



**United Nations**

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

**Seventy-second session (18 February-7 March 2008)  
Seventy-third session (28 July-15 August 2008)**

**General Assembly  
Official Records  
Sixty-third session  
Supplement No. 18 (A/63/18)**



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**United Nations • New York, 2008**

### **Note**

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## Letter of transmittal

15 August 2008

Excellency,

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 (discussed in chapter III) in addition to other related activities. The Committee also examined the situation of several States parties under its early warning and urgent procedures (see chapter II). Furthermore, the Committee examined several States parties under its follow-up procedure (see chapter IV).

In order to continue its consideration of subjects of general interest, the Committee held a thematic discussion on the subject of special measures within the meaning of articles 1 (4) and 2 (2) of the Convention at its seventy-third session (28 July-15 August 2008), and also decided to commence drafting a new general recommendation on this subject.

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 53 States parties (see annex I) 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 (see annex I), 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 continual 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 in particular the ongoing preparatory process 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, Excellency, 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 15 August 2008, the closing date of the seventy-third 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-third 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 15 August 2008.

### **B. Sessions and agendas**

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2008. The seventy-second (1846th to 1874th meetings) and seventy-third (1875th to 1902nd meetings) sessions were held at the United Nations Office at Geneva from 18 February to 7 March and from 28 July to 15 August 2008, respectively.

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

### **C. Membership and attendance**

5. The list of members of the Committee for 2008-2009 is as follows:

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Mr. Mahmoud ABOUL-NASR	Egypt	2010
Mr. Nourredine AMIR	Algeria	2010
Mr. Alexei S. AVTONOMOV	Russian Federation	2012
Mr. Jose Francisco CALI TZAY	Guatemala	2012
Ms. Fatimata-Binta Victoire DAH	Burkina Faso	2012

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Mr. Régis de GOUTTES	France	2010
Mr. Ion DIACONU	Romania	2012
Mr. Kokou Mawuena Ika Kana (Dieudonné) EWOMSAN	Togo	2010
Mr. HUANG Yong'an	China	2012
Mr. Anwar KEMAL	Pakistan	2010
Mr. Morton KJAERUM, until the end of the seventy-second session	Denmark	2010
Mr. Dilip LAHIRI	India	2012
Mr. Jose A. LINDGREN ALVES	Brazil	2010
Mr. Pastor Elias MURILLO MARTINEZ	Columbia	2012
Mr. Chris Maina PETER	Tanzania	2012
Mr. Pierre-Richard PROSPER	United States of America	2012
Mr. Linos-Alexandre SICILIANOS	Greece	2010
Mr. Patrick THORNBERRY	United Kingdom of Great Britain and Northern Ireland	2010

6. All members of the Committee attended the seventy-second and seventy-third sessions, bearing in mind that the number of members at the seventy-third session was 17, due to the resignation of Morten Kjaerum after the seventy-second session.

#### **D. Officers of the Committee**

7. At its 1846th meeting (seventy-second session), on 18 February 2008, the Committee elected the Chairperson, Vice-Chairpersons and Rapporteur as listed below in accordance with article 10, paragraph 2, of the Convention, for the terms indicated in brackets.

Chairperson: Ms. Fatimata-Binta Victoire DAH (2008-2010)

Vice-Chairpersons: Mr. Alexei AVTONOMOV (2008-2010)  
Mr. Francisco CALI TZAY (2008-2010)  
Mr. Anwar KEMAL (2008-2010)

Rapporteur: Mr. Linos-Alexandre Sicilianos (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 Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance**

8. 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>1</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.

9. 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.

10. 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. UNHCR representatives attend the sessions of the Committee and report back on any issues of concern raised by Committee members. At the country level, although there is no systematic follow-up to the implementation of the Committee's concluding observations and recommendations in the UNHCR field operations, these are regularly included in activities designed to mainstream human rights in their programmes.

11. Mr. Doudou Diène, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, held a dialogue in a closed meeting with the Committee at its 1848th meeting (seventy-second session), on 19 February 2008.

12. At its 1847th meeting (seventy-second session), the Committee held a brief dialogue with a representative of ILO, Mr. Martin Oelz, a representative of UNHCR, Ms. Karolina Lindholm Billing, the Coordinator of the National Institutions Unit of the Office of the High Commissioner for Human Rights (OHCHR), Mr. Gianni Magazzeni, and a specialist on human rights indicators of the OHCHR Research and Right to Development Branch, Mr. Nicolas Fasel.

13. At its 1875th meeting (seventy-third session), the Committee held a dialogue with a representative of ILO, Ms. Shauna Olney, Coordinator of the Equality team, a representative of UNHCR, Daniela Cicchella, Senior Liaison Officer, Protection, Policy and Legal Advice Section, and a representative of the National Institutions Unit of OHCHR, Ms. Liza Sekagya.

## **F. Other matters**

14. Mr. Ibrahim Salama, Chief of the Human Rights Treaties Branch of OHCHR, addressed the Committee at its 1846th meeting (seventy-second session), on 18 February 2008.

15. Mr. Bacre Ndiaye, addressed the Committee at its 1875th meeting (seventy-third session), on 28 July 2008.

## **G. Adoption of the report**

16. At its 1902nd meeting (seventy-third session), on 15 August 2008, the Committee adopted its annual report to the General Assembly.

## **Note**

<sup>1</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**

17. 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>

18. 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: Mr. Patrick Thornberry

Members: Mr. José Francisco Cali Tzay  
Mr. Anwar Kemal  
Mr. Chris Maina Peter  
Mr. Ion Diaconu

19. 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:

20. At its seventy-second session, the Committee considered new information concerning the situation of the Maya people and their land claims in Belize. In the absence of replies to its letters dated 9 March and 24 August 2007, and following the receipt of new information and the adoption of a pertinent decision by the Supreme Court of Belize, the Committee again sent a letter to Belize requesting it to respond to previously raised questions. The Government of Belize responded to the request for information regarding the situation of the Maya in Belize and their land claims by a letter dated 1 July 2008.

21. Following the receipt of written replies from Brazil on questions raised by the Committee in connection with the incomplete implementation of a presidential decree of 15 September 2005 on the eviction of non-indigenous rice-growers from the indigenous lands of Raposa Serra do Sol (ILRSS) in the State of Roraima, and after a meeting between the Committee's working group on early warning and urgent action and the Permanent Representative of Brazil to the United Nations in Geneva at the Committee's seventy-second session, the Committee, on 7 March 2008, sent a letter to the Government of Brazil to request further clarifications on several issues. At the seventy-third session, in light of new developments in the ongoing dispute and in anticipation of an imminent ruling by the Constitutional Court on the future of the ILRSS, Committee members heard a briefing by a non-governmental organization working on indigenous issues in Brazil. By a letter dated 15 August 2008, the Committee requested the Government of Brazil to provide updated responses to the issues raised by the Committee at the seventy-second session and to take all possible measures to reach a peaceful and viable solution.

22. By a letter dated 7 March 2008 to the Government of Chile, the Committee noted that it had not received a response to questions raised in August 2007 on the impact of industrial activities conducted on indigenous (Mapuche) lands on the health of the local communities. The Committee reiterated its request for information and also requested the State party to submit its overdue periodic

reports prior to 30 June 2008. In accordance with this request, the State party submitted its periodic reports by that date, and included in its report information on the specific issues raised by the Committee.

23. By a letter dated 7 March 2008, the Committee sought further information from the Government of China on the Hong Kong Race Relations Bill, which, in some aspects, did not appear to comply with the requirements of the Convention. The Committee requested China to include specific information on this issue in its overdue periodic report, to be submitted by 1 July 2008. In accordance with this request, the State party submitted its overdue report prior to that date, indicating that the report included detailed information on the content of the Hong Kong Race Relations Bill.

24. Following the receipt of a communication dated 24 January 2008 from the Government of Ethiopia, the Committee, in a letter dated 7 March 2008, welcomed the Government's openness to dialogue, but expressed continuing concern at the existence of serious tensions between different ethnic groups and grave allegations of human rights violations against certain ethnic groups. The Committee also reminded Ethiopia of its commitment to submitting its overdue reports, and asked that information on measures taken to combat racially motivated violence, racial prejudice and intolerance between ethnic groups be included in the report.

25. In response to the political crisis in Kenya, which was accompanied by heightened ethnic tensions and discrimination against certain ethnic groups within the country, the Committee, on 7 March 2008, sent a letter to the High Commissioner of Human Rights, offering its expertise and assistance in addressing the longer-term issues in connection with discrimination on the grounds of ethnicity which the crisis had brought to the forefront. By a letter dated 2 April 2008, the High Commissioner responded to the Committee and expressed her intention to remain in close contact with the Committee on the human rights situation in Kenya.

26. At the seventy-second session, the Committee further considered the situation of the Aymara indigenous communities of Ancomarca, Tacna, in Peru and, by a letter dated 7 March 2008, requested the Government of Peru to provide information and clarifications by 30 June 2008. At the seventy-third session, a Government delegation from Peru met with the Committee to provide information on the issues raised by the Committee and to reconfirm the Government's commitment to submit its overdue periodic report by the end of the year.

27. Following the receipt of information from the Government of the Philippines on the situation of the community of the Subanon of Mount Canatuan, Siocon, Zamboanga del Norte, the Committee, by a letter to the Government dated 7 March 2008, expressed its continued concern and sought further clarifications. The Government responded to the questions posed by the Committee by a letter dated 30 June 2008. At the seventy-third session, in light of the ongoing mining activities of transnational companies without prior consent on the traditional lands of the community of the Subanon, the Committee's working group on early warning and urgent action heard a briefing by a non-governmental organization and also met with the Deputy Permanent Representative of the Philippines to the United Nations in Geneva. By a letter dated 15 August 2008, the Committee sought further clarifications from the Government on some issues.

28. At the seventy-third session, the Committee considered issues relating to a dispute over land exploitation rights arising in connection with a gas pipeline project on indigenous land of the Lubicon Lake Indian Nation in Canada. By a letter dated 15 August 2008, the Committee requested the Government of Canada to provide updated information on measures taken to resolve the issue.



29. After having received reports alleging patterns of forced evictions of Roma from housing in a number of municipalities in the Czech Republic, the Committee considered this matter at its seventy-third session and requested the Government to provide information on these issues. The Committee also requested the Government to expedite the completion of its follow-up report on relevant recommendations adopted by the Committee following the consideration of the sixth and seventh periodic reports of the Czech Republic at its seventieth session.

30. In light of information on alleged discrimination and human rights violations against the indigenous population of north-eastern India, both in connection with the continued application of the Armed Forces Special Powers Act of 1958 as well as a disputed dam construction project on the lands and sacred sites of the indigenous Naga people of Manipur, a letter was sent to the Government on 15 August 2008 requesting updated information and reminding the Government of the Committee's relevant recommendations adopted following the consideration of India's fifteenth to nineteenth periodic reports at its seventieth session.

31. In light of reports on the destruction of Roma camps as well as a general atmosphere of hostility towards Roma and immigrants in Italy, the Committee, by a letter dated 15 August 2008, requested the Government to urgently provide information and to expedite its follow-up on the recommendations adopted by the Committee at its seventy-second session, following the consideration of Italy's periodic report.

32. In light of information on arbitrary displacements and other abuses suffered by members of the indigenous Charco la Pava community in Panama in connection with a dam construction project, the Committee, by a letter dated 15 August 2008, expressed its concern about the situation and requested to be urgently provided with information.

### 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**

#### **AUSTRIA**

33. The Committee considered the fifteenth, sixteenth and seventeenth periodic reports of Austria submitted as one document (CERD/C/AUT/17) at its 1890th and 1891st meetings (CERD/C/SR.1890 and CERD/C/SR.1891), held on 7 and 8 August 2008. At its 1900th meeting (CERD/C/SR.1900), held on 14 August 2008, the Committee adopted the following concluding observations.

#### **A. Introduction**

34. The Committee welcomes the submission of the combined fifteenth to seventeenth periodic reports of the State party, which were prepared in conformity with the reporting guidelines and which address the issues raised by the Committee in its previous concluding observations. It also expresses its appreciation for the frank dialogue held with the delegation and for the comprehensive and thorough written and oral responses provided to the list of issues and to the wide range of questions asked by Committee members.

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

35. The Committee welcomes the adoption of amendments to the Law on Equal Treatment which brought discrimination on grounds of ethnic origin, religion or ideology within the scope of the law and established new institutions and mechanisms which examine complaints regarding alleged discrimination.

36. The Committee welcomes the 2005 Federal Basic Care and Maintenance Act, and the agreement according to article 15a of the Federal Constitution Act regarding the basic care and maintenance of asylum-seekers (Agreement on Basic Care and Maintenance) which ensure the necessary supply of services to asylum-seekers. The Committee further welcomes the agreement on this subject between the federal and the regional authorities.

37. The Committee welcomes the amendment to the Foreign Citizens Employment Act, according to which, in addition to refugees, applicants for asylum also have unrestricted access to the labour market if they have enjoyed the status of a person with a subsidiary title to protection for one year.

38. The Committee welcomes the work carried out by the Advisory Board for Human Rights in monitoring police actions and advising the Federal Minister of the Interior on human rights issues.

39. The Committee notes with appreciation the State party's recruitment campaign "Vienna needs you" aimed at diversifying the police force and increasing the percentage of police officers in Vienna with an immigrant background within the medium and long term.

40. The Committee acknowledges with appreciation good practices and measures with a view to preventing and combating racial discrimination in Austria, such as the Vienna integration and diversity policy and the project "Companies without racism".

### C. Concerns and recommendations

41. While taking note of the explanations given in paragraph 85 of the State party's report according to which references to ethnic origin and the quantification of minority groups are rejected by members of national minorities due to historical trauma and personal fears, the Committee is concerned about the paucity of statistical data and the fragmentation of minorities across provinces, which leads to different treatment of members of the same minority.

**The Committee recommends that, in accordance with paragraph 11 of its revised reporting guidelines (CERD/C/2007/1), the State party conduct censuses and collect data, including on the basis of the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information derived from targeted social surveys conducted on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, in order to obtain accurate information on all ethnic groups living in the territory of the State party.**

42. The Committee is concerned about the distinction between autochthonous minorities and other minority groups. The Committee is further concerned about the application of a different treatment to individuals belonging to "autochthonous national minorities" residing in the so-called "historical settlement areas", inter alia, the Slovene minority in Carinthia and the Roma and Croat minorities in Burgenland, and individuals who do not reside in those settlement areas, such as Slovenes outside Carinthia and Roma and Croats outside Burgenland. The Committee considers that these distinctions may lead to unjustified differential treatment (art. 1).

**The Committee, in light of its general recommendation No. 14 (1993) on article 1, paragraph 1 of the Convention, recommends the State party to take measures in order to avoid unjustified differential treatment of minority groups, on the basis of their area of residence within the State party's territory.**

43. The Committee is concerned that not all the federal provinces of the State party fully implement federal laws and measures and about the differences in the extent of protection against racial discrimination between the federal provinces (art. 2 (1)).

**The Committee recommends that the State party, as a federal State, take the necessary legal and political measures to ensure that all its federal provinces and local authorities observe and comply with the laws and decisions adopted to implement the provisions of the Convention.**

44. While acknowledging that the State party has adopted around 30 different laws on non-discrimination covering different aspects of the Convention, the Committee is concerned about the scattered character of this legal framework and its complexity, due to the different procedures and institutions associated with each of the discrimination laws (art. 2 (1)).

**The Committee recommends that the State party review the effectiveness of its current legal framework on non-discrimination with a view to initiating a harmonization process while continuing its efforts to adopt adequate and comprehensive legislative provisions for the implementation of the Convention in its entirety. The Committee further recommends that the State party invite civil society to participate in such a process.**

45. The Committee welcomes the establishment in 2005 of the Ombudsperson for Equal Treatment irrespective of ethnic affiliation, religion or belief, age or sexual orientation in employment, and the Ombudsperson for Equal Treatment irrespective of ethnic affiliation in other areas. However, the Committee is concerned about the limited resources, as well as his/her limited competence to participate in court proceedings.

**The Committee recommends that the State party take appropriate measures to provide the Ombudspersons with the human and financial resources required to adequately advise and support victims of discrimination, and to grant them competence to initiate and participate in court proceedings as a third party.**

46. The Committee regrets the delay in the implementation of the decision of the Constitutional Court of 13 December 2001 regarding bilingual (Slovene/German) topographical signs in Carinthia, and the corresponding delay in guaranteeing the full protection of the rights of the Slovene minority (art. 2 (1)).

**The Committee urges the State party to accelerate its search for an appropriate solution to the implementation of the decision of 2001 of the Constitutional Court. The Committee requests the State party to provide information in its next periodic report on progress made in implementing this decision.**

47. While welcoming the fact that the State party is in the process of reviewing its Criminal Code, especially section 283 related to the offence of incitement to racial discrimination, the Committee expresses its concern about the restrictive nature of its provisions, which are limited to acts that endanger public order and which are committed against individuals who are members of ethnic groups (art. 4).

**The Committee encourages the State party to complete the review of its Criminal Code and to extend the scope of section 283 to cover all acts of racial discrimination against persons belonging to all vulnerable groups, including ethnic minorities, migrants, asylum-seekers and foreigners, without limiting them to public order, in order to give full effect to provisions of article 4 of the Convention.**

48. The Committee is concerned about reported instances of hate speech by politicians, targeting migrants, asylum-seekers, refugees, persons of African origin and members of minorities (art. 4 (c)).

**The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, including the obligation not to disseminate racist ideas. It recommends that the State party take resolute action to counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin, or to use racist propaganda in politics.**

49. The Committee is concerned about reported cases of ill-treatment which have led to death, or physical abuse committed by the police against asylum-seekers and about the long periods of detention of those whose application was rejected and who are awaiting deportation (art. 5 (b)).

**The Committee recommends that the State party take the necessary measures to treat asylum-seekers humanely and to take appropriate measures to reduce as much as possible the period of detention of asylum-seekers whose application was rejected and who are awaiting deportation.**

50. While taking note of the decree of the Federal Minister of the Interior (2002) concerning the use of non-discriminatory language and expressions by law enforcement officers in their work activities, especially when interacting with persons of foreign origin, and the inclusion of human rights in the training curricula of police officers, the Committee is concerned about reported cases of ill-treatment, arbitrary controls and verbal abuse by the police against non-citizens, notably asylum-seekers, persons of African descent and Roma (art. 5 (b)).

**In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee strongly recommends that the State party take the necessary steps to prevent questioning, arrests, searches and interrogations which are based on physical appearance, colour or membership of a racial or ethnic group, or any profiling. The Committee further urges the State party to severely punish acts of ill-treatment committed by law enforcement officials against non-citizens.**

51. The Committee takes note of reports according to which efficient means of control, monitoring and management to prevent abuses by the police against non-citizens, asylum-seekers and persons of African origin are not yet in place in the State party (art. 5 (b)).

**The Committee adheres to the recommendation made to the State party to consider the establishment of a fully independent monitoring body with powers to investigate complaints about police misconduct.**

52. The Committee notes that the number of individuals belonging to national minorities is much lower than the number of immigrants living in Austria and that of nationals of the State party with an immigrant background. The Committee also notes that the rights enshrined in the Convention are applicable to all persons of a different race or ethnic or national origin and regrets the lack of information concerning their situation, including with regard to their economic, social and cultural rights (art. 5 (e)).

**The Committee recommends that, in accordance with its revised reporting guidelines (CERD/C/2007/1), the State party provide detailed information in its next periodic report on the economic, social and cultural rights of immigrants and nationals with an immigrant background, notably in relation to their rights to work, access to social security, access to education and cultural rights.**

53. The Committee is concerned that in the State party the acts of racial discrimination in every day life in fields such as employment, housing, education and access to public places are only considered minor offences in Austrian law (art. 5 (e)).

**The Committee recommends that the State party review its legislation on racial discrimination, so as to ensure the adequate protection against discrimination in practice of persons belonging to vulnerable groups, such as ethnic minorities, immigrants and asylum-seekers, according to article 5 of the Convention. The Committee also**

**recommends that the State party consider adopting special measures in favour of such groups with the aim of guaranteeing them the full and equal enjoyment of their human rights and fundamental freedoms, in accordance with article 2, paragraph 2, of the Convention.**

54. The Committee is concerned about reports according to which minority groups encounter difficulties in preserving, using and developing their languages (art. 5 (e) (vi)).

**The Committee urges the State party to take effective measures to preserve minorities' languages and culture by, inter alia, encouraging and promoting the use of their mother tongues in the fields of education, public administration and legal proceedings, in the media and through their participation in public life, in accordance with article 7 of the State Treaty of Vienna (1955).**

**In this context, the Committee recommends that the State party review the relevant laws and provisions regarding Autochthonous National Minorities Advisory Councils and their structure, in order to ensure that national minority members of these Councils are freely elected by their respective minority and also to ensure that these Councils represent a real dialogue partner for the different bodies of the State party.**

55. The Committee is concerned about the frequent denial of access to places intended for use by the general public to persons of African and Latin-American origin, and to Roma. The Committee is further concerned about the lack of measures by the police and about the lack of public reaction on this issue in the State party (art. 5 (e) (f)).

**The Committee recommends that the State party take effective measures to ensure that individuals belonging to groups covered by the Convention enjoy and exercise equal rights to access any place or service intended for the use of the general public. The Committee further requests that the State party provide information on such measures.**

56. The Committee notes that the State party's new Law on Equal Treatment improves the avenues of redress. However, the Committee is concerned that due to the complexity of the complaints mechanisms and of the legal framework, it may be difficult for the victims of racial discrimination to have access to the relevant procedures (art. 6).

**The Committee recommends that the State party take steps to simplify the procedures in such cases, to extend the national provisions on the regulation of the burden of proof in civil matters in accordance with the Convention, to ensure that the complaints against racial discrimination are processed free of charge, and to offer legal assistance to persons who need it.**

57. The Committee notes that the small number of court cases on racial discrimination, might be misleading as to the prevalence of racial discrimination problems in the State party (art. 6).

**The Committee, recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as necessarily positive. The State party should inquire whether this situation may be the result of**

**inadequate information provided to victims concerning their rights, or victims' fear of social censure or reprisals, or their fear of the cost and complexity of the judicial process due to limited resources, or lack of trust in the police and judicial authorities, or the insufficient level of awareness by the authorities of offences involving racism. The State party, on the basis of such review should take all necessary measures to ensure that alleged victims of racial discrimination have access to effective remedies.**

58. The Committee notes that the State party has adopted measures to combat racism, stereotyping and racial prejudice in the media, such as the incorporation into the Federal Act for Austrian Broadcasting of provisions prohibiting racial incitement. However, the Committee is concerned that some media contribute to the creation of an atmosphere of hostility and rejection towards non-citizens in the State party (art. 7).

**The Committee recommends that the State party take action to develop educational and media training campaigns to educate the public about the life, society and culture of groups protected under the Convention, including ethnic minorities, migrants and persons of African origin, and the importance of building an inclusive society while respecting the human rights and cultural identity of all groups. The Committee also encourages the State party to work towards the reactivation of the mechanism of self-regulation of print media through the Austrian Press Council, which, according to information received from the State party, is currently inactive.**

59. 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.

60. 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 (A/CONF.189/12, chap. I), when implementing the Convention in its domestic legal order, particularly as regards articles 2 to 7 of the Convention. The Committee takes note of the State party's intention to adopt a National Action Plan against Racism and recommends the State party to take into account all the above recommendations on its elaboration and to include in its next periodic report specific information on such a plan and other measures taken to implement the Durban Declaration. The Committee also encourages the State party to increase its efforts to actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

61. The Committee reiterates its appeal to the State party to 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 resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the 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.

