws the State party's attention to the particular importance of recommendations 11, 14 and 16, and requests the State party to provide detailed information in its next periodic report on the concrete measures taken to implement these recommendations.

(33) The Committee recommends that the State party submit the eighteenth to twentieth periodic reports of Peru, as one document, due on 29 October 2012, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1), which the Committee adopted at its seventy-first session, and to refer to all the points raised in these concluding observations.

#### 42. **Philippines**

(1) The Committee considered the fifteenth to twentieth periodic reports of the Philippines (CERD/C/PHL/20), submitted in one document, at its 1956th and 1957th meetings (CERD/C/SR.1956 and 1957), held on 18 and 19 August 2009. At its 1969th meeting (CERD/C/SR.1969), held on 27 August, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the fifteenth to twentieth periodic reports and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the constructive and informative dialogue held with the delegation and the responses provided to many questions raised in the list of issues and posed by Committee members during the dialogue.

(3) Noting that the report was 11 years overdue, the Committee invites the State party to observe the deadlines set for the submission of its reports in the future.

### **B. Positive aspects**

(4) The Committee notes with satisfaction that the State party has ratified or acceded to all United Nations core human rights treaties and other international human rights treaties the provisions of which have a direct bearing on the subject of racial discrimination, in particular International Labour Organization (ILO) Convention No. 111 (1958) concerning Discrimination in Respect of Employment and Occupation and the Convention against Discrimination in Education of the United Nations Educational, Scientific and Cultural Organization.

(5) The Committee welcomes the State party's continued engagement with the United Nations on issues pertaining to human rights, including the rights of indigenous peoples, its participation in the Durban Review Conference and its work on fostering interfaith dialogue.

(6) The Committee welcomes the coming into force of the 1997 Indigenous Peoples Rights Act and the establishment of the National Commission on Indigenous Peoples, since the last periodic report (CERD/C/299/Add.12).

(7) The Committee welcomes the recognition of and the protection by the State party of traditional indigenous justice and conflict resolutions mechanisms.



(8) The Committee appreciates the standard procedural instructions issued by the National Police Commission to ensure that there shall be no discrimination on account of gender, religion, ethnic origin or political affiliation in the recruitment, selection and appointment of Philippine National Police personnel.

(9) The Committee notes as positive that personnel of a certain level of the Armed Forces of the Philippines cannot be promoted unless they receive a certification from the Commission on Human Rights in the Philippines that there are no pending cases or past findings that they have committed human rights violations.

(10) The Committee welcomes the State party's commitment to advance the peace process in regions affected by armed conflict.

(11) The Committee notes with appreciation the active role of a vibrant civil society and of the national human rights institution, the Commission on Human Rights in the Philippines, in providing extensive information to the Committee.

(12) The Committee notes that the Study on lessons learned and challenges to achieve the implementation on the right of indigenous peoples to education (A/HRC/EMRIP/2009/2) prepared by the United Nations Expert Mechanism on the Rights of Indigenous Peoples cites a number of examples from the Philippines. The Committee appreciates the information received on the development and pilot testing of the Indigenous Peoples Core Curriculum and Instructional Materials for Alternative Learning System as well as on other educational initiatives including in the area of higher education and the educational assistance programme.

### C. Concerns and recommendations

(13) The Committee is concerned by the State party's statement in its periodic report that racial discrimination has "never officially or factually existed in the Philippines, neither in a systematic nor formal nor intermittent or isolated manner" (para. 6) and that the Philippines Government therefore maintains "that discrimination based on race, colour or ethnic origin is non-existent in the Philippines" (para. 13).

**While the denial of the existence of formal racial discrimination might be acceptable, the Committee wishes to note that even well-intentioned or neutral policies may directly or indirectly have negative or undesired effects on race relations and lead to de facto discrimination. The Committee reiterates its observations that no country can claim that racial discrimination is non-existent in its territory, and that an acknowledgment of the existence of the phenomenon is a necessary precondition for the fight against discrimination.**

(14) The Committee notes that it did not receive adequate clarifications regarding the status of the Convention in the national legal system. While also noting that the Convention is regarded by the State party as "part of the law of the land", the Committee observes that many provisions in the Convention are not self-executing and require national legislation to take effect at the national level.

**The Committee urges the State party to ensure that the Convention becomes fully applicable in the national legal system, including through adoption of the necessary legislation.**

(15) While noting the State party's information on legislative, judicial and administrative measures taken at the national, provincial and local levels with the aim of protecting against racial discrimination and that the 2007 Anti-Religious and Racial Profiling Bill is pending consideration by Congress, the Committee remains concerned that the State party has not adopted a comprehensive anti-discrimination law.

**The Committee recommends that the State party adopt a comprehensive law on the elimination of discrimination on the grounds of race, colour, descent or national or ethnic origin, covering all rights and freedoms protected under the Convention. The Committee asks for further information on the status of the 2007 Anti-Religious and Racial Profiling Bill and any other bills relating to racial discrimination pending consideration by Congress.**

(16) The Committee is concerned that penal provisions classifying as punishable acts any dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination, violence or incitement to such acts and prohibiting all organizations and activities which promote and incite racial discrimination, to give full effect to article 4 of the Convention, remain lacking.

**The Committee reiterates its recommendation that the State party enact specific penal legislation in all areas required by article 4 of the Convention.**

(17) The Committee regrets the lack of disaggregated statistical data regarding the de facto enjoyment by members of indigenous peoples, ethnic minorities and non-citizens of the rights protected under the Convention, as without such data it is difficult to assess the socioeconomic situation of different groups in the State party. The Committee notes, however, that in the context of the 2010 national population census it is intended to include ethnicity as a variable. The Committee also notes the efforts undertaken within the framework of the Metagora Project to measure the level of awareness and fulfilment of indigenous people's rights to their ancestral domains and lands.

**Recalling the importance of gathering accurate and up-to-date data on the socioeconomic situation of the population, the Committee encourages the State party to use the census in 2010 to include indicators disaggregated by ethnicity and gender on the basis of voluntary self-identification, and to provide the data obtained in its next periodic report. In this regard, the Committee draws the State party's attention to paragraphs 10 to 12 of its guidelines on the form and content of reports (CERD/C/2007/1). The Committee also recommends that the State party consult with relevant communities in the preparatory process leading up to the census and encourages initiatives such as the Metagora project.**

(18) The Committee appreciates the information provided by the State party that peace processes in the different regions of armed conflict are resuming and takes note of the many initiatives taken to protect indigenous peoples, including children, in conflict zones. It welcomes the intention to establish a monitoring and reporting mechanism on the situation of children and the establishment of other committees monitoring different peace processes. The Committee is, however, concerned over reports of persisting human rights violations against indigenous peoples, who continue to be disproportionately affected by armed conflict. The Committee is concerned that leaders of these communities continue to be victims of extrajudicial executions as well as of disappearances and detention, and over reports indicating occupation of indigenous territories by the Armed Forces and armed groups.

**The Committee urges the State party to continue efforts to restore peace in the regions affected by armed conflict, to protect vulnerable groups from human rights violations, notably indigenous peoples and children of ethnic groups, and to ensure that independent and impartial investigations are conducted into all allegations of human rights violations. The Committee, recalling a recommendation of July 2008 by the Committee on the Rights of the Child under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, recommends the enforcement of the 1997 Indigenous Peoples Rights Act (IPRA) to ensure that indigenous children and children from other ethnic groups are not**

recruited by armed forces or armed groups (CRC/C/OPAC/PHL/CO/1, para. 19). The Committee seeks further information on the follow-up to the report of the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/8/3/Add.2) and of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90/Add.3).

(19) The Committee is concerned about the effects of internal displacement as a consequence of armed conflict especially on indigenous peoples in relation to their livelihoods, health and education.

**In the light of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Committee recommends that the State party adopt adequate measures in order to ensure the enjoyment by internally displaced persons of their rights under article 5 of the Convention, especially their right to security and their economic, social and cultural rights.**

(20) While taking note of additional information provided on the mandate of the Ombudsman, the Committee regrets that the information does not give a clear indication of the actual scope of activities and action of the Ombudsman in combating racial discrimination.

**The Committee recommends that the State party provide concrete information on the actual scope of activities and action of the Ombudsman in combating racial discrimination, and on institutional guarantees for his/her independence, in its next periodic report.**

(21) The Committee appreciates the work of the Commission on Human Rights in the Philippines, a national human rights institution established in accordance with the Paris Principles, but is concerned that its mandate does not explicitly include economic, social and cultural rights.

**The Committee, recalling a recommendation of the Committee on Economic, Social and Cultural Rights of December 2008 (E/C.12/PHL/CO/4, para. 13), recommends that the State party include the protection and promotion of economic, social and cultural rights in the mandate of the Commission on Human Rights in the Philippines.**

(22) The Committee notes that IPRA is an impressive piece of legislation containing a welcome definition of indigenous peoples, accounting both for self-definition and ascription by others. The Committee is concerned that the Regalian doctrine as applied to indigenous property seems to run counter to the notion of inherent rights under IPRA. The Committee is also concerned over information that IPRA is significantly undermined by Republic Act No. 942 (Mining Act of 1995).

**The Committee recommends that the State party conduct an independent review, in consultation with indigenous peoples, of the legislative framework in relation to indigenous property, with particular regard to the question of consistency between IPRA, its implementing guidelines, the Regalian doctrine and other related doctrines, as well as the Mining Act of 1995. The Committee, recalling a recommendation of the Committee on Economic, Social and Cultural Rights of December 2008 (E/C.12/PHL/CO/4, para. 16), urges the State party to fully implement IPRA, in particular by securing the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and ensuring that economic activities, especially mining, carried out on indigenous territories do not adversely affect the protection of the rights recognized to indigenous peoples under the aforementioned Act.**

(23) The Committee is concerned that the formal process for claiming collective land titles seems unduly burdensome, and is concerned over the fact that the indigenous communities bear the burden of proof when submitting applications.

**The Committee seeks further clarification on the time frames for obtaining Ancestral Domains/Lands certificates, and the number of applications filed and certificates issued for claiming collective land titles. The Committee recommends that the State party streamline the process for obtaining land rights certificates and take effective measures to protect communities from retaliation and violations when attempting to exercise their rights.**

(24) The Committee, while noting the increasing efforts of the National Commission for Indigenous Peoples to implement IPRA, is nevertheless concerned that consultation processes are not always adequately implemented when securing the free, prior and informed consent of indigenous peoples with regard to infrastructure and natural resource exploitation projects.

**The Committee recommends that the State party verify that the current structures and guidelines/procedures established to conduct free, prior and informed consent are in accordance with the spirit and letter of IPRA and set realistic time frames for consultation processes with indigenous peoples. It recommends that the State party verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims' lack of awareness of their rights, fear of reprisals, or a lack of confidence in the National Commission for Indigenous Peoples.**

(25) The Committee welcomes the State party's statements that it wishes to respect the customary practices and rights of the Subanon people of Canatuan within their ancestral territory and to address the community divisions associated with the Mount Canatuan case, which concerns mining operations at Mount Canatuan, a sacred site of the Subanon people, undertaken without their prior consent. The case was considered by the Committee under its early warning and urgent action procedure. The Committee remains concerned that contradictory information continues to be presented to it with regard to the status of actions taken to address the violations of the Subanon people's rights and destruction of their sacred mountain.

**The Committee urges the State party to consult with all concerned parties in order to address the issues over Mount Canatuan in a manner that respects customary laws and practices of the Subanon people, and welcomes information from the State party in relation to further developments.**

(26) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

(27) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(28) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the field of human rights protection,

in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(29) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.

(30) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 63/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(31) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(32) Noting that the State party submitted its core document in 1994, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(33) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 18, 23 and 25 above.

(34) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 14, 15, 17, 22 and 24 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(35) The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document, due on 4 January 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 43. **Poland**

(1) The Committee considered the consolidated seventeenth to nineteenth periodic reports of Poland (CERD/C/POL/19) at its 1938th and 1939th meetings (CERD/C/SR.1938 and CERD/C/SR.1939), held on 5 and 6 August 2009. At its 1963rd meeting (CERD/C/SR.1963), held on 24 August 2009, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the seventeenth to nineteenth periodic reports by the State party. It also expresses its appreciation for the constructive dialogue held with the high-level delegation and the written and oral responses provided to the list of issues and the questions posed by Committee members.

## B. Positive aspects

(3) The Committee notes with appreciation the following measures taken by the State party since the examination of its last periodic report:

(a) The enactment, in January 2005, of the Law on National and Ethnic Minorities and Regional Language aimed at the protection of minority languages;

(b) The enactment of the June 2003 Law on Social Employment which provides for financial support, administered by designated social institutions, to persons at risk of social exclusion for reasons including long-term unemployment;

(c) The establishment, in 2008, of the office of the Plenipotentiary for Equal Treatment, which coordinates Government action to combat racial discrimination and monitors Government policy in this area;

(d) The National Programme for Counteracting Racial Discrimination, Xenophobia and Related Intolerance of 2004–2009, developed with a view to implementing the Durban Declaration and Programme of Action, as well as the establishment of the Programme Monitoring Team to monitor its implementation;

(e) The steps taken, in consultation with the Polish Olympic Committee, to educate young people involved in sports on the negative effects of racism;

(f) The efforts to educate children on racism and the importance of tolerance, including through the vetting of textbooks and educational materials with a view to the removal of racist and other discriminatory content;

(g) The progressive abolition of separate education for Roma schoolchildren;

(h) The State party's consultation with human rights non-governmental organizations in the preparation of its periodic report.

## C. Concerns and recommendations

(4) The Committee, while noting measures to address discrimination against the Roma, such as the 2003 Programme for the Roma Community in Poland, remains concerned about the continued social marginalization and discrimination faced by members of the Roma minority, particularly in the fields of education, employment and housing. The Committee notes the State party's indication that, relative to the general population, high poverty levels persist among the Roma (arts. 2 and 5).

**The Committee recommends that the State party, taking into account general recommendation No. 27 (2000) on discrimination against Roma and:**

**(a) Enhance its efforts towards the full integration of the Roma into Polish society and combat discrimination against the Roma by improving their enjoyment of economic, social and cultural rights, particularly in education, employment and housing;**

**(b) Develop and implement poverty eradication programmes to combat poverty among the Roma and other economically marginalized population groups;**

**(c) Provide updated statistical information and data on life expectancy and poverty levels in the State party, disaggregated by region and ethnic group.**

(5) While welcoming the State party's innovative approach to the education of Roma children, including the introduction of Roma teaching assistants and the gradual phasing-out of separate education, the Committee notes with concern that many Roma children do

not attend or remain in school and do not pursue higher education. The Committee is also concerned that a lack of facility in the Polish language places Roma children at a severe disadvantage in accessing opportunities for education (arts. 2 and 5).

**The Committee recommends that the State party, taking into account its general recommendation No. 27 (2000) on discrimination against Roma:**

(a) **Implement the necessary measures to address the low attendance levels of Roma children, giving due weight to all the factors which account for these levels;**

(b) **Develop and implement strategies to improve access to mainstream education for Roma children;**

(c) **Increase the availability of bilingual education;**

(d) **Ensure adequate forms and schemes of education for members of Roma communities beyond school age, in order to improve adult literacy among them.**

(6) The Committee notes the delegation's statement that racially motivated crimes against persons of Arab, Asian and African origin are prosecuted when evidence is available. Nevertheless, the Committee remains concerned at the prevalence of racial violence and other acts of racial abuse against members of these groups (art. 4).

**The Committee recommends that the State party enhance its efforts to address racially motivated hate crimes by ensuring that all such incidents are thoroughly investigated and that perpetrators are brought to justice, and by continuing to raise awareness of the extent of ethnic discrimination and intolerance among local authorities and the general public.**

(7) The Committee notes the continued incidence of anti-Semitic activities in the State party, including the desecration of Jewish cemeteries, anti-Semitic hate speech and the dissemination of anti-Semitic material via the Internet.

**The Committee urges the State party to sensitize the public on the problems relating to anti-Semitism and to reinforce its efforts to prevent and punish such acts and to provide, in its next periodic report, information on any measures taken in this regard.**

(8) The Committee notes that, despite the State party's efforts to address manifestations of racial hatred during sports functions, the incidence of such activities remains high in the State party (art. 4).

**The Committee recommends that the State party embark on a sensitization and awareness-raising campaign against racism in sports and take additional steps to address these manifestations by, inter alia, enhancing its efforts to investigate them and punish those involved.**

(9) The Committee notes that, despite the State party's indication that there are no organizations promoting racial hatred and racial discrimination on its territory, groups such as the All-Polish Youth, the National-Radical Camp, the Liga Polskich Rodzin (League of Polish Families) and the local chapter of the Blood and Honour group, which are reported to be involved in promoting racial hatred and racial discrimination, remain active in the State party (art. 4).

**The Committee urges the State party to expedite the passing of legislation to criminalize the promotion of racial hatred and racial discrimination and the dissemination of racist material and ideology and to take firm measures to prosecute and punish those responsible.**

(10) The Committee has taken note of information indicating that the State party is a country of origin, transit and destination for trafficked persons (art. 5).

**The Committee requests that the State party provide, in its next periodic report, updated statistical data and information on the prevalence of trafficking as well as the impact of any measures taken to combat it.**

(11) The Committee takes note of the State party's efforts to integrate human rights education into school curricula. It notes, however, the lack of information on the use of the media in this area.

**The Committee reiterates its recommendation, contained in its previous concluding observations, that the State party pay particular attention to the role of the media in improving human rights education. It also requests that the State party provide, in its next report, information on measures taken in this regard (art. 7).**

(12) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(13) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order.

(14) The Committee recommends that the State party continue consulting and expanding its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(15) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(16) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 4, 6 and 7 above.

(17) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 5, 8 and 9 and requests that the State party provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(18) The Committee recommends that the State party submit its twentieth and twenty-first periodic report in a single document, due on 4 January 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 44. **Suriname**

(1) The Committee considered the eleventh and twelfth periodic reports of Suriname, submitted as a single document (CERD/C/SUR/12), at its 1916th and 1917th meetings (CERD/C/SR.1916 and 1917), held on 24 and 25 February 2009. At its 1928th meeting (CERD/C/SR.1928), held on 4 March, it adopted the following concluding observations.



## A. Introduction

(2) The Committee welcomes the eleventh and twelfth periodic reports submitted by the State party. The Committee also expresses appreciation for renewed dialogue with the State party and appreciates the responses provided by the delegation to some of the Committee's questions.

(3) The Committee regrets that sufficient information on the concrete implementation of the Convention and that the steps taken to carry out the previous concluding observations were not contained in the report. Similarly, it regrets the fact that the report, its general form, and content, are not consistent with the Committee's guidelines.

## B. Positive aspects

(4) The Committee welcomes the support of the State party in September 2007 for the United Nations Declaration on the Rights of Indigenous Peoples.

(5) Despite challenges and limited resources in terms of finances and manpower, the State party has made efforts to present its report to the Committee, indicating its commitment to the letter and spirit of the Convention.

(6) The Committee notes with interest the legal developments regarding the regulation of marriage, in particular, the entry into force of the Act on Revision of the 1973 Marriage Act by Government Decree of 25 June 2003, which removed the inequality that existed in the field of religious marriages.

(7) The Committee welcomes the recent steps that the State party is undertaking to strengthen the administration of justice, such as increasing the number of judges in the Court of Justice from 7 to 17 members, the recent training provided to new judges, as well as the ongoing training of prosecutors.

(8) The Committee welcomes and encourages continuing dialogue and collaboration with the Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples, especially regarding technical support for a draft framework law on indigenous peoples' rights.

(9) The Committee welcomes the information concerning the establishment of the Presidential Commission on Land Rights and the completion of its final report.

## C. Concerns and recommendations

(10) The Committee notes with concern that the information provided by the State party regarding the implementation of its previous concluding observations, issued in 2004, and on steps taken to give effect to the Committee's decisions under the early-warning and urgent-action procedures in 2003, 2005, and 2006, is insufficient.

**The State party is invited to comply with all recommendations and decisions addressed to it by the Committee and to take all necessary steps to ensure that national legislation and its implementation guarantee the effective enjoyment of all Convention rights in the State party. The Committee would like to have information on this subject in the State party's next periodic report.**

(11) The Committee is concerned that the establishment of the Constitutional Court, a body which is of particular importance for the protection of relevant groups, is still pending (arts. 2 and 6).

**The Committee reiterates the invitation extended to the State party in its previous concluding observations in 2004 to establish the Constitutional Court as soon as possible.**

(12) Recognizing the fact that the State party's national economy heavily depends on the natural-resource extraction industry, namely mining and logging, including in ancestral lands and traditional settlements of indigenous and tribal peoples, the Committee remains concerned about the protection of the rights to land, territories and communal resources of the indigenous and tribal peoples living in the interior of the country. Similarly, the Committee is concerned at the non-existence of a specific legislative framework to guarantee the realization of the collective rights of indigenous and tribal peoples (arts. 2 and 5).

**The Committee urges the State party to ensure legal acknowledgement of the collective rights of indigenous and tribal peoples, known locally as Maroons and Bush Negroes, to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land-tenure system and to participate in the exploitation, management and conservation of the associated natural resources.**

(13) While noting with interest the final report of the Presidential Commission on Land Rights presented for analysis to the President of Suriname, the Committee is concerned about the lack of an effective natural resources management regime (art. 2).

**The Committee encourages the State party to intensify its consideration of the final report of the Presidential Commission on Land Rights with a view to setting the principles for a comprehensive national land rights regime and appropriate relevant legislation with the full participation of the freely chosen representatives of indigenous and tribal peoples, as per the Commission's mandate. In the Committee's opinion, the State party's consideration of the report of the Presidential Commission should not be to the detriment of its full compliance with the orders of the Inter-American Court of Human Rights in the *Saramaka People* case.**

(14) The Committee is concerned that the draft Mining Act 2004 is still in Parliament and, according to information before the Committee, that mining licences continue to be granted by the Ministry of Natural Resources to enterprises without prior consultations with or providing information to indigenous and tribal peoples (arts. 2 and 5).

**The Committee invites the State party to update and approve the draft Mining Act in conformity with the Committee's previous recommendations (2004 and 2005). While noting that the district commissioners are involved with and consult the indigenous and tribal communities concerned before granting concessions, the Committee recommends that, when taking legislative or administrative decisions which may affect the rights and interests of indigenous and tribal peoples, the State party endeavour to consult and obtain their informed consent.**

(15) The Committee reiterates its concern with regard to repeated information highlighting the fact that children from indigenous or tribal groups continue to experience discrimination in, inter alia, access to education, health and public services. The Committee notes that this discrimination relates to indigenous and tribal communities living in the interior as well as to those in assimilated suburban settings. However, it regrets that in the absence of disaggregated statistical information, the Committee finds it difficult to assess the extent of equal enjoyment of the rights guaranteed in the Convention (art. 5).

**The Committee recommends that the State party provide relevant statistical information, including on budgetary allocations, in subsequent reports and emphasizes that such data are necessary to ensure the application of adequate**

**legislation governing equal enjoyment of economic, social and cultural rights by Surinamese citizens.**

(16) The Committee expresses concern that no special measures are taken to preserve the native languages of the country's indigenous and tribal people, and that this is reflected in the area of education. Of particular concern are the illiteracy rates for indigenous and tribal peoples, which are almost double the national average (art. 5).

**The Committee, while appreciating the value of multilingual education, reiterates its recommendation that the State party take steps to give adequate recognition to native languages and encourages the State party to seek strategies with a view to introducing bilingual education.**

(17) While welcoming the information shared by the State party on its existing policies to encourage job opportunities and training for people living in the interior, and while noting with interest that the State party is considering ratification of International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Committee remains concerned that the State party has not yet adopted special measures to ensure the effective protection with regard to the recruitment and conditions of employment of workers belonging to indigenous and tribal peoples (art. 5).

**The Committee calls on the State party:**

(a) **To include in its next report information on the research, consultations and discussions carried out by different ministries and special measures adopted in this respect; and**

(b) **To publicize and increase awareness-raising efforts to disseminate the content of the United Nations Declaration on the Rights of Indigenous Peoples.**

(18) While recognizing that the State party publicly declared that it has implemented the judgements of the Inter-American Court of Human Rights in the *Saramaka People* case and the *Moiwana Village* case, and welcoming the information provided by the delegation on the measures taken to date, the Committee is concerned at the ongoing delays in complying with the most crucial aspects of the court judgements, in particular, the recognition of the communal and self-determination rights of the Saramaka people and the investigation and punishment of the perpetrators of the Moiwana Village massacre in 1986. The Committee also notes with concern that, although efforts have been made regarding consultation with indigenous peoples so that they may participate in decisions which affect them with a view to securing their agreement, there are still situations in which consultation and participation do not occur (art. 6).

**The Committee recommends that the State party initiate consultations with the indigenous and Maroon communities concerned. The Committee further invites the State party to find ways and means to facilitate such participation and wishes to receive more detailed information on the results of such consultations. The Committee also reiterates its recommendation, with urgency, that the State party initiate steps towards the full implementation of the orders of the Inter-American Court of Human rights in accordance with the set implementation timeline. Further information would be appreciated in the next report on progress made in the implementation of the peace agreements of 1992.**

(19) The Committee notes with concern the recent trend of a growing flow of petitions regarding internal matters which have been addressed to international courts and bodies. This trend highlights the need to fortify national courts and create a legislative framework that adequately responds to domestic matters. While noting the State party's view that the remedies provided under Surinamese law are sufficient to assert and seek protection of

rights, the Committee stresses the analysis by the Inter-American Commission on Human Rights and the judgements by the Inter-American Court of Human Rights, which found that the domestic legal system does not provide adequate effective remedies to collective rights (art. 6).

**The Committee invites the State party to reconsider its position and to identify practical methods to strengthen judicial procedures, including through use of customary law practices, where appropriate, for effective protection and remedies against acts of discrimination affecting indigenous and tribal peoples.**

(20) Noting that the State party submitted its core document in 1998, the Committee encourages it to submit an updated version in accordance with the harmonized guidelines on reporting, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(21) The Committee recommends that the State party take into account the relevant provisions of the Durban Declaration and Programme of Action when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. It encourages the State party to participate actively in the Durban Review Conference in 2009.

(22) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and approved by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 63/243, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(23) The Committee recommends that the reports of the State party be made available to the public at the time of their submission and that the Committee's observations thereon be similarly publicized, including in indigenous languages.

(24) The Committee wishes to encourage the State party to ratify the International Convention on the Protection of All Migrant Workers and Members of Their Families.

(25) In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the Committee's recommendations in paragraphs 11, 17 (b) and 18 within one year from the adoption of the present concluding observations.

(26) The Committee recommends that the State party submit its thirteenth, fourteenth and fifteenth periodic reports on an exceptional basis in a single document by 14 April 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that it contains updated information and addresses all points contained in the concluding observations.

#### 45. **Tunisia**

(1) The Committee considered the eighteenth and nineteenth periodic reports of Tunisia, submitted in a single document (CERD/C/TUN/19), at its 1904th and 1905th meetings (CERD/C/SR.1904 and 1905), held on 16 and 17 February 2009. At its 1926th and 1927th meetings (CERD/C/SR.1926 and 1927), held on 3 and 4 March 2009, it adopted the following concluding observations.

## **A. Introduction**

(2) The Committee welcomes the State party's submission of its eighteenth and nineteenth periodic reports within the required time, the openness of the dialogue with the delegation and the written replies to the list of issues. The Committee commends the regularity with which the State party reports.

(3) The Committee appreciates the efforts made by the State party to comply with the reporting guidelines of the Committee, but regrets the lack of information regarding the practical implementation of the Convention and the lack of answers on issues raised in the previous concluding observations.

## **B. Positive aspects**

(4) The Committee welcomes the fact that, pursuant to article 32 of the Constitution, international instruments that have been ratified and promulgated by the State party, including the International Convention on the Elimination of All Forms of Racial Discrimination, form part of and take precedence over provisions of the State party's domestic law and can be invoked directly before the courts.

(5) The Committee notes with interest that in 2008, following recommendations by the Human Rights Council (A/HRC/8/21 and Corr.1, para. 83, recommendation No. 4) and the Human Rights Committee (CCPR/C/TUN/CO/5, para. 8), the High Committee on Human Rights and Fundamental Freedoms, a national institution established in 1991, underwent a reform of its powers, its membership and its working methods with a view to enhancing its effectiveness and its independence in conformity with the Paris Principles (General Assembly resolution 48/134, annex). The Committee welcomes the steps taken by the State party to seek accreditation of the High Committee on Human Rights and Fundamental Freedoms with the International Coordination Committee of National Human Rights Institutions and encourages it to ensure the independence of the High Committee in practice.

(6) The Committee welcomes the various measures taken to promote the principle of tolerance and the culture of human rights at all levels of education. It notes with interest the introduction of human rights education in the Higher Institute of the Judiciary, the Prison Officers College and the Police College.

(7) The Committee welcomes the State party's continuing efforts to promote understanding, tolerance and friendship between peoples, civilizations and religions. It is particularly interested in the academic training provided at the University of Ezzitouna, which emphasizes the history of religions, human rights in sacred writings and interreligious dialogue.

(8) The Committee commends the State party's continuing efforts to reduce poverty and develop the more disadvantaged areas of Tunisia, combat illiteracy and ensure equality between men and women in Tunisian society.

(9) The Committee welcomes the State party's ratification in 2008 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.

## **C. Concerns and recommendations**

(10) The Committee again takes note of the discrepancy between the State party's view that Tunisian society is homogeneous, and information provided by the State party itself on

various groups living in the country, such as the Berber-speaking and sub-Saharan African populations.

**In light of the absence of specific statistical data on the ethnic composition of Tunisian society, the Committee recommends that the State party provide an estimate of the ethnic composition of the population in subsequent reports, as recommended in paragraphs 10 and 12 of the guidelines for the CERD-specific document (CERD/C/2007/1), and draws the attention of the State party to its general recommendation No. 8 (1990) concerning the self-identification of members of racial and ethnic groups.**

(11) The Committee takes note of the information provided by the State party to the effect that Tunisia's Amazigh population, which reportedly makes up no more than 1 per cent of the total population, is fully integrated into the plural entity that is Tunisia and suffers no discrimination of any kind.

**The Committee calls on the State party to take account of the way in which the Amazigh perceive and define themselves. It urges the State party to review the situation of the Amazigh in the light of international agreements on human rights, with a view to guaranteeing the members of that community the enjoyment of the rights they claim, notably the right to their own culture and the use of their mother tongue and the preservation and development of their identity.**

(12) The Committee notes that, notwithstanding the recommendations made in 2003, the State party reasserts in its periodic report that racial discrimination does not exist in Tunisia. It understands that, in the view of the State party, although incidents of racial discrimination may occur, there is no systematic racial discrimination on the part of the State party.

**Bearing in mind that acts of racial discrimination often occur outside the context of official Government policy, the Committee recommends that the State party conduct studies in order to effectively assess and evaluate the occurrence of de facto racial discrimination by individuals, groups or organizations.**

(13) The Committee notes that the State party's Act No. 2003-75 does not fully meet the requirements relating to specificity under article 4 of the Convention.

**Recalling its general recommendations Nos. 7 (1985) and 15 (1993), the Committee recommends that the State party should adopt separate legislation on the offence of racial discrimination and the propagation of racial hatred meeting all the requirements of article 4 of the Convention and providing for penalties that are proportionate to the seriousness of the offences.**

(14) The Committee regrets that information provided on the implementation of article 5 of the Convention, relating to the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and fundamental freedoms without racial distinction, is incomplete.

**The Committee recommends that the State party focus more precisely on the issue of non-discrimination when reporting on the enjoyment of the rights under article 5 of the Convention, and provide practical information on the enjoyment of these rights by migrants from sub-Saharan Africa and by Amazigh within the jurisdiction of the State party.**

(15) The Committee is concerned about the absence of specific legislation on refugees and at the steps reportedly taken to remove refugees. It also notes the information concerning delays in the issuance and renewal of refugees' residence permits.

The Committee invites the State party to elaborate a legislative framework for the protection of refugees in accordance with international standards, to pursue its cooperation with the Office of the United Nations High Commissioner for Refugees (UNHCR) and to protect persons who have sought refuge in Tunisia. The Committee also recommends, in accordance with article 5 (b) of the Convention, that the State party ensure that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or physical integrity may be put at risk. The Committee invites the State party to ensure that, for all refugees, whatever their nationality, residence permits are issued and renewed with no delays and with no requirement to present a valid passport.

(16) While taking note of the information provided by the State party, the Committee remains concerned at reports of administrative practices whereby Amazigh given names may not be entered in the civil register.

**The Committee recommends that the State party take all appropriate measures to do away with this practice throughout its territory.**

(17) The Committee takes note of the State party's position, but is concerned at information to the effect that the Amazigh do not have the right to form social or cultural associations.

**The Committee urges the State party to take account of the recommendations made by the Human Rights Committee in its concluding observations on Tunisia (CCPR/C/TUN/CO/5, para. 21), to the effect that it should ensure that organizations are registered, and that they should be provided with effective and prompt recourse against any rejection of their applications.**

(18) The Committee notes that, according to some reports, the Amazigh are prevented from preserving and expressing their cultural and linguistic identity in Tunisia.

**The Committee stresses the State party's obligation under article 5 of the Convention to respect the right of the Amazigh to enjoy their own culture and to use their own language, in private and in public, freely and without discrimination. The Committee recommends that the State party should consider the possibility of allowing Tamazight, the Amazigh language, to be used by Berber speakers in their dealings with the various administrative and judicial authorities. It invites the State party to enhance its protection and promotion of Amazigh culture as a living culture and to take measures, especially in the field of education, in order to promote knowledge of the history, language and culture of the Amazigh. It recommends that Tunisia should consider the possibility of broadcasting programmes in Tamazight on the State media.**

(19) While noting that the High Committee on Human Rights and Fundamental Freedoms has received over 4,100 complaints of violations of rights since the last concluding observations, the Committee notes the information provided by the delegation on the absence of complaints of racial discrimination.

**The Committee requests that the State party include in its next periodic report statistical information on prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination, and where the relevant provisions of the existing domestic legislation have been applied. Recalling its general recommendation No. 21 (2005), the Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute. The Committee requests the State party to ensure that appropriate**

**provisions are available in national legislation, and to inform the public about the availability of legal remedies in the field of racial discrimination.**

(20) While bearing in mind that, under the Constitution of the State party, the Convention prevails over the provisions of domestic law, the Committee notes that the Convention has never been directly invoked in the national courts.

**The Committee recommends that the State party do more to provide judges and lawyers with adequate training in international human rights law in order to make them aware of the content and direct application of the Convention in domestic law.**

(21) The Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(22) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when it incorporates the Convention into its domestic legal order, particularly with regard to articles 2 to 7. The Committee also urges the State party to include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee likewise encourages the State party to participate actively in the Preparatory Committee for the 2009 Durban Review Conference.

(23) The Committee takes note of the State party's consideration of the optional declaration under article 14 of the Convention and encourages it to complete its consideration without delay.

(24) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(25) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the Committee's concluding observations should be similarly publicized in the official language and the other languages used in the State party.

(26) The Committee recommends that the State party consult widely with civil society organizations when it drafts its next periodic report.

(27) The Committee invites the State party to update its core document in accordance with the requirements of the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 13, 16 and 17 above.

(29) The Committee recommends that the State party should submit its twentieth, twenty-first and twenty-second periodic reports in a single document, due by 4 January 2012, taking into account the guidelines for the CERD-specific document, as adopted at its



seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations.

#### 46. **Turkey**

(1) The Committee considered the combined initial to third periodic reports of Turkey submitted as one document (CERD/C/TUR/3), at its 1914th and 1915th meetings (CERD/C/SR.1914 and 1915), held on 23 and 24 February 2009. At its 1927th meeting (CERD/C/SR.1927) held on 4 March, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the report which was elaborated in conformity with the Committee's reporting guidelines. It expresses appreciation for the written replies to the list of issues, provided in a timely manner prior to the session, and welcomes the opportunity to be able to initiate an open and constructive dialogue with the State party.

### **B. Positive aspects**

(3) The Committee welcomes the extensive legislative reform carried out by the State party with a view to integrating human rights standards into national legislation, including through amendments to the Constitution and the adoption of the Civil Code, the Penal Code, the Law on Associations and several other laws which are of relevance to the implementation of the Convention.

(4) The Committee notes with satisfaction the many training programmes and projects aimed at raising the awareness of judges, prosecutors and other public officials on human rights.

(5) The Committee welcomes the initial sponsorship and the subsequent active involvement of the State party in the United Nations Alliance of Civilizations initiative, demonstrating its commitment to combating racial discrimination globally.

(6) The Committee notes with satisfaction the initiatives taken by the State party to facilitate the voluntary return of internally displaced persons, consisting mainly of Kurds from south-eastern Turkey, in particular through the launching of several return and development projects, and the substantial funds allocated to facilitating returns.

(7) The Committee welcomes the ratification by the State party of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in September 2004.

### **C. Concerns and recommendations**

(8) The Committee notes the reservation to article 22 and the two declarations on the implementation and the territorial applicability of the Convention made by the State party upon ratification, which may affect the full implementation of the Convention.

**The Committee encourages the State party to consider withdrawing its reservation and declarations, including removal of the territorial limitation to the application of the Convention.**

(9) While taking note of the explanations given by the State party with regard to constitutional provisions preventing it from identifying ethnic groups in a census or

otherwise gathering information on the ethnic composition of the population, the Committee regrets the lack of statistical data in the report of the State party on the ethnic composition of its population. In this respect, the Committee takes note of the State party's indication that academic institutions are not prohibited from carrying out research on this issue.

**In the Committee's view, information on the ethnic composition of the population of a country is a prerequisite for identifying the specific needs of different ethnic groups and possible gaps in their protection against racial discrimination. The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), in the absence of quantitative data on the issue, the State party provide information on the use of mother tongues, languages commonly spoken, or other indicators of ethnic diversity, together with any information derived from academic research carried out in this field, so as to be able to evaluate the composition of its population and its situation in all fields covered by the Convention.**

(10) The Committee regrets the lack of information relating to the representation of the various ethnic groups in the parliament and other elected bodies, as well as their participation in public bodies.

**The Committee invites the State party to promote adequate representation of the various ethnic groups in the parliament and other elected bodies, as well as their participation in public bodies, and requests the State party to include such information in the next periodic report.**

(11) While welcoming the fact that the Convention is directly applicable in the State party, the Committee regrets the absence of a definition of racial discrimination in domestic law, which may, in turn, impede the adequate application of relevant legislation prohibiting such discrimination. The Committee notes that this is particularly important due to the fact that the relevant legislation, including article 10 of the Constitution providing for equality before the law of all individuals without discrimination, inter alia, on the grounds of race, does not consistently include "national or ethnic origin" among the prohibited grounds of discrimination (art. 1).

**The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its domestic law, including all elements contained in article 1 of the Convention.**

(12) The Committee notes that according to Turkish law, only Turkish citizens belonging to non-Muslim minorities under the Treaty of Lausanne of 1923 fall within the scope of the term "minority", and that the Treaty is applied restrictively only to the Armenian, Greek and Jewish communities. The Committee also notes that some groups, such as the Roma and the Kurds, face a more difficult socioeconomic situation than the rest of the population. The Committee is concerned that the application of restrictive criteria to determine the existence of ethnic groups, official recognition of some and refusal to recognize others, may give rise to differing treatment for various ethnic and other groups which may, in turn, lead to de facto discrimination in the enjoyment of the rights and freedoms referred to in article 5 of the Convention (arts. 2 and 5).

**The Committee, referring to its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and recalling its general recommendation No. 20 (1996) on article 5 of the Convention, calls upon the State party to ensure the non-discriminatory implementation of each of the rights and freedoms referred to in article 5 of the Convention for all groups within the scope of the Convention. Furthermore, the Committee recommends that the State party conduct research with a view to effectively assessing and evaluating the incidence of racial discrimination in the country, with particular focus on**

**discrimination based on national or ethnic origin, and take targeted measures to eliminate such discrimination. The Committee requests the State party to provide information on the result of such studies and measures taken in the next periodic report.**

(13) The Committee is concerned by allegations of persisting hostile attitudes on the part of the general public, including attacks and threats, towards Roma, Kurds and persons belonging to non-Muslim minorities (arts. 2 and 3).