62. 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 the official and national languages.

63. 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.

64. The Committee invites 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).

65. In accordance with article 9, paragraph 1, of the Convention and article 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, 17, and 23 above.

66. The Committee recommends that the State party submit its eighteenth, nineteenth and twentieth periodic reports, in a single document, due on 8 June 2011, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1), as adopted by the Committee at its seventy-first session, and that the report be an update document and address all points raised in the present concluding observations.

## **BELGIUM**

67. The Committee considered the fourteenth and fifteenth periodic reports of Belgium, submitted in one document (CERD/C/BEL/15), at its 1857th and 1858th meetings (CERD/C/SR.1857 and 1858), held on 25 and 26 February 2008. At its 1870th meeting (CERD/C/SR.1870), held on 5 March 2008, it adopted the following concluding observations.

### **A. Introduction**

68. The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, and notes with appreciation the regularity with which the State party submits its reports, in compliance with the requirements of the Convention. It appreciates the attendance of a large delegation, which included representatives of the francophone and Flemish communities and regions, and the extensive and detailed responses provided to the questions asked by the Committee, including in writing.

69. The Committee welcomes the presence in the delegation of a representative of the Centre for Equal Opportunity and Action to Combat Racism and that the representative took an active part in the examination, providing information on the implementation of the Convention in the State party.

### **B. Positive aspects**

70. The Committee acknowledges with appreciation the adoption of the Law of 10 May 2007, modifying the Law of 30 July 1981 on the punishment of acts of racism and xenophobia.

71. The Committee expresses its satisfaction with the work of the Centre for Equal Opportunity and Action to Combat Racism, especially in bringing cases of racial discrimination to court, as well as the assurances given by the delegation that there is no intention to narrow its mandate.



72. The Committee notes with appreciation other measures adopted to prevent and combat racial discrimination in Belgium, especially the 2004 federal action plan to combat racism, anti-Semitism and xenophobic violence and the setting up of a special unit to monitor racist messages on the Internet.

73. The Committee further commends the State party for its active role with respect to the Durban Conference and its follow-up, including the invitation to visit Belgium for the Working Group of Experts on People of African Descent which took place in June 2005.

74. The Committee welcomes the fact that the State party has granted non-EU citizens the right to vote in local elections.

75. The Committee acknowledges with appreciation the “diversity” policy adopted to strengthen the inclusion of migrants in the labour market and in society as such.

### **C. Specific concerns and recommendations**

76. The Committee welcomes the existence of the Centre for Equal Opportunity and Action to Combat Racism, and other bodies with the mandate to promote and protect human rights, but regrets that no independent national human rights institution, established in accordance with the Paris Principles (General Assembly resolution 48/134), exists in the State party.

**The Committee recommends that the State party continue its consideration of the establishment of an independent national human rights institution, with a broad mandate to promote and protect human rights, in accordance with the Paris Principles.**

77. While noting that members of the *Front National* party were found guilty of incitement to racial hatred and sentenced to 250 hours of community service, with a suspension of the right to be elected for 10 years, the Committee remains concerned at the persistence of hate speech in the State party. The Committee is further concerned with the judicial procedure brought before the Constitutional Court by the *Vlaams Belang* party, and others, based on the allegation that article 21 of the Law of 10 May 2007, which declares that the dissemination of ideas based on racial superiority and hatred are criminal offences, violates freedom of expression (arts. 4 (a) and 7).

**In light of its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee recommends that the State party continue to uphold the provisions enshrined in article 4 of the Convention, which are compatible with the right to freedom of opinion and expression, as the exercise of this right carries special duties and responsibilities.**

**The Committee also recommends that the State party strengthen its measures to prevent and combat xenophobia and racial prejudice amongst politicians, public officials and the general public, as well as to promote tolerance between all ethnic and national groups.**

78. The Committee notes that the *Vlaams Blok* party, an organization promoting racism and discriminatory propaganda, dissolved itself in 2004 following a lengthy trial for racist offences. It further notes that the *Vlaams Belang* party, its successor, has been under a judicial procedure before the State Council since May 2006 for “hostility towards rights and liberties guaranteed by the European Convention on Human Rights” (article 15 ter, paragraph 1 of the law of 4 July 1989) aimed at cancelling its public financial allocation. The Committee, however, is concerned that the State

party has not adopted any specific provisions implementing article 4 (b) of the Convention in its domestic legislation, declaring illegal and prohibiting organizations which promote and incite racial discrimination (art. 4 (b)).

**The Committee, recalling its general recommendation No. 15, recommends that the State party adopt legislation to ensure the full and adequate implementation of article 4 of the Convention in its domestic legal system, especially provisions declaring illegal and prohibiting organizations which promote and incite racial discrimination, in accordance with article 4 (c).**

79. The Committee is concerned about the limited number of criminal cases concerning racist offences brought to justice and the high number of complaints that are discontinued, especially with regard to racial violence, hatred and discrimination committed by members of the police force. The Committee is further concerned about the lack of detailed statistical information on investigations, prosecutions and convictions with regard to racist offences, as well as on reparation provided to the victims (arts. 4 (a), 5 (b), 6 and 7).

**In the light of 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 take all necessary measures to ensure that protection and remedies against any acts of racial discrimination are effective, and that complaints are promptly, thoroughly and impartially investigated and persons charged with offences prosecuted and tried.**

**The Committee also recommends that the State party provide, in its next periodic report, detailed information on the investigation, prosecution and conviction of racially motivated offences as well as on reparations provided to victims of such acts.**

**The Committee further recommends that the State party reinforce information campaigns and education 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.**

80. The Committee is concerned about the findings in the study from the National Institute on Criminal Statistics and Criminology concluding that foreigners in the penal system receive more severe sentences than people of Belgian origin. The Committee has noted that, according to the State party, this is not an intentional policy but rather an unconscious “vicious circle” involving many actors in the administration of the penal system (art. 5 (a)).

**The Committee urges the State party to follow this development closely and develop a focused strategy, taking into consideration general recommendation No. 31, for changing the situation in order to ensure that all persons irrespective of race, colour, descent, or national or ethnic origin are treated equally in the penal system.**

81. The Committee is concerned about the fact that ethnic minorities are often over-represented in social urban housing - up to 90 per cent in some cases - which has resulted in de facto segregation in certain neighbourhoods of large cities. In addition, such phenomenon may lead to the use of ethnic criteria to allocate social housing, which would be a discrimination violating the provisions of the Convention (art. 5 (e)).

**The Committee, recalling its general recommendation No. 19 (1995) on article 3 of the Convention, recommends that the State party adopt effective measures to prevent de facto segregation and address the underlying factors, especially as such segregation has a negative impact on the enjoyment of economic, social and cultural rights of the individuals affected.**

**The Committee further recommends that the State party provide detailed information in its next periodic report on specific measures adopted to address the de facto segregation and the impact of these measures.**

82. The Committee is concerned that the Flemish community adopted a decree on 15 December 2006 restricting access to social housing to persons who speak or make the commitment to learn Dutch, as well as by the fact that the decree was endorsed by the State Council. The Committee is further concerned that the municipality of Zaventem, near Brussels, adopted a regulation restricting the acquisition of public lands to Dutch speakers or to persons committing themselves to learn it (art. 5 (e) (iii)).

**While noting that the State party has a federal structure, the Committee recalls that Belgium is a single State under international law and has the obligation to ensure the implementation of the provisions of the Convention throughout its territory.**

**The Committee recommends that the State party ensure that linguistic requirements do not lead to indirect discrimination affecting both citizens and non-citizens who do not speak Dutch, on grounds of their national or ethnic origin, thus impairing their enjoyment of economic, social and cultural rights, in particular their housing rights. The Committee further recommends that the State party provide detailed information in its next periodic report on this issue.**

83. Noting that the European Court of Human Rights, in its judgement of 24 January 2008, found that Belgium had violated article 3 and 5 of the European Convention on Human Rights on ground of inhuman and degrading treatment of asylum-seekers, the Committee shares the concern about the detention of asylum-seekers, the conditions of such detention, and the lack of non-custodial measures applicable to them (art. 5).

**The Committee, recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party adopt all necessary measures to use non-custodial measures for asylum-seekers and, when detention is required, that conditions meet international standards.**

84. The Committee is concerned that police forces continue, in certain cases, to use excessive force during expulsion of non-citizens, as noted by the European Court of Human Rights, in its judgement of 12 October 2006, which found that Belgium had violated article 3 and 8 of the European Convention on Human Rights (arts. 5 (b), 6 and 7).

**The Committee recommends that the State party continue to follow this issue closely, especially by ensuring that members of the police forces are adequately trained in human rights and that all allegations of ill-treatment and excessive use of force are investigated.**

85. While acknowledging that Belgium is party to numerous international human rights instruments, the Committee notes that Belgium has signed but not ratified the Framework Convention for the Protection of National Minorities of the Council of Europe (arts. 2 and 5).

**The Committee recommends that the State party consider ratifying the Framework Convention for the Protection of National Minorities, thus providing its minorities with all the rights recognized in the Convention.**

86. While welcoming the adoption of the law of 10 August 2005 amending various legal provisions with a view to intensifying action to combat trafficking in persons, the Committee notes the absence of detailed statistical information on investigations, prosecutions and convictions of human traffickers, bearing in mind that victims are often women and children belonging to ethnic minorities, including non-citizens. It also notes the lack of measures to protect and provide adequate reparation to victims (art. 5 (b) and (e)).

**The Committee recommends that the State party reinforce its measures to adequately prevent, combat and punish human trafficking, especially of non-citizens, and to provide, in its next periodic report, detailed statistical information in this regard, including on protection and reparation provided to the victims.**

87. While noting that in the State party the competence to regulate the wearing of the headscarf in schools belongs to each school board, the Committee is concerned as to the equal enjoyment of the right to education by all girls in Belgium (art. 5 (e) (v)).

**The Committee recommends that the State party ensure that the procedure implementing school regulations always place emphasis on dialogue in order to prevent such regulations from denying any student the right to education, and to ensure that everyone can always exercise that right.**

88. While acknowledging the work of the Walloon Travellers' Mediation Centre since 2001 and the recognition of caravans as a form of housing in the Flemish Housing Code since 2004, the Committee remains concerned as to the practical enjoyment of social, economic and cultural rights by Roma and Travellers, especially in education and employment (arts. 5 (e) and 7).

**The Committee recommends, in light of its general recommendation No. 27 (2000) on discrimination against Roma, that the State party strengthen its measures to improve the schooling of Roma children, as well as employment opportunities for Roma and Travellers.**

**The Committee further recommends that the State party provide, in its next periodic report, detailed information on the enjoyment of social, economic and cultural rights of Roma and Travellers, as well as on the impact of the measures taken to increase and improve sites on residential land for caravan-dwellers and improve access to health care and other basic facilities.**

89. The Committee further notes that the State party has not withdrawn its declaration on article 4 of the Convention and recommends that it consider doing so.

90. The Committee recommends that the State party 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 resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the 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.

91. 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 (A/CONF.189/12, chap. I), 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 actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

92. 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 (adopted by the General Assembly in resolution 45/158).

93. 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 the official and national languages.

94. 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.

95. 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).

96. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 10, 14, 16 and 22 pursuant to paragraph 1 of rule 65 of the rules of procedure.

97. The Committee recommends that the State party submit its sixteenth to nineteenth periodic reports in a combined single report on the 6 September 2012, taking into account the guidelines for the CERD-specific document, as adopted at its seventy-first session, and that it address all points raised in the present concluding observations.

## **DOMINICAN REPUBLIC**

98. The Committee considered the ninth to twelfth periodic reports of the Dominican Republic, due in 2000, 2002, 2004 and 2006, respectively, and submitted in a single document (CERD/C/DOM/12), at its 1863rd and 1864th meetings (CERD/C/SR.1863 and 1864), held on 28 and 29 February 2008. At its 1873rd meeting (CERD/C/SR.1873), held on 6 March 2008, it adopted the concluding observations as set out below.

### **A. Introduction**

99. The Committee welcomes the ninth to twelfth periodic reports of the Dominican Republic and the fact that the State party was represented by a high-ranking, multisectoral delegation. The Committee expresses appreciation to the Dominican Republic for its written replies to the list of issues and for the detailed answers provided by the delegation to the many questions put to it. Furthermore, the Committee appreciates the will of the State party to engage in a constructive dialogue on the progress made and challenges encountered in implementing the Convention.

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

100. The Committee acknowledges the serious impact that the humanitarian crisis in Haiti has had on the State party, and which has resulted in an elevated number of migrants on its territory.

### **C. Positive aspects**

101. The Committee notes with satisfaction that the State party has ratified the Convention without any reservation.

102. The Committee notes with satisfaction that the State party has ratified, in addition to the Convention on the Elimination of All Forms of Racial Discrimination, four United Nations human rights treaties, namely the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination against Women, and its Optional Protocol, and the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography.

103. The Committee takes note with appreciation of the anti-discrimination provision contained in principle VII of the Labour Code.

104. The Committee appreciates the information provided by the delegation that a draft Penal Code is under consideration to give effect to provisions of the Convention.

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

105. The Committee notes with concern that, in paragraph 67 of its report, the State party, when describing the composition of the population of the Dominican Republic, uses the expressions “racial purity” and “genetic characteristics” of different ethnic groups, which could lead to an erroneous

interpretation of the State party's policies. The Committee also notes the statement by the delegation that, although incidents of racial discrimination may occur, there is no racial discrimination on the part of public authorities, an assertion which the Committee rejects, bearing in mind that no Government is capable of knowing how each public official performs his or her functions (arts. 1, 2 and 5).

**The Committee reminds the State party that it is an obligation under article 2 (d) of the Convention to prohibit and bring to an end, by all appropriate means, including legislation, racial discrimination by any persons, group or organizations.**

106. The Committee notes with concern the absence of general anti-discrimination legislation, including a definition of racial discrimination in line with article 1, paragraph 1, of the Convention (arts. 1 and 2).

**The Committee recommends that the State party adopt comprehensive legislation prohibiting discrimination on the grounds of race, colour, descent or national or ethnic origin.**

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

**The Committee invites the State party to facilitate the prompt establishment of a national human rights institution in accordance with the Paris Principles.**

108. While noting the information provided by the delegation that the draft Penal Code under consideration by National Congress provides for sanctions against racial discrimination, the Committee notes with concern that the draft code has still not been adopted (art. 4).

**The Committee reiterates the recommendation addressed to the State party in its previous concluding observations (CERD/C/304/Add.74, para. 10), that it ensure that the draft Penal Code take into consideration the provisions of article 4 of the Convention fully, and recommends that the draft code be adopted expeditiously. Furthermore, the Committee draws the attention of the State party to its general recommendation 15 (1993) on article 4 and recommends that it take effective steps to ensure the effective enforcement of the new legislation once adopted.**

109. The Committee expresses concern over reports of racial discrimination in access to places or services and facilities to the general public, including leisure facilities (arts. 4 and 5 (f)).

**The Committee recommends that effective measures be taken to ensure that access to places or services and facilities intended for use by the general public is not denied on the grounds of race, colour, or national or ethnic origin, contrary to article 5 (f) of the Convention. The Committee encourages the State party to include adequate provisions to prohibit and provide for sanctions against discrimination in relation to access to places, services and facilities intended for use by the general public in the draft Penal Code.**

110. The Committee is concerned at information received according to which migrants of Haitian origin, whether documented or undocumented, are allegedly detained and subject to collective deportations (“repatriations”) to Haiti without any guarantee of due process (arts. 5 (a) and 6).

**Taking into account its general recommendation 30 (2004) on non-citizens, the Committee recommends that the State party:**

**(a) Ensure that laws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis of race, colour or ethnic or national origin;**

**(b) Ensure that non-citizens are not subject to collective expulsion, in particular in situations where there are insufficient guarantees that the personal circumstances of each of the persons concerned have been taken into account;**

**(c) Avoid the expulsion of non-citizens, especially of long-term residents, that would result in disproportionate interference with the right to family life;**

**(d) Ensure that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed to pursue such remedies effectively. The Committee further recommends that the State party take the necessary measures to accelerate the approval of the provision of Migration Law No. 285-04 setting guidelines on the principle of due process in deportation or expulsion procedures.**

**The Committee invites the State party to adopt humane and internationally accepted measures in dealing with undocumented migrants.**

111. The Committee is concerned at the fact that Migration Law No. 285-04 narrows the scope of article 11 of the Dominican Constitution establishing that any person born in the State party is entitled to Dominican citizenship, with the exception of, in particular, children of persons “in transit”. The law provides that only children of residents born on Dominican soil are entitled to Dominican nationality, and defines “non-residents” to include, inter alia, undocumented migrants living and working in the State party, and temporary workers, which considerably limits access to citizenship for children of migrants of Haitian origin born in the Dominican Republic, and may lead to situations of statelessness. The Committee is furthermore concerned at the retroactive application of this law. The Committee notes with concern the negative and artificial interpretation of the term “in transit” in the State party’s legislation, which has seriously affected the status of many families of Haitian origin who would otherwise be Dominican residents (art. 5 (d) (iii)).

**The Committee strongly recommends that the State party take appropriate measures to guarantee respect for the principle of non-discrimination in children’s access to nationality. The Committee further recommends that the State party consider the possibility of acceding to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, which prohibit deprivation of nationality on discriminatory grounds and stipulate that a State party should grant nationality to persons born on its territory who would otherwise be stateless. The State party should reconsider the status of people who have been in its territory for a long period with a view to regularizing their stay.**



112. The Committee is concerned about the fact that children of foreign mothers born in the Dominican Republic are provided with “pink” birth declarations by hospitals or clinics, and are registered in the Foreigners’ Book, which hampers their access to nationality, a birth certificate and subsequently a national identity card (“cédula”). Birth certificates and identity cards are key documents required for access to a wide range of services and for the equal enjoyment of rights including in the fields of employment, education, including university studies, and health services (art. 5 (d) and (e) (iv)). The Committee furthermore notes that this practice is in contradiction with article 11 of the Constitution of the State party.

**The Committee emphasizes the existing link between the registration of births and the ability of children to enjoy civil, political, economic, social and cultural rights, in particular education and health, as enumerated under article 5 of the Convention. The Committee recommends that the State party take appropriate legislative and administrative measures to ensure equal access to birth certificates for all children in the country, including in the case of late request for birth registration, as ordered in the ruling of the Inter-American Court of Human Rights of 8 September 2005 in the case *Yean and Bosico Children v. The Dominican Republic*.**

113. While taking note of the explanations provided by the delegation on the application of circular 17 of the Central Electoral Board regarding falsified documents, the Committee is concerned at reports alleging that Dominicans of Haitian descent, who are holders of a birth certificate, identity cards and electoral identity documents have had their identity documents confiscated and destroyed, or have been denied copies of these documents on the grounds of their ethnic origin (art. 5 (d)).

**The Committee urges the State party to take immediate steps, including the removal of administrative obstacles, to issue all Dominicans of Haitian descent with identity documents, including those whose documents have been confiscated or destroyed by the authorities.**

114. While welcoming the efforts of the State party to combat human trafficking for purposes of economic exploitation, the Committee is concerned at reports of Haitians being trafficked to the Dominican Republic owing to the high demand for cheap labour in the sugar-cane industry, tourism and construction sectors (art. 5 (e) (i)).

**The Committee urges the State party to develop comprehensive policies and allocate adequate resources to prevent, investigate and punish human trafficking, and to provide assistance to and support for victims.**

115. Notwithstanding the information provided by the delegation on the progress made with respect to access of migrants of Haitian origin to basic social services, the Committee is concerned at reports received regarding the dire living conditions of undocumented Haitian migrants and their children, and their limited access to health services, housing, sanitation, drinking water and education, including university studies (art. 5 (e) (iv), (v)).

**Recalling its general recommendation 30 (2004), the Committee recommends that the State party take all necessary measures to ensure the right of non-citizens, in particular migrants of Haitian origin, to an adequate standard of living, in particular their access to health services, sanitation, drinking water and education.**

116. The Committee is concerned at information received according to which dark-skinned Dominicans working in free zones and in the informal sector, in particular women, and notably those employed as domestic workers, are allegedly victims of double discrimination, on the grounds of both colour and gender (arts. 2 and 5 (i)).

**The Committee recommends that the State party take measures to eliminate discrimination against dark-skinned Dominicans in working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. Recalling its general recommendation 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address the phenomenon of double discrimination faced by dark-skinned Dominican women working in free zones and the informal sector.**

117. The Committee notes the State party's assertion that there have been neither complaints nor court decisions on the subject of racial discrimination, which is put forward as evidence of the absence of racial discrimination in the Dominican Republic (art. 6).

**Recalling its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reminds the State party that the absence of complaints and legal action by victims of racial discrimination may merely be an indication of the absence of relevant specific legislation, 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 sensitize members of the public on their rights, including all legal remedies in the field of racial discrimination.**

118. The Committee is concerned at allegations of discriminatory or vexatious conduct towards dark-skinned persons, both Haitian and Dominican, and those of Haitian origin, by officials working in various national or local authorities (art. 7).

**The Committee recommends that the State party provide awareness-raising training programmes for members of the judiciary, law enforcement officers, teachers, social workers and other public officials on the provisions of the Convention. Furthermore, the Committee encourages the State party to undertake national campaigns to raise awareness of human rights, and in particular of issues concerning racism, xenophobia and related intolerance, in order to prevent and combat all forms of discrimination, and to include intercultural education in school curricula.**

119. 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 (General Assembly resolution 45/158 of 18 December 1990).

120. 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 (A/CONF.189/12, chap. I), when implementing the Convention in 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 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 actively participate in the Preparatory Committee of the Durban Review Conference, in the regional preparatory meeting, in Brazil, in June 2008, and in the Durban Review Conference in 2009.

121. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th 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 Assembly resolution 61/148 of 19 December 2006, in which the 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.

122. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and urges the State party to consider doing so.

123. 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 the official and national languages.

124. 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.

125. 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 (see HRI/GEN/2/Rev.4).

126. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 11, 12 and 13, pursuant to paragraph 1 of rule 65 of the rules of procedure.

127. The Committee recommends that the State party submit its thirteenth and fourteenth periodic reports in a single report, due on 24 June 2010, and that the report be comprehensive and address all points raised in the present concluding observations.

## **ECUADOR**

128. The Committee considered the seventeenth to nineteenth periodic reports of Ecuador, submitted as one document (CERD/C/ECU/19), at its 1876th and 1877th meetings (CERD/C/SR.1876 and CERD/C/SR.1877), held on 28 and 29 July 2008. At its 1896th meeting (CERD/C/SR.1896), held on 12 August 2008, it adopted the following concluding observations.

### **A. Introduction**

129. The Committee welcomes with satisfaction the periodic report submitted by Ecuador and the efforts made by the State party to submit its reports on time. The Committee appreciates the opportunity to renew the dialogue with the State party and expresses its gratitude for the open and frank dialogue with the delegation and the extensive and detailed responses provided, orally and in

writing, both to the list of issues and to the questions posed orally by the members. The Committee also notes the diversity of the delegation, in particular, the presence of a member of the Afro-descendant community.

## **B. Positive aspects**

130. The Committee welcomes the fact that in July 2008 the Constituent Assembly adopted the draft of the new Constitution, which will be the subject of a referendum in September 2008 and in particular the recognition of Ecuador's multi-ethnic and multicultural nature.

131. The Committee welcomes with satisfaction the creation of the Rural Development Programme within the Ministry of Economic and Social Inclusion as a follow-up to the Poverty Reduction and Local Rural Development Project which ended in 2007 and which provided services to citizens from various provinces and cantons with indigenous and Afro-Ecuadorian populations through seven regional offices.

132. The Committee welcomes the fact that the Standing Committee on the National Human Rights Plan has organized human rights training in 22 provinces with the aim of creating a culture of tolerance and non-discrimination through the implementation of the operational plans on the Afro-Ecuadorian people, migrants, foreigners, refugees and others.

133. The Committee notes with satisfaction the fact that the Ministry of Economic and Social Inclusion, through the Office of the Under-Secretary for Social Development, has funded a number of projects in the framework of a strategy for territorial development of rural and urban marginal areas, whose beneficiaries include indigenous and Afro-Ecuadorian organizations.

134. The Committee welcomes the actions taken by the municipality of the Metropolitan District of Quito to improve the living conditions of indigenous and Afro-Ecuadorian citizens living in that district, including the Programmes for Afro-Ecuadorian and Indigenous Development (2001), the Ordinance for Ethnically Based Social Inclusion of the Afro-Ecuadorian People (2007), the Metropolitan Social Council for the Elimination of Racial Discrimination (2007) and the Strategic Metropolitan Plan for the Comprehensive Development of the Afro-Ecuadorian People of Quito (2007-2015).

## **C. Concerns and recommendations**

135. Bearing in mind that the draft Constitution guarantees the specific rights of the indigenous peoples and the Afro-Ecuadorian communities, the Committee remains concerned that a high proportion of persons belonging to the indigenous peoples and Afro-Ecuadorian communities continue to suffer in practice from racism and racial discrimination in the State party.

**The Committee recommends that the State party should undertake to combat racial discrimination by drawing up a comprehensive national policy to combat 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-Ecuadorian communities of the rights guaranteed in the draft Constitution, broken down into the urban and rural population by age and sex.**

136. While the Committee welcomes the information contained in the periodic report on statistics relating to the ethnic composition of the State party, the Committee notes the limitations in the 2001 National Population Census and wishes to receive additional information on the characteristics and particular situation of the various ethnic groups.

**The Committee recommends that the State party should continue to refine the census methodology so that it reflects the ethnic complexity of Ecuadorian society, bearing in mind the principle of self-identification, in keeping with its general recommendation 8 (1990) and with paragraphs 10 to 12 of the guidelines for the CERD-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). In that context, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population.**

137. While the Committee takes note of the fact that the draft Constitution guarantees the enjoyment of the collective rights of indigenous peoples and Afro-Ecuadorians, the Committee expresses its concern at the obstacles in the National Assembly impeding the adoption of specific laws guaranteeing the realization of the collective rights of the indigenous peoples and Afro-Ecuadorians, such as the bill on the collective rights of the Black or Afro-Ecuadorian peoples (art. 2).

**The Committee urges the State party to continue its efforts to secure the adoption of specific legislation fully guaranteeing the collective rights of indigenous peoples and Afro-Ecuadorians. The Committee calls on the State party to include detailed information in this regard in its next report.**

138. While the Committee takes note of Ministerial Decision No. 2467 guaranteeing the Roma people the right to free association for peaceful purposes, the Committee is concerned at the failure of the State party's draft Constitution to grant legal recognition to the Roma people as an ethnic minority (art. 2).

**The Committee reminds the State party of its general recommendation 27 (2000) on discrimination against Roma and encourages the State party to adopt and put into effect national strategies and programmes and display resolute political will to improve the situation of the Roma and protect them against discrimination by State agencies, as well as by all persons and organizations.**

139. While the Committee welcomes with satisfaction the fact that the current Constitution recognizes the right of indigenous peoples and Afro-Ecuadorian communities to administer justice in keeping with their cultures and traditions, it expresses concern that this legal recognition has not been reflected in practice in a model of administration of justice which applies indigenous law (art. 5 (a)).

**The Committee reminds the State party of its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)) and urges the State party to ensure respect for and recognition of the traditional systems of justice of the indigenous peoples, in conformity with international human rights law. In that regard, the Committee encourages the State party to expedite the process of adoption of the bill to harmonize and allocate**

**responsibilities for the administration of justice, whose principal objective is to ensure compatibility between the functions of the system of justice of the indigenous peoples and those of the national system of justice.**

140. The Committee is concerned that indigenous women continue to experience double discrimination based both on their ethnic origin and on their sex, and particularly the murdering of indigenous women (art. 5 (b)).

**The Committee reminds the State party of its general recommendation 25 (2000) on gender dimensions of racial discrimination and recommends that it should take special steps to protect the rights of women belonging to the indigenous peoples and Afro-Ecuadorian communities. The Committee also urges the State party to take immediate steps to put a stop to the murdering of indigenous women.**

141. The Committee expresses concern at alleged ill-treatment and violence against some indigenous peoples by the Armed Forces to secure the interests of oil, mining and logging companies operating in indigenous territories (art. 5 (b)).

**The Committee recommends that the State party should investigate accusations of ill-treatment and violence against the indigenous peoples by some members of the Armed Forces, and that those responsible should be punished. The Committee also urges the State party to take prompt steps to prevent such acts, and in that regard recommends that it should boost training for its Armed Forces in human rights, including the provisions of the Convention.**

142. The Committee notes with concern the low level of participation in political life by the indigenous peoples and Afro-Ecuadorian communities, and the poor representation of indigenous peoples and Afro-Ecuadorians in the Congress (art. 5 (c)).

**In the light of its general recommendation 23 (1997), section 4 (d), the Committee recommends that the State party should redouble its efforts to ensure full participation by indigenous peoples and Afro-Ecuadorians, especially women, in public affairs, and that it should take effective steps to ensure that all indigenous peoples participate in the administration at all levels.**

143. While the Committee takes note of the adoption of the Consultation and Participation Act as a supplement to article 84 of the current Constitution, which requires prior and informed consent, the Committee reiterates its concern at the exploitation of the subsoil resources of the traditional territories of the indigenous peoples, and the fact that in practice the right of the indigenous peoples to be consulted prior to the exploitation of natural resources in their territories is not fully respected. It also expresses its concern at the negative health and environmental effects produced by extractive activities at the expense of the exercise of the right to land and the cultural rights of the indigenous peoples concerned (art. 5 (d) (v)).

**The Committee urges the State party to enforce the Consultation and Participation Act fully in practice and, in light of its general recommendation 23, section 4 (d), consult the indigenous population concerned at each stage of the process and obtain their consent in advance of the implementation of projects for the extraction of natural resources. The**

**Committee also encourages the State party to ensure that oil companies carry out environmental impact studies in the areas where they plan to begin operations before obtaining licences in accordance with the 2002 Government decree.**

144. The Committee is concerned that, despite the Constitutional guarantees of the right of the indigenous population to communal ownership of property, the State party does not grant that population security under the law or effective protection against forcible eviction from their ancestral lands (art. 5 (d) (v)).

**The Committee urges the State party to ensure that the indigenous peoples enjoy effective legal protection against forcible eviction from their ancestral lands, and receive proper compensation if such evictions occur.**

145. The Committee is concerned at the limited enjoyment of economic, social and cultural rights by indigenous peoples and Afro-Ecuadorians, particularly where housing, education, health and employment are concerned, principally as a result of the growing and persistent poverty in the State party (art. 5 (e)).

**The Committee recommends that the State party should 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.**

146. While the Committee takes note of recent progress in efforts to combat illiteracy among the indigenous and Afro-Ecuadorian population, it continues to be concerned at the high level of illiteracy among the indigenous peoples and Afro-Ecuadorian communities (art. 5 (e) (v)).

**The Committee encourages the State party to take immediate and medium-term action to ensure the effective implementation of measures to reduce illiteracy among indigenous people and Afro-Ecuadorians. In addition, the State party's next report should include precise data on the proportion of indigenous people and Afro-Ecuadorians who have access to primary, secondary and university education.**

147. While the Committee is pleased to note the introduction of a system of bilingual education in Ecuador, providing instruction to indigenous children in Spanish and in their own languages, it is concerned at the poor application of the bilingual intercultural system in practice (art. 5 (e) (v)).

**The Committee recommends that the State party should strengthen the legal arrangements underpinning indigenous institutional structures. Specifically, it is recommended that the Department of Bilingual Intercultural Education, the Department for Intercultural Health and the Council of Nationalities (CODENPE) should be given legal status and allocated the necessary resources so that they can perform their functions effectively.**

148. While the Committee welcomes the fact that the National Department for the Defence of the Rights of Indigenous Peoples is authorized to receive individual and collective complaints, it notes the absence of cases before the domestic courts (art. 6).

**The Committee recommends that the State party should provide information in its next report on the outcome of cases, if any, settled before the domestic courts involving racial discrimination against the indigenous peoples and Afro-Ecuadorian communities, and whether the victims received proper compensation. The Committee also reminds the State party that it should widely disseminate information on the available domestic remedies for acts of racial discrimination, legal avenues for obtaining compensation in cases of discrimination and the individual complaint procedure under article 14 of the Convention.**

149. The Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Ecuadorian communities in the media, including the presentation of stereotypes which denigrate the indigenous peoples in television programmes and in articles in the press (art. 7).

**The Committee recommends that the State party should take appropriate steps to combat racial prejudice which leads to racial discrimination in the media, both in public and private channels and in the press. The Committee also recommends that in the sphere of information the State party should foster understanding, tolerance and friendship among the various racial groups in the State party, including the adoption of a media code of conduct which commits the media to show respect for the identity and culture of the indigenous peoples and Afro-Ecuadorian communities.**

150. The Committee recommends that the State party should bear in mind the relevant elements of the Durban Declaration and Programme of Action adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12, chap. I) when incorporating the Convention, and in particular articles 2 to 7, into its domestic legal order. It also recommends that in its next periodic report the State party should provide information on plans of action and other steps taken to give effect to the Durban Declaration and Programme of Action at the national level. The Committee encourages the State party to play an active part in the work of the Preparatory Committee for the Durban Review Conference and in the Conference itself in 2009.

151. The Committee recommends that the State party's reports should be disseminated as soon as they are submitted and that the Committee's observations thereon should also be published in the official and national languages of the State party.

152. 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 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).

153. The Committee recommends that, in preparing its next periodic report, the State party should consult extensively with civil society organizations working in the field of protection of human rights, especially in efforts to combat racial discrimination.

154. 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 10, 13 and 16 above, within one year from the adoption of the present concluding observations.



155. The Committee recommends that the State party should submit its twentieth, twenty-first and twenty-second periodic reports in a single document by 4 January 2012, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1). The report should contain updated information and answer all the points contained in the concluding observations.

## **FIJI**

156. The Committee considered the sixteenth to seventeenth periodic reports of Fiji (CERD/C/FJI/17) submitted in one document at its 1850th and 1851st meetings (CERD/C/SR.1850 and CERD/C/SR.1851), held on 19 and 20 February 2008. At its 1867th meeting (CERD/C/SR.1867), held on 3 March 2008, the Committee adopted the concluding observations as set out below.

### **A. Introduction**

157. The Committee welcomes the timely submission of the periodic report by the State party, and the opportunity thus offered to pursue its dialogue with the State party. It notes with appreciation that the report is in conformity with the reporting guidelines and welcomes the efforts made by the State party to address the issues raised by the Committee in its previous concluding observations (CERD/C/62/CO/3).

158. The Committee expresses appreciation for the dialogue held with the delegation and for the detailed and extensive written and oral responses provided to the list of issues and to the wide range of questions asked by Committee members.

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

159. The Committee is aware of the recent suspension of democratic institutions in Fiji and hopes for a speedy return to a democratic form of government, especially bearing in mind the close connection between democracy and human rights.

### **C. Positive aspects**

160. The Committee welcomes the stated intention of the State party to make the optional declaration under article 14 of the Convention.

161. The Committee notes with satisfaction the adoption of the Immigration Act of 2003 and the repeal of section 8 (1) g of the Act, which marks a substantial improvement in the State party's immigration legislation.

162. The Committee welcomes the commitment expressed by the State party to strive for reconciliation among the communities in Fiji.

163. The Committee commends the ratification by the State party of the International Labour Organization (ILO) Conventions No. 111 on Discrimination in Employment and Occupation and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

#### D. Concerns and recommendations

164. The Committee reiterates its concern about the decision by the State party to maintain its reservations and declarations, which may seriously affect the implementation of the Convention, particularly in the light of recent developments in international law with regard to the protection of indigenous rights.

**The Committee encourages the State party to consider withdrawing its reservations and declarations. In particular, the Committee recommends that the State party reflect on the appropriateness of its reservations and declarations in the light of the developments in international law with regard to indigenous peoples' rights.**

165. Notwithstanding the State party's intention to finalize a peoples' charter for change and progress as a guideline for future policies through consultation and dialogue with various stakeholders including civil society, the Committee is concerned that this needs to be an inclusive process.

**The Committee recommends that the State party guarantee the participation of all ethnic communities in the elaboration of the draft peoples' charter for change and progress. It also expresses the hope that this process is in conformity with the Convention and the Committee's recommendations. The Committee further encourages the State party to hold free and fair elections as soon as possible so as to form a Government based on the 1997 Constitution, which provides for power-sharing between the ethnic communities while ensuring that indigenous forms of governance are respected.**

166. The Committee, while noting the delegation's assurances regarding the independence of the Fiji Human Rights Commission, is concerned that the Commission may no longer fully meet the criteria set out in the Paris Principles relating to the status of national institutions for the promotion and protection of human rights.

**The Committee encourages the State party to take all necessary steps to ensure the independence of its national human rights institution, in accordance with the Paris Principles of 1993 (General Assembly resolution 48/134, annex, of 20 December 1993).**

167. The Committee welcomes the census conducted in 2007. Pending the publication of the census results, it regrets, however, the paucity of the data currently available. The Committee also notes that it has not received data on children of mixed parentage.

**The Committee recommends that the results of the recent census be published as soon as possible, and in this regard 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) concerning the ethnic characteristics of the population. The State party is also encouraged to collect statistics on children of mixed ethnic parentage and to provide the Committee with such data.**

168. While noting the explanation offered by the delegation, the Committee observes that its interpretation of the concept of "indigenous" Fijians remains unclear, in particular in relation to the general concept of "indigenous peoples" in international law. Moreover, the relationship between the rights of "indigenous" Fijians and those of other Fijians needs further explanation (art. 2).

**The Committee recommends that the State party reflect further on how the concept of “indigenous” Fijians relates to the understanding of indigenous peoples in international law, in particular as reflected in International Labour Organization Convention No. 169 on indigenous and tribal peoples’ rights and the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, the State party is invited to explain how the concept of indigenous Fijians is applied in law and practice and its impact on the enjoyment of human rights by everyone in Fiji.**

169. While welcoming the fact that national courts must have regard for international law when interpreting the State party’s Constitution, the Committee regrets that it has not received any information on the extent to which courts have referred to the Convention in accordance with the constitutional provisions (art. 2 (1)).

**The State party is invited to provide the Committee, in its next periodic report, with examples of cases in which the Convention has been utilized by courts when interpreting national law.**

170. The Committee is seriously concerned that no specific laws prohibiting racial discrimination have been adopted by the State party (art. 2 (1)).

**The Committee recommends that the State party adopt a comprehensive law on the elimination of racial discrimination, including regarding acts perpetrated by private persons, taking into consideration all elements of the Convention. Furthermore, the State party should expedite the review of its legislation so as to ensure full compliance with the Convention.**

171. The Committee is concerned that the requirement for individuals to indicate their ethnicity in official forms, such as immigration forms, may lead to discrimination (art. 2 (1)).

**The Committee recommends that the State party take all necessary measures to ensure that the registration of ethnic identity in Fiji is made on the basis of self-identification, and that the operation of the present system does not lead to discriminatory treatment.**

172. The Committee notes the State party’s stated intention to review the scope of its special measures programmes and to consult communities affected when devising new programmes. The Committee remains concerned, however, that the need for special measures, in sectors such as education and employment, may not be based on a realistic appraisal of the current situation of the different communities (art. 2 (2)).

**The Committee encourages the State party to engage in a data-gathering exercise to ensure that special measures are designed and implemented on the basis of need, and that their implementation is monitored and regularly evaluated. The Committee also reiterates the need to ensure that the special measures adopted in no case lead to the maintenance of unequal or separate rights for different ethnic groups after the objectives for which they were taken have been achieved.**

173. While noting the statistical information provided by the State party on the representation of the different ethnic communities in the military and police forces and the State party's explanation of these data, the Committee remains concerned about the lower levels of representation of Indo-Fijians in these forces and in the public administration in general (arts. 2 (2) and 5 (c)).

**The Committee recommends that the State party consider adopting measures to ensure that all ethnic groups are duly represented in State institutions and the public administration, including special measures aimed at achieving adequate representation of all communities, particularly in the military, taking into account its role during the recent political turmoil in the State party.**

174. The Committee notes the information provided by the State party on the education system, and particularly welcomes the compulsory teaching of both the Fijian and Hindi languages, although it remains unclear whether this is applicable to all schools. The Committee, however, considers that the mere re-registering of a school as private and the withdrawal of its funding when its enrolment policies are found to be discriminatory is not conducive to preventing segregation in schools (arts. 3, 5 (e) (v) and 7).

**The Committee recommends that the State party take all necessary steps to ensure that school enrolment policies are not discriminatory, including where necessary by de-registration of schools. It also invites the State party to ensure that curricula convey to students the importance of respect for the different ethnic communities of Fiji. Furthermore, mixed schools should be promoted and strong action taken to promote intercultural education.**

175. While noting the existing criminal law provisions in relation to article 4 of the Convention, the Committee remains concerned by the State party's opposition to the banning of racist organizations and the absence of laws to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance. The Committee also reiterates its regret at the State party's insufficient statistics on discrimination-related cases (art. 4).

**Recalling its Committee's general recommendation 15 on organized violence based on ethnic origin (1993), the Committee strongly recommends that the State party amend its legislation to bring it into line with article 4 of the Convention. The Committee recommends that the State party adopt specific and unambiguous legislation prohibiting racist organizations and amend its laws to the effect that racial motivation constitutes an aggravating circumstance for crimes. Furthermore, the Committee wishes to receive data regarding serious cases of racial hatred or incitement to racial hatred.**

176. The Committee regrets that the State party was not able to provide data concerning the ethnic composition of the prison population (art. 5 (b)).

**Recalling its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system (2005), the Committee encourages the State party to strengthen its efforts to collect the requested data and to provide such data to the Committee in its next periodic report.**

177. The Committee regrets that it has not received adequate information regarding the nature of the relationship between the indigenous communities and their lands and the extent of the land base

subject to customary norms. Furthermore, while taking note that the issue of land rights will be addressed in the proposed peoples' charter, the Committee remains concerned that the current status of land distribution in the State party inhibits the economic development of non-indigenous communities, in particular of Indo-Fijians (art. 5 (d)).

**The Committee invites the State party to include, in its next periodic report, information on the nature of the relationship of the indigenous community to their lands. The Committee also encourages the State party to take appropriate and immediate measures to resolve the land rights issue in a conciliatory and equitable manner, and to take interim measures urgently so as to prevent further deterioration of the economic situation of non-indigenous Fijians. It also strongly recommends that the State party consider reviewing its current land regime so as to make it more accessible to members of non-indigenous communities.**

178. While welcoming the fact that the National Committee on the Prevention of Suicide has identified Indo-Fijians as their key addressees, the Committee continues to be concerned that it has not received information on the effectiveness of measures taken by the State party to address high suicide rates in that community (art. 5 (e) (iv)).

**The Committee recommends that the State party set up a comprehensive evaluation strategy of its suicide prevention programmes, including on the motives behind the pattern of suicides, and to provide information thereon to the Committee in its next periodic report.**

179. The Committee welcomes the adoption of an action plan to combat racial discrimination in the field of education and to promote integration of the student body. It regrets, however, that the State party has not provided sufficiently detailed information on the content of this plan or how it is implemented in practice (art. 7).

**The Committee recommends that the State party provide more detailed information on the action plan as well as on its effectiveness in practice.**

180. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex, of 18 December 1990).

181. 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 (A/CONF.189/12, chap. I), when implementing the Convention in 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 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 increase its efforts to participate actively in the Preparatory Committee of the Durban Review Conference and in the Durban Review Conference in 2009.

182. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th 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 Assembly resolution 61/148, in which the 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.

183. 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 those reports be similarly publicized in the official and national languages.

184. 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 its next periodic report.

185. 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 (see HRI/GEN/2/Rev.4).

186. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information on its follow-up to the recommendations contained in paragraphs 11, 19 and 23 above within one year of the adoption of the present conclusions.

187. The Committee recommends that the State party submit its eighteenth, nineteenth and twentieth periodic reports, in a single document, due on 10 February 2012, taking into account the specific guidelines for Committee on the Elimination of Racial Discrimination documents, as adopted by the Committee at its seventy-first session, and that the report be an update document and address all points raised in the present concluding observations.

## **GERMANY**

188. The Committee considered the sixteenth to eighteenth periodic reports of Germany submitted as one document (CERD/C/DEU/18), at its 1886th and 1887th meetings (CERD/C/SR.1886 and CERD/C/SR.1887), held on 5 and 6 August 2008. At its 1998th meeting (CERD/C/SR.1998) held on 13 August 2008, it adopted the following concluding observations.

### **A. Introduction**

189. The Committee welcomes the submission of Germany's sixteenth to eighteenth periodic reports, which were elaborated in conformity with the Committee's reporting guidelines, and expresses appreciation for the frank and constructive dialogue held with the delegation and for the comprehensive and thorough written replies to the list of issues, provided in a timely manner prior to the session. It further appreciates the attendance of a delegation composed of experts from various ministries, including the representative of the Federal Anti-Discrimination Office of the Ministry for Family Affairs, Senior Citizens, Women and Youth.

190. The Committee appreciates the fact that the German Institute for Human Rights (*Deutsches Institut für Menschenrechte*), non-governmental organizations working on human rights and racism issues, and representatives of the Jewish and Muslim communities, have contributed to the elaboration of the present report.

## **B. Positive aspects**

191. The Committee welcomes the adoption of the General Equal Treatment Act in August 2006 (*Allgemeines Gleichbehandlungsgesetz - AGG*), which prohibits discrimination on the grounds of race and ethnic origin, gender, religion and belief, disability, age and sexual orientation.
192. The Committee welcomes the establishment of the Federal Anti-Discrimination Office within the Federal Ministry for Family Affairs, Senior Citizens, Women and Youth, which provides legal advice to individuals who claim to have been victims of racial discrimination.
193. The Committee welcomes the elaboration of the National Plan of Action against Racism and notes that its content may evolve in the course of time.
194. The Committee welcomes the declaration made by the State party under article 14 of the Convention in September 2001, by which the State party accepted the competence of the Committee to consider individual communications.
195. The Committee welcomes the signature in January 2003 of the Additional Protocol to the Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.
196. The Committee welcomes the creation of the Secretariat for Minorities, which strengthens the visibility of minorities' rights at federal level and offers greater opportunities for minorities to voice their concerns to the federal executive and legislative bodies.
197. The Committee welcomes the enactment of the Law on promotion of the Friesian language in public life adopted in 2004, which strengthens the position of the Friesian minority.
198. The Committee welcomes the entry into force in 2005 of the Immigration Act, the establishment of the National Integration Plan in July 2003 as well as the statement by the delegation that the policy of integration implemented by the State party is not aimed at the assimilation of minority groups.
199. The Committee welcomes the project "Youth for Tolerance and Democracy - against Right-Wing Extremism, Xenophobia and anti-Semitism", which was implemented from 2001 to 2006, as well as the permanent follow-up through the programme "Youth for Diversity, Tolerance and Democracy" launched in January 2007, which is intended to enhance the prevention strategies developed in the previous programme.
200. The Committee welcomes the establishment of the Islam Conference, as a forum in which representatives of the Muslim communities living in Germany meet with representatives of German authorities with the aim of establishing continuous dialogue to address Islamophobic tendencies and discuss relevant policy responses.