**The Committee recommends that the State party take steps to prevent and combat such attitudes, including through information campaigns and education of the general public. Furthermore, in the light of its general recommendation No. 19 (1995) on article 3 of the Convention, the Committee encourages the State party to monitor all tendencies which may give rise to racial or ethnic de facto segregation and endeavour to combat the negative consequences of such tendencies.**

(14) The Committee observes that article 4 of the Convention is not self-executing but requires the adoption of specific legislation. The Committee also notes that article 216 of the Penal Code prohibiting incitement of enmity or hatred on the grounds of social class, race, religion, sect, or regional difference is limited to acts constituting a clear and imminent danger to public order and therefore excludes from its scope of application, inter alia, acts inciting hostility that do not amount to danger to the public order. The Committee remains concerned that national legislation does not fully cover all aspects of article 4 of the Convention. The Committee is also concerned at reports that article 216 of the Penal Code has been applied against persons advocating their rights under the Convention (art. 4).

**The Committee recommends that the State party adopt legislation, in the light of its general recommendation No. 15 (1993) on article 4 of the Convention, to ensure full and adequate implementation of article 4. The Committee also calls upon the State party to ensure that article 216 of the Penal Code is interpreted and applied in conformity with the Convention.**

(15) The Committee expresses concern over the fact that the State party maintains the geographical limitation to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, which, in turn, reduces the protection offered to refugees from non-European States and may subject them to discrimination. The Committee is also concerned at reports on deportation and refoulement of refugees recognized under the mandate of the Office of the High Commissioner for Refugees (UNHCR), as well as of persons registered with UNHCR as asylum-seekers (art. 5).

**The Committee welcomes the stated intention of the State party to withdraw the above geographical limitation, and encourages it to give high priority to this process. The Committee calls upon the State party to refrain from deporting refugees or persons registered with UNHCR as asylum-seekers.**

(16) While noting that following an amendment made to the Turkish Penal Code, article 301 now criminalizes public denigration of “the Turkish nation” instead of “Turkishness” and that prosecution of this offence is made conditional on the prior authorization of the Minister of Justice, the Committee remains concerned at the possibility that the new article may lead to action being taken against persons advocating their rights under the Convention.

**The Committee calls upon the State party to ensure that the new article 301 of the Penal Code is interpreted and applied in conformity with the Convention.**

(17) While noting that the Penal Code includes a specific provision (art. 3) prohibiting discrimination in its application, and that also some other laws, such as the Labour Law and the law on TV and radio broadcasting contain a specific provision prohibiting

discrimination, the Committee is concerned at the absence of comprehensive anti-discrimination legislation covering all rights protected under article 5 of the Convention (arts. 1 and 5).

**The Committee recommends that the State party, as a part of its ongoing legislative reform, enact comprehensive anti-discrimination legislation covering all rights and freedoms protected under article 5 of the Convention.**

(18) The Committee is concerned at the particularly serious situation of the Greek minority, including the training of religious personnel and unresolved questions of restitution of property (art. 5 (d)).

**The Committee calls upon the State party to redress such discrimination and to urgently take the necessary measures to reopen the Greek Orthodox theological seminary on the island of Heybeliada, to return confiscated properties and, in this respect, to promptly execute all relevant judgements by the European Court of Human Rights.**

(19) The Committee is concerned that many persons of Roma origin continue to experience discrimination, particularly in the fields of education, employment and housing (art. 5 (e)).

**The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party take special measures to improve the situation of Roma to overcome the disadvantages brought about by persistent discrimination, in particular in the fields of education, employment and housing.**

(20) While noting the adoption of the Law on Foreign Language Education and Teaching, and the Learning of Different Languages and Dialects by Turkish Citizens and its By-law on Education in Different Languages and Dialects traditionally used by Turkish Citizens of 2003, the Committee remains concerned at the inadequate possibilities for children belonging to ethnic groups to learn their mother tongue, in particular having regard to the information given by the State party that schools offering private language courses have “all been closed down by their founders and owners due to lack of interest and non-attendance” (art. 5 (e) (v)).

**The Committee recommends that the State party ensure effective implementation of the above-mentioned laws. The Committee also recommends that State party consider further amendments to the legislation to allow teaching of languages traditionally used in Turkey in the general public education system and encourages it to establish a public school network offering teaching of these languages, and consider means of strengthening the involvement of the members of the local communities in decision-making in this field.**

(21) The Committee notes the lack of information on the practical application of criminal and other legislation aimed at eliminating racial discrimination, and that according to the State party’s report and the replies to the list of issues and questions, there have been no complaints or court decisions in civil or administrative proceedings concerning acts of racial discrimination during the reporting period (arts. 2 (1) (d) and 6).

**The Committee, considering that no country is free from racial discrimination, urges the State party to investigate why there have been no complaints of such discrimination. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party verify that the lack of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims’ lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or lack of attention or sensitivity to cases of**

**racial discrimination on the part of the authorities. The Committee requests the State party to provide in its next report updated information on complaints about acts of racial discrimination and on decisions taken in civil or administrative court proceedings. Such information should include the number and nature of cases brought, convictions obtained and sentences imposed, and any restitution or other remedies provided to victims of such acts.**

(22) While welcoming the extensive training provided for judges, prosecutors and police officers on human rights in general, the Committee regrets the comparatively limited attention given in training programmes to the specific issues covered by the Convention (art. 6).

**The Committee encourages the State party to strengthen its efforts to provide training for judges, prosecutors, lawyers and police officers to increase their awareness of the content and importance of the Convention at the national level.**

(23) The Committee notes that the Penal Code does not include any general provision stipulating that racist motivation should be taken into account as a specific aggravating circumstance for the purpose of sentencing in relevant crimes (art. 6).

**The Committee recommends that the State party include in its domestic criminal legislation a specific provision to ensure that the motive of ethnic, racial or religious hatred is taken into account as an aggravating circumstance in proceedings under the criminal law.**

(24) The Committee notes that the State party provided only a brief response to the question on the activities, methods of work and challenges faced by the Minority Issues Assessment Board established to address and resolve difficulties encountered by Turkish citizens belonging to non-Muslim minorities. The Committee also notes the process of establishment of the office of ombudsman and a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (General Assembly resolution 48/134, annex) (art. 6).

**The Committee requests the State party to include in its next periodic report detailed information regarding the work of the Minority Issues Assessment Board, as well as updated information on the status of establishment of the office of ombudsman and the national human rights institution.**

(25) The Committee notes the State party's view that the remedies provided by the European Court of Human Rights are sufficient, and that making the declaration provided for in article 14 of the Convention is thus not necessary. The Committee believes that article 14 of the Convention has independent value specific to the question of racial discrimination across the whole spectrum of human rights, and therefore invites the State party to reconsider its position and to envisage the possibility of making the declaration.

(26) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 63/243, in which the Assembly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(27) The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, when implementing the Convention in its domestic legal order, particularly as

regards articles 2 to 7 of the Convention. The Committee also urges that the State party include in its next periodic report specific information on measures taken to implement the Durban Declaration and Programme of Action at the national level. The Committee also encourages the State party to continue to actively participate in the Preparatory Committee of the Durban Review Conference, as well as in the Durban Review Conference in 2009.

(28) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission in the official language and in other languages traditionally used in Turkey, and that the observations of the Committee with respect to these reports be similarly publicized.

(29) The Committee recommends that the State party consult widely with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

(30) In accordance with article 9, paragraph 1, of the Convention and rule 65 of the its amended rules of procedure, the Committee requests the State party to provide, within one year, information on the way it has followed up on the recommendations contained in paragraphs 8, 13, 18 and 20 above.

(31) The Committee invites the State party to regularly update its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).

(32) The Committee recommends that the State party submit its combined fourth and fifth periodic reports in a single document, due on 15 October 2011, taking into account the guidelines for the CERD-specific document adopted by the Committee at its seventy-first session (CERD/C/2007/1). That report should be an update document and address all points raised in the present concluding observations.

#### 47. **United Arab Emirates**

(1) The Committee considered the twelfth to seventeenth periodic reports of the United Arab Emirates (CERD/C/ARE/12-17), submitted in one document, at its 1936th and 1937th meetings (CERD/C/SR.1936 and 1937), held on 4 and 5 August 2009. At its 1957th meeting (CERD/C/SR.1957), held on 18 August, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the State party's report, which has been prepared in conformity with the reporting guidelines, and its written replies to the list of issues, as well as for the supplementary information and further clarifications given in response to the questions posed orally by the Committee members.

(3) The Committee welcomes the high-level delegation from the State party and appreciates that the delegation replied frankly and constructively to the questions and comments raised by Committee members.

(4) The Committee takes note of the fact that the State party's nationals are a numerical minority in their own country, 825,495 of the total population of 4,106,427, and that the foreign population comprises approximately 85 per cent of its labour force, creating a unique and challenging environment for the State party.

## B. Positive aspects

(5) The Committee welcomes the initiative of the State party in renewing its dialogue with the Committee and its revived dedication and support to international organizations and bodies.

(6) The Committee also welcomes the information from the State party on the upcoming visit of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

(7) The Committee notes with satisfaction that, as stated in its written replies and oral presentation, the Convention has force of law within the State party, thus allowing it to be invoked before the courts of the State party directly in the same way as national law.

(8) The Committee welcomes the conclusion by the State party of memorandums of understanding with several States concerning the recruitment of their nationals as contract workers for work in the United Arab Emirates, in order to regularize the process for workers' entry into the State party so as to familiarize these persons with their rights and obligations under their employment contract.

(9) The Committee notes with appreciation the adoption of Federal Act No. 51 of 2006, which aims to combat human trafficking offences and all forms of exploitation, particularly of women and children, and the establishment by the Act of a National Committee on Human Trafficking.

## C. Concerns and recommendations

(10) While taking note of the information provided by the State party on the geographical and gender distribution of the population residing in the State party as well as the total number of citizens and non-citizens, the Committee is concerned at the lack of statistical data in the report of the State party on the ethnic composition of the population and the socioeconomic situation of the different groups.

**In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, disaggregated by national, non-national and ethnic origin, as well as statistical data on the socioeconomic situation of the different groups, in order to be able to evaluate their situation in the economic, social and cultural fields and the level of protection of their rights.**

(11) The Committee takes note of the fact that the State party's Constitution is founded on a principle of social justice and protects a range of fundamental rights. The Committee is concerned, however, that some of the fundamental rights may not apply to non-citizens on its territory.

**The Committee recommends that the State party ensure equality between citizens and non-citizens in the enjoyment of fundamental rights to the extent recognized under international law.**

(12) The Committee takes note of information provided by the State party on existing legislation prohibiting discrimination and its statement that the people of the State party practise tolerance and condemn all manifestations of discrimination. The Committee, however, is concerned that the legislation primarily addresses religious discrimination and does not mention racial discrimination, especially discrimination based on national origin.

**The Committee believes that racial discrimination or the potential for racial discrimination exists in all societies. The Committee therefore recommends that the**

**State party enact legislation specifically prohibiting racial discrimination or amend the existing laws, in order to be in full compliance with the Convention (art. 2).**

(13) The Committee notes the lack of national legislative provisions fulfilling the requirements of article 4 of the Convention, which requires States parties to penalize the dissemination of ideas based on racial superiority and hatred, the incitement to racial hatred, acts of violence against any race or groups of persons of another colour or ethnic origin and incitement to such acts.

**The Committee draws attention to its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993) according to which the obligations of article 4 are of mandatory character, and emphasizes the preventive value of legislation expressly prohibiting incitement to racial discrimination and racist propaganda. The Committee recommends that that the State party include provisions reflecting the requirements of article 4 in its national legislation (art. 4).**

(14) While noting the information provided by the State party in its report, in the written replies and the explanations given orally on efforts to improve the living and working conditions of non-citizen contract workers, the Committee remains concerned at conflicting reports from other sources that substandard conditions remain.

**With reference to its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party:**

(a) **Continue to strengthen the protection of all foreign labourers through adequate legislation and policies aimed at curbing abuses, such as the withholding of passports by employers, extended non-payment of wages, arbitrary deductions of wages, non-payment of overtime and working hours;**

(b) **Ensure implementation of existing laws and enhance monitoring mechanisms, such as labour inspections, with regard to payment of wages, medical care, housing and other living and working conditions of foreign workers;**

(c) **Reinforce the effectiveness of complaint mechanisms and facilitate access to them by foreign workers;**

(d) **Provide additional statistical data, in the next report, on the number of inspections carried out, complaints lodged, investigations, judgements and information on compensation granted, if any (arts. 5 (e) (i) (iii) and (iv) and 6).**

(15) The Committee notes and welcomes the information provided by the State party on its efforts to improve and regulate the sponsorship system, such as the inclusion of article 18 in the Labour Law, which regulates relations between agencies, employers and workers, including foreign workers. However, the Committee remains concerned at allegations concerning persisting abuses of this system by employers despite the efforts of the State party.

**The Committee recommends that the State party intensify its efforts to protect the rights of the persons recruited under the sponsor system by: (a) strengthening legislation and policies as needed; (b) strengthening enforcement of the relevant regulations and monitoring foreign workers' living and working conditions; and (c) improving the effectiveness and transparency of existing complaint mechanisms. The Committee further encourages the State party to continue its cooperation with the International Labour Organization aimed at regulating the recruitment and working conditions of foreign workers (arts. 5 (d) (i), 5 (e) (i) and 6).**

(16) The Committee notes the information from the State party in its report and the written replies on the continuous efforts to improve the situation of domestic foreign workers, particularly by introducing, in 2007, a standard employment contract for domestic



workers, which lays down some rights they are entitled to, in terms of wages, rest breaks, payment of salaries and medical treatment. The Committee also notes that the State party is currently preparing draft legislation which will regulate in a more detailed manner the working conditions of certain categories of foreign workers, including domestic workers, and provide for a complaint mechanism. However, the Committee is concerned that domestic workers are not included in the protection afforded by the Labour Law and continue to face violations of their rights.

**The Committee recommends that the State party continue its efforts by finalizing and promulgating legislation to protect the labour rights of domestic workers, to prevent abuses and to enable domestic workers to easily file complaints in the case of such abuses (arts. 5 and 6).**

(17) The Committee, noting the information provided by the State party concerning the acquisition of nationality under national legislation and the information that the acquisition process is currently under study and review, is nevertheless concerned that currently children of women nationals of the United Arab Emirates married to a foreign national do not receive citizenship under any circumstances.

**Reaffirming section 16 of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party consider modifying its legislation in order to allow children of women nationals of the United Arab Emirates to receive citizenship in conformity with the provisions of non-discrimination stipulated in article 5 (d) (iii) of the Convention.**

(18) While welcoming the efforts made by the State party to regularize the situation of the “*Bidoun*” (unregistered residents), including through the creation of a committee to deal with the question of undocumented persons and the granting of residence permits, in addition to the granting of nationality to over 1,200 “*Bidoun*”, the Committee remains concerned at the legal situation of some “*Bidoun*”, notably regarding their status as stateless persons and at allegations of discrimination they face on the labour market.

**The Committee recommends that the State party: (a) continue its efforts to verify the nationality of the “*Bidoun*” without discrimination and grant nationality as appropriate; and (b) take appropriate measures to ensure their equal access to the labour market (art. 5 (d) (iii) and 5 (e) (i)).**

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(20) The Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(21) The Committee recommends that the State party continue consulting and expanding its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the preparation of the next periodic report.

- (22) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention.
- (23) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolution 63/243, in which it strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.
- (24) The Committee recommends that the State party's reports be made readily available and accessible to the public at the time of their submission, and that the observations of the Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.
- (25) Noting that the State party has not submitted its core document, the Committee encourages the State party to submit it in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN/2/Rev.4, sect. I).
- (26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 14, 16 and 18 above.
- (27) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 10, 12 and 13 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.
- (28) The Committee recommends that the State party submit its eighteenth to twentieth periodic reports in a single document, due on 20 July 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

48. In 2009, Mr. Amir served as coordinator and Mr. Prosper as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

49. Terms of reference for the work of the coordinator on follow-up<sup>1</sup> and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee<sup>2</sup> were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

50. At the 1923rd meeting (seventy-fourth session) and the 1897th meeting (seventy-fifth session), held on 2 March and 17 August 2009 respectively, the coordinator on follow-up presented a report on his activities to the Committee.

51. Since the closing of the seventy-third session, follow-up reports on the implementation of recommendations regarding which the Committee had requested information were received from the following States parties: Austria (CERD/C/AUT/CO/17/Add.1), Belgium (CERD/C/BEL/CO/15/Add.1), Bosnia and Herzegovina (CERD/C/BIH/CO/6/Add.2), Canada (CERD/C/CAN/CO/18/Add. 1), Italy (CERD/C/ITA/CO/15/Add.1), New Zealand (CERD/C/NZL/CO/17/Add.1), Republic of Korea (CERD/C/KOR/CO/14/Add.1), Republic of Moldova (CERD/C/MDA/CO/7/Add.1), Turkey (CERD/C/TUR/CO/3/Add.1) and United States of America (CERD/C/USA/CO/6/Add.1).

52. At its seventy-fourth and seventy-fifth sessions, the Committee considered the follow-up reports of Belgium, Bosnia and Herzegovina, Israel, Italy, New Zealand, the Republic of Korea and the United States of America and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

#### Notes

<sup>1</sup> For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

<sup>2</sup> For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18)*, annex VI.

## V. Review of the implementation of the Convention in States parties the reports of which are seriously overdue

### A. Reports overdue by at least 10 years

53. The following States parties are at least 10 years late in the submission of their reports:

Sierra Leone	Fourth periodic report due since 1976
Liberia	Initial report due since 1977
Gambia	Second periodic report due since 1982
Somalia	Fifth periodic report due since 1984
Papua New Guinea	Second periodic report due since 1985
Solomon Islands	Second periodic report due since 1985
Central African Republic	Eighth periodic report due since 1986
Afghanistan	Second periodic report due since 1986
Seychelles	Sixth periodic report due since 1989
Saint Lucia	Initial report due since 1991
Malawi	Initial to sixth periodic reports due since 1997
Burkina Faso	Twelfth periodic report due since 1997
Kuwait	Fifteenth periodic report due since 1998
Niger	Fifteenth periodic report due since 1998
Swaziland	Fifteenth periodic report due since 1998
Burundi	Eleventh periodic report due since 1998
Iraq	Fifteenth periodic report due since 1999
Gabon	Tenth periodic report due since 1999

### B. Reports overdue by at least five years

54. The following States parties are at least five years late in the submission of their reports:

Jordan	Thirteenth periodic report due since 1999
Uruguay	Sixteenth periodic report due since 2000
Haiti	Fourteenth periodic report due since 2000
Guinea	Twelfth periodic report due since 2000
Rwanda	Thirteenth periodic report due since 2000
Syrian Arab Republic	Sixteenth periodic report due since 2000

Holy See	Sixteenth periodic report due since 2000
Zimbabwe	Fifth periodic report due since 2000
Malta	Fifteenth periodic report due since 2000
Lesotho	Fifteenth periodic report due since 2000
Tonga	Fifteenth periodic report due since 2001
Mauritius	Fifteenth periodic report due since 2001
Sudan	Twelfth periodic report due since 2002
Bangladesh	Twelfth periodic report due since 2002
Eritrea	Initial report due since 2002
Kenya	Initial report due since 2002
Belize	Initial report due since 2002
Benin	Initial report due since 2002
Algeria	Fifteenth periodic report due since 2003
Sri Lanka	Tenth periodic report due since 2003
San Marino	Initial periodic report due since 2003
Viet Nam	Tenth periodic report due since 2003
Qatar	Thirteenth periodic report due since 2003
Equatorial Guinea	Initial report due since 2003
Hungary	Eighteenth periodic report due since 2004
Cyprus	Seventeenth periodic report due since 2004
Egypt	Seventeenth periodic report due since 2004
Thailand	Initial report due since 2004
Timor-Leste	Initial report due since 2004
Jamaica	Sixteenth periodic report due since 2004
Armenia	Fifth periodic report due since 2004
Paraguay	Initial periodic report due from 2004
Honduras	Initial periodic report due from 2004
Trinidad and Tobago	Fifteenth periodic report due since 2004

### **C. Action taken by the Committee to ensure submission of reports by States parties**

55. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention, decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by States parties whose reports were overdue by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned

and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of the implementation of the Convention. The Committee agreed that in the absence of an initial report, the Committee would consider all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations. In practice the Committee also considers relevant information from other sources, including from non-governmental organizations, whether it is an initial or periodic report that is seriously overdue.