### C. Concerns and recommendations

201. While taking note 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.

**The Committee recommends that, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1), 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 targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, so as to be able to evaluate the composition of its population and its situation in economic, social and cultural fields.**

202. While noting the State party's reservations with regard to the use of the term "race", the Committee is concerned that the State party's strong focus on xenophobia, anti-Semitism and right-wing extremism may lead to the neglect of other forms of racial discrimination. The Committee is also concerned that the overall legislative design of key provisions of the Criminal Code may not be sufficiently precise in relation to racist elements in crimes. In this connection, the Committee also regrets the absence of a definition of racial discrimination in the State party's domestic legislation (art. 1).

**The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its national legislation, in accordance with article 1, paragraph 1, of the Convention. The Committee also recommends that the State party broaden its approach to combating racial discrimination with a view to countering such discrimination in all its forms, including expressions of racist prejudices and attitudes.**

203. While noting that the definition of the crimes in sections 86a and 130 of the Criminal Code provides a basis for prosecuting crimes committed via racist propaganda on the Internet, the Committee remains concerned about reported incidents of hate speech, including racist propaganda on the Internet (art. 4 (a)).

**The Committee recommends that the State party increase its efforts to prevent racially motivated offences including hate speech and racist propaganda on the Internet, and ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries with it special duties and responsibilities, in particular the obligation not to disseminate racist ideas. In this respect, the Committee encourages the State party to ratify the Additional Protocol to the Convention on Cybercrime.**

204. The Committee is concerned about the possible negative effects in terms of indirect discrimination on the grounds of ethnic origin, due to the exception to the principle of equal treatment as regards access to rental housing contained in paragraph 19, section III of the General Equal Treatment Act. According to this provision, landlords can refuse to rent apartments to persons



applying for accommodation with a view to creating and maintaining socially stable residential structures and balanced housing estates and also balanced economic, social and cultural conditions (art. 3 and art. 5 (e) (iii)).

**The Committee recommends that the State party guarantee the equal enjoyment of the right to adequate housing by ensuring that housing agencies and other providers of accommodation refrain from engaging in discriminatory practices. Furthermore, the Committee encourages the State party to consider modifying paragraph 19 section III of the General Equal Treatment Act in order to conform with article 5 (e) (iii) of the Convention.**

205. The Committee remains concerned about the increase of reported racist-related incidents against members of the Jewish, Muslim, Roma/Sinti communities as well as German nationals of foreign origin and asylum-seekers, in particular of African origin (art. 5 (b)).

**The Committee recommends that the State party take more resolute action at the federal and Länder level to prevent and punish perpetrators of racially motivated acts of violence against members of the Jewish, Muslim and Roma/Sinti communities, as well as German nationals of foreign origin and asylum-seekers, in particular of African origin. Furthermore, the State party should provide updated statistical data, on an annual basis, on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and the national or ethnic origin of victims.**

206. The Committee is concerned about the addition by some Länder of specific questions to citizenship questionnaires which may be discriminatory, in particular the questionnaire introduced in Baden-Württemberg, which was to be answered by citizens of the 57 member States of the Organization of the Islamic Conference (OIC) who apply for German citizenship (art. 5 (d) (iii)).

**The Committee recommends that the Federal Government encourage the use of questionnaires without discriminatory content, for all applicants for citizenship.**

207. While taking note of the amendments to the Nationality Law simplifying the acquisition of German citizenship by long-term residents, the Committee regrets that a considerable proportion of non-citizens who may fulfil the requirements to obtain naturalization still live in the State party without citizenship, in particular persons of Turkish origin (art. 5 (d) (iii)).

**The Committee recommends that the State party facilitate acquisition of German citizenship by long-term residents and persons born in Germany in order to promote the integration of such residents as may wish to acquire German citizenship without relinquishing their own.**

208. While taking note that the State party recognizes German Roma and Sinti as a national minority, the Committee is concerned that many Roma and Sinti continue to experience discrimination 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 all Roma and Sinti to overcome the disadvantages brought about by**

**persistent discrimination, in particular in the fields of education, employment and housing. Furthermore, the Committee recommends that the framework agreement for the protection of Roma and Sinti between Rhineland-Palatinate and the respective Land association of the Central Council of German Sinti in 2005 be replicated in other Länder.**

209. While noting current proposals for legislative change, the Committee is concerned by reports that the principle of compulsory primary education is not fully applied to children of asylum-seekers in Hesse, Baden-Württemberg and Saarland, with the effect that the children concerned encounter obstacles in connection with school enrolment (art. 5 (e) (v)).

**In light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party ensure that children of asylum-seekers residing in the territory of the State party do not face any obstacles in connection with school enrolment.**

210. The Committee is concerned that children of immigrants are overrepresented in special schools for “under-achievers” (*Sonderschulen*), mainly on account of their lack of adequate German language skills, and underrepresented in secondary and tertiary education (art. 5 (e) (v)).

**The Committee, recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party take effective measures to ensure the integration of children of non-citizens in the regular school system, and reconsider the problem of transfer of such children to *Sonderschulen* including the criteria for any such transfer, as well as improving current arrangements to support the German language skills of such children.**

211. The Committee is concerned about the fragile situation of the Sorbian school network in Saxony and Brandenburg, caused in part by falling school enrolment, which may have an impact on the general principle of the use of minority languages in the school system (art. 5 (e) (v)).

**The Committee recommends that the State party ensure effective implementation of the legal provisions with regard to the use of minority languages in the school system. The State party should encourage the authorities of Saxony and Brandenburg to consider means of strengthening the involvement of the Sorbian minority in decision-making in this field and ensure the continuation of a viable Sorbian school network, including secondary schools, in order to sustain Sorbian language and culture.**

212. The Committee is concerned that the granting of compensation to victims of racially motivated acts under the Victims Compensation Act (*Gesetz über die Entschädigung für Opfer von Gewalttaten - OEG*) appears to be based on the citizenship status of the victims rather than on the seriousness of the acts committed (art. 6).

**The Committee recommends that the State party consider revising the provisions of the Victims Compensation Act in order to provide for compensation to victims of racially motivated crime regardless of their citizenship status.**

213. While noting that the Criminal Code includes a general provision stipulating that the motives and aims of the offender must be taken into account in determining the sentences for crimes, the Committee is concerned that German criminal law does not explicitly include a provision which

stipulates that racist motivation should be taken into account as a specific aggravating circumstance for the purpose of sentencing in relevant crimes. The Committee understands that such a law will be considered by the parliament (art. 6).

**The Committee recommends that the State party continue its efforts to 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.**

214. The Committee is concerned that members of the Roma and Sinti communities are victims of racial prejudice and stigmatization in the media and that insufficient measures have been taken by the State party to address this situation (art. 7).

**The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party take effective measures to counter the dissemination of any ideas of racial or ethnic superiority or racial hatred, as well as the incitement to discrimination and violence against Roma in the media, in accordance with the provisions of the Convention. It encourages the State party to fully implement and where possible improve methods of self-monitoring by the media in order to avoid racially discriminatory or biased language.**

215. The Committee recommends the State party provide information on follow-up measures to give effect to the recommendations of the Committee in Communication No. 38/2006 adopted on 22 February 2008, in conformity with article 14 of the Convention.

216. While taking note of the State party's explanation in its written replies (see question 23), the Committee nevertheless 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 with a view to strengthening the protection of non-citizens against racial discrimination.

217. 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 (A/CONF.189/12, chap. I), 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 the National Action Plan against Racism 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 actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

218. 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 the official language and in minority languages.

219. 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.

220. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 16, 17, 22 and 26 above, pursuant to paragraph 1 of rule 65 of the Committee's rules of procedure.

221. 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).

222. The Committee recommends that the State party submit its combined nineteenth to twenty-second periodic reports in a single report, due on 15 June 2012, 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.

## **ITALY**

223. The Committee considered the fourteenth and fifteenth periodic reports of Italy submitted as one document (CERD/C/ITA/15) at its 1851st and 1852nd meetings (CERD/C/SR.1851 and CERD/C/SR.1852), held on 20 and 21 February 2008. At its 1867th and 1868th meetings (CERD/C/SR.1867 and CERD/C/SR.1868), held on 3 and 4 March 2008, the Committee adopted the concluding observations as set out below.

### **A. Introduction**

224. The Committee welcomes the submission of the fourteenth to fifteenth periodic reports of Italy, which were prepared in conformity with the reporting guidelines, and expresses its appreciation for the frank dialogue held with the delegation and for the comprehensive and thorough written replies to the list of issues, provided in a timely manner prior to the session. It also appreciates the attendance of a delegation composed of experts from various ministries, including from the National Office for the Elimination of Racial Discrimination, and acknowledges their efforts to respond to the Committee's oral questions.

### **B. Positive aspects**

225. The Committee welcomes the adoption of Legislative Decree No. 215 of 9 July 2003, which converted European Council directive 2000/43/EC enshrining the principle of equal treatment of all people regardless of their race or ethnic origin into law.

226. The Committee welcomes the convening of the European Conference on Roma in January 2008, held in Rome, which was aimed at identifying possible solutions to the problems encountered by Roma.

227. The Committee welcomes the entry into force in January 2008 of Law Decree No. 249/07, which affords immigrants with a higher degree of protection against measures involving expulsion.

228. The Committee welcomes the memorandum of understanding for the protection of "gypsy, nomadic and camminanti" minors signed by the association for nomads and the Ministry of Education in June 2005.

229. The Committee welcomes the establishment, in November 2004, under the Ministry of Equal Opportunity, of the National Office for the Elimination of Racial Discrimination, to promote equality and fight discrimination based on race or ethnic origin.

230. The Committee welcomes the information provided by the State party, according to which the Court of Cassation had ruled that any judicial act concerning a defendant would be declared null and void if it had not been translated into the defendant's mother tongue. The Committee also welcomes the establishment of cultural-linguistic mediators that provide information, guidance and support to foreign prisoners during judicial proceedings.

231. The Committee notes with satisfaction the enactment on 22 June 2007 of a law providing for criminal sanctions against employers of undocumented migrants in order to combat exploitation in the workplace.

232. The Committee welcomes the adoption of Law Decree No. 162/2005, which provides new measures aimed at preventing and sanctioning acts of racially motivated violence during sport events, including the setting up of a national observatory on sport events.

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

233. While taking note of the explanations given by the delegation according to which the State party legislation does not allow for a census identifying ethnic groups and makes no 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.

**The Committee recommends that, in accordance with paragraph 11 of its revised reporting guidelines (CERD/C/2007/1), the State party should provide information on the use of mother tongues, languages commonly spoken or other indicators of ethnic diversity, together with any information derived from targeted social surveys conducted on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned.**

234. While noting the assurances provided by the delegation that the State party would consider the recognition of Roma and Sinti as minorities in national law, on an equal footing with the historical linguistic minorities protected by Act No. 482/1999, the Committee is concerned that no comprehensive national legislation and policies addressing the specificities and needs of Roma and Sinti have been adopted (art. 2).

**The Committee, recalling its general recommendation 27 on discrimination against Roma, recommends that the State party adopt and implement a comprehensive national policy and legislation regarding Roma and Sinti with a view to recognizing them as a national minority and protecting and promoting their languages and culture.**

235. The Committee notes that the State party has not yet established an independent national human rights institution. It also takes note of the pledge made to establish a national human rights institution during the election to the Human Rights Council and the approval of a bill by the Chamber of Deputies on 4 April 2007 with a view to establishing such an institution in accordance with the Paris Principles (General Assembly resolution 48/134, annex, of 20 December 1993) (art. 2).

**The Committee recommends that the State party undertake, in consultation with a broad base of civil society representatives and with the support of the Office of the United Nations High Commissioner for Human Rights, the necessary steps to establish an independent national human rights institution in accordance with the Paris Principles.**

236. While welcoming the new policy to combat marginalization of Roma and Sinti in the sphere of housing and facilitating their social inclusion, the Committee is concerned that Roma and Sinti still live in conditions of de facto segregation in camps, in which they lack access to the most basic facilities (arts. 3 and 5 (e) (iii)).

**The Committee, recalling its general recommendation 27, recommends that the State party develop and implement policies and projects aimed at avoiding segregation of Roma communities in housing, to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and maintenance. The Committee further recommends that the State party act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and to refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.**

237. The Committee, while noting the initiatives adopted by the State party to combat racial discrimination and intolerance, is concerned about reported instances of hate speech, including statements targeting foreign nationals and Roma, attributed to politicians (art. 4).

**The Committee recommends that the State party increase its efforts to prevent racially motivated offences and hate speech, and ensure that relevant criminal law provisions are effectively implemented. The Committee recalls that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas. It also recommends that the State party take resolute action to counter any tendency, especially from politicians, to target, stigmatize, stereotype or profile people on the basis of race, colour, descent and national or ethnic origin or to use racist propaganda for political purposes.**

238. The Committee is deeply concerned by the prevailing negative attitudes and stereotypes concerning Roma among the municipalities and the public, resulting in discriminatory ordinances and road signs and other measures adopted by the municipal authorities aimed at the nomadic population (arts. 5 and 7).

**The Committee, recalling its general recommendation 27, requests the State party to ensure that municipalities remove discriminatory ordinances and comply with the State party's obligations under the Convention. The Committee further requests the State party to endeavour, by encouraging a genuine dialogue, consultations or other appropriate means, to improve relations between Roma and non-Roma communities, in particular at the local level, aimed at ending discrimination against the Roma.**

239. The Committee is concerned at reports regarding the situation of undocumented migrant workers from various parts of the world, in particular from Africa, Eastern Europe and Asia, drawing attention to violations of their human rights, in particular of their economic, social and cultural rights,

including alleged ill-treatment, low wages received with considerable delay, long working hours and situations of bonded labour, whereby a part of wages are withheld by employers as payment for accommodation in overcrowded lodgings without electricity or running water (art. 5).

**The Committee, recalling its general recommendation 30 on non-citizens, urges the State party to take measures to eliminate discrimination against non-citizens in working conditions and work requirements, including employment rules and practices with discriminatory purposes or effects. Furthermore, it recommends that the State party take effective measures to prevent and redress the serious problems commonly faced by non-citizen workers, including debt bondage, passport retention, illegal confinement and physical assault.**

240. The Committee is concerned by allegations that foreigners held in the temporary stay and assistance centre of Lampedusa are not properly informed of their rights, do not have access to a lawyer and face collective expulsion. It is further concerned about reports that detention conditions in the centre are unsatisfactory in terms of overcrowding, hygiene, food and medical care, and that some immigrants have suffered ill-treatment (art. 5).

**The State party is encouraged to improve the conditions of stay and assistance centres and reception and identification centres to ensure that adequate health care and better living conditions are provided. It also recalls the obligation of the State party to take measures to ensure that conditions in centres for refugees and asylum-seekers conform to international standards. Furthermore, the Committee recommends that the State party take measures to ensure that non-citizens are not returned or removed to a country or territory where they may be subject to serious human rights violations, including torture and cruel, inhuman or degrading treatment or punishment.**

241. The Committee is concerned about reports of ill-treatment of Roma, in particular of Roma of Romanian origin, by members of the police force in the course of raids in Roma camps, notably following the enactment, in November 2007, of the Presidential Decree No. 181/07 regarding expulsion of foreigners (art. 5 (b)).

**The Committee recommends that the State party take measures to prevent the use of illegal force by the police against Roma, and that local authorities take more resolute action to prevent and punish racially motivated acts of violence against Roma and other persons of foreign origin. In this regard, the Committee draws the attention of the State party to its general recommendation 27 and urges it to ensure protection of the security and integrity of Roma, without any discrimination, by adopting measures to prevent racially motivated acts of violence against them.**

242. While welcoming the initiatives taken by the Ministry of Education at both the central and local levels to ensure the integration and effective schooling of Roma children and to combat school failure and dropout, the Committee remains concerned about the low rate of school attendance by Roma children (art. 5 (e) (v)).

**The Committee once again draws the attention of the State party to its general recommendation 27 and recommends that the State party strengthen its efforts to support the inclusion in the school system of all children of Roma origin and to address the causes of dropout rates, including any cases of early marriage, in particular of Roma girls, and,**

**for these purposes, to cooperate actively with Roma parents, associations and local communities. It further recommends that it proceed to improve dialogue and communication between teaching personnel and Roma children, Roma communities and parents, including more frequent use of teaching assistants chosen from among the Roma.**

243. The Committee notes the small number of court cases on racial discrimination in the State party (art. 6).

**The Committee, recalling its general recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, reminds the State party that the small number of complaints, prosecutions and convictions relating to acts of racial discrimination should not be viewed as being necessarily positive. The State party should inquire whether this situation is the result of inadequate information provided to victims concerning their rights or the insufficient level of awareness by the authorities of offences involving racism. The State party should take, in particular on the basis of such a review, all necessary measures to ensure that victims of racial discrimination have access to effective remedies.**

244. The Committee is concerned that the mass media continue to play a role in portraying a negative image of the Roma and Sinti communities and that insufficient measures have been taken by the State party to address this situation (art. 7).

**The Committee recommends that the State party encourage the media to play an active role in combating prejudices and negative stereotypes, which lead to racial discrimination, and that it adopt all necessary measures to combat racism in the media. It further requests the State party to adopt promptly the code of conduct of journalists drafted in collaboration with the National Office for the Elimination of Racial Discrimination, the Office of the United Nations High Commissioner for Refugees and the Italian National Press Federation.**

245. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex, of 18 December 1990).

246. 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 (A/CONF.189/12, chap. I), when implementing the Convention in 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 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 Preparatory Committee of the Durban Review Conference and in the Durban Review Conference in 2009.

247. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th 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 Assembly resolution 61/148 of 19 December 2006, in which the



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.

248. 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 the official and national languages.

249. 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 its next periodic report.

250. Pursuant to paragraph 1 of rule 65 of the Committee's rules of procedures, the State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 13, 18 and 22 above.

251. 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 (see HRI/GEN/2/Rev.4).

252. The Committee recommends that the State party submit its combined sixteenth to eighteenth periodic reports in a single report, due on 18 February 2011, taking into account the specific guidelines for Committee on the Elimination of Racial Discrimination documents, as 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.

## **MOLDOVA**

253. The Committee considered the combined fifth to seventh periodic reports of the Republic of Moldova (CERD/C/MDA/7) at its 1861st and 1862nd meetings (CERD/C/SR.1861 and 1862), held on 27 and 28 February 2008. At its 1871st and 1872nd meetings (CERD/C/SR.1871 and 1872), held on 5 and 6 March 2008, the Committee adopted the concluding observations as set out below.

### **A. Introduction**

254. The Committee welcomes the comprehensive report and written replies submitted by Moldova. It appreciates the frank and detailed answers provided by the delegation in response to the Committee's questions, as well as its concrete proposals for further developing the constructive dialogue between the Committee and the State party.

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

255. The Committee notes that the eastern region of Transnistria continues to be outside the effective control of the State party, which is therefore unable to monitor the implementation of the Convention in that part of its territory.

### C. Positive aspects

256. The Committee welcomes the adoption by the State party of the Status of Refugees Act in 2002, as well as of regulations based on that Act concerning the provision of material assistance to refugees (Government decision No. 1622 of 31 December 2003), and of a national programme of action on migration and asylum (Government decision No. 448 of 27 April 2006) to reduce the adverse consequences of illegal migration and to strengthen the domestic system of asylum.

257. The Committee notes with appreciation that the National Human Rights Plan of Action for 2004-2008 of the State party includes a chapter on the rights of national minorities.

258. The Committee notes with appreciation that the State party has included education on the Holocaust and the causes of the genocide of Jews and Roma between 1941 and 1944 in school curricula, and that modern history textbooks contain chapters on the Holocaust and the genocide of Jews and Roma.

259. The Committee welcomes the recent legislative initiatives of the State party to bring its domestic legislation into line with the Rome Statute of the International Criminal Court, with a view to preparing its accession to the Rome Statute.

### D. Concerns and recommendations

260. The Committee notes the absence in the report of disaggregated statistical information on the enjoyment by members of national minorities and non-citizens of the rights protected under the Convention, such as the rights to work, housing and health, and on school attendance and dropout rates among minority and refugee children.

**The Committee requests the State party to provide detailed information in its next periodic report on the enjoyment by national minorities and non-citizens of the rights protected under the Convention, disaggregated by gender, age, ethnic group and nationality, and recommends that a coherent system of data collection be developed for that purpose.**

261. The Committee notes that the parliamentary advocates heading the Centre for Human Rights of Moldova have dealt with only a few complaints related to racial discrimination.

**The Committee recommends that the State party promote the role and strengthen the activities of the parliamentary advocates in relation to complaints about racial discrimination, and consider elevating the status of the Centre for Human Rights to that of a national human rights institution, in compliance with the Paris Principles (General Assembly resolution 48/134, annex, of 20 December 1993).**

262. The Committee notes with concern that the State party has not adopted comprehensive legislation to prevent and combat discrimination in all areas, and that many existing non-discrimination provisions guarantee equality before the law and equal enjoyment of human rights only to citizens (art. 2 (1) (d)).

**The Committee recommends that the State party consider adopting comprehensive non-discrimination legislation protecting both citizens and, subject to reasonable**

**differentiations, non-citizens, and that it include a definition of direct and indirect discrimination, as well as provisions on adequate sanctions, compensation and on a shared burden of proof in civil proceedings.**

263. The Committee notes with concern reports regarding the decrease in the budget of the Bureau for Inter-Ethnic Relations, the central public administrative body promoting inter-ethnic relations and the rights of citizens to manifest their ethnic, cultural and linguistic identity. It also notes that the division for national minorities, inter-ethnic relations and languages of the Bureau is understaffed, and that its advisory body, the Coordinating Council of Ethnic and Cultural Organizations, has failed to represent the interests of national minorities effectively (arts. 2 (1) (e)).

**The Committee recommends that the State party allocate sufficient resources to the Bureau for Inter-Ethnic Relations, in particular its division for national minorities, inter-ethnic relations and languages, and that it strengthen the independence of the Coordinating Council of Ethnic and Cultural Organizations.**

264. While acknowledging that the plan of action to provide support for the Roma for the period 2007-2010 (Government decision No. 1453 of 21 December 2006) includes special measures in the fields of employment, health care, social welfare, protection of children, education and culture, the Committee notes with concern that the Bureau for Inter-Ethnic Relations has reportedly failed to elaborate annual plans for the implementation of the plan of action, and that non-governmental organizations allegedly have no access to information on the implementation of the plan of action (art. 2 (2)).

**The Committee recommends that the State party elaborate annual plans for the implementation of the plan of action in support of the Roma population (2007-2010) and that information on any measures taken or envisaged to implement the plan of action be made available to the public in order to ensure that non-governmental organizations, in particular Roma organizations, can participate effectively in the implementation and monitoring of the plan.**

265. The Committee notes with concern that public and religious organizations that pursue extremist activities, including incitement to racial, national and religious hatred, and mass media agencies disseminating materials of such extremist nature are not in practice declared illegal and prohibited under articles 6 and 7 of the Law on Combating Extremist Activity. It also notes with concern that only very few complaints have been registered and investigated under these provisions and under articles 135, 176 and 346 of the Criminal Code (arts. 4 and 6).

**The Committee recommends that the State party ensure that articles 6 and 7 of the Law on Combating Extremist Activity and other relevant criminal law provisions are applied in full conformity with article 4 of the Convention. It reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be merely an indication of a lack of awareness of the availability of legal remedies or of insufficient will on the part of the authorities to prosecute. In that regard, the Committee recommends that the State party introduce mandatory training for the police, prosecutors, judges and other law enforcement officers on the application of criminal law provisions sanctioning incitement to racial hatred and discrimination by individuals and organizations, and that it inform the public about all legal remedies in the field of racial discrimination. It also requests the State party to provide updated information in its next**

**periodic report on the number of complaints registered and investigated under articles 135, 176 and 346 of the Criminal Code and under the Law on Combating Extremist Activity, as well as on the types of sanctions imposed on perpetrators and on compensation provided to victims.**

266. The Committee is concerned that applications by Muslim ethnic minorities, such as the Tatars, to be registered as religious communities have been rejected by the State Service for Religious Issues, apparently on purely formal grounds (art. 5 (d) (vii)).

**The Committee recommends that the State party consider facilitating the registration of Muslim ethnic minorities, such as the Tatars, as religious communities, including the possibility of resubmitting required documents in cases where applications are incomplete.**

267. The Committee notes with concern that the State party has only offered to designate specific areas in Christian cemeteries for Muslim burials, although Muslim ethnic minorities have repeatedly asked to be assigned separate burial sites (art. 5 (d) (vii)).

**The Committee recommends that the State party ensure that members of Muslim ethnic minorities, such as the Tatars, can be buried in accordance with their beliefs and preferences.**

268. The Committee notes with concern that the Roma are not represented in Parliament and that, apart from the police force, there are no quotas for the recruitment of Roma in the public service, despite the right of national minorities to an approximately proportionate representation in the executive, the judiciary and the army under the Members of Ethnic Minorities (Rights and Legal Status of their Associations) Act of 2001 (arts. 5 (c) and 2 (2)).

**The Committee recommends that the State party adopt special measures, such as statutory electoral and public service targets and specific training programmes, to ensure an approximately proportionate representation of the Roma and of other underrepresented minorities in Parliament and in the public service, including at senior levels and in the judiciary, in accordance with the Members of Ethnic Minorities (Rights and Legal Status of their Associations) Act of 2001.**

269. The Committee notes with concern the reported high unemployment rate among the Roma population and the lack of employment opportunities for Roma (art. 5 (e) (i)).

**The Committee recommends that the State party intensify further its efforts to train unemployed Roma for the labour market, including through specifically targeted vocational training, retraining and language training programmes, and by creating favourable conditions for investment and private entrepreneurship among Roma communities, including infrastructural measures and loans for microbusinesses.**

270. The Committee notes with concern that the Ukrainian, Gagauz and Bulgarian languages and cultures are taught as subjects only in a limited number of schools where the language of instruction is Russian, that Ukrainian or Bulgarian are the language of instruction only in certain classes in a few

experimental schools, that there are no schools where the Roma, Azeri or Tatar language and culture are taught, and that the quality of Moldovan language education for minority children is reportedly poor (art. 5 (e) (v)).

**The Committee recommends that the State party intensify its efforts to provide adequate opportunities for minority children to receive instruction in their native language and in Moldovan, and/or study their language and culture throughout the entire cycle of education, including by (a) extending the teaching of Ukrainian, Gagauz and Bulgarian to schools where the language of instruction is Moldovan; (b) increasing the number of schools where these languages are the language of instruction; and (c) introducing languages of numerically smaller minorities as school subjects whenever there is sufficient demand. The State party should also continue and intensify further its efforts to improve the quality of Moldovan language education for minority children. In that context, it is encouraged to proceed with its planned accession to the European Charter for Regional or Minority Languages, and to consider applying it also to numerically smaller minorities.**

271. The Committee notes with concern the reported low school attendance and high dropout rates among Roma children, as well as reports that only very few Roma students have received State scholarships for higher education and that none has been admitted under the 15 per cent quota of the total number of places in higher education (for each subject, profession and type of college) that have been reserved for certain disadvantaged groups, including the Roma (art. 5 (e) (v)).

**The Committee recommends that the State party provide financial support to Roma families to cover the cost of school books, transport and other indirect costs of schooling, offer special Moldovan language classes for Roma children, cater for the needs of Roma pupils whose parents work as seasonal workers abroad, include Roma language and culture in school curricula, and continue and intensify its efforts to raise awareness among Roma families about the importance of education starting from preschool. It also recommends that the State party make full use of available scholarship schemes and quotas to increase Roma participation in higher education.**

272. The Committee notes with concern the lack of information on, and the low number of, registered complaints about acts of racial discrimination and discrimination against ethnic minorities, including police violence against Roma, Muslims and persons of African or Asian descent. It also notes the lack of information on the number of criminal investigations and the types of sanctions imposed on perpetrators under criminal law provisions, the Code of Administrative Offences and other relevant legislation (art. 6).

**The Committee recommends that the State party ensure that all reported cases of racial discrimination and discrimination against ethnic minorities, including cases of police violence against Roma, Muslims and persons of African or Asian origin are investigated and prosecuted effectively and that victims have access to effective remedies, including compensation. It requests the State party to provide, in its next periodic report, detailed information on the number of complaints received and registered concerning such acts of discrimination, the number of criminal investigations and the types of sanctions imposed on perpetrators under relevant criminal law and other provisions, as well as on the amounts of compensation provided to victims.**

273. The Committee is concerned about the persistence of negative societal attitudes and stereotypes against Roma and other persons of minority ethnic origin (art. 7).

**The Committee recommends that the State party increase its efforts to combat prejudices, including among Government officials, against Roma and other persons of minority ethnic origin, and that it strengthen the activities of the Bureau for Inter-Ethnic Relations to promote tolerance and foster intercultural dialogue among the different ethnic groups of Moldova.**

274. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (General Assembly resolution 45/158, annex, of 18 December 1990).

275. 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 (A/CONF.189/12, chap. I) when implementing the Convention in 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 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 Preparatory Committee of the Durban Review Conference in regional preparatory meetings, if appropriate, and in the Durban Review Conference in 2009.

276. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th 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 Assembly resolution 61/148 of 19 December 2006, in which the 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.

277. 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 those reports be similarly publicized in the official and national languages.

278. 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 its next periodic report.

279. 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 human rights treaty bodies in their fifth inter-committee meeting, held in June 2006 (see HRI/GEN/2/Rev.4).

280. In accordance with article 9, paragraph 1, of the Convention and article 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, 14 and 19 above.

281. The Committee recommends that the State party submit its eighth and ninth periodic reports, in a single document, due on 25 February 2010, taking into account the specific guidelines for Committee documents (CERD/C/2007/1), and that the report be an update document and address all points raised in the present concluding observations.

## **NAMIBIA**

282. The Committee considered the eighth to twelfth periodic reports of Namibia (CERD/C/NAM/12), submitted in one document, at its 1878th and 1879th meetings (CERD/C/SR.1878 and CERD/C/SR.1879), held on 29 and 30 July 2008. At its 1896th meeting (CERD/C/SR.1896), held on 12 August 2008, it adopted the following concluding observations.

### **A. Introduction**

283. The Committee welcomes the submission of the eighth to twelfth periodic reports by the State party. It notes with appreciation the efforts made by the State party to comply with the guidelines for the preparation of reports and to address the issues raised by the Committee in its previous concluding observations.

284. The Committee welcomes the opportunity to resume the dialogue with the State party and expresses appreciation for the frank and sincere dialogue held with the delegation and the comprehensive responses provided to the list of issues and questions posed by Committee members.

285. 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**

286. The Committee welcomes the commitment expressed by the State party to reconciling Namibian society and building a nation in which all communities can live in peace and harmony, irrespective of their national and ethnic origin, colour, belief or language. It acknowledges the difficulties with which the State party has been confronted in eliminating racial discrimination following decades of its institutionalization during colonial occupation. The Committee commends the State party for its critical self-assessment during the dialogue with the Committee.

287. The Committee welcomes the State party's efforts to combat segregation and racial discrimination in various areas, particularly education.

288. The Committee also welcomes the adoption of special measures in the context of the Durban Declaration and Programme of Action and, in accordance with article 1, paragraph 4, and article 2, paragraph 2, of the Convention, with the purpose of securing adequate advancement of racial, ethnic and other groups that have experienced discrimination.

289. The Committee welcomes the intention of the State party to hold a national census in the near future and notes that information obtained from such census will enable a better assessment of the implementation by the Committee and the State party itself.

### C. Concerns and recommendations

290. The Committee notes with concern the paucity of socio-economic data provided in the current report and underlines the importance and value it attaches to such data.

**The Committee recommends that the State party take all necessary measures to ensure that socio-economic data relevant for the monitoring of the Convention is available in the next report. In this connection, the Committee draws the State party's attention to paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session (CERD/C/2007/1).**

291. While noting with satisfaction that, according to article 144 of the Namibian Constitution, the Convention is directly applicable by Namibian courts, the Committee is concerned that the definition of racial discrimination in the Racial Discrimination Prohibition Act of 1991 is not completely consistent with article 1 of the Convention.

**The Committee recommends the State party to ensure that its domestic law conforms to the Convention. The State party is also encouraged to strengthen its efforts to provide training for judges and lawyers to increase their awareness of the content and the direct applicability of the Convention at the national level.**

292. While noting the establishment of a Law Reform and Development Commission which is charged with, inter alia, the review of discriminatory laws dating back to colonial times, the Committee reiterates its concern about the discriminatory character of some Namibian laws that remain in force, including with regard to the administration of intestate inheritance. It also remains concerned about aspects of customary laws of certain ethnic groups on personal status that discriminate against women and girls, including laws pertaining to marriage and inheritance (arts. 2 and 5 (d) (iv) and (vi)).

**The Committee urges the State party to review its laws with a view to removing discriminatory laws in order to provide equal protection and treatment to all persons. Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends in particular that the State party urgently ensure that its laws, especially on marriage and inheritance, do not discriminate against women and girls of certain ethnic groups. It invites the State party to consider introducing a system which allows individuals a choice between customary law systems and the national law while ensuring that the discriminatory aspects of customary laws are not applied.**

293. The Committee notes with appreciation the State party's intention to increase the budget allocated for special measures, but remains concerned that not all communities might benefit from these programmes in practice. While noting the State party's assertion that it consults the affected communities when devising special measures, it is concerned by the existing perception that these programmes are imposed without consultation and active participation of these communities (arts. 2 (2) and 5 (c)).

**The Committee encourages the State party to engage in a data-gathering exercise to ensure that special measures are designed and implemented for all beneficiary**



**communities on the basis of their prior consultation and active participation, and that they will not result in the maintenance of unequal or separate rights for those groups after the objectives for which they were taken have been achieved.**

294. The Committee notes with appreciation the legal provisions regarding the desegregation of the educational system. However, it remains concerned about the persistence of de facto discrimination regarding access to education, as well as the high illiteracy rate that continues to exist among marginalized parts of the population (arts. 3 and 5 (e) (v)).

**The Committee urges the State party to strengthen the implementation of its laws and policies aimed at the desegregation of education. In particular, the State party should increase its efforts aimed at reducing illiteracy, especially among the most marginalized communities. It requests the State party to provide, in its next periodic report, information on the impact achieved by these measures.**

295. The Committee is concerned that the 1998 Racial Discrimination Prohibition Amendment Act restricts the scope of the original law regarding the prohibition of hate speech by limiting the possibility to prosecute such acts only as *crimen injuria*. It regrets that it did not receive any information on concrete measures taken to ensure that verbal attacks on minority groups by Government officials or other actors are subject to sanctions (art. 4).

**The Committee recommends that the State party review its laws in order to prevent, combat and punish hate speech with a view to upholding the provisions of article 4 of the Convention. Recalling its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee reminds the State party that the exercise of the right to freedom of opinion and expression carries special duties and responsibilities, and that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression. The State party is urged to take firm action to counter any tendency to target, stigmatize, stereotype or profile persons and communities on the basis of race, colour, descent, or national or ethnic origin, especially by politicians.**

296. The Committee notes with concern that it did not receive sufficient information on the status and situation of refugees and asylum-seekers in the State party, in particular with regard to their right to identity documents and the requirement for refugees and asylum-seekers to reside in special camps, unless a special permit is granted (art. 5 (a) and (d) (i)).

**The Committee urges the State party to respect the right to freedom of movement of refugees and asylum-seekers within the borders of the State party's territory, as well as their right to identity documents, including by issuing official birth certificates to newborn children of asylum-seekers and refugees.**

297. The Committee regrets that it did not receive sufficient information on the criteria used by the State party to recognize traditional leaders under the Traditional Authorities Act of 2000 as well as the Council of Traditional Leaders Act of 1997, including on whether the scope of the laws includes all indigenous communities. It is therefore particularly concerned that no institution exists to assess applications for recognition independently of the Government (art. 5 (b)).

**The Committee requests the State party to provide, in its next periodic report, information on the criteria used for the recognition of traditional leaders. The State party should ensure that the criteria used for the recognition of traditional leaders under the Traditional Authorities Act of 2000 are objective and fair and that their application process is monitored by an independent body charged with assessing the legitimacy of applications for recognition by indigenous groups.**

298. The Committee acknowledges the difficulties within a democratic system in implementing land reform policies with a view to addressing existing imbalances. However, it is concerned about the apparent lack of clear and transparent criteria for the redistribution of land in practice, and notes with concern the paucity of information concerning the implementation of relevant policies in this field (art. 5 (d) (v)).

**The State party is encouraged to implement its policies on land reform in such a way to ensure the equal exercise by the different ethnic communities of the rights enshrined in the Convention within the framework of a democratic system. The Committee invites the State party to provide information on the measures taken to ensure the implementation of land reform policy and particularly its impact on vulnerable groups.**

299. The Committee is concerned about the lack of recognition of the rights of ownership of indigenous communities over the lands which they traditionally occupy or have occupied (art. 5 (d) (v)).

**The Committee reminds the State party of its general recommendation No. 23 (1997) on the rights of indigenous peoples, in particular paragraph 5, which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. It therefore encourages the State party, in consultation with the indigenous communities concerned, to demarcate or otherwise identify the lands which they traditionally occupy or use, and to establish adequate procedures to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws.**

300. The Committee welcomes the statement that local communities participate in the management of new conservation areas. However, it is concerned about the ability of the local indigenous communities to pursue their traditional way of life in such parks. The Committee is also concerned that those communities whose lands were taken before 1990 have not been able to receive redress for this dispossession (arts. 5 (d) (v) and (e) (vi)).

**The Committee encourages the State party to strengthen its laws and policies aimed at ensuring that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities. In cases where indigenous communities have been deprived of their lands and territories traditionally owned, the Committee recommends that the State party take steps to return those lands and territories or to provide adequate reparation measures, in accordance with paragraph 5 of general recommendation No. 23 (1997) on the rights of indigenous peoples.**

301. The Committee remains concerned that despite the special measures taken by the State party to reduce poverty and to progressively realize equal and sustainable development, discrimination on the grounds of ethnicity with regard to the enjoyment of economic, social and cultural rights persists in the State party (art. 5 (e)).

**The Committee 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 the different ethnic groups in the State party, based on which the State party should strengthen its efforts in combating poverty among marginalized groups as well as its measures aimed at promoting equal opportunities for all persons.**

302. The Committee acknowledges the State party's stated intention to review the development programmes currently in place, as well as the steps taken by the State party to improve the economic and social situation of the indigenous communities, including by mobile school units, scholarships for San children, and non-discrimination training for employers. However, it remains concerned about the extreme poverty of the indigenous communities and its impact on their equal enjoyment of human rights. The Committee is particularly concerned about the high rate of HIV/AIDS infection among the San, their lack of access to identification documents, their low level of school attendance, and the comparatively low life expectancy among those communities (art. 5 (e)).

**The Committee recommends that the State party enhance its efforts to reduce poverty and to stimulate economic growth and development for the most marginalized groups, namely the indigenous communities, especially with regard to education and health. It requests that the State party provide, in its next periodic report, information on the active involvement of targeted beneficiaries in the decisions directly relating to their rights and interests.**

303. The Committee notes with concern the low level of participation in political life and, in particular, the lack of representation in Parliament as well as regional and local public authorities of the indigenous communities, particularly the San community (art. 5 (c)).

**The Committee recommends that the State party strengthen its efforts to ensure the full participation of indigenous communities in public affairs at all levels. It encourages the State party to revise its electoral laws with a view to encouraging political parties to broaden their appeal to ethnic minorities and to include a minimum proportion of candidates from these groups.**

304. The Committee is concerned about the high incidence of rape of San women by members of other communities, which seems to be caused by negative stereotypes, and it regrets the lack of detailed information provided by the State party on this issue (art. 5 (b)).

**The Committee recommends that the State party adopt all necessary measures to ensure prompt, thorough and independent investigations into all allegations of rape against San women. It also urges the State party to increase its efforts aimed at combating prejudices against the San and to promote tolerance and foster intercultural dialogue among the different ethnic groups of Namibia.**

305. The Committee, while welcoming the State party's efforts to enhance the economic and social participation of persons belonging to marginalized groups, in particular the San, notes with concern that integration policies and programmes might be detrimental to the protection of ethnic and cultural diversity of these communities (arts. 5 and 7).

**Recalling that the principle of non-discrimination requires that the cultural characteristics of all ethnic groups be taken into consideration, the Committee urges the State party to ensure that its integration policies and programmes respect and protect the cultural identities of persons belonging to national or ethnic minorities within its territory. The Committee further encourages the State party to ensure the participation of these groups in the design and implementation of integration policies and programmes, at both national and local levels.**

306. The Committee commends the State party for the planned increase of the financial and human resources of the Office of the Ombudsman. However, the Committee expresses its concern about the limited mandate of the Ombudsman (art. 6).

**The Committee encourages the State party to take all necessary steps to strengthen the legislative mandate and the capacity of the Office of the Ombudsman, so that it effectively fulfil its mandate. The Committee, while noting that only a small number of complaints have been received, reminds the State party that this may be due to victims' lack of information about their rights and of the accessibility of legal remedies. The State party is therefore encouraged to sensitize the general public about their rights and the availability of legal remedies for victims of racial discrimination.**

307. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by the General Assembly in resolution 45/158).

308. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action, adopted 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 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 increase its efforts to actively participate in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

309. 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.

310. The Committee recommends that the State party 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 resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the 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.

311. 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 the official, most commonly spoken, and indigenous languages.

312. 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.

313. 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).

314. 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 11, 14, and 23 above.

315. The Committee recommends that the State party submit its thirteenth, fourteenth, and fifteenth periodic reports, in a single document, due on 31 July 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.

## **NICARAGUA**

316. The Committee considered at its 1859th and 1860th meetings (CERD/C/SR.1859 and CERD/C/SR.1860), held on 26 and 27 February 2008, the tenth to fourteenth periodic reports of Nicaragua, submitted as a single document (CERD/C/NIC/14). At its 1872nd meeting (CERD/C/SR.1872), held on 6 March 2008, it adopted the following concluding observations.

### **A. Introduction**

317. The Committee welcomes the periodic report submitted by Nicaragua and the efforts made by the State party to comply with the guidelines for the preparation of reports. The Committee, noting that the report was submitted over 10 years late, urges the State party to comply with the deadlines set for the submission of its future reports. The Committee commends the State party for the submission of the basic core document in line with the harmonized guidelines on reporting under the international human rights treaties (HRI/MC/2006/3 and Corr.1).

318. The Committee welcomes the opportunity to resume the dialogue with the State party after a lengthy interruption. It also expresses its appreciation for the open dialogue held with the delegation and for the delegation's extensive, detailed oral and written replies, both to the list of issues and to the questions raised by members.

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

319. The Committee is aware of the socio-economic difficulties the State party has been experiencing for over 20 years as a result of internal conflict and natural disasters, and which are impeding the effective implementation of the Convention's provisions.

### C. Positive aspects

320. The Committee welcomes the institutionalization of the procedure for preparing reports, through the establishment of the Unit for the Monitoring of International Conventions within the Ministry of Foreign Affairs and the Inter-Agency Committee on Human Rights composed of representatives of government institutions and civil society.

321. The Committee welcomes the adoption of general laws containing special provisions for protecting the rights of the indigenous peoples, including the General Act on the Environment and Natural Resources, the Act on Official Use of the Languages of the Communities of the Atlantic Coast of Nicaragua, the Act concerning the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and of the Bocay, Coco, Indio and Maíz Rivers, the Decree instituting National Garífuna Day, and the Code of Children and Adolescents.

322. The Committee notes with satisfaction the adoption of the new Criminal Code, which was approved by the National Assembly in November 2007 and incorporates a definition of racial discrimination and the characterization of the offence of racial discrimination (art. 36).

323. The Committee notes with satisfaction the entry into force in 2006 of the General Education Act establishing the Regional Autonomous Education System, and hopes that this Act will secure acknowledgement of the right of the indigenous peoples and ethnic communities of the Caribbean Coast to intercultural education in their mother tongue.

324. The Committee welcomes the information provided by the delegation concerning the establishment of the Office of the Special Procurator for Defence of the Rights of the Indigenous Peoples and Ethnic Communities. Branches of this office exist in each autonomous region on the Atlantic Coast and have competence to receive complaints from persons who consider their rights to have been violated by State officials.

325. The Committee welcomes the institutionalization of the International Day for the Elimination of Racial Discrimination.

326. The Committee is pleased to note the ratification by the State party in 2005 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted by the General Assembly in its resolution 45/158 of 18 December 1990).

### D. Concerns and recommendations

327. Bearing in mind that the Constitution and the Autonomy Statute of the Atlantic Coast Region acknowledge the country's multi-ethnic and multicultural nature and guarantee the specific rights of the indigenous peoples and communities of African descent, the Committee is concerned that representatives of the indigenous peoples and communities of African descent continue to suffer de facto racism and racial discrimination in the State party.

**The Committee recommends that the State party undertake to combat racial discrimination by developing a global and national policy to combat racism and racial discrimination, and ensuring effective implementation of the Autonomy Statute.**

328. While the Committee welcomes the statistical data on indigenous peoples contained in the periodic report, it notes the shortcomings of the 2005 national census, which did not specify precisely the characteristics of the various ethnic groups and indigenous peoples making up the Nicaraguan population, including those resulting from a mixture of cultures.

**The Committee recommends that the State party continue to improve the methodology used in the census so that it reflects the ethnic complexity of Nicaraguan society, bearing in mind the principle of self-identification, in accordance with the Committee's general recommendation VIII 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). In this connection, the Committee requests the State party to include in its next periodic report disaggregated statistical data on the composition of the population.**

329. The Committee notes that the Convention has the status of ordinary law in the State party and that it is not included among the international treaties listed in article 46 of the Constitution, which have constitutional status (art. 2).

**The Committee recommends that the State party consider the possibility of including the Convention in the list of international treaties contained in article 46 of the Constitution.**

330. While noting the new legislation adopted to protect the rights of the indigenous peoples, the Committee is concerned that the indigenous peoples of the Pacific, central and northern regions of Nicaragua do not enjoy any specific legislation that recognizes and protects their rights (art. 2).

**The Committee urges the State party to accelerate the process of adoption of the Act relating to the Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua, and the appointment of a Special Procurator for the Indigenous Peoples of the Pacific, Central and Northern Regions of Nicaragua.**

331. The Committee welcomes the establishment in 2001 of the National Commission for the Elimination of Racial Discrimination, composed of members of State institutions, civil-society organizations, and associations of indigenous peoples and communities of African descent. Nevertheless, the Committee is concerned at reports it has received that this body does not function effectively in practice (art. 2).