56. At its seventy-fourth session, the Committee reviewed the implementation of the Convention in the Gambia and adopted concluding observations in the absence of a delegation. Panama, which had also been scheduled for review at the seventy-fourth session, submitted its report prior to that session.

57. At its seventy-fifth session, the Committee decided to postpone the scheduled review of the implementation of the Convention in the Maldives, as the State party had submitted a report before the session. The Committee also decided to postpone the review scheduled in respect of Kuwait, in the light of a commitment received from the State party to finalize its reports in the near future.

## VI. Consideration of communications under article 14 of the Convention

58. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 53 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B.

59. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

60. During its seventy-fifth session, on 14 August 2009, the Committee considered communication No. 42/2008 (*Rajasingham v. Australia*), which concerned alleged discrimination on the basis of nationality (New Zealand), arising from the application of a number of Australian laws which allegedly restrict the rights of non-citizens to social security, education, and nationality, in violation of article 5 (e) (iv), 5 (e) (v) and 5 (d) (iii), read in conjunction with article 2 (1) (a) and article 6 of the Convention.

61. The Committee concluded that the laws in question did not make any distinction based on national origin and found no violation of any provisions of the Convention.

62. During its seventy-fifth session, on 21 August 2009, the Committee also considered communication No. 41/2008 (*Ahmed Fara Jama v. Denmark*), which concerned alleged discriminatory statements by a Danish Member of Parliament against individuals of Somali origin. The Committee noted that the impugned remarks amounted to a description of a specific sequence of events, which could not necessarily be interpreted as expressly claiming that individuals of Somali origin were responsible for those events. In the light of the information at its disposal, and noting the ambiguity of the statements in question, the Committee concluded that it was not in a position to find a violation of any of the provisions of the Convention by the State party.

63. Nevertheless, the Committee called on the State to ensure that its police and judicial authorities conduct thorough investigations into the alleged acts of racial discrimination. It also drew the attention of politicians and members of political parties to the particular duties and responsibilities incumbent upon them under article 4 of the Convention with regard to their statements and declarations, published articles or other forms of media expression.

## VII. Follow-up to individual communications

64. At its sixty-seventh session,<sup>1</sup> following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

65. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.<sup>2</sup> On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

66. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

67. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 27 complaints and found violations of the Convention in 10 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

### Notes

<sup>1</sup> See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I

<sup>2</sup> *Ibid.*, annex IV, sect. II.



**Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation**

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory or incomplete response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Denmark (3)	10/1997, Habassi	X (A/61/18)	X			
	16/1999, Kashif Ahmad	X (A/61/18)	X			
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	X (A/63/18)		X Incomplete		X
Netherlands (2)	1/1984, A. Yilmaz-Dogan				X (never requested by the Committee)	
	4/1991, L.K.				X (never requested by the Committee)	
Norway (1)	30/2003, The Jewish Community of Oslo	X (A/62/18)				X
Serbia and Montenegro (1)	29/2003, Dragan Durmic	X (A/62/18)				X
Slovakia (2)	13/1998, Anna Koptova	X (A/61/18) A/62/18				X
	31/2003, L.R. et al.	X (A/61/18) A/62/18				X

**Petitions in which the Committee found no violations of the Convention but made recommendations**

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	X 28 January 2004				X
Denmark (3)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi 41/2008 Ahmed Farah Jama				X	X X
Norway (1)	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	

### **VIII. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention**

68. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, as transmitted to it by the competent bodies of the United Nations, and to submit to the General Assembly its expressions of opinion and recommendations in this regard.

69. Accordingly, and at the request of the Committee, Mr. Lahiri examined the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2009<sup>1</sup> (A/64/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council, listed in document CERD/C/75/3, and presented his report at the seventy-fifth session, on 27 August 2009. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

70. The Committee further noted that there was significant ethnic diversity in a number of the Non-Self-Governing Territories, warranting a close watch on incidents or trends which reflect racial discrimination and violation of rights guaranteed in the Convention. The Committee therefore stressed that greater efforts should be made to raise awareness concerning the principles and objectives of the Convention in Non-Self-Governing Territories. The Committee further stressed the need for States parties administering Non-Self-Governing Territories to include details on the implementation of the Convention in these territories in their periodic reports to the Committee.

#### *Note*

<sup>1</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 23 (A/64/23).*

## **IX. Action taken by the General Assembly at its sixty-third session**

71. The Committee considered this agenda item at its seventy-fourth session. For its consideration of this item, the Committee had before it General Assembly resolution 63/243 of 24 December 2008.

72. The Committee took note with appreciation of the decision of the General Assembly to authorize the Committee to meet for an additional week per session, as a temporary measure, with effect from August 2009, until 2011, and to further assess the situation regarding the meeting time of the Committee at its sixty-fifth session, on the basis of an evaluation to be made by the Office of the High Commissioner for Human Rights.

73. The Committee welcomed the opportunity given to its Chairperson, at the sixty-third session of the General Assembly, to present for the first time an oral report on the work of the Committee to the Assembly. The Committee also took note with appreciation of the invitation extended to the Chairperson to again present a report and engage in an interactive dialogue with the members of the General Assembly at its sixty-fifth session.

## **X. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference**

74. The Committee considered questions related to the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at its seventy-fourth and seventy-fifth sessions, and actively contributed to preparations for and follow-up to the Durban Review Conference.

75. At its seventy-fourth session, within the framework of implementation of the Durban Declaration and Programme of Action and the preparatory process of the Durban Review Conference, the Committee adopted and submitted a contribution to the Durban Review Conference, consisting of a summary of its views and contributions previously submitted to the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action, with annexed proposals on the revised version of the technically reviewed draft text of the outcome document of the Durban Review Conference.<sup>1</sup>

76. At the Durban Review Conference, held in Geneva from 20 to 24 April 2009, the Committee was represented by its chairperson, Fatimata-Binta Victoire Dah, together with Committee members Régis de Gouttes, Ion Diaconu, Anwar Kemal and Patrick Thornberry. The Chairperson of the Committee delivered a statement to the Conference. Two members of the Committee had also represented the Committee at the final meeting of the Preparatory Committee for the Review Conference, which immediately preceded the Conference.

77. Among the activities undertaken within the framework of the Conference, a side event was held on 22 April under the heading “Combating racial discrimination: the central role of the United Nations Committee on the Elimination of Racial Discrimination”. This event, in which the Committee members present at the Conference acted as panellists and which was attended by representatives of States parties, non-governmental organizations and national human rights institutions, focused on significant substantive and procedural developments in the work of the Committee since the World Conference in 2001. At the same time, it served to highlight the fortieth anniversary of the entry into force of the Convention. Members of the Committee also acted as moderators or rapporteurs of other side events associated with the Conference.

78. At its seventy-fifth session, the Committee discussed and adopted a general recommendation on follow-up to the Durban Review Conference, the text of which is reproduced in annex VIII.

### *Note*

<sup>1</sup> Document A/CONF.211/PC/WG.2/CRP.2, submitted by the Chairperson-Rapporteur of the intersessional open-ended working group.

## **XI. Thematic discussions and general recommendations**

79. In examining the periodic reports of States parties, the Committee has found that some issues related to the application and interpretation of the provisions of the Convention can usefully be examined from a more general perspective. The Committee has therefore held a number of thematic debates on such issues, including in particular on issues related to discrimination against Roma (August 2000), descent-based discrimination (August 2002) and non-citizens and racial discrimination (March 2004). The outcome of these thematic debates is reflected in the Committee's general recommendations Nos. 27 to 30. In March 2005, the Committee held a thematic discussion on the prevention of genocide and adopted a declaration on this subject.<sup>1</sup>

80. At the seventy-third session, the Committee had held a thematic discussion on the subject of special measures within the meaning of articles 1 (4) and 2 (2) of the Convention, with the participation of representatives from UNESCO and ILO, interested States parties and non-governmental organizations. The thematic discussion on this subject was continued within the Committee at the seventy-fourth and seventy-fifth sessions. At the seventy-fifth session, the Committee adopted a draft text on the subject of special measures as general recommendation No. 32 (2009), which is reproduced in annex VIII.

81. At the seventy-fifth session, the Committee also engaged in a discussion on follow-up to the Durban Review Conference. The discussion concluded with the adoption of a general recommendation, which sets out the views and proposals of the Committee in this regard. The text of this document, which was adopted as the Committee's general recommendation No. 33 (2009), is reproduced in annex VIII.

### *Note*

<sup>1</sup> This declaration was followed up by a decision on the prevention of genocide adopted at the sixty-seventh session in August 2005, in which the Committee identified indicators of massive and systematic patterns of racial discrimination. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, chap. II.

## Annexes

### Annex I

#### Status of the Convention

##### **A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (173) as at 28 August 2009<sup>a</sup>**

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

##### **B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (53) as at 28 August 2009**

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela (Bolivarian Republic of).

**C. States parties that have accepted the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties<sup>a</sup> (43) as at 28 August 2009**

Australia, Bahamas, Bahrain, Belize, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Guinea, Holy See, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

*Note*

<sup>a</sup> The following States have signed but not ratified the Convention: Bhutan, Djibouti, Grenada, Guinea-Bissau, Nauru and Sao Tome and Principe.



## Annex II

### Agendas of the seventy-fourth and seventy-fifth sessions

#### A. Seventy-fourth session (16 February–6 March 2009)

1. Adoption of the agenda.
2. Filling of casual vacancy.
3. Organizational and other matters.
4. Prevention of racial discrimination, including early warning measures and urgent action procedures.
5. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
6. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
7. Consideration of communications under article 14 of the Convention.
8. Follow-up procedure.
9. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
10. Universal periodic review procedure of the Human Rights Council.

#### B. Seventy-fifth session (3–28 August 2009)

1. Adoption of the agenda.
2. Filling of casual vacancy.
3. Organizational and other matters.
4. Prevention of racial discrimination, including early warning measures and urgent action procedures.
5. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
6. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
7. Consideration of communications under article 14 of the Convention.
8. Follow-up procedure.
9. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference.
10. Universal periodic review procedure of the Human Rights Council.
11. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories in which

General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.

12. Report of the Committee to the General Assembly at its sixty-fourth session.

## Annex III

### Opinions of the Committee under article 14 of the Convention adopted at the seventy-fifth session

#### Opinion concerning communication No. 41/2008

<i>Submitted by:</i>	Mr. Ahmed Farah Jama (represented by counsel)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Denmark
<i>Date of communication:</i>	14 January 2008 (initial submission)

*The Committee on the Elimination of Racial Discrimination*, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Meeting* on 21 August 2009,

*Having concluded* its consideration of communication No. 41/2008, submitted to the Committee on the Elimination of Racial Discrimination by Mr. Ahmed Farah Jama under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Having taken into account* all information made available to it by the petitioner of the communication, his counsel and the State party,

*Adopts* the following:<sup>a</sup>

1.1 The petitioner is Mr. Ahmed Farah Jama, a Somali citizen living in Denmark, born in 1963. He claims to be a victim of violations by Denmark of article 2, paragraph 1 (d), article 4 and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by counsel, Mr. Niels Erik Hansen.

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 3 March 2008.

#### The facts as submitted by the petitioner

2.1 On 18 February 2007, the Danish newspaper *Sobdagsavisen* published an interview with Ms. Pia Merete Kjaersgaard, a member of parliament and the leader of the Danish People's Party. Among other issues, she referred to an incident which had taken place in 1998, when she was attacked in an area of Copenhagen called Norrebro by a group of individuals. In particular, she said: "Suddenly they came out in large numbers from the Somali clubs. There she is, they cried, and forced the door to the taxi open and then beat me ... I could have been killed; if they had entered I would have been beaten up. It was rage for blood." The petitioner claims that no Somalis were involved in the incident in question, and that this was a new false accusation by Ms. Kjaersgaard against the Somalis living in Denmark.

2.2 The petitioner filed a complaint requesting the police to investigate whether Ms. Kjaersgaard's statement constituted a crime under section 266b of the Criminal Code.<sup>b</sup> He claims that the persons who actually attacked Ms. Kjaersgaard were never arrested by the

police and their identity and nationality were never established. Furthermore, at the time Ms. Kjaersgaard had not indicated that the authors of the attack were Somalis and none of the newspaper articles published or witnesses stated that Somalis were involved. He recalls that in the past Ms. Kjaersgaard had made public statements accusing Somalis of paedophilia and gang rape of Danish women.<sup>c</sup>

2.3 In a decision dated 25 June 2007, the Commissioner of Police, with the consent of the Regional Public Prosecutor, rejected the complaint, as it seemed unlikely that a crime had been committed. The decision indicated that the statement was a mere description of the acts that took place and that the context in which it was made had been taken into consideration. It also indicated that, because the Regional Public Prosecutor had been involved in the proceedings, any appeal against it should be forwarded to the Prosecutor-General.

2.4 The petitioner appealed to the Director of Public Prosecutions on 10 July 2007. On 18 September 2007, the Director dismissed the case, as he considered that the petitioner had no right to appeal. He held that the petitioner had neither a personal nor a legal interest in the case and therefore could not be considered a party to it. Only the parties were entitled to appeal the decision. Those reporting the crime, those affected by the crime, witnesses and so on were considered parties only if they had a direct, personal and legal interest in the matter. Lobby organizations, companies or other entities or persons handling the interests of others or the interests of the general public on an idealistic, professional, organizational or similar basis could not normally be considered parties to a criminal case, unless they had received a power of attorney from a party. Accordingly, the Documentation and Advisory Centre on Racial Discrimination (DACoRD), which was acting on behalf of the petitioner, could not be considered entitled to appeal.

### **The complaint**

3.1 The petitioner claims that the absence of a proper investigation by the police and the Regional Public Prosecutor constitutes a violation of article 2, paragraph 1 (d), and article 6 of the Convention. The argument in the decision of 25 June 2007 that Ms. Kjaersgaard's statement was a mere description of the acts that took place in 1998 implied that the police had not even consulted their own files on the case. If they had, they would have learned that the suspect in the 1998 incident was a white male.

3.2 The petitioner further claims that the State party did not fulfil its obligation, under article 4 of the Convention, to take effective action regarding an act of hate speech against Somalis living in Denmark. He considers that the act in question constitutes racist propaganda and therefore falls within the scope of section 266b (2) of the Criminal Code. Furthermore, he refers to a statement made by a police officer to the media according to which it was uncontested that people had swarmed out of the Somali clubs when Ms. Kjaersgaard was attacked in 1998. By confirming the false accusation made by Ms. Kjaersgaard, this statement may also constitute a violation of article 4, as it would make the accusations more credible and stir up hatred against Somalis living in Denmark.

3.3 Finally, the petitioner claims that the denial of his right to appeal violates his right to an effective remedy. The ongoing public statements against Somalis have a negative effect on his daily life in Denmark. A study published by the Danish Board for Ethnic Equality in 1999 indicated that Somalis living in Denmark constituted the ethnic group most likely to suffer from racist attacks in the street (verbal abuse, violent attacks, spitting in the face, etc.). As a black person of Somali origin, he has to be on the alert when he enters into public spaces, fearing racist attacks and abuse. Thus, he considers himself a victim in the present case and has a personal interest in it.

### State party's observations on admissibility and the merits

4.1 On 3 June 2008, the State party submitted observations on the admissibility and merits of the communication. It argues that the petitioner has failed to establish a prima facie case for the purpose of admissibility and that he did not exhaust domestic remedies.

4.2 The State party states that on 16 March 2007 the Documentation and Advisory Centre on Racial Discrimination, on behalf of the petitioner, reported Ms. Kjaersgaard to the police for violation of section 266b of the Criminal Code. On 25 June 2007, the Commissioner of the West Copenhagen Police decided, pursuant to section 749 (1) of the Danish Administration of Justice Act, not to initiate an investigation. The Commissioner indicated that Ms. Kjaersgaard's statement did not "constitute an aggravated insult and degradation of a group of persons that can be considered to fall within the scope of section 266b of the Criminal Code. I have emphasized in particular the nature of the statement, which is a description of a specific sequence of events, as well as the context in which it was made... Hence, as the statement cannot be considered to fall within the scope of section 266b of the Criminal Code, there is no basis for initiating any investigation". The decision was issued after endorsement by the Regional Public Prosecutor for North Zealand and West Copenhagen.

4.3 As a result of the appeal filed by DACoRD on behalf of the petitioner, the Director of Public Prosecutions obtained an opinion from the Regional Public Prosecutor dated 20 July 2007. The Prosecutor stated, inter alia, that in his view the statements did not fall within the scope of section 266b of the Criminal Code, whether or not it could actually be proved who had assaulted Ms. Kjaersgaard in 1998. Accordingly, it would have made no difference to his decision on the matter if he had had police reports on the 1998 incident or on the questioning of Ms. Kjaersgaard at his disposal.

4.4 The communication should be declared inadmissible in its entirety because the petitioner has failed to establish a prima facie case. One of the themes of the interview with Ms. Kjaersgaard to the *Søndagsavisen* dealt with what it is like to have to live under police protection and, in that connection, the 1998 incident was mentioned. The statements are in the nature of a description of a specific sequence of events, as part of a description of how Ms. Kjaersgaard perceived the incident. She only stated in the interview that the attackers came out from "the Somali clubs", but did not express any attitude or make any degrading statement about persons of Somali origin. The statements in question therefore cannot be considered racially discriminating, and they thus fall outside the scope of article 2, paragraph 1 (d), article 4 and article 6 of the Convention.

4.5 In the communication to the Committee, the petitioner referred to a statement of Ms. Kjaersgaard ("I could have been killed; if they had got in, I would have been beaten to a pulp at least. It was a killing rage.") This statement was not included in the complaint lodged by the petitioner with the police, nor was it subsequently reported to the Danish authorities. Since the applicant has thus not exhausted domestic remedies in this respect, this part of the communication should be declared inadmissible.

4.6 It appears that the petitioner considers himself to be a victim of a racist attack and that he has an interest in the case because the ongoing statements affect his life in a negative way. According to section 267 (1) of the Criminal Code, any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the eyes of his fellow citizens, is liable to a fine or to imprisonment for a term not exceeding four months. Further, according to section 268, if an allegation has been made or disseminated in bad faith, or if the author had no reasonable ground to regard it as true, he is guilty of defamation. Pursuant to section 275 (1) of the Criminal Code, these offences are subject to private prosecution. The State party recalls the Committee's Opinion in communication No. 25/2002, *Sadic v. Denmark*, in

which the Committee recognized that the institution of proceedings under section 267 (1) of the Criminal Code could be regarded as an effective remedy which the petitioner had failed to exhaust. It also recalls communication No. 34/2004, *Gelle v. Denmark*, where the Committee held that the case in question concerned statements that were made squarely in the public arena and that it would thus be unreasonable to expect the petitioner to institute separate proceedings under the general provision of section 267, after having unsuccessfully invoked section 266b in respect of circumstances directly implicating the language and object of that provision. Finally, the State party recalls the decision of the Human Rights Committee declaring inadmissible communication No. 1487/2006, *Ahmad v. Denmark*, concerning the publication of an article called “The Face of Muhammad” in a Danish newspaper on 30 September 2005. The Director of Public Prosecutions decided against bringing criminal prosecutions in respect of the publications at issue pursuant to sections 140 and 266b of the Criminal Code. Subsequently, Mr. Ahmad, on behalf of the Islamic Community of Denmark, instituted private criminal proceedings against the editors of the newspaper under sections 267 and 268 of the Code. Eventually, the editors were acquitted. The judgement was subsequently appealed to the High Court, where the case was still pending when the Human Rights Committee declared it inadmissible for failure to exhaust domestic remedies. According to the State party, this decision should be taken into account when assessing whether the present communication should be declared inadmissible. It does not follow from article 2, paragraph 1 (d), and article 6 of the Convention that the petitioner is entitled to a specific remedy. The crucial factor is that a remedy is available.