**The Committee recommends that the State party take the necessary steps to ensure that the National Commission for the Elimination of Racial Discrimination is officially recognized as the body responsible for developing and implementing a State policy to combat racism, assigning to it the financial and technical resources required for it to function properly.**

332. While the Committee is pleased at the characterization of the offence of racial discrimination in the new Criminal Code, it is unclear whether articles 45 and 113 of this Code provide for sanctions against organizations that promote racial discrimination (art. 4).

**The Committee urges the State party to characterize every criminal act specified in the relevant paragraphs of article 4 of the Convention, including subparagraph (b),**

**which prohibits organizations that promote and incite racial discrimination, and to recognize participation in such organizations or activities as an offence punishable by law.**

333. While the Committee welcomes the fact that the Nicaraguan Constitution, the Organic Act on the Judiciary and the legal framework for autonomy recognize the right of the indigenous peoples and communities of African descent to administer justice in accordance with their cultures and traditions, it is concerned that this legal recognition has not been granted in practice through a system of administration of justice for the autonomous regions that incorporates and implements indigenous systems of law (art. 5 (a)).

**The Committee draws the State party's attention to its general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (para. 5 (e)), and urges the State party to ensure respect for, and recognition of, the traditional systems of justice of the indigenous peoples, in conformity with international human rights law. To this end, the Committee encourages the State party to continue implementation of the programme concerning Assistance, Mediation, Information and Guidance Centres (CAMINOS), and use of rural judicial facilitators with the aim of improving access to justice for the indigenous peoples and communities of African descent, and court-appointed defence lawyers.**

334. The Committee is concerned at reports it has received that justice in the autonomous regions is administered solely in Spanish, in direct violation of the Act on Official Use of the Languages of the Communities of the Caribbean Coast region, which states that the languages of the indigenous peoples and communities of African descent shall be in official use in the autonomous regions and may be used at all stages of the administration of justice (art. 5 (a)).

**The Committee, bearing in mind its general recommendation XXXI, recommends that the State party guarantee the right of the indigenous peoples to use their languages in judicial proceedings, as provided for in the Act on Official Use of the Languages of the Communities of the Caribbean Coast, and - where necessary - interpreters.**

335. While noting with satisfaction the efforts made by the State party to implement reform of the Electoral Act, the Committee is concerned at the low participation of the indigenous peoples and communities of African descent in the political life of the State party and, in particular, in the autonomous regional councils (art. 5 (c)).

**The Committee draws the State party's attention to its general recommendation XXIII on the rights of indigenous peoples (para. 4 (d)), and recommends that the State party redouble its efforts to ensure the full participation of the indigenous peoples and communities of African descent in the public affairs of the State at all levels.**

336. The Committee acknowledges the measures recently adopted by the State party to implement the 2001 judgement of the Inter-American Court of Human Rights in the Awas Tingni case, but remains concerned at the constant delays in the demarcation and land titling of the traditional territory of the Awas Tingni community. In this respect, the Committee expresses its concern at the further delay in the land titling of the community's territory, reportedly as a result of land disputes with neighbouring communities when, in accordance with the procedure in force, these disputes should already have been settled. The Committee is also concerned because the lengthy delay in the



implementation process has led to illegal incursions into the territory of the Awas Tingni by non-indigenous settlers and woodcutters, causing serious damage to the lands and resources of the Awas Tingni (art. 5 (b)).

**The Committee urges the State party to proceed immediately with the demarcation and land titling of the lands of the Awas Tingni community, without prejudice to the rights other communities may have in accordance with the criteria established in the judgement of the Inter-American Court of Human Rights and in general recommendation XXIII (para. 5). The Committee further requests the State party to include in its next periodic report information on the stage reached in the process of demarcation and land titling of the Awas Tingni territory.**

337. While it welcomes the adoption of the General Health Act, which enables the autonomous regions to define their own health-care model in line with their traditions, cultures, practices and customs, the Committee notes with concern the difficult access, in practice, of the indigenous peoples and communities of African descent in the Atlantic Coast autonomous region to health services and infrastructure (art. 5 (e) (iv)).

**The Committee urges the State party to step up its efforts to guarantee the right to public health, medical care, social security and social services to the indigenous peoples and communities of African descent, particularly in the Atlantic autonomous region, and provide them with financial and institutional support in the practice of, and access to, traditional indigenous medicine.**

338. The Committee expresses its concern that the maternal mortality rate for the Atlantic autonomous region continues to be much higher than the national average (art. 5 (e) (iv)).

**The Committee urges the State party to take effective measures to combat maternal mortality in the Atlantic autonomous region.**

339. While the Committee notes with satisfaction the 2003-13 Plan for the Regional Autonomous Education System within the framework of the new General Education Act, it is concerned at the high rate of illiteracy of the indigenous peoples and communities of African descent, especially in the north of the Atlantic autonomous region (art. 5 (e) (v)).

**The Committee encourages the State party to take action in the short and medium terms for the implementation of measures to reduce illiteracy, especially in the north of the Atlantic autonomous region.**

340. While the Committee welcomes the competence of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities in the north and south of the Atlantic region to receive individual and collective complaints, it notes that it has received no information on the nature and outcomes of the 521 complaints received in 2007 (art. 6).

**The Committee recommends that the State party provide information in its next report on the outcomes of those complaints relating to racial discrimination against the indigenous peoples and communities of African descent and on whether the victims received appropriate compensation.**

341. The Committee is concerned at reports received that women belonging to the indigenous peoples and communities of African descent are victims of double discrimination.

**The Committee draws the State party's attention to its general recommendation XXV on gender-related dimensions of racial discrimination, and recommends that it pay special attention to the rights of women belonging to the indigenous peoples and communities of African descent.**

342. The Committee is concerned at the racial discrimination against the indigenous peoples and communities of African descent in the media, including stereotypical, degrading representations of indigenous peoples in television programmes and press articles (art. 7).

**The Committee recommends that the State party adopt appropriate measures to combat racial prejudice that leads to racial discrimination in the media - both public and private channels - and in the press. In addition, the Committee recommends that the State party promote, in the information sector, understanding, tolerance and friendship between the various racial groups that exist in the State party, including the adoption of a code of ethics for the media, which requires the media to respect the identity and culture of the indigenous peoples and communities of African descent.**

343. The Committee recommends that the State party accelerate the process of adopting the legislation authorizing the Government to recognize the Committee's competence as provided for under article 14 of the Convention.

344. The Committee recommends that the State party facilitate the process of acceding to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, of 1989.

345. 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 refers to General Assembly resolution 61/148 of 19 December 2006, in which the 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.

346. The Committee recommends that the State party take into account the relevant elements of the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (A/CONF.189/12 and Corr.1, sect. I) 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. It encourages the State party to participate actively in the Preparatory Committee for the Durban Review Conference, in the regional conference in Brazil in June 2008, and in the Durban Review Conference in 2009.

347. The Committee recommends that the State party's reports be disseminated as soon as they are submitted and that the Committee's observations on them be published in the State party's official and national languages.

348. 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.

349. In accordance with article 9, paragraph 1, of the Convention and article 65 of the Committee's rules of procedure as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 16, 21 and 22 above within one year of the adoption of the present observations.

350. The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports as a single document by 17 March 2011, taking into consideration the guidelines for the CERD-specific report adopted by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain updated information and respond to all the points raised in the concluding observations.

## **RUSSIAN FEDERATION**

351. The Committee considered the combined eighteenth and nineteenth periodic reports of the Russian Federation (CERD/C/RUS/19) at its 1882nd and 1883rd meetings (CERD/C/SR.1882 and 1883), held on 31 July and 4 August 2008. At its 1897th and 1898th meetings (CERD/C/SR.1897 and 1898), held on 13 August 2008, the Committee adopted the following concluding observations.

### **A. Introduction**

352. The Committee welcomes the timely submission of the detailed report and written replies by the Russian Federation (CERD/C/RUS/Q/19/Add.1). It appreciates the comprehensive answers and explanations provided by the high-level delegation in response to the Committee's questions, as well as the constructive dialogue between the Committee and the delegation.

### **B. Positive aspects**

353. The Committee welcomes the qualification of certain criminal offences in the revised Criminal Code (2007) as offences for which the motive of ethnic, racial or religious hatred or enmity is an aggravating circumstance, including homicide (art. 105), bodily harm (arts. 111, 112 and 115), threat of murder or infliction of grave injury to health (art. 119), involvement of minors in crime (art. 150), hooliganism (art. 213), vandalism (art. 214) and desecration of moral remains or places of burial (art. 244).

354. The Committee notes with appreciation the adoption in 2006 of a Federal Law on Advertising which prohibits the use in commercial advertisements of indecent and offensive images, comparisons and expressions, based on race and ethnicity.

355. The Committee welcomes the adoption in 2006 of the Federal Law on Migration Registration of Foreign Nationals and Stateless Persons in the Russian Federation and of amendments to the Federal Law on the Legal Status of Foreign Citizens in the Russian Federation, simplifying the procedure for obtaining work permits and temporary residence permits especially for non-citizens who have newly arrived in the State party.

356. The Committee notes with appreciation that the Federal Law on General Principles of Organization of Local Self-Government in the Russian Federation of 6 October 2003 confers the competence for ensuring the rights of national and cultural autonomies on the local self-governments, including support to educational institutions in the field of learning national languages.

357. The Committee welcomes the establishment of an institutional framework for the protection of the rights of ethnic minorities and small indigenous peoples, in particular:

(a) The establishment in 2004 of a Ministry of Regional Development comprising a Department on Inter-Ethnic Relations with primary responsibility in this field;

(b) The establishment in 2004 of the Presidential Council for Promoting the Development of Civil Society Institutions and Human Rights and the important range of its activities;

(c) The creation in 2006 of the 'Social Forum' comprising a Commission for Tolerance and Freedom of Conscience with a mandate to proactively combat all forms of nationalism and intolerance;

(d) The newly established Advisory Council on the Affairs of Autonomous Ethnic Cultural Organizations.

358. The Committee notes with appreciation that the State party has made substantial voluntary contributions to the Office of the High Commissioner for Human Rights, earmarked for the preparation of the 2009 Durban Review Conference.

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

359. While noting that the Federal Law amending and supplementing the Criminal Code of 8 December 2003 inserted a definition of punishable discriminatory acts into article 136 of the Criminal Code, based exclusively on violations of the rights, freedoms and legitimate interests of individuals and citizens in connection with, inter alia, their race or ethnic background, the Committee is concerned that there is no comprehensive definition of racial discrimination covering all fields of law and public life (art. 1, para. 1).

**The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination in its legislation, including all acts of direct as well as indirect discrimination, that covers all fields of law and public life, in accordance with article 1, paragraph 1, of the Convention.**

360. The Committee notes the State party's explanation that it refrains from collecting comparative statistical data on the enjoyment by ethnic minorities of the rights protected under the Convention in order to prevent any discrimination on the basis of ethnicity. It is nevertheless concerned that, without such data, it is very difficult to assess the socio-economic status of the different ethnic groups in the State party and, on that basis, adopt special measures to address any inequalities in the enjoyment of those rights (art. 2).

**The Committee requests the State party to provide detailed information in its next periodic report on the enjoyment by ethnic minorities and non-citizens of the rights protected under the Convention, including the rights to work, housing, health, social**

**security and education, disaggregated by gender, ethnic group and nationality, and recommends that a mechanism for systematic data collection be developed for that purpose.**

361. While noting that a number of sectoral laws such as the Labour Code include anti-discrimination provisions, the Committee nevertheless expresses concern that the State party has not yet adopted comprehensive civil and administrative legislation to prevent and combat racial discrimination in all areas (art. 2, para. 1 (d)).

**The Committee recommends that the State party consider adopting comprehensive anti-discrimination legislation, covering direct as well as indirect discrimination and providing for a shared burden of proof in civil and administrative court proceedings concerning acts of racial discrimination.**

362. The Committee notes that article 286 of the Criminal Code criminalizes violations of rights and lawful interests of individuals and organizations committed in an official capacity while exceeding official powers. It is nevertheless concerned that, despite this provision, ethnic minorities such as Chechens and other persons originating from the Caucasus or from Central Asia, as well as Roma and Africans, reportedly continue to be subject to disproportionately frequent identity checks, arrests, detentions and harassment by the police and other law enforcement officers (arts. 2, para. 1 (a), 5 (b) and 5 (d) (i)).

**The Committee recommends that the State party take appropriate action, including disciplinary or criminal proceedings, against public officials who engage in racially selective arrests, searches or other unwarranted acts based solely on the physical appearance of persons belonging to ethnic minorities, provide continuous mandatory human rights training to police and other law enforcement officers to prevent such profiling, and amend the performance targets for the police accordingly. In this connection, the Committee draws the attention of the State party to general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.**

363. Taking into consideration the dialogue held with the Russian delegation, the Committee notes with concern reports about searches of Georgian businesses, police demands for lists of names of Georgian students, identity checks, destruction of identity papers, detention in inhumane conditions, deportations under a simplified procedure and other repressive measures against Georgian nationals and ethnic Georgians in 2006 (arts. 2, para. 1 (a), 5 (b) and 5 (d) (i)).

**The Committee recommends that the State party undertake a thorough investigation, through an independent body, into all allegations of unlawful police conduct against Georgian nationals and ethnic Georgians in 2006 and adopt measures to prevent the recurrence of such acts in the future.**

364. The Committee is concerned at the absence of a federal government programme addressing the social and economic marginalization of the Roma (arts. 2 and 5 (e)).

**The Committee recommends that the State party adopt a national plan of action that includes special measures for the promotion of access by Roma to employment, personal documents, residence registration, adequate housing with legal security of tenure,**

**education and other economic, social and cultural rights, in accordance with general recommendation 27 (2000) on discrimination against Roma, and allocate sufficient resources for the effective implementation of that plan.**

365. While noting the information provided by the State party on the substantial federal funds allocated to the federal target programme for the economic and social development of the small indigenous peoples until 2011, the Committee is nevertheless concerned about the reportedly ineffective implementation of the programme and about the lack of information on its concrete results (art. 2).

**The Committee recommends that the State party further intensify its efforts to effectively implement the federal target programme for the economic and social development of the small indigenous peoples, extend it to all peoples that self-identify as ‘indigenous’, and provide information on the concrete results achieved under the programme in its next periodic report.**

366. While acknowledging the State party’s efforts to combat incitement to racial, ethnic and religious hatred in the media and, albeit to a more limited extent, in political discourse, the Committee notes with concern the increase in the number of racist and xenophobic statements in the media, including in mainstream media and publications by established publishing houses, on the Internet, and in the discourse of public officials and political parties, targeting ethnic minorities such as Chechens and other persons originating from the Caucasus or from Central Asia, Roma, Africans, as well as ethnic minorities of Muslim or Jewish faith (art. 4 (a) and (c)).

**The Committee recommends that the State party intensify its efforts to combat ethnically motivated hate speech in the media, on the Internet and in political discourse, by publicly condemning such statements, imposing adequate sanctions for publicly making racist statements, making full use of official warnings under articles 4 and 16 of the Federal Law on the Means of the Mass Media, and by closing, if appropriate, any media outlets inciting to racial hatred. It also recommends that the State party effectively cooperate with third States from where Russian-speaking Internet sites operate, and that it train judges, procurators, the police and law enforcement officers on the application of article 282 of the Criminal Code and other relevant criminal law provisions.**

367. The Committee is concerned about reports that the broad scope of the Law on Combating Extremist Activities lends it to arbitrary application and that the law is not systematically applied against ultra-nationalist, skinhead and neo-nazi groups in the State party which harass and assault members of ethnic minorities (arts. 4 (b), 5 (d) (vii) and 6).

**The Committee recommends that the State party give primary consideration to combating extremist organizations, and their members, engaging in activities motivated by racial, ethnic or religious hatred or enmity, when applying the Law on Combating Extremist Activities as well as article 282 of the Criminal Code.**

368. While noting with appreciation the explanation given by the Head of the Russian delegation concerning the root causes of racist and xenophobic attitudes among parts of Russian society, the Committee is nevertheless gravely concerned about the alarming increase in the incidence and severity of racially motivated violence, especially by young persons belonging to extremist groups

and, in some cases, by extremist elements of Cossack organizations, against Chechens and other persons originating from the Caucasus or from Central Asia, Roma, Meshketian Turks, Muslims, Africans and other ethnic minorities (art. 5 (b)).

**The Committee recommends to the State party to further intensify its efforts to combat racially motivated violence, including by ensuring that judges, procurators and the police take into account the motive of ethnic, racial or religious hatred or enmity as an aggravating circumstance in any proceedings under the criminal law provisions mentioned in paragraph 3 above, and to provide updated statistical data on the number and nature of reported hate crimes, prosecutions, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims.**

369. The Committee notes the absence of statistical data on the number of asylum applications and applications for refugee status lodged with the competent authorities of the State party, as well as on the number of cases where such applications were granted (art. 5 (b)).

**The Committee requests the State party to include in its next periodic report updated statistical data on the number of asylum and refugee applications received per year and on the number of cases where such applications were granted, disaggregated by national or ethnic origin of the applicants.**

370. The Committee notes with concern that none of the small indigenous peoples of the State party are represented in the State Duma of the Federal Assembly and that, according to information from intergovernmental bodies, the provisions in the Law on Guaranteeing the Rights of Small Indigenous Peoples, which envisaged quotas for indigenous peoples in the legislative bodies of the territorial entities of the State party, were abrogated in 2004 (art. 5 (c)).

**The Committee recommends that the State party consider introducing guaranteed seats or mandatory quotas to ensure that the small indigenous peoples of the North, Siberia and the Russian Far East are represented in the legislative bodies, as well as in the executive branch and in public service, at the regional and federal levels, and ensure their effective participation in any decision-making processes affecting their rights and legitimate interests.**

371. While noting the information from the Russian delegation concerning the considerable number of internally displaced persons (IDP) who have returned to the Chechen Republic and the substantial funds allocated to facilitating their return, the Committee is nevertheless concerned about reports that IDPs from Chechnya are sometimes pressured to return and to relocate from temporary accommodation centres in Ingushetia and Grozny, and that IDPs within Chechnya are not eligible for, and those outside Chechnya are sometimes denied, forced migrant status (art. 5 (d) (i) and 5 (e) (iii)).

**The Committee recommends that the State party ensure that internally displaced persons from Chechnya are not pressured to return to their pre-conflict places of residence if they fear for their personal safety, that returnees who are relocated from temporary accommodation centres in Ingushetia and Grozny are provided with adequate alternative housing, and that all IDPs are granted forced migrant status and the related benefits.**

372. While noting that Federal Act No. 5242-1 of 1993 on Russian citizens' rights to freedom of movement, choice of address and place of residence in the Russian Federation provides that registration shall not constitute a precondition for the exercise of citizens' rights, the Committee is concerned about reports that, in practice, the enjoyment of many rights and benefits depends on registration, and that the police is often reluctant to grant residence registration to Chechens and other persons originating from the Caucasus, Roma, Meshketian Turks, Yezidis, Kurds and Hemshils in Krasnodar Krai, Tajiks, non-citizens from Africa and Asia, as well as asylum-seekers and refugees (art. 5 (d) (i)).

**The Committee recommends that the State party carefully monitor the implementation of its system of residence registration, sanction officials who deny registration on ethnically discriminatory grounds, and provide effective remedies to victims, with a view to eliminating any discriminatory impact of the registration system on ethnic minorities.**

373. The Committee is concerned about reports that former Soviet citizens who did not acquire Russian citizenship in the early 1990s, including many Meshketian Turks, Yezidis, Kurds and Hemshils in Krasnodar Krai, Afghans, as well as Armenians and Russians who fled from Azerbaijan to Moscow, Moscow Oblast, Krasnodar Krai, Stavropol Krai and Rostov Oblast between 1998 and 1992, are barred from the simplified procedure for granting Russian citizenship under article 14 of the Federal Law on Citizenship of the Russian Federation of 2002 if they cannot prove residence registration, and must undergo the same cumbersome and reportedly arbitrary procedure for obtaining temporary residence permits as any foreign citizen or stateless person, subject to regional quotas, since the entry into force of the Federal Law on the Legal Status of Foreign Citizens on 1 November 2002 (art. 5 (d) (i) and (iii)).

**The Committee recommends that the State party facilitate access to residence registration and Russian citizenship by all former Soviet citizens on the basis of a simplified procedure and irrespective of the ethnicity of applicants.**

374. The Committee notes with concern that recent changes to federal legislation regulating the use of land, forests and water bodies, in particular the revised Land (2001) and Forest (2006) Codes and the new Water Code, deprive indigenous peoples of their right to preferred, free and non-competitive access to land, fauna and biological as well as aquatic resources, on which they rely for their traditional economic activities, and that the grant of licences to private companies for activities such as logging, extraction of subsoil resources and the construction of pipelines or hydroelectric dams leads to privatization and ecological depletion of territories traditionally inhabited by indigenous peoples (art. 5 (d) (v)).

**The Committee recommends that the State party take legislative and other effective measures to implement the Federal Law on Territories of Traditional Nature Use (2001); reinsert the concept of free-of-charge use of land by indigenous peoples into the revised Land Code and the Law on Territories of Traditional Nature Use, and the concept of preferential, non-competitive access to natural resources into the Forest and Water Codes; seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities; ensure that licensing agreements provide for adequate compensation of the affected communities; and withdraw support for the Evenkiiskaya dam and other large-scale projects threatening the traditional lifestyle of indigenous peoples.**



375. The Committee is concerned about reports that non-citizens and ethnic minority workers are often subject to exploitative conditions of work as well as discrimination in job recruitment (art. 5 (e) (i)).

**The Committee recommends that the State party intensify its efforts to protect non-citizens and ethnic minority workers against exploitative work conditions and discrimination in job recruitment, e.g. by providing effective remedies for victims and by training judges and labour inspectors on the application of articles 2 and 3 of the Labour Code.**

376. The Committee is concerned about the destruction of Roma settlements, often on the basis of court orders to demolish illegally constructed dwellings, in numerous cities and regions of the State party, and about the disproportionate effects that such demolitions and forced evictions may have on the Roma families concerned (art. 5 (e) (iii)).

**The Committee recommends that the State party review its policy of demolishing illegally constructed Roma settlements when the dwellings have existed for a long time, legalize existing settlements to the extent possible, and provide adequate alternative housing whenever forced evictions of Roma take place.**

377. The Committee notes with concern reports about segregation of children belonging to ethnic minorities, in particular Roma, in special remedial classes, as well as about instances where ethnic minority children whose parents lack residence registration were denied access to education by local school authorities, despite contrary instructions from the Federal Ministry of Education (art. 5 (e) (v)).

**The Committee recommends that the State party carefully review the criteria by which children are allocated to special remedial classes and take effective measures to ensure that ethnic minority children, including Roma, are fully integrated into the general education system. It further recommends that the State party ensure that local school authorities admit all children, irrespective of ethnicity and registration status of their parents.**

378. The Committee notes the absence of information on complaints or court decisions in civil or administrative proceedings concerning acts of racial discrimination (art. 6).

**The Committee requests the State party to provide updated information in its next periodic report on the number of complaints about acts of racial discrimination and on the decisions taken in civil and administrative court proceedings. It reminds the State party that the absence of complaints and legal action by victims of racial discrimination may be merely an indication of a lack of awareness of the availability of legal remedies or of insufficient will on the part of the authorities to apply such remedies. In that regard, the Committee calls on the State party to ensure that victims of racial discrimination have access to effective legal remedies enabling them to seek redress, and to inform the public about such remedies.**

379. The Committee is concerned about the increase of racist and xenophobic attitudes especially among young Russians (art. 7).