4.7 Regarding the merits, the State party finds that no violation of article 2, paragraph 1 (d), article 4 or article 6 took place. The assessment carried out by the Commissioner of the West Copenhagen Police fully satisfies the requirements that can be inferred from the Convention as interpreted in the Committee’s practice. The question in the present case was solely whether Ms. Kjaersgaard’s statements could be considered to fall within the scope of section 266b of the Criminal Code. There were thus no problems with the evidence and the public prosecutor simply had to perform a legal assessment of the statements in question. This legal assessment was thorough and adequate, although it did not have the outcome sought by the petitioner. In his refusal to initiate an investigation, the public prosecutor placed particular emphasis on the nature of Ms. Kjaersgaard’s statements as a description of a specific sequence of events and on the fact that the statements were made as part of Ms. Kjaersgaard’s description of the 1998 events.

4.8 According to the guidelines on the investigation of violations of section 266b of the Criminal Code, issued by the Director of Public Prosecutions, “in cases where a report of a violation of section 266b of the Criminal Code is lodged with the police, the person who issued the written or oral statement should normally be interviewed, inter alia, to clarify the purpose of the statement, unless it is obvious that section 266b of the Criminal Code has not been violated”. The reason why the case files concerning the 1998 incident were not reviewed and that Ms. Kjaersgaard was not interviewed is that the statements did not fall within the scope of the said section, regardless of whether it could be proved who had allegedly assaulted her in 1998. Ms. Kjaersgaard simply stated that her attackers came out from “the Somali clubs”, and did not make any disparaging or degrading remarks about persons of Somali origin. In that light, obtaining the police reports on the 1998 incident was irrelevant to the decision on the matter. Nothing in the present case could provide the public prosecutor with a basis for establishing that Ms. Kjaersgaard had criminal intent to make disparaging statements about a specific group of people. Consequently, the public prosecutor’s handling of the case satisfies the requirements that can be inferred from article 2, paragraph 1 (d), and article 6 of the Convention, taken together with the Committee’s practice.

4.9 The State party rejects the claim that by confirming the false accusation made by Ms. Kjaersgaard, the police may also be in violation of article 4. The fact that the Commissioner dismissed the report cannot be taken to mean that it was determined whether the statements about the 1998 incident were true or false. In fact, the Commissioner did not give any opinion on this matter because he considered that the statements fell outside the scope of section 266b.

4.10 Regarding the petitioner's claim that neither he nor DACoRD was able to appeal the Commissioner's decision, the Convention does not imply a right for citizens to appeal the decisions of national administrative authorities to a higher administrative body. Nor does the Convention address the question of when a citizen should be able to appeal a decision to a superior administrative body. Hence, the Convention cannot be considered a bar to a general rule to the effect that it is normally only the parties to a case or others with a direct, essential, individual and legal interest in the case who are entitled to appeal a decision about criminal prosecution.

4.11 The State party refers to Notice No. 9/2006 issued by the Director of Public Prosecutions, according to which police commissioners must notify him of all cases in which a report of a violation of section 266b is dismissed. This reporting scheme builds on the ability of the Director of Public Prosecutions, as part of his general supervisory powers, to take a matter up for consideration to ensure proper and uniform enforcement of section 266b. In the present case, the Director found no basis for exceptionally disregarding the fact that neither DACoRD nor the applicant was entitled to appeal the decision. Furthermore, in its appeal, DACoRD did not give any reason, either in its own right or on behalf of the petitioner, as to why it considered itself entitled to appeal. The State party concludes that the petitioner did have access to an effective remedy.

#### **Petitioner's comments on the State party's submission**

5.1 On 18 August 2008, the petitioner commented on the State party's submission. He held that Ms. Kjaersgaard's description of the 1998 events was incorrect, as nobody (Somalis or non-Somalis) came out of the Somali clubs when she arrived in her taxi. No Somalis were involved, either as bystanders or aggressors, and no Somalis participated in the planning and execution of the attack. Refugees from Somalia have been one of the main targets, along with other groups, of the ongoing racist propaganda of the Danish People's Party. In spite of this, the police did not acknowledge that the statement was false.

5.2 In connection with the claims related to articles 2 and 6 of the Convention, the police should have interviewed Ms. Kjaersgaard in the course of the investigation in order to clarify why her statement was different from that made in 1998. At that time she had not indicated that her attackers came out of the Somali clubs. Furthermore, he insists that in being denied the right to appeal he was also denied the right to an effective remedy.

5.3. The petitioner disagrees with the State party's argument that no prima facie case has been established. As to the argument that domestic remedies were not exhausted in connection with Ms. Kjaersgaard's statement that "she could have been killed", the petitioner confirms that no such statement was included in his report to the police. However, the police could have included it in its investigation, as it was mentioned in the article in question. The decision by the police not to investigate further means that they did not find a violation in connection with that phrase either.

5.4 The petitioner argues that his case is not comparable to communication No. 1487/2006, *Ahmad v. Denmark*, submitted to the Human Rights Committee. This communication concerns religious discrimination against Islam and thus does not fall within the scope of the Convention. Furthermore, in communication No. 1487/2006, the legal standing of the authors in connection with the appeal was never questioned.

5.5 Regarding the State party's observations on the merits, the petitioner rejects the argument that Ms. Kjaersgaard's statement does not fall within the scope of section 266b of the Criminal Code. False accusations against an ethnic group have always been covered by that provision, as well as by article 4 of the Convention. If the public prosecutor had consulted the 1998 file, it would not have been "obvious", as the State party suggested, that the statement did not fall within the scope of section 266b.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of All Forms of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 With regard to the State party's objection that the petitioner failed to establish a prima facie case for the purposes of admissibility, the Committee observes that Ms. Kjaersgaard's statement was not of such a character as to fall ab initio outside the scope of article 2, paragraph 1 (d), article 4 and article 6 of the Convention. The Committee also notes the petitioner's claim that the ongoing public statements against Somalis have a negative effect on his daily life and considers that he satisfies the "victim" requirement within the meaning of article 14, paragraph 1, of the Convention. It thus follows that the petitioner has sufficiently substantiated his claims for the purposes of admissibility.

6.3 Regarding the petitioner's claim that he was not given the opportunity to appeal the decision of the police commissioner, the Committee does not consider it within its mandate to assess the decisions of domestic authorities regarding the appeals procedure in criminal matters. This part of the communication is therefore inadmissible *ratione materiae* under article 14, paragraph 1, of the Convention.

6.4 On the issue of exhaustion of domestic remedies, the State party claims that part of Ms. Kjaersgaard's statement was not included in the petitioner's report to the police, in particular the sentences: "I could have been killed; if they had got in, I would have been beaten to a pulp at least. It was a killing rage." The Committee considers, however, that these sentences are closely linked to those in which she referred to the authors of the attack. Even if they were not referred to specifically by the petitioner, they are part of the claim which constituted the gist of his report to the police. Accordingly the Committee does not share the State party's view that the petitioner did not exhaust domestic remedies with respect to that part of the statement.

6.5 The Committee takes note of the State party's argument that the applicant is not entitled to a specific remedy, and that private prosecution is possible under sections 267 (1) and 268 of the Criminal Code. The Committee notes, however, that the statements were made in the public arena, which is the central focus of both the Convention and section 266b of the Criminal Code, and that the petitioner's choice of remedy was not a controversial issue at the national level. It would thus be unreasonable to require the petitioner to initiate also proceedings under sections 267 (1) and 268, after having unsuccessfully invoked section 266b in respect of circumstances directly implicating the language and object of that provision.<sup>d</sup>

6.6 In the absence of any further objections to the admissibility of the communication, the Committee declares the communication admissible, insofar as it relates to the State party's alleged failure fully to investigate the incident.



*Consideration of the merits*

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under section 266b of the Criminal Code. This provision criminalizes public statements by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination.

7.3 The Committee recalls its earlier jurisprudence<sup>e</sup> according to which it does not suffice, for the purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which States parties undertake to adopt immediate and positive measures to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1 (d), which requires States to prohibit and bring to an end, by all appropriate means, racial discrimination, and article 6, which guarantees to everyone effective protection and remedies against any acts of racial discrimination.

7.4 The Committee notes the petitioner's claim that the reference in Ms. Kjaersgaard's statement, in the newspaper interview published on 17 February 2007, to the fact that her aggressors in the 1998 incident came out of the Somali clubs constituted an act of racial discrimination, as no Somalis were involved in the incident in question. The Committee also notes that the Commissioner of the West Copenhagen Police asserts that he examined the claim and concluded that Ms. Kjaersgaard's statement was merely a description of a specific sequence of events, in that she stated that the aggressors came out of the Somali clubs but did not make any disparaging or degrading remarks about persons of Somali origin. The Committee considers that, on the basis of the information before it, the statement concerned, despite its ambiguity, cannot necessarily be interpreted as expressly claiming that persons of Somali origin were responsible for the attack in question. Consequently, without wishing to comment on Ms. Kjaersgaard's intentions in making the statement, the Committee cannot conclude that her statement falls within the scope of article 2, paragraph 1 (d), and article 4 of the Convention, or that the investigation conducted by the national authorities into the 1998 incident did not meet the requirements of an effective remedy under the Convention.

8. In the circumstances, the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, considers that it is not in a position to state that there has been a violation of the Convention by the State party.

9. On the basis of rule 95, paragraph 1, of its rules of procedure, the Committee would nevertheless like to draw attention to earlier recommendations formulated in the course of its consideration of individual communications, in which it called on States parties to:

- Ensure that the police and judicial authorities conduct thorough investigations into allegations of acts of racial discrimination as referred to in article 4 of the Convention<sup>f</sup>
- Draw the attention of politicians and members of political parties to the particular duties and responsibilities incumbent upon them pursuant to article 4 of the

Convention with regard to their speeches, articles or other forms of expression in the media<sup>g</sup>

[Adopted in English, French, Russian and Spanish, the French text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

*Notes*

- <sup>a</sup> Pursuant to rule 90 of the Committee's rules of procedure, Committee member Mr. Peter did not participate in the adoption of the present opinion.
- <sup>b</sup> This provision reads as follows:
- “(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination shall be liable to a fine or to imprisonment for a term not exceeding two years.
- “(2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance.”
- <sup>c</sup> See communication No. 34/2004, *Gelle v. Denmark*, opinion adopted on 6 March 2006.
- <sup>d</sup> See communication No. 33/2003, *Quereshi v. Denmark*, opinion adopted on 9 March 2005, para. 6.3 and communication No. 34/2004, *Gelle v. Denmark*, opinion adopted on 6 March 2006, para. 6.3.
- <sup>e</sup> See communication No. 34/2004, *Gelle v. Denmark*, opinion adopted on 6 March 2006, paras. 7.2 and 7.3.
- <sup>f</sup> Communication No. 29/2003, *Dragan Durmic v. Serbia and Montenegro*, opinion adopted on 6 March 2006.
- <sup>g</sup> Communication No. 27/2002, *Kamal Quereshi v. Denmark*, opinion adopted on 19 August 2003; communication No. 36/2006, *P.S.N. v. Denmark*, opinion adopted on 8 August 2007; communication No. 37/2006, *A.W.R.A.P. v. Denmark*, opinion adopted on 8 August 2007.

## Opinion concerning communication No. 42/2008

<i>Submitted by:</i>	D.R. (not represented)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Australia
<i>Date of communication:</i>	1 June 2008 (initial submission)

*The Committee on the Elimination of Racial Discrimination*, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Meeting on 14 August 2009,*

*Having concluded* its consideration of communication No. 42/2008, submitted to the Committee on the Elimination of Racial Discrimination by Mr. D.R. under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination.

*Having taken into account* all information made available to it by the author of the communication, his counsel and the State party,

*Adopts* the following:

1.1 The author is Mr. D.R., a New Zealand citizen currently residing in Australia. He claims to be a victim of violations by Australia of articles 5(e)(iv), 5(e)(v), and 5(d)(iii), read in connection with article 2(1)(a) of the International Convention on the Elimination of All Forms of Racial Discrimination. He is not represented.

### **The facts as presented by the petitioner**

2.1 The petitioner is a New Zealand citizen residing in Australia. He holds a Special Category Visa (SCV), which allows him to live and work indefinitely in Australia. This special immigration status is the result of the bilateral Trans-Tasman Travel Arrangement between Australia and New Zealand, which allows citizens of both countries to live in either country indefinitely.

2.2 The petitioner claims that a number of Australian laws unlawfully restrict his rights to social security, education, and nationality, on the basis of his national origin, in violation of articles 5(e)(iv), 5(e)(v), and 5(d)(iii), in connection with article 2(1)(a) of the Convention. He also argues that there are no national laws or judicial avenues which he could avail himself of to seek effective protection and remedies for discrimination on the ground of national origin in Australia. As such, the author argues that the State party also breached article 6 of the Convention in his regard.

2.3 Regarding the right to social security, the petitioner argues that the Social Security Act (SSA), which restricts access to the full range of social security payments to New Zealand citizens, unless they hold permanent visas, differentiates between Australian nationals and other legal residents, based on their immigration status. The author claims that to the extent that they impose conditions which only apply to non-Australian residents, these restrictions constitute discrimination based on nationality. The author's allegations refer mainly to the meaning of the term "Australian resident", which defines eligibility for most social security benefits under the SSA. "Australian residents" include Australian citizens, permanent visa holders, and "protected" SCV holders. Those New Zealanders who were in Australia on 26 February 2001, and those absent from Australia on that day but who had been in Australia for a period totalling 12 months in the two years prior to that date, and who subsequently returned to Australia, are considered as "protected" SCV

holders, and treated as Australian residents for the purposes of the Act. Other New Zealand citizens must meet normal migration criteria to become “Australian residents” for the purposes of the Act. The author first arrived in Australia after the pertinent date, and therefore does not hold “protected SCV” status for the purposes of the SSA. He is therefore required to apply for, and obtain a permanent residence visa if he wishes to enjoy the same social benefits afforded to Australian citizens and permanent-visa holders. He would then be required to wait two additional years (waiting period for new arrivals regarding eligibility for social security), even though he has already resided in Australia for six years. The author further claims that another consequence of these restrictions is that his six years of residency in Australia will not count towards the 10-year minimum eligibility period for pension benefits, as long as he is not considered an “Australian resident” under the SSA. The petitioner has not attempted to apply for a permanent resident visa. He contends that the requirement imposed by the SSA on New Zealand nationals to hold a permanent-visa is superfluous and incompatible with the Convention, since they are *de facto* permanent residents, on the basis of the bilateral Trans-Tasman Travel Arrangement between Australia and New Zealand. He further argues that these restrictions constitute unequal treatment between Australians and legally resident non-Australians, and directly discriminate against him on the basis of his nationality. He adds that these restrictions are devoid of any legitimate aim.

2.4 Secondly, the petitioner argues that the State party violated his right to education under the Convention. Persons entitled to a higher education tuition fee loan (“HECS-HELP” Programme) from the Australian Government, under the Higher Education Support Act (2003) (HESA), must be either Australian citizens, or “permanent humanitarian visa holders”, i.e. refugees, who reside in Australia for the duration of the unit of study. The author alleges that under the HECS-HELP Programme, the Government pays a significant portion of higher education tuition fees for a student who qualified for a subsidised place, and enables the student to borrow the balance. Students who are eligible for the HECS-HELP loan are also eligible for a substantial tuition fee discount by paying their fees upfront. Students who do not qualify for a subsidised place must pay the full tuition fee, but the “FEE-HELP” Programme<sup>a</sup> would enable them to borrow the full amount. Persons who qualify for FEE-HELP assistance are Australian citizens, permanent humanitarian visa holders, and permanent visa holders undertaking study as part of a bridging course for overseas-trained professionals.

2.5 The petitioner argues that the eligibility requirements imposed by the HESA unlawfully restrict access to higher education for all resident non-Australians who are not refugees, regardless of their capacity to pay back the loan. He contends that these restrictions do not use the notion of residence permit for the legitimate purpose of ascertaining whether a non-Australian has the right to reside, but instead uses it to define a condition which is constitutive of access to higher education. He argues that the State party should provide a legitimate explanation for the fact that while a person who obtained Australian citizenship by descent, but who has otherwise never resided in, nor paid taxes in Australia, would be eligible for a student loan and a tuition fee discount, a non-Australian who permanently resides in Australia, but is not a refugee, cannot benefit from such entitlements. He argues that this requirement discriminates against him on the basis of his nationality, and has no legitimate aim.

2.6 Thirdly, the petitioner contends that he is the victim of a violation by the State party of his right to nationality under the Convention. He argues that in order to be eligible for Australian citizenship, he would need to be a “permanent resident”, under the meaning of the Australian Citizenship Act (2007) (ACA). Section 5(1) of the ACA defines a “permanent resident” as the holder of a permanent visa who is present in Australia, or the holder of a permanent visa who is absent from Australia, but has previously been present in Australia and held a permanent visa immediately before last leaving Australia. Persons who

hold, or have held, a Special Category Visa may also be considered “permanent residents” if they satisfy specific requirements similar to those provided by the Social Security Act (SSA) for the determination of “Australian residents”. In other terms, only those New Zealanders who were in Australia on 26 February 2001, and those absent from Australia on that day but who had been in Australia for a period totalling 12 months in the two years prior to that date, and who subsequently returned to Australia, will qualify as “permanent residents” under the ACA. New Zealand citizens who have a residence certificate issued under the SSA will also be deemed permanent residents for the purposes of the Act.<sup>b</sup>

2.7 The petitioner holds a Special Category Visa, which enables him to reside legally in Australia for an indeterminate time period, and therefore makes him a *de facto* permanent resident. However, to be entitled to apply for Australian citizenship after a period of 2 to 4 years, he would need to become a legally-recognized permanent resident, or be deemed a permanent resident for the purposes of the Australian Citizenship Act (ACA). The petitioner claims that despite the fact that he has permanently resided in Australia for more than 4 years, he is excluded from the definition of “permanent resident” under the ACA, as a result of conditions which pertain directly to his nationality and immigration status. He argues that the imposition of specific conditions only applicable to New Zealand citizens discriminate upon him on the basis of his national origin, and are deliberately designed to limit his access to social security, which is not a legitimate aim. He notes that the deliberate nexus between the restrictions imposed upon New Zealand citizens with regard to access to citizenship and social security benefits is reinforced by the fact that the “permanent resident” criteria within the ACA are similar to those provided in the Social Security Act for the determination of the status of “Australian resident”. The author alleges that as a result of the restrictive conditions imposed by the ACA, he is ineligible to apply for Australian citizenship, and is therefore subject to the limitations imposed by Australian law *vis-à-vis* non-citizens for access to social security and higher education benefits.

2.8 Lastly, the petitioner affirms that the State party failed to offer him effective protection from, and remedy for the above allegations of discrimination under the Convention, and as such infringed articles 2(1)(a) and 6 of the Convention. He claims that Australia’s Racial Discrimination Act (1975) does not offer any effective protection or remedy for discrimination on the ground of nationality, since the term “national origin” in section 10 was interpreted by the Full Bench Federal Court as excluding nationality as a ground for discrimination,<sup>c</sup> an interpretation which was later confirmed by the High Court of Australia.<sup>d</sup> The author claims that this judicial interpretation of the Racial Discrimination Act precludes him from seeking remedy via the Australian court system. He submits that the only two possible avenues for the pursuit of any remedy are via the Commonwealth Ombudsman, or the Human Rights and Equal Opportunities Commission (HREOC). However, he has not made a formal complaint before any of these instances as he asserts that neither has the power to override the operation of Commonwealth legislation,<sup>e</sup> and because of the interpretation of the Racial Discrimination Law (1975) previously detailed, which excludes nationality as a ground of discrimination.

### **The complaint**

3. The petitioner claims that there is no effective remedy available to him in Australia. He claims that the Social Security Act (1991) (SSA), the Higher Education Support Act (2003) (HESA), and the Australian Citizenship Act (2007) (ACA) discriminated against him on the basis of his New Zealand nationality, by withdrawing entitlements to social security, and unlawfully restricting his access to education and citizenship, in breach of articles 5(e)(iv), 5(e)(v) and 5(d)(iii), in connection with article 2(1)(a) of the Convention. By so doing, the State party committed an act of racial discrimination against him. The State party also failed to offer him effective protection and remedies, and therefore failed to

pursue without delay a policy of eliminating racial discrimination, in breach of articles 6 and 2(1)(a) of the Convention.

#### **State party's submission on admissibility and merits**

4.1 On 5 February 2009, the State party submitted that the communication should be declared inadmissible, as its allegations are incompatible with the provisions of the Convention, and the author has not exhausted all available domestic remedies. Subsidiarily, the State party submits that the allegations are misconceived and not substantiated by evidence of racial discrimination, and are without merit.

4.2 For the State party, the communication is inadmissible *ratione materiae* under rule 91(c) of the Committee's rules of procedure, as the Committee is only competent to examine communications alleging racial discrimination, under the meaning of the Convention. A claim on discrimination on the basis of nationality does not constitute racial discrimination as defined in article 1(1) of the Convention.<sup>f</sup> The State party refers to article 1(2) of the Convention, which states that the Convention "shall not apply to distinctions, exclusions, restrictions or preferences made by a State Party to this Convention between citizens and non-citizens".

4.3 Regarding allegations regarding his right to social security and education, the State party asserts that the petitioner failed to exhaust domestic remedies, noting that he had a number of administrative and judicial avenues open to him, the most relevant of which would have been to bring a complaint under the Racial Discrimination Act (1975) to the Human Rights and Equal Opportunity Commission (HREOC). In the event that the complaint was not resolved by the HREOC, the author could have applied to have the matter heard by the Federal Magistrates Court or the Federal Court of Australia to obtain an enforceable remedy for unlawful discrimination. It was also possible for him to make a complaint to the Commonwealth Ombudsman. The State party notes that the doubts expressed by the petitioner about the effectiveness of available remedies do not absolve him from pursuing them.<sup>g</sup> It further notes that the author failed to use the most obvious available remedy of applying for permanent residency in Australia, which would allow him to access certain social security payments not covered by the bilateral Social Security Agreement between Australia and New Zealand (2001). Permanent residency would also entitle the author to apply for Australian citizenship, which in turn would enable him to access the higher education loan schemes and tuition discounts available to Australian citizens. Had the author successfully applied for permanent residency and subsequently claimed social security payments, a significant number of administrative and judicial avenues would have been opened to him to challenge decisions made in relation to his claim.

4.4 On the merits, the State party submits that the petitioner's claims are misconceived, as the limitations on his ability to access certain social security payments and higher education loans and discounts do not arise by reason of his national origin, but rather from the fact that he is neither a permanent resident nor a citizen of Australia. The Australian Government introduced legislative changes in 2001, so as to provide a more equitable situation between all migrants. Previously, New Zealand citizens received preferential treatment; the subsequent withdrawal of such advantages merely places New Zealand citizens on an equal footing with people of other nationalities who are neither permanent residents nor Australian citizens. This was recognized by the Committee as a legitimate aim.<sup>h</sup> The State party dismisses as incorrect the petitioner's assertion that his six years of residency in Australia will not count towards the 10 year period which is a prerequisite to obtain age pension, and confirms that upon reaching 65 years, he will be able to rely on the Social Security Agreement between Australia and New Zealand and ensure that his six years of residence are taken into account. It is open for the author to apply for permanent residency, which would make him eligible to apply for Australian citizenship, so as to

enable him to receive the same entitlements to social security payments as all Australian citizens.

4.5 On the right to education, the State party submits that citizenship and residency restrictions contained in the Higher Education Support Act (2003) with regard to access to the “HECS-HELP” and “FEE-HELP” schemes are consistent with Australia’s obligations under the Convention. These restrictions were introduced for the legitimate purpose of ensuring that publicly funded higher education meets, first and foremost, the needs of Australian citizens, and for assisting in managing the debt avoidance potential related to non-Australian residents borrowing taxpayer funds through student loans, and then moving back overseas. New Zealand citizens living in Australia are, for that purpose, treated in the same way as all foreign nationals who are not Australian citizens, permanent humanitarian visa holders, or permanent visa holders undertaking study as part of a bridging course for overseas-trained professionals. The State party notes that as a New Zealand citizen, the author has access to employment services, health care, public housing, primary and secondary education and family tax benefits in Australia. New Zealand citizens can travel, live and work indefinitely under the terms of the Trans-Tasman Travel Arrangement. In this respect, they continue to access a significant relative advantage over foreign nationals of other States. It is open to the author to apply for permanent residency, like migrants of other nationalities. This would allow him to apply for Australian citizenship, which would enable him to receive the same entitlements to loan schemes and discounts as all Australian citizens.

4.6 On the claim that the eligibility requirements for acquiring Australian citizenship are unequally imposed upon New Zealand citizens so as to render them ineligible to apply for Australian citizenship, the State party submits that the author has not exhausted all domestic remedies, as he has not taken steps preparatory to applying for Australian citizenship. Had he taken such steps, there would have been a range of domestic remedies available to him to seek a review of Government decisions made in relation to his application, such as appeals to the Administrative Appeals Tribunal, the Federal Court, and the High Court of Australia. The petitioner also had available to him the ability to make complaints to the Human Rights and Equal Opportunity Commission (HREOC) under Australia’s anti-discrimination legislation, the Commonwealth Ombudsman, or commence legal proceedings in the Federal Magistrates Court and the Federal Court of Australia.

4.7 Subsidiarily, the State party submits that the petitioner’s allegations are without merit.<sup>1</sup> The eligibility criteria set forth in the Australian Citizenship Act require that the person be a permanent resident, a condition which equally applies to all migrants seeking to apply for Australian citizenship, without distinction as to national origin. The author has not attempted to gain permanent residency as a step preparatory to applying for Australian citizenship, nor has he provided evidence suggesting that he faces any impediment to becoming a permanent resident, arising specifically from his national origin, or the fact that he is a New Zealand citizen.

4.8 On the final claim of the petitioner, the State party submits that there is no evidence to suggest that the author made any attempts to access and seek relief through the various domestic remedies which were available to him. As the author did not invoke any of these remedies, the State party submits that it does not have a case to answer on the merits as to its provision of protection and remedies. It is only once available remedies are operationalized that any assessment can be made as to whether those remedies did indeed provide the author with protection against any alleged acts of discrimination under the Convention.

**Author's comments on State party submission**

5.1 The petitioner reaffirms that he is the victim of discrimination as a New Zealand national, as a result of Australia's laws and denial of protection and remedies. Nationality is a recognised ground for discrimination under the Convention, and is encompassed in the concept of national origin. The Committee is therefore competent to consider his claims. On the issue of exhaustion of domestic remedies, he argues that he should not be required to pursue domestic remedies, since the State party itself acknowledged that nationality is not recognised as a ground for discrimination under Australian law. In these conditions, he considers that domestic remedies do not offer him any reasonable prospect of success.

5.2 In the petitioner's view, the concept of "permanent resident" is ambiguous under Australian law, since he has the right to reside permanently in Australia, but yet is not legally recognized as a permanent resident. He argues that the State party only addressed the issue of differential treatment between Australian citizens and residents of other nationalities, but failed to respond to his claim of differential treatment between New Zealand nationals specifically and residents of other nationalities.

5.3 The petitioner acknowledges the fact that if he held a permanent visa, he would eventually be able to access certain social security payments not already covered by the bilateral Social Security Agreement between Australia and New Zealand. He maintains, however, that it is a discriminatory requirement, and that the State party failed to establish that it has any legitimate rationale. The range of domestic remedies cited by the State party would only be relevant to the holder of a permanent visa who has been denied social security payments as a result of an administrative decision. In his case, he claims to have been denied his right to certain social security benefits by the direct operation of legislation, which he deems discriminatory.

5.4 On access to higher education, he claims that the State party did not explain why non-Australian residents do not have access to the same higher education loan schemes and tuition discounts as Australian citizens. He adds that while non-New Zealand permanent residents will eventually be entitled to apply for citizenship, and therefore benefit from access to the Government loan scheme, he, as a New Zealand national, cannot comply with the discriminatory citizenship requirement imposed by law, as he is not considered a permanent resident. He adds that holding a permanent visa would in any case not entitle him to apply for tuition loans and discounts, unless he held a permanent *humanitarian* visa. He maintains that this differentiation based on nationality and immigration status has no legitimate aim.

5.5 Regarding the right to nationality, the petitioner reiterates that the requirement for permanent residency is discriminatory. He stresses that his New Zealand nationality is being used as an illegitimate impediment to receiving Australian citizenship. The range of domestic remedies cited by the State party would only be relevant to the holder of a permanent visa who has been denied citizenship as a result of an administrative decision. In his case, he claims to have been denied his right to nationality by the direct operation of legislation, which he deems discriminatory. He also notes that the application procedure for a permanent visa is an onerous one, requiring that the applicant meet strict conditions, which represent significant barriers preventing long-term residents from enjoying social security and higher education benefits, as well as access to Australian citizenship.

5.6 The petitioner reaffirms that all domestic remedies are illusory. He notes that the State party did not dispute that domestic law does not offer him any protection or remedy for discrimination based on New Zealand nationality concerning eligibility for Australian citizenship. Such discrimination falls within the ambit of the concept of racial discrimination. By failing to offer him effective protection from, and remedy for such racial discrimination, the State party breached articles 2(1) (a) and 6 of the Convention.



### Issues and proceedings before the Committee

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of all Forms of Racial Discrimination must decide, pursuant to article 14, paragraph 7(a), of the Convention, whether the current communication is admissible.

6.2 The Committee has noted the State party's contention that the author's communication should be considered inadmissible as it is incompatible with the provisions of the Convention (rule 91(c) of the Committee's rules of procedure), and the author failed to exhaust domestic remedies (rule 91(e)).

6.3 On the compatibility of the communication with rule 91(c) of the Committee's rules of procedure, the State party argues that the author's allegations do not fall *ratione materiae* within the scope of the definition of racial discrimination, as provided in article 1(1) of the Convention. The State party noted that this definition does not recognise nationality as a ground of racial discrimination. It further noted that article 1(2) of the Convention specifically excluded distinctions, exclusions, restrictions, or preferences made by a State party between citizens and non-citizens from the Convention. Taking into account general recommendation No. 30 of 2004 and in particular the necessity to interpret article 1, paragraph 2, of the Convention in the light of article 5, the Committee does not consider that the communication as such is *prima facie* incompatible with the provisions of the Convention.

6.4 The Committee notes the State party's contention that the communication should be considered inadmissible under rule 91(e) of the rules of procedure, as the author failed to exhaust domestic remedies. The petitioner in turn maintains that complaints to the Human Rights and Equal Opportunity Commission (HREOC) or the Commonwealth Ombudsman would have no prospect of success. The Committee observes that the HREOC cannot proceed with any complaint under the Convention, and that the HREOC Act does not cover complaints where the events complained of are the result of the direct operation of legislation. The Committee recalls that discrimination on the ground of a person's citizenship is not a ground covered by the Racial Discrimination Act (1975). The State party has conceded this. The Committee refers to its decision on communication N<sup>o</sup> 39/2006, *D.F. v. Australia*,<sup>j</sup> where the complaint had been rejected by the HREOC on the three grounds evoked above. It is therefore reasonable to assume that had the author in this case brought a complaint before the HREOC, it would have failed on the same grounds. In any event, the Committee notes that any decision of the HREOC or the Commonwealth Ombudsman, even if they had accepted the petitioner's complaint and decided in his favour, would only have had recommendatory rather than binding effect, and the State party would be free to disregard such decisions. The Committee therefore considers that none of the proposed remedies can be described as one which would be effective.<sup>k</sup>

6.5 As for the State party's contention that the author also had a number of judicial instances before which he could have sought remedy, the Committee reiterates that domestic remedies need not be exhausted if they objectively have no prospect of success. This is the case where under applicable domestic law, the claim would inevitably be dismissed, or where established jurisprudence of the highest domestic tribunals would preclude a positive result. Taking into account the clear wording of the decision of the Full Court of the Federal Court of Australia in the *Macabenta* case,<sup>l</sup> which excluded nationality as a recognized discrimination ground within the Racial Discrimination Act (1975), the Committee concludes that there were no effective remedies that the author could have pursued. As the Committee sees no other impediment to admissibility, it proceeds to the consideration of the case on its merits.

7.1 The Committee observes that the State party contests the petitioner's claim that he is discriminated against on the basis of his national origin with respect to the distribution of

social security benefits. It observed that prior to amendments introduced in 2001, New Zealand citizens residing in Australia enjoyed preferential treatment with regards to access to social security payments in Australia, as compared with foreign nationals of other States who were neither Australian citizens, nor permanent residents. Pursuant to the 2001 amendments, these benefits were withdrawn from all other New Zealand citizens, to ensure that regardless of their place of their place of birth, all were placed within the same position as migrants from other countries in Australia. The Committee notes that like other non-citizens, New Zealand citizens in Australia can apply on the same terms for a permanent resident's visa or Australian citizenship, the receipt of either of which would bring them within the definition of "Australian resident" for the purposes of receiving the social security benefits in question. In this context, the Committee refers to its Opinion on case N° 39/2006, *D.F. v. Australia*, where the Committee examined a comparable claim, and found that the 2001 amendments did not result in the operation of a distinction, but rather in the removal of such a distinction, which had placed the author and all New Zealand citizens in a more favourable position compared to other non-citizens. The Committee believes that this analysis is pertinent, and applicable in the present situation. The author has not demonstrated that the implementation of the Social Security Act (SSA) results in distinctions based on national origin. He has failed to show that his national origin would be an impediment to receiving a permanent resident's visa or Australian citizenship, which would make him eligible for the benefits in question under the SSA. For these reasons, the Committee concludes that the Act in question does not make distinctions based on national origin and thus finds no violation of either article 5 (e)(iv) or 2(1)(a), of the Convention.

7.2 Regarding the right to education, the Committee noted the author's contention that the eligibility criteria set forth in the Higher Education Support Act (2003) (HESA), requiring that the applicant of student loans and tuition fee discounts must be either an Australian citizen, or a "permanent humanitarian visa holder", i.e. a refugee, have unduly restricted his right to education. The Committee also took note of the State party's argument, alleging that the rationale for such restriction was to ensure that publicly funded higher education meets, first and foremost, the needs of Australian citizens, and to assist in managing the debt avoidance potential related to non-Australian residents borrowing taxpayer funds through student loans, and then moving back overseas. The Committee notes that the author's lack of entitlement to such benefits is not based on his national origin, but on the fact that he is not an Australian citizen, the holder of a permanent humanitarian visa, or the holder of a permanent visa undertaking a unit of study as part of a bridging course for overseas-trained professionals. New Zealand citizens living in Australia are treated in the same way as other foreign nationals who do not meet these objective requirements. Even if it favours Australian citizens and recognized refugees, it is not possible to reach the conclusion that the system works to the detriment of persons of a particular national origin. Like other non-citizens, New Zealand nationals in Australia can apply on the same terms as persons of other nationalities for a permanent resident's visa, which in turn would entitle them to apply for Australian citizenship subsequently, the receipt of which would bring them within the eligibility requirements of the HESA. The author has not demonstrated that the implementation of the HESA results in distinctions based on national origin. He has failed to show that his national origin would be an impediment to receiving a permanent resident's visa or Australian citizenship, which would make him eligible for benefits under the HESA. For these reasons, and insofar as the author's complaint is based on article 5 (e) (v) and 2(1) (a) of the Convention, the Committee considers it to be ill-founded.

7.3 With regards to the right to nationality, the Committee notes the author's contention that the restrictive definition of "permanent resident" under the Australian Citizenship Act (2007) (ACA) unduly restricts his right to nationality under the Convention. The Committee also noted the State party's argument that the author, as a New Zealand citizen,

can obtain a permanent resident visa and then apply for Australian citizenship. There is no evidence in the communication to suggest that the author made any such attempts to gain permanent residency as a step preparatory to applying to Australian citizenship. The Committee observes that there are no obstacles imposed particularly on New Zealand nationals to acquiring permanent residency in Australia or Australian citizenship. The author has not demonstrated that the implementation of the ACA results in unjustified or disproportionate distinctions based on national origin. He has failed to show that his national origin would be an impediment to receiving a permanent resident's visa or Australian citizenship, that the majority of visa holders are non-citizens of national origins different to himself, or indeed that he has been refused such a visa, or Australian citizenship, on the grounds of his national origin. For these reasons, the Committee concludes that the Act in question does not make any distinctions based on national origin and thus finds no violation of either article 5 (d)(iii) or 2(1)(a) of the Convention.

7.4 The Committee noted the petitioner's argument that the State party failed to provide him effective protection from, and remedy for the preceding allegations of discrimination on the ground of nationality under the Convention, and that by doing so, Australia failed to pursue a policy of eliminating racial discrimination. The Committee also notes the State party's argument that it is not until the petitioner seeks relief through the various domestic remedies available that any assessment on their compliance with the Convention can be made. The Committee noted that the petitioner has not applied for permanent residency or for Australian citizenship, the acquisition of which is central to all his claims for entitlement to the various benefits sought. The Committee concluded that there is no violation by the State party of the Convention *vis-à-vis* the author, with regard to any of the above allegations. The State party cannot be held accountable to ensure protection from, or remedies for violations which it did not commit. The Committee thus finds no violation of either article 6, or article 2(1)(a), of the Convention.

8. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of any of the provisions of the Convention.

[Adopted in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

#### Notes

<sup>a</sup> Sections 90.5 and 104.5 of HESA.

<sup>b</sup> Section 5 (2), read with Schedule 1 of ACA.

<sup>c</sup> *Macabenta v. Minister of State for Immigration and Multicultural Affairs* [1998] 385 FCA.

<sup>d</sup> The author stresses that by rejecting special leave to appeal in the *Macabenta* case, the High Court settled the point that nationality is not a recognized ground of discrimination under the Racial Discrimination Act (1975).

<sup>e</sup> The author refers to Human Rights Committee, communication No. 900/1999, *C. v. Australia*, decision adopted on 28 October 2002 and Committee on the Elimination of Racial Discrimination, communication No. 39/2006, *D.F. v. Australia*, decision adopted on 22 February 2008.

<sup>f</sup> The State party also refers to Australia's Racial Discrimination Act (1975), which implements Australia's obligations under the Convention.

<sup>g</sup> The State party refers to Committee on the Elimination of Racial Discrimination, communication No. 009/1997, *D.S. v. Sweden*, inadmissibility decision adopted on 17 August 1998, para. 6.4.

<sup>h</sup> The State party refers to general recommendation No. 30 (2004) and to communication No. 39/2006, *D.F. v. Australia*, decision adopted on 22 February 2008.

- <sup>i</sup> It refers to article 1(3) of the Convention and to general recommendation No. 30 (2004), para. 14.
- <sup>j</sup> Decision adopted on 22 February 2008.
- <sup>k</sup> The Committee here refers to a relevant and similar analysis made by the Human Rights Committee in communication No. 900/1999, *Mr. C. v. Australia*, decision adopted on 28 October 2002, para. 7.3.
- <sup>l</sup> *Macabenta v. Minister of State for Immigration and Multicultural Affairs* [1998] 385 FCA, cited in para. 2.11 above.

## Annex IV

### Follow-up information provided in relation to cases in which the Committee adopted recommendations

This annex compiles information received on follow-up to individual communications since the last annual report,<sup>a</sup> as well as any decisions made by the Committee on the nature of those responses.