**The Committee recommends that the State party further intensify its education and awareness-raising campaigns to combat prejudices against ethnic minorities and to promote inter-ethnic dialogue and tolerance within society, in particular among the Russian youth.**

380. The Committee encourages the State party to consider ratifying the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as Convention No. 169 (1989) of the International Labour Organization concerning Indigenous and Tribal Peoples in Independent Countries.

381. 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 (A/CONF.189/12, chap. I) when implementing the Convention in 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 periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

382. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites Assembly resolution 61/148, in which the 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.

383. 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 those reports be similarly publicized.

384. 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 its next periodic report.

385. 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 human rights treaty bodies in their fifth inter-committee meeting, held in June 2006 (see HRI/GEN/2/Rev.4).

386. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, by 15 August 2009 at the latest, on the measures it has taken to implement the recommendations contained in paragraphs 16, 18, 23 and 26 above during the year following the adoption of the present concluding observations.

387. The Committee recommends that the State party submit its combined twentieth to twenty-second periodic reports in a single document, due on 6 March 2012, taking into account the guidelines for the CERD-specific document (CERD/C/2007/1), as adopted by the Committee at its seventy-first session, and that the report be an update document and address all points raised in the present concluding observations.

## **SWEDEN**

388. The Committee considered the seventeenth and eighteenth periodic reports of Sweden (CERD/C/SWE/18), submitted in one document, at its 1894th and 1895th meetings (CERD/C/SR.1894 and CERD/C/SR.1895), held on 11 and 12 August 2008. At its 1901st and 1902nd meetings (CERD/C/SR.1901 and CERD/C/SR.1902), held on 15 August 2008, it adopted the following concluding observations.

### **A. Introduction**

389. 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. It commends the efforts by the State party to address the issues raised by the Committee in its previous concluding observations (CERD/C/64/CO/8).

390. The Committee appreciates the frank and open dialogue with the delegation composed of experts from different ministries, including the Ministry of Integration and Gender Equality, and the State party's frank acknowledgement of the existence of racial discrimination within segments of Swedish society, as well as the increase in crimes motivated by xenophobia, Islamophobia or anti-Semitism. Such acknowledgement is an important step in implementing the Convention.

### **B. Positive aspects**

391. The Committee welcomes the adoption of a new Anti-Discrimination Act (*Ett starkare skydd mot discriminering*) by the State party in July 2008, which merges the existing anti-discrimination legislation into one law and extends the scope of protection.

392. The Committee commends the State party for the forthcoming merger of the different Ombudsmen into a single institution and recommends that the new consolidated institution, once established, seek accreditation through the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

393. The Committee welcomes the adoption of the Aliens Act in 2006, which provides for the right to appeal to an independent appellate body and the increased use of oral hearings in asylum proceedings, expands the scope of application of the definition of refugees to include women escaping gender-based violence, and offers complementary forms of protection to persons escaping generalized violence.

394. The Committee welcomes the adoption of a second National Action Plan for Human Rights for the period 2006-2009, with a focus on protection from discrimination, and the forthcoming follow-up seminar on its implementation.

395. The Committee notes with appreciation the efforts by the State party to promote the rights of the Roma minority, including convening a working conference on Roma women's rights in December 2007, aimed at sharing information and best practices among policymakers and Roma networks across Europe.

396. The Committee notes with appreciation the State party's acceptance of new methods to investigate and combat discrimination, including pilot projects in situation testing and anonymous job applications, and for substantially raising the level of damages awarded to victims of racial discrimination.

### C. Concerns and recommendations

397. The Committee, while noting the State party's position regarding the collection of data on the ethnic composition of the population, reiterates its concern about the paucity of such data at its disposal for the monitoring of the Convention and regrets the lack of information on the criteria used for collecting data concerning mother tongue tuition.

**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.**

398. The Committee is concerned that the transfer of the mandate and functions of the former Swedish Integration Board to various Government agencies, including the Swedish Migration Board and the incumbent Ombudsman on Ethnic Discrimination, may result in the loss of the holistic approach to the collection of data and subsequent analysis of racial discrimination in the State party (art. 2).

**The Committee recommends that the State party take measures to ensure that the closure of the Swedish Integration Board does not detract from a holistic approach to the development of strategies to combat racial discrimination in the State party.**

399. While noting the existence, in the area of the application of the Convention, of a diversified non-governmental organization (NGO) community in the State party, the Committee wishes to emphasize the importance of providing adequate support to these institutions (art. 2 (1) (e)).

**The Committee recommends that the State party may consider providing the NGOs engaged in the field of human rights and, in particular, in combating racial discrimination with adequate support to enable them to perform their functions effectively.**

400. The Committee is concerned that the new Anti-Discrimination Act of July 2008 does not provide for the adoption of special measures regarding vulnerable racial or ethnic groups, with the exception of certain measures related to immigrant employment agencies. It recalls that special

measures for the advancement of certain groups are required when circumstances so warrant, provided that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups (arts. 1 (4), and 2 (2)).

**The Committee encourages the State party to review its position regarding special measures in view of the persisting inequalities experienced by minority and indigenous groups as well as foreign-born persons.**

401. While noting the existence of legal provisions giving effect to article 4, and the State party's position that its legislation meets the requirements of the Convention, the Committee remains concerned about the absence of any explicit criminal law provisions declaring illegal and prohibiting organizations promoting and inciting racial hatred (art. 4).

**The Committee reiterates its recommendation that the State party review its position on the prohibition of racist organizations and amend its legislation to bring it in line with article 4 (b) of the Convention. In this regard, the Committee recalls its general recommendation No. 15 (1993) on article 4 of the Convention, according to which all provisions of article 4 are of a mandatory character.**

402. While the Committee welcomes the State party's efforts to combat hate crimes, including by new tracking methods in the judicial system, it is concerned about the increase of reported racially motivated hate crimes since 2000, as well as the spread of white power music and propaganda. It also expresses concern that the objectives of the relevant laws and policies are not being realized fully in practice, and that the Attorney-General initiated criminal proceedings only in a limited number of cases of agitation against ethnic minorities. Furthermore, the Committee is concerned that the judiciary, the prosecution authority, and the police force use different definitions of hate crime (arts. 4 and 6).

**The State party should intensify its efforts to prevent, combat, and prosecute racially motivated offences and hate speech, and to ensure that relevant criminal law provisions and existing policy directives are effectively implemented. In this regard, the Committee recommends that the State party replicate best practice examples, such as the hate crime unit in Stockholm. The Committee also requests that the State party provide orientation courses in order to sensitize prosecutors to the general importance of prosecuting racist acts, including hate speech. The State party should introduce a common definition of hate crime to be used by all the authorities involved in combating such crimes.**

403. The Committee, while noting relevant studies undertaken by the State party, is concerned about discrimination in the judicial and law enforcement systems against persons of non-Swedish background. The Committee is particularly concerned about allegations of racial prejudice among judicial personnel and about the lack of legal interpreters (arts. 5 (a) and 6).

**By reference to its 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 develop and strengthen its programmes aimed at combating discrimination in the judicial and law enforcement systems. In this regard, the State party is encouraged to implement the recommendations contained in the study entitled "Discrimination in the Criminal Justice Process" by the National Council of Crime Prevention in 2006, in particular by providing effective interpretation and**

**translation facilities to all persons appearing before institutions of law and justice, and by actively recruiting staff with foreign backgrounds into the law enforcement authorities and the judiciary.**

404. The Committee notes the State party's continued commitment to the integration of foreign-born persons. Nevertheless, it remains concerned that despite such efforts, de facto discrimination against persons of foreign origin persists in a number of areas. It is particularly concerned about the lower employment rate among persons of immigrant origin, especially women. It regrets the lack of information on concrete measures taken to prevent discrimination in the area of health. The Committee is also concerned about the prevalence of de facto discrimination in the housing sector (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 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 on the results of the project of anonymous job applications, which is aimed at providing equal access to employment, in its next periodic report. The State party is also encouraged to review its health-care policies, with a view to offering equal access to health care to all persons, irrespective of ethnic origin. The Committee recommends that the State party strengthen its efforts to combat de facto discrimination in the housing sector, including by ensuring transparent and clear criteria in allocation of public housing.**

405. While welcoming the efforts made by the State party to eliminate discrimination against the Roma, such as the establishment of a Delegation for Roma Issues in 2006, and noting the establishment of a working group on education within the framework of this Delegation, 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 (arts. 2, 5, and 6).

**In 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, by effectively enforcing existing policies on the protection of minorities. The State party should also increase its efforts to combat negative attitudes and prevailing stereotypes concerning Roma.**

406. While noting the State party's stated intention to address the reports of various inquiries regarding Sami land and resource rights<sup>1</sup> in a bill to be submitted to Parliament in March 2010, the Committee reiterates its concern about the limited progress achieved in resolving Sami rights issues. It is also concerned about the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights, as well as the lack of resources allocated to these inquiries (arts. 5 (d) (v), 5 (e) (vi), and 6).

**The Committee recommends that the State party take effective measures to ensure that studies conducted in the area of Sami rights result in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also invited to initiate further studies into methods by which Sami land and resource rights may be established, taking into account the oral tradition of Sami culture, as well as any limitations in written documentary evidence of Sami title.**

407. While noting the State party's assumption that no further legal actions by Swedish landholders against Sami reindeer herders are to be expected, the Committee reiterates its concern regarding such land disputes. It is particularly concerned about past court rulings which have deprived Sami communities of winter grazing lands. It is also concerned about de facto discrimination against the Sami in legal disputes, as the burden of proof for land ownership rests exclusively with the Sami, and about the lack of legal aid provided to Sami villages as litigants (arts. 5 (a), 5 (d) (v), 5 (e) (vi) and 6).

**The Committee recommends that the State party grant necessary legal aid to Sami villages in court disputes concerning land and grazing rights and invites the State party to introduce legislation providing for a shared burden of proof in cases regarding Sami land and grazing rights. It also encourages the State party to consider other means of settling land disputes, such as mediation.**

408. The Committee, while commending the State party for its active participation in the initiative of a Nordic Sami Convention, is concerned about the slow progress in its further development. It is also concerned that the State party has deferred its ratification of International Labour Organization (ILO) Convention No. 169 (1989) on Indigenous and Tribal Peoples in Independent Countries (art. 5 (e) (vi)).

**The Committee encourages the State party proceed expeditiously towards the goal of adopting a Nordic Sami Convention and of ratifying ILO Convention No. 169.**

409. The Committee expresses concern about the continuing discrimination against the Sami in many segments of Swedish society. It is also concerned that despite the State party's effort to increase awareness of the possibility of schools providing mother tongue tuition, such awareness remains low among members of the Sami community (art. 5 (e)).

**The Committee encourages the State party to implement the recommendations contained in the study by the Ombudsman on Ethnic Discrimination published in July 2008. The State party is encouraged to raise greater awareness among the Sami regarding the availability of mother tongue tuition and to implement distance learning programmes as a measure to avoid teacher shortfalls and lack of funding. The Committee encourages the State party to learn from best practices in other countries with Sami communities.**

410. 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.

411. 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 (A/CONF.189/12, chap. I), 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 and comprehensively in the Preparatory Committee for the Durban Review Conference, as well as in the Durban Review Conference in 2009.

412. 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 the official and national languages.

413. 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.

414. 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).

415. 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 15, 16 and 20 above.

416. The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports in a single document, due on 31 July 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.

## **SWITZERLAND**

417. The Committee considered the combined fourth to sixth periodic reports of Switzerland (CERD/C/CHE/6) at its 1892nd and 1893rd meetings (CERD/C/SR.1892 and 1893), held on 8 and 11 August 2008. At its 1999th meeting (CERD/C/SR.1999), held on 14 August 2008, the Committee adopted the following concluding observations.

### **A. Introduction**

418. The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, as well as its written replies. Furthermore, it appreciates the detailed and comprehensive oral answers provided by the delegation in response to the Committee's questions, as well as the open and constructive dialogue between the Committee and the delegation.

### **B. Positive aspects**

419. The Committee welcomes the fact that in 2003 the State party made the optional declaration provided for in article 14 of the Convention.

420. The Committee welcomes the establishment of the Fund for anti-racism and human rights projects, as well as the Service for Combating Racism.



421. The Committee notes with appreciation the introduction in 2007 of a federal examination which is mandatory for candidates applying for posts in the police force and which integrates modules on ethics and human rights.

422. The Committee notes the reinforcement of the jurisprudence of the Federal Supreme Court concerning article 261 bis of the Criminal Code, which thus makes it possible to more effectively address racist speeches and behaviour through criminal sanctions.

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

423. The Committee notes with regret the lack of substantial progress made by the State party in combating racist and xenophobic attitudes towards some minorities, including black persons, Muslims, Travellers, immigrants and asylum-seekers. It is particularly concerned at the hostility resulting from the negative perception of foreigners and certain minorities by part of the population, which has resulted in popular initiatives questioning the principle of non-discrimination. The Committee regrets that in the period covered by the report, the prohibition against racial discrimination had to be defended against repeated attacks in the political arena, including demands for its abolition or restriction (art. 7).

**The Committee urges the State party to further intensify its efforts in education and awareness-raising campaigns to combat prejudices against ethnic minorities and promote inter-ethnic dialogue and tolerance within society, in particular at the cantonal and communal level. The State party should consider implementing the recommendations made by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance following his visit to Switzerland in 2006, as well as the relevant recommendations made by the working group on the universal periodic review in 2008.**

424. While noting that according to the State party, its federal system does not constitute an obstacle to the implementation of the Convention within its territory and that sufficient mechanisms exist within the Swiss system, the Committee remains concerned that inconsistencies in the implementation of the Convention exist and that the laws, policies and decisions of cantons and communes could contradict the State party's obligations under the Convention.

**The Committee underscores once again the responsibility of the Federal Government of Switzerland for the implementation of the Convention. The State party is invited to play a proactive role, leading the authorities of the cantons and communes to fully implement the Convention in conformity with article 54 (1) of the Federal Constitution. The Confederation should use and reinforce all existing mechanisms to monitor compliance with the provisions of the Convention, including by clearly formulating human rights requirements for the cantons and communes.**

425. While noting that the Convention forms an integral part of the Swiss legal system and that some of its provisions may be directly invoked before the Swiss courts, the Committee remains concerned at the lack of comprehensive civil and administrative legislation and policies to prevent and combat racial discrimination in all areas, and at the fact that only 10 cantons, out of 26, have enacted anti-discrimination laws (art. 2 (1) (d)).

**The Committee invites the State party to adopt a national plan and legislation at all levels of Government against racial discrimination, xenophobia and other forms of intolerance. The State party should devote adequate financial resources for the implementation of the Convention, and ensure that the plan is integrated with other mechanisms for the implementation of human rights in Switzerland.**

426. The Committee regrets that an independent national human rights institution, in accordance with the Paris Principles (General Assembly resolution 48/134), has not so far been established in Switzerland. It welcomes the commitment of the State party before the Human Rights Council to continue to consider the establishment of such a human rights institution. The Committee notes that the Federal Commission against Racism (FCR), which is responsible for preventing racial discrimination and promoting inter-ethnic dialogue, has not been provided with adequate funds.

**The Committee invites the State party once again to establish a well-financed and adequately staffed independent human rights institution according to the Paris Principles. The Committee reiterates its recommendation that the means of the Federal Commission against Racism should be strengthened and recommends more regular dialogue with the FCR.**

427. While taking note of article 8 of the Federal Constitution, which incorporates an explicit prohibition of discrimination, as well as the different national law provisions that may be applied in cases of racial discrimination, the Committee notes with concern that the domestic legislation of the State party does not currently contain a definition of racial discrimination in conformity with the definition set out in article 1 of the Convention.

**The Committee recommends that the State party consider adopting a clear and comprehensive definition of racial discrimination, including direct as well as indirect discrimination, to cover all fields of law and public life, fully in accordance with article 1, paragraph 1, of the Convention.**

428. While welcoming the information provided by the canton of Vaud on its efforts to implement the Convention, the Committee notes the lack of information regarding the activities of other cantons to combat racism and racial discrimination (art. 2).

**The State party is invited to provide the Committee in its next report with detailed and updated information on its activities and measures undertaken by the cantons in the area of racial discrimination.**

429. The Committee notes that the State party intends to maintain its reservation to article 2 of the Convention. The Committee also notes with concern the inadequate protection of the right to marry and found a family for aliens not stemming from European Union States (art. 2).

**The Committee invites the State party to consider the possibility of withdrawing its reservation to article 2, paragraph 1 (a) of the Convention and encourages it to ensure that immigration policies and laws do not intentionally or unintentionally discriminate.**

430. While noting the explanation provided by the delegation with regard to the exigencies of national security, the Committee is concerned at the use of racial profiling, including in airports. The Committee is also concerned by the lack of statistics regarding racial profiling at cantonal level (art. 2).

**The Committee recommends that the State party review existing national security measures and ensure that individuals are not targeted on the grounds of race or ethnicity. In this regard, the Committee invites the State party to take account of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee also requests the State party to compile information regarding racial profiling at the cantonal level.**

431. The Committee notes with concern the reasons expressed by the State party for maintaining its reservation to article 4 of the Convention relating to the prohibition of hate speeches. While taking into account the importance conferred by the Federal Constitution on the freedoms of expression and assembly, the Committee recalls that freedom of expression and assembly is not absolute and that the establishment and activities of organizations promoting or inciting racism and racial discrimination shall be prohibited. In this regard, the Committee is particularly concerned at the role played by some political associations and parties in the rise of racism and xenophobia in the State party (art. 4).

**Taking into account the mandatory nature of article 4 of the Convention, the Committee invites the State party to consider withdrawing its reservation to article 4 and recommends that the State party enact legislation that declares illegal and prohibits any organization which promotes or incites racism and racial discrimination. In this context, the Committee draws the attention of the State party to its general recommendation No. 15 (1993) on article 4 of the Convention.**

432. The Committee notes with concern the increase in reports of alleged excessive use of force by the police within the territory of the State party, in particular against black persons (art. 4 (a) and (c)).

**The Committee urges the State party to take firm measures to eradicate all forms of racially discriminatory practice and excessive use of force by the police and in particular: (a) establish an independent mechanism for the investigation of complaints concerning the actions of law enforcement officials; (b) initiate disciplinary and criminal proceedings against alleged perpetrators, ensuring that the sanctions imposed are proportionate to the gravity of the offence, and grant appropriate remedy for victims; (c) continue its efforts to provide relevant training to the police, including in cooperation with the Federal Commission against Racism; (d) consider recruiting members of minorities into the police force; and (e) consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.**

433. The Committee notes with concern that the State party's legislation on aliens and asylum-seekers may not guarantee them equal rights in accordance with the Convention. For instance, pursuant to the Aliens Act which entered into force on 1 January 2008, asylum-seekers whose requests are rejected are excluded from the welfare system with resulting marginalization and vulnerability (art. 5 (b)).

**The Committee urges the State party to take effective and adequate measures to guarantee the rights under the Convention to aliens and asylum-seekers. It invites the**

**State party to harmonize its domestic legislation on aliens and asylum-seekers with the Convention, and to take into account the recommendations made in this area by different bodies and organizations dealing with racial discrimination issues.**

434. While welcoming the new legislation on naturalization which is expected to enter into force in 2009, the Committee remains concerned at the fact that the cantons and communes may introduce stricter conditions than the Confederation on naturalization matters, may infringe upon the right to private life, and that the lack of definition of integration criteria in the naturalization process could lead municipal assemblies to adopt inconsistent standards and decisions (art. 5 (d) (iii)).

**The Committee encourages the State party to adopt standards on integration for the naturalization process, in conformity with the Convention, and to take all effective and adequate measures to ensure that naturalization applications are not rejected on discriminatory grounds throughout the territory of the State party.**

435. While noting with appreciation that Travellers/Yenish have been recognized by the State party as a national cultural minority under the Council of Europe's Framework Convention for the Protection of National Minorities, the Committee remains concerned that Travellers, including Yenish, Sinti and Roma, are still subjected to numerous disadvantages and forms of discrimination, particularly in the areas of housing and education. It notes with concern the lack of adequate measures to protect their language and culture as well as the persistence of racial stereotyping against them (arts. 2 and 5).

**The Committee recommends once again that the State party strengthen its efforts to improve the situation of Travellers, in particular with regard to the means and enjoyment of their rights to housing, education and cultural rights. The State party should adopt a national coordinating policy aimed at protecting Travellers' rights.**

436. 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.

437. 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 (A/CONF.189/12, chap. I) when implementing the Convention in 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 periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

438. The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the 14th 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 61/148, in which the 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.

439. 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 those reports be similarly publicized in the official and national languages.

440. 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 its next periodic report.

441. 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 (see HRI/GEN/2/Rev.4).

442. In accordance with article 9, paragraph 1, of the Convention and article 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, 10, 14 and 18 above.

443. The Committee recommends that the State party submit its seventh and eighth periodic report due on 14 November 2010, taking into account the specific guidelines for Committee documents, as adopted at its seventy-first session (CERD/C/2007/1), that address all points raised in the present concluding observations.

## **TOGO**

444. The Committee considered the combined sixth to seventeenth periodic reports of Togo (CERD/C/TGO/17) at its 1880th and 1881st meetings (CERD/C/SR.1880 and 1881), held on 30 and 31 July 2008. At its 1897th meeting (CERD/C/SR.1897), held on 13 August 2008, the Committee adopted the concluding observations as set out below.

### **A. Introduction**

445. The Committee welcomes the report submitted by the State party and commends the candid way in which it acknowledged certain situations that have greatly affected Togo. The Committee regrets, however, that non-governmental human rights organizations did not participate in drafting the report.

446. The Committee welcomes the opportunity to resume dialogue with the State party after a long interruption and invites it to submit its future reports in a regular manner. It commends the presence of a large and high-level delegation and expresses its satisfaction for the additional information provided orally and in writing.

447. The Committee notes with satisfaction the presence of the National Human Rights Commission of Togo and the information provided by its Chairperson.

### **B. Positive aspects**

448. The Committee welcomes the process of reconciliation initiated by Togo, which resulted in the signing of the Global Political Accord on 20 August 2006, and the peaceful conduct of the legislative elections in October 2007. It also welcomes the determination of the State party to establish the rule of law and its commitment to meet its international human rights obligations.

449. The Committee notes with satisfaction the State party's stated intention to establish a truth, justice and reconciliation commission in the near future.

450. The Committee welcomes the national programme for the promotion and protection of human rights adopted on 31 May 2007, which emphasizes public awareness about international human rights instruments.

451. The Committee notes with satisfaction that the State party has begun to implement a national programme to modernize the justice system as well as legislative reform of the Criminal Code.

452. The Committee welcomes the elimination of discriminatory provisions from the Electoral Code.

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

453. While the Committee notes the difficulties expressed by the delegation, it would like to have updated information on the ethnic and linguistic composition of the population of Togo. It recalls that information on the demographic composition makes it possible for both the Committee and the State party to better evaluate the application of the Convention at the national level.

**The Committee encourages the State party to conduct a census and to provide the census data in its next report. It recommends that the questionnaire used for this purpose should include questions that help to better identify the ethnic and linguistic composition of the population. It draws the State party's attention to the general guidelines regarding the form and contents of reports to be submitted by States parties to the Committee, adopted at its seventy-first session (CERD/C/70/Rev.5).**

454. The Committee notes with concern that, although the State party acknowledges that inter-ethnic conflicts have occurred in Togo, there is currently no definition of racial discrimination that reflects the definition given in article 1 of the Convention.

**The Committee encourages the State party to persist in its efforts to carry out reform of its legislation, particularly of the Criminal Code, in the very near future, making provision for the inclusion of a definition of racial discrimination that is fully consistent with article 1 of the Convention (art. 1).**

455. The Committee notes with concern that the requirements of article 4 of the Convention are not fully reflected in domestic law, including the requirement to declare illegal the provision of assistance to and financing of racist activities and to prohibit organizations that disseminate racist propaganda.