<b>State party</b>	<b>Denmark</b>
<b>Case and No.</b>	<b>Murat Er, 40/2007</b>
<b>Opinion adopted on</b>	8 August 2007
<b>Issues and violations found</b>	Ethnic discriminatory practice in schools with respect to educational and training possibilities, failure to carry out effective investigation – articles 2, paragraph 1 (d); 5, paragraph (e) (v); and article 6.
<b>Remedy recommended</b>	The Committee on the Elimination of Racial Discrimination recommends that the State party grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.
<b>Date of examination of report(s) since adoption</b>	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
<b>Due date for State party response</b>	9 January 2008
<b>Date of reply</b>	10 January 2008; 8 January and 29 May 2009
<b>State party response</b>	On 10 January 2008, the State party forwarded a translation of a copy of a letter from its Complaints Committee for Ethnic Equal Treatment under the Danish Institute for Human Rights to the Committee, which it is assumed is to be considered as the State party's response to the Committee's decision. The Complaints Committee submits that it agrees with the Committee's decision on admissibility, that the petitioner must be considered a potential victim of discrimination as his chances of being recruited as a trainee were considered limited compared with students of ethnic Danish origin, and refers to the decision of the Complaints Committee of 1 September 2004, which was of a similar view. However, it states that in the judgement of the High Court of Eastern Denmark of 27 June 2006, the court took no position on the school's willingness to accommodate requests from employers only to accept ethnic Danes as trainees, and that thus the Danish courts have not definitively determined whether the school was prepared to accommodate such requests.

The judgement of this court should be seen in the light of the fact that the petitioner had claimed compensation and had not claimed that the college should be ordered to acknowledge having violated the Act on Ethnic Equal Treatment by accommodating requests from employers to accept only ethnic Danes as trainees. As to the Committee's recommendation on compensation, the Complaints Committee states that pursuant to general principles of State liability under public international law, it would be sufficient in the circumstances to compensate potential victims by granting redress in the form of establishing the existence of the violation. As the petitioner could not prove that he was an actual victim of ethnic discrimination, the Complaints Committee considers that the State party is not obliged to grant the petitioner financial compensation. In addition, on the violation of failing to investigate, the Complaints Committee submits that it fails to see what more could have been done to carry out an effective investigation of the case – witness statements were produced in court and the case was considered by the Complaints Committee itself, and the City and High Courts.

**Petitioner's response**

On 14 March 2008, the petitioner commented on the State party's response. He stated that it does not make a decisive difference for his status as a potential victim of discrimination whether the school opts to accommodate the demand from an employer only to send ethnic Danes, or whether the school in anticipation of problems with an employer decides not to send trainees of a different ethnic background – the "not-P" in this case. In both cases, the school has exercised differential treatment prior to the question emerging of whether a given student should be sent as a trainee and was qualified for it at a given time.

As to the State party's argument on compensation, the petitioner submits that the Complaints Committee is not competent to address questions of compensation, and accordingly does not have the facts at its disposal. The petitioner has suffered distress (and he refers to the medical evidence produced in court) and non-economic damage from the case, in that he was marginalized from the labour force and discontinued his training as a carpenter. He also incurred costs in the proceedings designed to prevent and redress the breach found and instituted the case also for preventive reasons, to stop what he considers is a widespread practice of discrimination in vocational schools.

As to the argument on the State party's failure to investigate, the petitioner stated that the issue of whether there was a request from an employer who was accommodated by the school or whether the school was acting in anticipation of a problem could have been resolved if the identity of the employers had been

divulged, so they could be questioned as a witness in court. Since they were not identified and the “P-note” not produced, the evidentiary issue should have been resolved in favour of the petitioner. The petitioner refers to research conducted in January 2008, in which it concluded that 63 per cent of consultants employed at vocational colleges admitted that they try to meet companies’ demands for trainees with an ethnic Danish background and that 8 out of 10 consultants experienced companies only wanting trainees with a Danish background.

Finally, the petitioner submits that the State party has taken no steps to remedy the breach of the Convention. It refers to the jurisprudence of the European Convention on Human Rights on compensation and proposes that the matter be settled with a compensation of DKr 115,000 (breakdown provided), free of tax.

**State party’s supplementary response**

On 8 January 2009, the State party reiterated its request to the Committee to clarify what is meant by an “effective investigation”. It informed the Committee that the petitioner received legal aid in an amount of DKr 40,500 (approx. 5,400 euros). With respect to his claim for reimbursement of his costs and expenses before the Danish High Court of Eastern Denmark, the State party notes that the Court’s decision on this case was that the petitioner should pay the sum of DKr 25,000 to the technical school in question, but that the petitioner’s representative had informed the Government that it would cover the costs and expenses on his behalf. In any event, according to the State party, the Committee had not recommended the payment of compensation for costs and expenses before the national courts.

As to the payment of non-pecuniary compensation, or moral compensation, the State party maintains its view that as the petitioner was not personally targeted by the actions in the present case it is not reasonable to award compensation for such loss. In this regard, the State party distinguishes this case from that of *L.K. v. the Netherlands* (No. 4/1991) and *Habassi v. Denmark* (4/1991) and considers that the present case is more in line with that of *Hassan Gelle v. Denmark* (No. 34/2004), in which the State party’s response was considered satisfactory.

On the issue of publicity, the State party submits that the decision was forwarded to the Danish Court Administration, the complaints committee for ethnic equal treatment and to the Ministry of Education. The Ministry sent letters to all vocational schools in the State party emphasizing that it is against the law to categorize students by ethnicity and that the school associations, the management and the teachers have a joint responsibility in this field.

**Petitioner's comments**

On 9 March 2009, the author commented on the State party's submission and requests the Committee to remain seized of the case under the follow-up procedure. He refers the State party to the Human Rights Committee's general comment No. 33 (2008) in which it stated that, "States parties must use whatever means lie within their powers in order to give effect to the Views issued by the Committee". According to the petitioner, the State party has the same obligation to the Committee. In his view, the State party understands what is expected of it to implement the Committee's opinion but is simply unwilling to do so. On the issue of compensation, the petitioner submits that the State party is confusing the issue of legal aid and compensation, and submits that he would have been entitled to legal aid even if the Committee had not found a violation of the Convention. As to the High Court costs paid by the petitioner's representative, the petitioner submits that this money was still lost as a result of an incorrect decision of the Court. The petitioner refers to other similar cases brought before the Danish national courts since the case under consideration. He also submits that he is not aware that any letter has been sent to the vocational schools as indicated by the State party, and in any event does not consider the measures taken by the State party to publish the views as adequate. In his view, wide publicity should include a press release or similar action.

On 29 May 2009, the State party provided a copy of the letter, dated 23 April 2009, which was sent to all technical vocational schools and in which a copy of the Committee's opinion is included.

**Committee's decision**

The Committee, while welcoming the State party's recognition of a violation of article 5, paragraph e (v), of the Convention, regrets the State party's view that recognition of a violation in itself should be a sufficient remedy and that it thus should not be obliged to grant the petitioner compensation. The Committee also regrets the State party's refusal to acknowledge that it violated the provisions under articles 2, paragraph 1 (d) and 6, of the Convention.

The Committee regards the follow-up dialogue as ongoing and in light of the petitioner's comments would wish to receive further information from the State party on the measures it intends to take to implement its opinion, including the granting of compensation.

At its seventy-fifth session, the Committee examined both the State party's and the petitioner's response with respect to the Committee's decision on follow-up. It reiterates its earlier decisions that while welcoming the State party's recognition of a violation of article 5, paragraph e (v), of the Convention, it regrets the State



party's view that recognition of a violation in itself should be a sufficient remedy and that it thus should not be obliged to grant the petitioner compensation. The Committee also regrets the State party's refusal to acknowledge that it violated the provisions under articles 2, paragraph 1 (d) and 6, of the Convention. However, in light of the firm refusal by the State party to pay non-pecuniary compensation to the petitioner, the Committee considers that no useful purpose will be served in pursuing the follow-up dialogue with the State party.

*Note*

<sup>a</sup> *Official Records of the General Assembly, Sixty-third Session, Supplement No. 18 (A/63/18).*

**Annex V****Documents received by the Committee at its seventy-fourth and seventy-fifth sessions in conformity with article 15 of the Convention**

The following is a list of the working papers referred to in chapter VIII submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

A/AC.109/2009/1	British Virgin Islands
A/AC.109/2009/2	Tokelau
A/AC.109/2009/3	Pitcairn
A/AC.109/2009/4	American Samoa
A/AC.109/2009/5	St. Helena
A/AC.109/2009/6	Montserrat
A/AC.109/2009/7	Bermuda
A/AC.109/2009/8	Cayman Islands
A/AC.109/2009/9	New Caledonia
A/AC.109/2009/10	Turks and Caicos Islands
A/AC.109/2009/11	Anguilla
A/AC.109/2009/12	Western Sahara
A/AC.109/2009/13	Falkland Islands (Malvinas)
A/AC.109/2009/14	United States Virgin Islands
A/AC.109/2009/15	Gibraltar
A/AC.109/2009/16	Guam

## Annex VI

### Country Rapporteurs for reports of States parties considered by the Committee and for States parties considered under the review procedure at the seventy-fourth and seventy-fifth sessions

<i>Periodic reports considered by the Committee</i>	<i>Country rapporteur</i>
Azerbaijan Fifth to sixth periodic reports (CERD/C/AZE/6)	Mr. de Gouttes
Bulgaria Fifteenth to nineteenth periodic reports (CERD/C/BGR/19)	Mr. de Gouttes
Chad Tenth to fifteenth periodic reports (CERD/C/TCD/15)	Mr. Ewomsan
Chile Fifteenth to eighteenth periodic reports (CERD/C/CHL/15-18)	Mr. Avtonomov
China Tenth to thirteenth periodic reports (CERD/C/CHN/10-13; CERD/C/HKG/13; CERD/C/MAC/13)	Mr. Sicilianos
Colombia Tenth to fourteenth periodic reports (CERD/C/COL/14)	Mr. Diaconu
Congo Initial to ninth periodic reports (CERD/C/COG/9)	Mr. Ewomsan
Croatia Sixth to eighth periodic reports (CERD/C/HRV/8)	Mr. Diaconu
Ethiopia Seventh to sixteenth periodic reports (CERD/C/ETH/16)	Mr. Peter
Finland Seventeenth and nineteenth periodic reports (CERD/C/FIN/19)	Mr. Kemal
Greece Sixteenth to nineteenth periodic reports (CERD/C/GRC/16-19)	Mr. Lindgren Alves

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<i>Periodic reports considered by the Committee</i>	<i>Country rapporteur</i>
Montenegro Initial report (CERD/C/MNE/1)	Mr. Lahiri
Pakistan Fifteenth to twentieth periodic reports (CERD/C/PAK/20)	Mr. Peter
Peru Fourteenth to seventeenth periodic reports (CERD/C/PER/14-17)	Mr. Cali Tzay
Philippines Fifteenth to twentieth periodic reports (CERD/C/PHL/20)	Mr. Thornberry
Poland Seventeenth to nineteenth periodic reports (CERD/C/POL/19)	Mr. Amir
Suriname Eleventh and twelfth periodic reports (CERD/C/SUR/12)	Mr. Murillo
Tunisia Eighteenth and nineteenth periodic reports (CERD/C/TUN/19)	Mr. Avtonomov
Turkey Initial to third periodic reports (CERD/C/TUR/3)	Mr. Thornberry
United Arab Emirates Twelfth to seventeenth periodic reports (CERD/C/ARE/12-17)	Mr. Prosper
<i>States parties considered under the review procedure</i>	
Gambia	Mr. Amir
<i>States parties which had been scheduled for review, but in respect of which the review was cancelled or postponed</i>	
Panama (submitted report prior to seventy-fourth session)	
Maldives (submitted report prior to seventy-fifth session)	
Kuwait (committed to submit a report soon after the seventy-fifth session)	

## Annex VII

### List of documents issued for the seventy-fourth and seventy-fifth sessions of the Committee<sup>a</sup>

CERD/C/74/1	Provisional agenda and annotations of the seventy-fourth session of the Committee
CERD/C/74/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-fourth session of the Committee
CERD/C/75/1	Provisional agenda and annotations of the seventy-fifth session of the Committee
CERD/C/75/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-fifth session of the Committee
CERD/C/75/3	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.1904-1925	Summary records of the seventy-fourth session of the Committee
CERD/C/SR.1934-1972	Summary records of the seventy-fifth session of the Committee
CERD/C/AZE/CO/6	Concluding observations of the Committee on the Elimination of Racial Discrimination – Azerbaijan
CERD/C/BGR/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Bulgaria
CERD/C/TCD/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination – Chad
CERD/C/CHL/CO/15-18	Concluding observations of the Committee on the Elimination of Racial Discrimination – Chile
CERD/C/CHN/CO/10-13; CERD/C/HKG/CO/13; CERD/C/MAC/CO/13	Concluding observations of the Committee on the Elimination of Racial Discrimination – China
CERD/C/COL/CO/14	Concluding observations of the Committee on the Elimination of Racial Discrimination – Colombia
CERD/C/COG/CO/9	Concluding observations of the Committee on the Elimination of Racial Discrimination – Congo
CERD/C/HRV/CO/8	Concluding observations of the Committee on the Elimination of Racial Discrimination – Croatia
CERD/C/ETH/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination – Ethiopia

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CERD/C/FIN/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Finland
CERD/C/GRC/CO/16-19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Greece
CERD/C/MNE/CO/1	Concluding observations of the Committee on the Elimination of Racial Discrimination – Montenegro
CERD/C/PAK/CO/20	Concluding observations of the Committee on the Elimination of Racial Discrimination – Pakistan
CERD/C/PER/CO/14-17	Concluding observations of the Committee on the Elimination of Racial Discrimination – Peru
CERD/C/PHL/CO/20	Concluding observations of the Committee on the Elimination of Racial Discrimination – Philippines
CERD/C/POL/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Poland
CERD/C/SUR/CO/12	Concluding observations of the Committee on the Elimination of Racial Discrimination – Suriname
CERD/C/TUN/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Tunisia
CERD/C/TUR/CO/3	Concluding observations of the Committee on the Elimination of Racial Discrimination – Turkey
CERD/C/ARE/CO/12-17	Concluding observations of the Committee on the Elimination of Racial Discrimination – United Arab Emirates
CERD/C/AZE/6	Fifth and sixth periodic reports of Azerbaijan
CERD/C/BGR/19	Fifteenth to nineteenth periodic reports of Bulgaria
CERD/C/TCD/15	Tenth to fifteenth periodic reports of Chad
CERD/C/CHL/15-18	Fifteenth to eighteenth periodic reports of Chile
CERD/C/CHN/10-13; CERD/C/HKG/13; CERD/C/MAC/13	Tenth to thirteenth periodic reports of China
CERD/C/COL/14	Tenth to fourteenth periodic reports of Colombia
CERD/C/COG/9	Initial to ninth periodic reports of Congo
CERD/C/HRV/8	Sixth to eighth periodic reports of Croatia
CERD/C/ETH/16	Seventh to sixteenth periodic reports of Ethiopia
CERD/C/FIN/19	Seventeenth to nineteenth periodic reports of Finland
CERD/C/MNE/1	Initial report of Montenegro
CERD/C/PAK/20	Fifteenth to twentieth periodic reports of Pakistan
CERD/C/PER/14-17	Fourteenth to seventeenth periodic reports of Peru
CERD/C/PHL/20	Fifteenth to twentieth periodic reports of the Philippines
CERD/C/POL/19	Seventeenth to nineteenth periodic reports of Poland

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CERD/C/SUR/12	Eleventh and twelfth periodic reports of Suriname
CERD/C/TUN/19	Eighteenth and nineteenth periodic reports of Tunisia
CERD/C/TUR/3	Initial to third periodic reports of Turkey
CERD/C/ARE/12-17	Twelfth to seventeenth periodic reports of the United Arab Emirates
CERD/C/BEL/CO/15/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Belgium
CERD/C/BIH/CO/6/Add.2	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Bosnia and Herzegovina
CERD/C/ITA/CO/15/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Italy
CERD/C/KOR/CO/14/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Republic of Korea
CERD/C/MDA/CO/7/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Republic of Moldova
CERD/C/NZL/CO/17/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – New Zealand
CERD/C/TUR/CO/3/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Turkey
CERD/C/USA/CO/6/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – United States of America

*Note*

<sup>a</sup> This list only concerns documents issued for general distribution.

## Annex VIII

### **Text of general recommendations adopted by the Committee in the reporting period**

#### **General recommendation No. 32 (2009) The meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination**

##### **I. Introduction**

###### **A. Background**

1. At its seventy-first session, the Committee on the Elimination of Racial Discrimination (the Committee) decided to embark upon the task of drafting a new general recommendation on special measures, in the light of the difficulties observed in the understanding of such notion. At its seventy-second session, the Committee decided to hold at its next session a thematic discussion on the subject of special measures within the meaning of articles 1 (4) and 2 (2) of the Convention. The thematic discussion was held on 4 and 5 August 2008 with the participation of States parties to the Convention, representatives of the Committee on the Elimination of Discrimination against Women (CEDAW), the International Labour Organization (ILO), the United Nations Educational, Scientific and Cultural Organization (UNESCO) and non-governmental organizations. Following the discussion, the Committee renewed its determination to work on a general recommendation on special measures, with the objective of providing overall interpretative guidance on the meaning of the above articles in the light of the provisions of the Convention as a whole.

###### **B. Principal sources**

2. The general recommendation is based on the Committee's extensive repertoire of practice referring to special measures under the Convention. Committee practice includes the concluding observations on the reports of States parties to the Convention, communications under article 14 and earlier general recommendations, in particular general recommendation No. 8 (1990) on article 1, paragraphs 1 and 4, of the Convention, as well as general recommendation No. 27 (2000) on discrimination against Roma and general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (descent), both of which make specific reference to special measures.

3. In drafting the recommendation, the Committee has also taken account of work on special measures completed under the aegis of other United Nations-related human rights bodies, notably the report by the Special Rapporteur of the Subcommission on the Promotion and Protection of Human Rights,<sup>a</sup> and general recommendation No. 25 (2004) of the Committee on the Elimination of Discrimination against Women on temporary special measures.<sup>b</sup>

###### **C. Purpose**

4. The purpose of the general recommendation is to provide, in the light of the Committee's experience, practical guidance on the meaning of special measures under the Convention in order to assist States parties in the discharge of their obligations under the



Convention, including reporting obligations. Such guidance may be regarded as consolidating the wealth of Committee recommendations for States parties regarding special measures.

#### **D. Methodology**

5. The Convention, as the Committee has observed on many occasions, is a living instrument that must be interpreted and applied taking into account the circumstances of contemporary society. This approach makes it imperative to read its text in a context-sensitive manner. The context for the present recommendation includes, in addition to the full text of the Convention including its title, preamble and operative articles, the range of universal human rights standards on the principles of non-discrimination and special measures. Context-sensitive interpretation also includes taking into account the particular circumstances of States parties without prejudice to the universal quality of the norms of the Convention. The nature of the Convention and the broad scope of the Convention's provisions imply that, while the conscientious application of Convention principles will produce variations in outcome among States parties, such variations must be fully justifiable in the light of the principles of the Convention.

## **II. Equality and non-discrimination as the basis of special measures**

### **A. Formal and de facto equality**

6. The International Convention on the Elimination of All Forms of Racial Discrimination is based on the principles of the dignity and equality of all human beings. The principle of equality underpinned by the Convention combines formal equality before the law with equal protection of the law, with substantive or de facto equality in the enjoyment and exercise of human rights as the aim to be achieved by the faithful implementation of its principles.

### **B. Direct and indirect discrimination**

7. The principle of enjoyment of human rights on an equal footing is integral to the Convention's prohibition of discrimination on grounds of race, colour, descent, and national or ethnic origin. The "grounds" of discrimination are extended in practice by the notion of "intersectionality" whereby the Committee addresses situations of double or multiple discrimination — such as discrimination on grounds of gender or religion — when discrimination on such a ground appears to exist in combination with a ground or grounds listed in article 1 of the Convention. Discrimination under the Convention includes purposive or intentional discrimination and discrimination in effect. Discrimination is constituted not simply by an unjustifiable "distinction, exclusion or restriction" but also by an unjustifiable "preference", making it especially important that States parties distinguish "special measures" from unjustifiable preferences.

8. On the core notion of discrimination, general recommendation No. 30 (2004) of the Committee observed that differential treatment will "constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim" (para. 4). As a logical corollary of this principle, general recommendation No. 14 (1993) observes that "differentiation of treatment will not constitute discrimination if the criteria for such differentiation, judged against the objectives and purposes of the Convention, are legitimate" (para. 2). The term "non-discrimination" does not signify the necessity of uniform treatment when there are significant differences in situation between one person or group and another, or, in other words, if there is an objective and reasonable justification for differential treatment. To treat

in an equal manner persons or groups whose situations are objectively different will constitute discrimination in effect, as will the unequal treatment of persons whose situations are objectively the same. The Committee has also observed that the application of the principle of non-discrimination requires that the characteristics of groups be taken into consideration.

### **C. Scope of the principle of non-discrimination**

9. The principle of non-discrimination, according to article 1 (1) of the Convention, protects the enjoyment on an equal footing of human rights and fundamental freedoms “in the political, economic, social, cultural or any other field of public life”. The list of human rights to which the principle applies under the Convention is not closed and extends to any field of human rights regulated by the public authorities in the State party. The reference to public life does not limit the scope of the non-discrimination principle to acts of the public administration but should be read in the light of provisions in the Convention mandating measures by States parties to address racial discrimination “by any persons, group or organization”.<sup>c</sup>

10. The concepts of equality and non-discrimination in the Convention, and the obligation on States parties to achieve the objectives of the Convention, are further elaborated and developed through the provisions in articles 1 (4) and 2 (2) regarding special measures.

## **III. The concept of special measures**

### **A. Objective of special measures: advancing effective equality**

11. The concept of special measures is based on the principle that laws, policies and practices adopted and implemented in order to fulfil obligations under the Convention require supplementing, when circumstances warrant, by the adoption of temporary special measures designed to secure to disadvantaged groups the full and equal enjoyment of human rights and fundamental freedoms. Special measures are one component in the ensemble of provisions in the Convention dedicated to the objective of eliminating racial discrimination, the successful achievement of which will require the faithful implementation of all Convention provisions.

### **B. Autonomous meaning of special measures**

12. The terms “special measures” and “special and concrete measures” employed in the Convention may be regarded as functionally equivalent and have an autonomous meaning to be interpreted in the light of the Convention as a whole which may differ from usage in particular States parties. The term “special measures” includes also measures that in some countries may be described as “affirmative measures”, “affirmative action” or “positive action” in cases where they correspond to the provisions of articles 1 (4) and 2 (2) of the Convention, as explained in the following paragraphs. In line with the Convention, the present recommendation employs the terms “special measures” or “special and concrete measures” and encourages States parties to employ terminology that clearly demonstrates the relationship of their laws and practice to these concepts in the Convention. The term “positive discrimination” is, in the context of international human rights standards, a *contradictio in terminis* and should be avoided.

13. “Measures” includes the full span of legislative, executive, administrative, budgetary and regulatory instruments, at every level in the State apparatus, as well as plans, policies, programmes and preferential regimes in areas such as employment, housing, education, culture, and participation in public life for disfavoured groups, devised and implemented on

the basis of such instruments. States parties should include as required in order to fulfil their obligations under the Convention provisions on special measures in their legal systems, whether through general legislation or legislation directed to specific sectors in the light of the range of human rights referred to in article 5 of the Convention, as well as through plans, programmes and other policy initiatives referred to above at national, regional and local levels.

### **C. Special measures and other related notions**

14. The obligation to take special measures is distinct from the general positive obligation of States parties to the Convention to secure human rights and fundamental freedoms on a non-discriminatory basis to persons and groups subject to their jurisdiction; this is a general obligation flowing from the provisions of the Convention as a whole and integral to all parts of the Convention.

15. Special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example, the rights of persons belonging to minorities to enjoy their own culture, profess and practise their own religion and use their own language, the rights of indigenous peoples, including rights to lands traditionally occupied by them, and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological differences from men.<sup>d</sup> Such rights are permanent rights, recognized as such in human rights instruments, including those adopted in the context of the United Nations and its agencies. States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice. The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures.<sup>e</sup>

### **D. Conditions for the adoption and implementation of special measures**

16. Special measures should be appropriate to the situation to be remedied, be legitimate, necessary in a democratic society, respect the principles of fairness and proportionality, and be temporary. The measures should be designed and implemented on the basis of need, grounded in a realistic appraisal of the current situation of the individuals and communities concerned.

17. Appraisals of the need for special measures should be carried out on the basis of accurate data, disaggregated by race, colour, descent and ethnic or national origin and incorporating a gender perspective, on the socioeconomic and cultural<sup>f</sup> status and conditions of the various groups in the population and their participation in the social and economic development of the country.

18. States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.

## **IV. Convention provisions on special measures**

### **A. Article 1, paragraph 4**

19. Article 1, paragraph 4, of the Convention stipulates that “special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that

they shall not be continued after the objectives for which they were taken have been achieved”.

20. By employing the phrase “**shall not be deemed racial discrimination**”, Article 1, paragraph 4, of the Convention makes it clear that special measures taken by States parties under the terms of the Convention do not constitute discrimination, a clarification reinforced by the *travaux préparatoires* of the Convention which record the drafting change from “should not be deemed racial discrimination” to “shall not be deemed racial discrimination”. Accordingly, special measures are not an exception to the principle of non-discrimination but are integral to its meaning and essential to the Convention project of eliminating racial discrimination and advancing human dignity and effective equality.

21. In order to conform to the Convention, special measures do not amount to discrimination when taken for the “**sole purpose**” of ensuring equal enjoyment of human rights and fundamental freedoms. Such a motivation should be made apparent from the nature of the measures themselves, the arguments used by the authorities to justify the measures, and the instruments designed to put the measures into effect. The reference to “sole purpose” limits the scope of acceptable motivations for special measures within the terms of the Convention.

22. The notion of “**adequate advancement**” in article 1, paragraph 4, implies goal-directed programmes which have the objective of alleviating and remedying disparities in the enjoyment of human rights and fundamental freedoms affecting particular groups and individuals, protecting them from discrimination. Such disparities include but are not confined to persistent or structural disparities and de facto inequalities resulting from the circumstances of history that continue to deny to vulnerable groups and individuals the advantages essential for the full development of the human personality. It is not necessary to prove “historic” discrimination in order to validate a programme of special measures; the emphasis should be placed on correcting present disparities and on preventing further imbalances from arising.

23. The term “**protection**” in the paragraph signifies protection from violations of human rights emanating from any source, including discriminatory activities of private persons, in order to ensure the equal enjoyment of human rights and fundamental freedoms. The term “protection” also indicates that special measures may have preventive (of human rights violations) as well as corrective functions.

24. Although the Convention designates “**racial or ethnic groups or individuals requiring ... protection**” (art. 1, para. 4), and “racial groups or individuals belonging to them” (art. 2, para. 2), as the beneficiaries of special measures, the measures shall in principle be available to any group or person covered by article 1 of the Convention, as clearly indicated by the *travaux préparatoires* of the Convention, as well as by the practice of States parties and the relevant concluding observations of the Committee.<sup>8</sup>

25. Article 1, paragraph 4, is expressed more broadly than article 2, paragraph 2, in that it refers to individuals “requiring ... protection” without reference to ethnic group membership. The span of potential beneficiaries or addressees of special measures should, however, be understood in the light of the overall objective of the Convention as dedicated to the elimination of all forms of racial discrimination, with special measures as an essential tool, where appropriate, for the achievement of this objective.

26. Article 1, paragraph 4, provides for limitations on the employment of special measures by States parties. The first limitation is that the measures “**should not lead to the maintenance of separate rights for different racial groups**”. This provision is narrowly drawn to refer to “racial groups” and calls to mind the practice of apartheid referred to in article 3 of the Convention which was imposed by the authorities of the State, and to practices of segregation referred to in that article and in the preamble to the Convention.

The notion of inadmissible “separate rights” must be distinguished from rights accepted and recognized by the international community to secure the existence and identity of groups such as minorities, indigenous peoples and other categories of person whose rights are similarly accepted and recognized within the framework of universal human rights.

27. The second limitation on special measures is that **“they shall not be continued after the objectives for which they have been taken have been achieved”**. This limitation on the operation of special measures is essentially functional and goal-related: the measures should cease to be applied when the objectives for which they were employed — the equality goals — have been sustainably achieved.<sup>h</sup> The length of time permitted for the duration of the measures will vary in light of their objectives, the means utilised to achieve them, and the results of their application. Special measures should, therefore, be carefully tailored to meet the particular needs of the groups or individuals concerned.

## B. Article 2, paragraph 2

28. Article 2, paragraph 2 of the Convention stipulates that “States parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved”.

29. Article 1, paragraph 4 of the Convention is essentially a clarification of the meaning of discrimination when applied to special measures. Article 2, paragraph 2 carries forward the special measures concept into the realm of obligations of States parties, along with the text of Article 2 as a whole. Nuances of difference in the use of terms in the two paragraphs do not disturb their essential unity of concept and purpose.

30. The use in the paragraph of the verb **“shall”** in relation to taking special measures clearly indicates the mandatory nature of the obligation to take such measures. The mandatory nature of the obligation is not weakened by the addition of the phrase **“when the circumstances so warrant”**, a phrase which should be read as providing context for the application of the measures. The phrase has, in principle, an objective meaning in relation to the disparate enjoyment of human rights by persons and groups in the State party and the ensuing need to correct such imbalances.

31. The internal structure of States parties, whether unitary, federal or decentralised, does not affect their responsibility under the Convention, when resorting to special measures, to secure their application throughout the territory of the State. In federal or decentralised States, the federal authorities shall be internationally responsible for designing a framework for the consistent application of special measures in all parts of the State where such measures are necessary.

32. Whereas Article 1, paragraph 4 of the Convention uses the term “special measures”, Article 2, paragraph 2 refers to **“special and concrete measures”**. The *travaux préparatoires* of the Convention do not highlight any distinction between the terms and the Committee has generally employed both terms as synonymous.<sup>i</sup> Bearing in mind the context of article 2 as a broad statement of obligations under the Convention, the terminology employed in article 2, paragraph 2, is appropriate to its context in focusing on the obligation of States parties to adopt measures tailored to fit the situations to be remedied and capable of achieving their objectives.

33. The reference in article 2, paragraph 2, regarding the objective of special measures to ensure **“adequate development and protection”** of groups and individuals may be compared with the use of the term “advancement” in article 1, paragraph 4. The terms of

the Convention signify that special measures should clearly benefit groups and individuals in their enjoyment of human rights. The naming of fields of action in the paragraph — “social, economic, cultural and other fields” — does not describe a closed list. In principle, special measures can reach into all fields of human rights deprivation, including deprivation of the enjoyment of any human rights expressly or impliedly protected by article 5 of the Convention. In all cases it is clear that the reference to limitations of “development” relates only to the situation or condition in which groups or individuals find themselves and is not a reflection on any individual or group characteristic.

34. **Beneficiaries of special measures** under article 2, paragraph 2, may be groups or individuals belonging to such groups. The advancement and protection of communities through special measures is a legitimate objective to be pursued in tandem with respect for the rights and interests of individuals. The identification of an individual as belonging to a group should be based on self-identification by the individual concerned, unless a justification exists to the contrary.

35. Provisions on the **limitations of special measures** in article 2, paragraph 2, are in essence the same, *mutatis mutandis*, as those expressed in article 1, paragraph 4. The requirement to limit the period for which the measures are taken implies the need, as in the design and initiation of the measures, for a continuing system of monitoring their application and results using, as appropriate, quantitative and qualitative methods of appraisal. States parties should also carefully determine whether negative human rights consequences would arise for beneficiary communities consequent upon an abrupt withdrawal of special measures, especially if such have been established for a lengthy period of time.

## V. Recommendations for the preparation of reports by States parties

36. The present guidance on the content of reports confirms and amplifies the guidance provided to States parties in the harmonized guidelines on reporting to the international human rights treaty monitoring bodies,<sup>j</sup> and the guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention.<sup>k</sup>

37. Reports of States parties should describe special measures in relation to any articles of the Convention to which the measures are related. The reports of States parties should also provide information, as appropriate, on:

- The terminology applied to special measures as understood in the Convention
- The justifications for special measures, including relevant statistical and other data on the general situation of beneficiaries, a brief account of how the disparities to be remedied have arisen, and the results to be expected from the application of measures
- The intended beneficiaries of the measures
- The range of consultations undertaken towards the adoption of the measures, including consultations with intended beneficiaries and with civil society generally
- The nature of the measures and how they promote the advancement, development and protection of groups and individuals concerned
- The fields of action or sectors where special measures have been adopted
- Where possible, the envisaged duration of the measures
- The institutions in the State responsible for implementing the measures
- The available mechanisms for monitoring and evaluation of the measures

- Participation by targeted groups and individuals in the implementing institutions and in monitoring and evaluation processes
- The results, provisional or otherwise, of the application of the measures
- Plans for the adoption of new measures and the justifications thereof
- Information on reasons why, in light of situations that appear to justify the adoption of measures, such measures have not been taken

38. In cases where a reservation affecting Convention provisions on special measures is maintained, States parties are invited to provide information as to why such a reservation is considered necessary, the nature and scope of the reservation, its precise effects in terms of national law and policy, and any plans to limit or withdraw the reservation within a specified time frame. In cases where States parties have adopted special measures despite the reservation, they are invited to provide information on such measures in line with the recommendations in paragraph 37 above.

#### Notes

<sup>a</sup> The concept and practice of affirmative action, final report of the Special Rapporteur, Marc Bossuyt (E/CN.4/Sub.2/2002/21).

<sup>b</sup> Adopted at the thirtieth session of the Committee. See *Official Records of the General Assembly, Thirty-eighth Session, Supplement No. 38 (A/59/38)*, annex I (2004).

<sup>c</sup> Article 2 (1) (d); see also article 2 (1) (b).

<sup>d</sup> See CEDAW general recommendation No. 25 (2004), para. 16.

<sup>e</sup> See, for example, *ibid.*, para. 19 and the recommendations of the Forum on Minority Issues on the right to education (A/HRC/10/11/Add.1), para. 12 (2009).

<sup>f</sup> Article 2 (2) includes the term “cultural” as well as “social” and “economic”.

<sup>g</sup> See also paragraph 7 above.

<sup>h</sup> Committee on Economic, Social and Cultural Rights, general comment No. 20 (2009), para. 9.

<sup>i</sup> The United Nations Declaration on the Elimination of All Forms of Racial Discrimination referred, in article 2 (3), to “special and concrete measures”. See also paragraph 12 above.

<sup>j</sup> HRI/MC/2006/3.

<sup>k</sup> CERD/C/2007/1.

## **General recommendation No. 33 (2009) Follow-up to the Durban Review Conference**

*The Committee on the Elimination of Racial Discrimination,*

*Welcoming* the adoption of the Outcome Document of the Durban Review Conference, held in Geneva from 20 to 24 April 2009,

*Welcoming also* the reaffirmation by the Review Conference of the Durban Declaration and Programme of Action, as adopted at the World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001, as well as the commitment to prevent, combat and eradicate these phenomena,

*Noting* that the Durban Review Conference reaffirmed that the International Convention on the Elimination of All Forms of Racial Discrimination is the principal international instrument to prevent, combat and eradicate racism, racial discrimination, xenophobia and related intolerance and that full implementation of the Convention is fundamental for the fight against all forms of racism and racial discrimination occurring today worldwide,

*Welcoming* the acknowledgment by the Durban Review Conference of the interpretation given by the Committee on the Elimination of Racial Discrimination to the definition of the concept of racial discrimination as contained in the Convention, so as to address multiple or aggravated forms of racial discrimination,

*Welcoming also* the expression of appreciation by the Durban Review Conference with regard to the early warning and urgent action procedure and the follow-up procedure established by the Committee,

*Concerned* at the consequences which the world financial and economic crisis could have on the situation of persons belonging to the most vulnerable groups, mainly racial and ethnic groups, leading to an aggravation of discrimination they may suffer,

*Concerned also* at situations of serious, massive and multiple racial and ethnic discrimination which may result in genocide, and recalling in this connection its decision of 2005 on follow-up to the Declaration on the Prevention of Genocide, as well as its indicators of patterns of systematic and massive racial discrimination, with a view to preventing such developments,

*Expressing its satisfaction* at the recognition by the Durban Review Conference of the role and contribution of the Committee in promoting the implementation of the Convention,

*Conscious* of its own responsibilities in the follow-up to the World Conference and the Review Conference and of the need to strengthen its capacity to fully discharge these responsibilities,

*Stressing* the vital role of non-governmental organizations in the struggle against racial discrimination and encouraging them to continue to provide the Committee with pertinent information for the fulfilment of its mandate,

*Noting* the emphasis placed by the Review Conference on the importance of effective national monitoring and evaluation mechanisms in order to ensure that all appropriate steps are taken to follow up on the concluding observations and general recommendations of the Committee,



1. *Recommends* that the States parties to the International Convention on the Elimination of Racial Discrimination:

(a) If they have not yet done so, consider making the declaration under article 14 of the Convention, in order to enable individuals to resort to the envisaged remedy if they consider themselves to be victims of violations of the rights enshrined in the Convention;

(b) If they have made the optional declaration under article 14, increase awareness of this procedure so that its potential can be fully realized;

(c) If they have not yet done so, ratify the amendment to article 8 of the Convention on the financing of the Committee;

(d) Consider withdrawing their reservations to the Convention, if any, taking into account the evolution in the field of human rights since its adoption;

(e) Comply with their reporting obligations under the Convention through timely submission of their periodic reports and other information requested by the Committee, in conformity with the relevant guidelines;

(f) Be mindful that their response to the current financial and economic crisis should not lead to a situation which would increase poverty and underdevelopment and, potentially, a rise in racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants, indigenous peoples, persons belonging to minorities and other particularly vulnerable groups all over the world;

(g) Engage with national human rights institutions and civil society, in a spirit of cooperation and respect, while preparing their periodic reports and with regard to follow-up;

(h) Cooperate with the Committee in the early warning and urgent action procedure and in its follow-up procedure;

(i) Include in their periodic reports information on action plans or other measures to implement the Durban Declaration and Programme of Action, taking into account the Outcome Document of the Review Conference;

(j) When fulfilling their primary responsibility to implement the substantive provisions contained in articles 2 to 7 of the Convention, take into account the relevant parts of the Durban Declaration and Programme of Action and the Outcome Document of the Review Conference;

(k) Consider establishing or strengthening national monitoring and evaluation mechanisms to ensure that all appropriate steps are taken to follow up on the concluding observations and general recommendations of the Committee;

2. *Also recommends:*

(a) That States which have not yet acceded to the International Convention on the Elimination of All Forms of Racial Discrimination sign and ratify the Convention as soon as possible, with a view to achieving its universal ratification;

(b) That States include in their national reports to the universal periodic review mechanism of the Human Rights Council information on measures to prevent and combat racism, racial discrimination, xenophobia and related intolerance;

(c) That all international sporting bodies promote, through their national, regional and international federations, a world of sports free from racism, racial discrimination, xenophobia and related intolerance;

(d) That the Office of the United Nations High Commissioner for Human Rights, through appropriate activities and programmes, further increase awareness of the struggle against racism, racial discrimination, xenophobia and related intolerance, including with regard to the work of treaty bodies and other human rights mechanisms in this area;

(e) That the Office of the High Commissioner for Human Rights continue its efforts to increase awareness and support for the work of the Committee on the Elimination of Racial Discrimination, including through webcasting of the meetings of the Committee, and to provide the Committee with adequate resources to enable it to discharge its mandate fully, as part of the overall endeavour to strengthen the work of the treaty bodies;

(f) That the relevant United Nations bodies and specialized agencies provide technical cooperation and assistance to States in order to enhance the effective implementation of the Convention, taking into account the Durban Declaration and Programme of Action and the Outcome Document of the Review Conference;

3. *Expresses its willingness:*

(a) To continue to cooperate fully with all relevant organs, agencies and entities of the United Nations system, in particular the Office of the High Commissioner on Human Rights, in following up the Durban Declaration and Programme of Action, taking into account the results of the Review Conference;

(b) To continue to cooperate with all mechanisms established under the Human Rights Council, in order to promote the implementation of the recommendations of the Durban Declaration and Programme of Action and all other activities to combat racism, racial discrimination, xenophobia and related intolerance;

(c) To continue its cooperation and joint activities with other human rights treaty bodies, with a view to achieving a more effective follow-up to the Durban Declaration and Programme of Action, taking into consideration the outcome of the Review Conference Document;

(d) To fully take into account in its activity the recommendations and conclusions retained in the Outcome Document of the Review Conference.

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