**The Committee recommends that the State party establish provisions making each of the criminal acts referred to in the relevant paragraphs of article 4 of the Convention a criminal offence, including assistance to and financing of racist activities, and prohibiting organizations that disseminate racist propaganda (art. 4 (a)).**

456. While the Committee takes into account the State party's commitment to national reconciliation, it notes with concern that no criminal penalty has been imposed on the political leaders and authors of journalistic articles who have incited ethnic hatred and tribalism, even though, as the State party acknowledges, the gravity of their conduct resulted in massacres, manhunts and population displacements, particularly following the 2005 presidential elections. The Committee recalls that grave human rights violations must not go unpunished.

**The Committee recommends that the State party take the necessary measures to combat effectively any tendency, particularly on the part of political officials and the media, to stigmatize or stereotype persons on the basis of race, colour, descent and national or ethnic origin. The State party should also ensure that no grave violation of human rights goes unpunished (art. 4 (b) and (c)).**

457. The Committee regrets that it did not have enough information on the activities of the Office of the High Commissioner for Reconciliation and Strengthening National Unity established on 11 March 2008 or on the policies conducted by Togo to bring national unity to the country.

**The Committee reminds the State party that the objective of building a nation based on the principle of equality for all should be achieved by taking into account the protection of the ethnic and cultural diversity of all ethnic groups and observing the rights recognized and protected by the Convention. It recommends that the Government's activities, including the activities of the Office of the High Commissioner for Reconciliation and Strengthening National Unity, take into account the principle of non-discrimination established under the Convention (art. 5).**

458. The Committee is concerned by the tensions between various ethnic groups in Togo that could persist and hinder the reconciliation process.

**The Committee invites the State party to step up its efforts to promote harmonious relations between the various ethnic and cultural groups in Togo, including through campaigns to increase awareness about tolerance and inter-ethnic understanding. It also invites it to take measures to promote the cultural identity of these groups and preserve their languages (art. 7).**

459. The Committee notes with concern the persistence of significant disparities based on gender and geographic, ethnic and social origin in Togo, including in the educational system and access to health services.

**The Committee encourages the State party to make every effort to reduce existing disparities, including in the educational system and access to health services, through appropriate strategies and measures (art. 2, para. 2 and art. 5 (e) (iv) and (v)).**

460. The Committee notes with concern that the legal instrument governing property matters, the decree of 24 July 1906, is not adequate to guarantee the right of indigenous peoples to own, develop, control and use their lands, resources and communal territories.

**The Committee recommends that the State party take effective and adequate measures to protect the right of indigenous peoples to land and (a) provide effective protection of the forest rights of indigenous peoples within the framework of the National Commission for the Modernization of Legislation; (b) draw up a registry of the ancestral land of indigenous peoples; (c) take into account the interests of indigenous peoples and the imperatives of safeguarding the environment with respect to land use; and (d) provide domestic remedies in cases of violation of the rights of indigenous peoples. The Committee also invites the State party to take account of its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5 (e)).**

461. While taking into account the efforts made by the State party to restore ethnically balanced representation in the recruitment of public administration personnel and within the law enforcement and security forces, the Committee notes with concern that there remains an ethnic imbalance in the civil service and that the Kabyè-Tem-Losso group is predominant in the army. However, some ethnic groups such as the Peulh are underrepresented in the Government, Assembly, magistracy and public institutions.

**The Committee encourages the State party to continue its efforts to implement the recommendations of the 2005 fact-finding mission by taking urgent and adequate measures to radically transform recruitment in the army and civil service so that they reflect the cultural and ethnic diversity of Togolese society and that no ethnic group suffers discrimination (art. 5 (e) (i)).**

462. The Committee regrets not having received sufficient clarification of the status of the Convention in Togolese domestic law, including the scope of articles 50 to 140 of the Constitution.

**The Committee recommends that the State party provide it with more information on the status of the Convention in domestic law and on individuals' right to invoke the relevant provisions of the Convention before the courts (art. 6).**

463. The Committee notes with concern that according to the State party racial discrimination is practically non-existent in Togo and that no complaint has been registered to date.

**The Committee requests the State party to include in its next periodic report statistics on the legal proceedings instituted and sentences handed down for offences related to racial discrimination. It reminds it that the absence of complaints and court cases on the part of victims of racial discrimination may reflect the non-existence of specific relevant legislation, ignorance of available remedies, fear of social disapproval or the unwillingness of the responsible authorities to institute legal proceedings. It requests the State party to ensure that its national legislation contains the appropriate provisions and inform the public of all the available legal remedies in the area of racial discrimination (art. 6).**

464. 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 (A/CONF.189/12, chap. I), 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.

465. 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.

466. 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 of 16 December 1992. In this connection, the Committee cites General Assembly resolution 61/148,



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.

467. 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 comments on those reports be similarly publicized in the official and national languages and, if possible, the main minority languages.

468. 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.

469. 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 (see HRI/GEN/2/Rev.4).

470. In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to provide information, no later than 15 August 2009, on its follow-up to the recommendations contained in paragraphs 13, 17 and 18 above within one year of the adoption of the present concluding observations.

471. The Committee recommends that the State party submit its eighteenth and nineteenth periodic reports, in a single document, by 5 July 2011, taking into account the specific reporting guidelines for the Committee on the Elimination of Racial Discrimination, as adopted by the Committee at its seventy-first session, and addressing all points raised in the present concluding observations.

## **UNITED STATES OF AMERICA**

472. The Committee considered the fourth, fifth and sixth periodic reports of the United States of America, submitted in a single document (CERD/C/USA/6), at its 1853rd and 1854th meetings (CERD/C/SR.1853 and 1854), held on 21 and 22 February 2008. At its 1870th meeting (CERD/C/SR.1870), held on 5 March 2008, it adopted the following concluding observations.

### **A. Introduction**

473. The Committee welcomes the reports, and the opportunity to continue an open and constructive dialogue with the State party. The Committee also expresses appreciation for the detailed responses provided to the list of issues, as well as for the efforts made by the high-level delegation to answer the wide range of questions raised during the dialogue.

### **B. Positive aspects**

474. The Committee welcomes the acknowledgement of the multiracial, multi-ethnic, and multicultural nature of the State party.

475. The Committee notes with satisfaction the work carried out by the various executive departments and agencies of the State party which have responsibilities in the field of the elimination

of racial discrimination, including the Civil Rights Division of the U.S. Department of Justice, the Equal Employment Opportunity Commission (EEOC) and the Department of Housing and Urban Development (HUD).

476. The Committee welcomes the reauthorization, in 2005, of the Violence Against Women Act of 1994 (VAWA).

477. The Committee also welcomes the reauthorization, in 2006, of the Voting Rights Act of 1965 (VRA).

478. The Committee commends the launch, in 2007, of the E-RACE Initiative (“Eradicating Racism and Colorism from Employment”), aimed at raising awareness on the issue of racial discrimination in the workplace.

479. The Committee notes with satisfaction the creation, in 2007, of the National Partnership for Action to End Health Disparities for Ethnic and Racial Minority Populations, as well as the various programmes adopted by the U.S. Department of Health and Human Services (HHS) to address the persistent health disparities affecting low-income persons belonging to racial, ethnic and national minorities.

480. The Committee also notes with satisfaction the California Housing Element Law of 1969, which requires each local jurisdiction to adopt a housing element in its general plan to meet the housing needs of all segments of the population, including low-income persons belonging to racial, ethnic and national minorities.

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

481. The Committee reiterates the concern expressed in paragraph 393 of its previous concluding observations of 2001 (A/56/18, paras. 380-407) that the definition of racial discrimination used in the federal and state legislation and in court practice is not always in line with that contained in article 1, paragraph 1, of the Convention, which requires States parties to prohibit and eliminate racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect. In this regard, the Committee notes that indirect, or de facto - discrimination occurs where an apparently neutral provision, criterion or practice would put persons of a particular racial, ethnic or national origin at a disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary (art. 1 (1)).

**The Committee recommends that the State party review the definition of racial discrimination used in the federal and state legislation and in court practice, so as to ensure, in light of the definition of racial discrimination provided for in article 1, paragraph 1, of the Convention, that it prohibits racial discrimination in all its forms, including practices and legislation that may not be discriminatory in purpose, but in effect.**

482. While appreciating that the Constitution and laws of the State party may be used in many instances to prohibit private actors from engaging in acts of racial discrimination, the Committee

remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to discriminatory acts perpetrated by private individuals, groups or organizations (art. 2).

**The Committee recommends that the State party consider withdrawing or narrowing the scope of its reservation to article 2 of the Convention, and to broaden the protection afforded by the law against discriminatory acts perpetrated by private individuals, groups or organizations.**

483. The Committee notes that no independent national human rights institution established in accordance with the Paris Principles (General Assembly resolution 48/134, annex) exists in the State party (art. 2).

**The Committee recommends that the State party consider the establishment of an independent national human rights institution in accordance with the Paris Principles.**

484. While welcoming the acknowledgement by the delegation that the State party is bound to apply the Convention throughout its territory and to ensure its effective application at all levels, federal, state, and local, regardless of the federal structure of its Government, the Committee notes with concern the lack of appropriate and effective mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state and local levels (art. 2).

**The Committee recommends that the State party establish appropriate mechanisms to ensure a coordinated approach towards the implementation of the Convention at the federal, state and local levels.**

485. The Committee notes with concern that despite the measures adopted at the federal and state levels to combat racial profiling, including the elaboration by the Civil Rights Division of the U.S. Department of Justice of the Guidance Regarding the Use of Race by Federal Law Enforcement Agencies - such practice continues to be widespread. In particular, the Committee is deeply concerned about the increase in racial profiling against Arabs, Muslims and South Asians in the wake of the 11 September 2001 attack, as well as about the development of the National Entry and Exit Registration System (NEERS) for nationals of 25 countries, all located in the Middle East, South Asia or North Africa (arts. 2 and 5 (b)).

**Bearing in mind 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 strengthen its efforts to combat racial profiling at the federal and state levels, inter alia, by moving expeditiously towards the adoption of the End Racial Profiling Act, or similar federal legislation. The Committee also draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens, according to which measures taken in the fight against terrorism must not discriminate, in purpose or effect, on the grounds of race, colour, descent, or national or ethnic origin, and urges the State party, in accordance with article 2, paragraph 1 (c), of the Convention, to put an end to the National Entry and Exit Registration System (NEERS) and to eliminate other forms of racial profiling against Arabs, Muslims and South Asians.**

486. The Committee notes with concern that recent case law of the U.S. Supreme Court and the use of voter referenda to prohibit states from adopting race-based affirmative action measures have further limited the permissible use of special measures as a tool to eliminate persistent disparities in the enjoyment of human rights and fundamental freedoms (art. 2 (2)).

**The Committee reiterates that the adoption of special measures “when circumstances so warrant” is an obligation arising from article 2, paragraph 2, of the Convention. The Committee therefore calls once again upon the State party to adopt and strengthen the use of such measures when circumstances warrant their use as a tool to eliminate the persistent disparities in the enjoyment of human rights and fundamental freedoms and ensure the adequate development and protection of members of racial, ethnic and national minorities.**

487. The Committee is deeply concerned that racial, ethnic and national minorities, especially Latino and African American persons, are disproportionately concentrated in poor residential areas characterized by sub-standard housing conditions, limited employment opportunities, inadequate access to health care facilities, under-resourced schools and high exposure to crime and violence (art. 3).

**The Committee urges the State party to intensify its efforts aimed at reducing the phenomenon of residential segregation based on racial, ethnic and national origin, as well as its negative consequences for the affected individuals and groups. In particular, the Committee recommends that the State party:**

- (i) Support the development of public housing complexes outside poor, racially segregated areas;**
- (ii) Eliminate the obstacles that limit affordable housing choice and mobility for beneficiaries of Section 8 Housing Choice Voucher Program; and**
- (iii) Ensure the effective implementation of legislation adopted at the federal and state levels to combat discrimination in housing, including the phenomenon of “steering” and other discriminatory practices carried out by private actors.**

488. The Committee remains concerned about the persistence of de facto racial segregation in public schools. In this regard, the Committee notes with particular concern that the recent U.S. Supreme Court decisions in *Parents Involved in Community Schools v. Seattle School District No. 1* (2007) and *Meredith v. Jefferson County Board of Education* (2007) have rolled back the progress made since the U.S. Supreme Court’s landmark decision in *Brown v. Board of Education* (1954), and limited the ability of public school districts to address de facto segregation by prohibiting the use of race-conscious measures as a tool to promote integration (arts. 2, 3 and 5 (e) (v)).

**The Committee recommends that the State party undertake further studies to identify the underlying causes of de facto segregation and racial inequalities in education, with a view to elaborating effective strategies aimed at promoting school desegregation and providing equal educational opportunity in integrated settings for all students. In this regard, the Committee recommends that the State party take all appropriate measures, including the**

**enactment of legislation, to restore the possibility for school districts to voluntarily promote school integration through the use of carefully tailored special measures adopted in accordance to article 2, paragraph 2, of the Convention.**

489. While appreciating that some forms of hate speech and other activities designed to intimidate, such as the burning of crosses, are not protected under the First Amendment to the U.S. Constitution, the Committee remains concerned about the wide scope of the reservation entered by the State party at the time of ratification of the Convention with respect to the dissemination of ideas based on racial superiority and hatred (art. 4).

**The Committee draws the attention of the State party to its general recommendations No. 7 (1985) and 15 (1993) concerning the implementation of article 4 of the Convention, and request the State party to consider withdrawing or narrowing the scope of its reservations to article 4 of the Convention. In this regard, the Committee wishes to reiterate that the prohibition of all ideas based on racial superiority or hatred is compatible with the right to freedom of opinion and expression, given that the exercise of this right carries special duties and responsibilities, including the obligation not to disseminate racist ideas.**

490. While noting the explanations provided by the State party with regard to the situation of the Western Shoshone indigenous peoples, considered by the Committee under its early warning and urgent action procedure, the Committee strongly regrets that the State party has not followed up on the recommendations contained in paragraphs 8 to 10 of its decision 1 (68) of 2006 (CERD/C/USA/DEC/1) (art. 5).

**The Committee reiterates its Decision 1 (68) in its entirety, and urges the State party to implement all the recommendations contained therein.**

491. The Committee reiterates its concern with regard to the persistent racial disparities in the criminal justice system of the State party, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, allegedly due to the harsher treatment that defendants belonging to these minorities, especially African American persons, receive at various stages of criminal proceedings (art. 5 (a)).

**Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, according to which stark racial disparities in the administration and functioning of the criminal justice system, including the disproportionate number of persons belonging to racial, ethnic and national minorities in the prison population, may be regarded as factual indicators of racial discrimination, the Committee recommends that the State party take all necessary steps to guarantee the right of everyone to equal treatment before tribunals and all other organs administering justice, including further studies to determine the nature and scope of the problem, and the implementation of national strategies or plans of action aimed at the elimination of structural racial discrimination.**

492. The Committee notes with concern that according to information received, young offenders belonging to racial, ethnic and national minorities, including children, constitute a disproportionate number of those sentenced to life imprisonment without parole (art. 5 (a)).

**The Committee recalls the concerns expressed by the Human Rights Committee (CCPR/C/USA/CO/3/Rev.1, para. 34) and the Committee against Torture (CAT/C/USA/CO/2, para. 34) with regard to federal and state legislation allowing the use of life imprisonment without parole against young offenders, including children. In light of the disproportionate imposition of life imprisonment without parole on young offenders, including children, belonging to racial, ethnic and national minorities, the Committee considers that the persistence of such sentencing is incompatible with article 5 (a) of the Convention. The Committee therefore recommends that the State party discontinue the use of life sentence without parole against persons under the age of eighteen at the time the offence was committed, and review the situation of persons already serving such sentences.**

493. While welcoming the recent initiatives undertaken by the State party to improve the quality of criminal defence programmes for indigent persons, the Committee is concerned about the disproportionate impact that persistent systemic inadequacies in these programmes have on indigent defendants belonging to racial, ethnic and national minorities. The Committee also notes with concern the disproportionate impact that the lack of a generally recognized right to counsel in civil proceedings has on indigent persons belonging to racial, ethnic and national minorities (art. 5 (a)).

**The Committee recommends that the State party adopt all necessary measures to eliminate the disproportionate impact that persistent systemic inadequacies in criminal defence programmes for indigent persons have on defendants belonging to racial, ethnic and national minorities, inter alia, by increasing its efforts to improve the quality of legal representation provided to indigent defendants and ensuring that public legal aid systems are adequately funded and supervised. The Committee further recommends that the State party allocate sufficient resources to ensure legal representation of indigent persons belonging to racial, ethnic and national minorities in civil proceedings, with particular regard to those proceedings where basic human needs, such as housing, health care, or child custody, are at stake.**

494. The Committee remains concerned about the persistent and significant racial disparities with regard to the imposition of the death penalty, particularly those associated with the race of the victim, as evidenced by a number of studies, including a recent study released in October 2007 by the American Bar Association (ABA)<sup>2</sup> (art. 5 (a)).

**Taking into account 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 undertake further studies to identify the underlying factors of the substantial racial disparities in the imposition of the death penalty, with a view to elaborating effective strategies aimed at rooting out discriminatory practices. The Committee wishes to reiterate its previous recommendation contained in paragraph 396 of its previous concluding observations of 2001, that the State party adopt all necessary measures, including a moratorium, to ensure that death penalty is not imposed as a result of racial bias on the part of prosecutors, judges, juries and lawyers.**

495. The Committee regrets the position taken by State party that the Convention is not applicable to the treatment of foreign detainees held as “enemy combatants”, on the basis of the argument that the law of armed conflict is the exclusive *lex specialis* applicable, and that in any event the Convention “would be inapplicable to allegations of unequal treatment of foreign detainees” in accordance to

article 1, paragraph 2, of the Convention. The Committee also notes with concern that the State party exposes non-citizens under its jurisdiction to the risk of being subjected to torture or cruel, inhuman or degrading treatment or punishment by means of transfer, rendition, or refoulement to third countries where there are substantial reasons to believe that they will be subjected to such treatment (arts. 5 (a), 5 (b) and 6).

**Bearing in mind its general recommendation No. 30 (2004) on non-citizens, the Committee wishes to reiterate that States parties are under an obligation to guarantee equality between citizens and non-citizens in the enjoyment of the rights set forth in article 5 of the Convention, including the right to equal treatment before the tribunals and all other organs administering justice, to the extent recognized under international law, and that article 1, paragraph 2, must be construed so as to avoid undermining the basic prohibition of discrimination set out in article 1, paragraph 1, of the Convention.**

**The Committee also recalls its Statement on racial discrimination and measures to combat terrorism (A/57/18), according to which States parties to the Convention are under an obligation to ensure that measures taken in the struggle against terrorism do not discriminate in purpose or effect on grounds of race, colour, descent or national or ethnic origin.**

**The Committee therefore urges the State party to adopt all necessary measures to guarantee the right of foreign detainees held as “enemy combatants” to judicial review of the lawfulness and conditions of detention, as well as their right to remedy for human rights violations. The Committee further requests the State party to ensure that non-citizens detained or arrested in the fight against terrorism are effectively protected by domestic law, in compliance with international human rights, refugee and humanitarian law.**

496. While recognizing the efforts made by the State party to combat the pervasive phenomenon of police brutality, the Committee remains concerned about allegations of brutality and use of excessive or deadly force by law enforcement officials against persons belonging to racial, ethnic or national minorities, in particular Latino and African American persons and undocumented migrants crossing the U.S.-Mexico border. The Committee also notes with concern that despite the efforts made by the State party to prosecute law enforcement officials for criminal misconduct, impunity of police officers responsible for abuses allegedly remains a widespread problem (arts. 5 (b) and 6).

**The Committee recommends that the State party increase significantly its efforts to eliminate police brutality and excessive use of force against persons belonging to racial, ethnic or national minorities, as well as undocumented migrants crossing the U.S.-Mexico border, inter alia, by establishing adequate systems for monitoring police abuses and developing further training opportunities for law enforcement officials. The Committee further requests the State party to ensure that reports of police brutality and excessive use of force are independently, promptly and thoroughly investigated and that perpetrators are prosecuted and appropriately punished.**

497. While welcoming the various measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, the Committee remains deeply concerned about the incidence of rape and sexual violence experienced by women belonging to such groups, particularly with regard to American Indian and Alaska Native women and

female migrant workers, especially domestic workers. The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered (arts. 5 (b) and 6).

**The Committee recommends that the State party increase its efforts to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, inter alia, by:**

- (i) Setting up and adequately funding prevention and early assistance centres, counselling services and temporary shelters;**
- (ii) Providing specific training for those working within the criminal justice system, including police officers, lawyers, prosecutors and judges, and medical personnel;**
- (iii) Undertaking information campaigns to raise awareness among women belonging to racial, ethnic and national minorities about the mechanisms and procedures provided for in national legislation on racism and discrimination; and**
- (iv) Ensuring that reports of rape and sexual violence against women belonging to racial, ethnic and national minorities, and in particular Native American women, are independently, promptly and thoroughly investigated, and that perpetrators are prosecuted and appropriately punished.**

**The Committee requests the State party to include information on the results of these measures and on the number of victims, perpetrators, convictions, and the types of sanctions imposed, in its next periodic report.**

498. The Committee remains concerned about the disparate impact that existing felon disenfranchisement laws have on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, who are disproportionately represented at every stage of the criminal justice system. The Committee notes with particular concern that in some states, individuals remain disenfranchised even after the completion of their sentences (art. 5 (c)).

**Taking into account the disproportionate impact that the implementation of disenfranchisement laws has on a large number of persons belonging to racial, ethnic and national minorities, in particular African American persons, the Committee recommends that the State Party adopt all appropriate measures to ensure that the denial of voting rights is used only with regard to persons convicted of the most serious crimes, and that the right to vote is in any case automatically restored after the completion of the criminal sentence.**

499. The Committee regrets that despite the various measures adopted by the State party to enhance its legal and institutional mechanisms aimed at combating discrimination, workers belonging to racial, ethnic and national minorities, in particular women and undocumented migrant workers, continue to face discriminatory treatment and abuse in the workplace, and to be disproportionately



represented in occupations characterized by long working hours, low wages, and unsafe or dangerous conditions of work. The Committee also notes with concern that recent judicial decisions of the U.S. Supreme Court - including *Hoffman Plastics Compound, Inc. v. NLRB* (2007), *Ledbetter v. Goodyear Tire and Rubber Co.* (2007) and *Long Island Care at Home, Ltd. v. Coke* (2007) - have further eroded the ability of workers belonging to racial, ethnic and national minorities to obtain legal protection and redress in cases of discriminatory treatment at the workplace, unpaid or withheld wages, or work-related injury or illnesses (arts. 5 (e) (i) and 6).

**The Committee recommends that the State party take all appropriate measures, including increasing the use of “pattern and practice” investigations, to combat de facto discrimination in the workplace and ensure the equal and effective enjoyment by persons belonging to racial, ethnic and national minorities of their rights under article 5 (e) of the Convention. The Committee further recommends that the State party take effective measures, including the enactment of legislation, such as the proposed Civil Rights Act of 2008, – to ensure the right of workers belonging to racial, ethnic and national minorities, including undocumented migrant workers, to obtain effective protection and remedies in case of violation of their human rights by their employer.**

500. The Committee is concerned about reports relating to activities, such as nuclear testing, toxic and dangerous waste storage, mining or logging, carried out or planned in areas of spiritual and cultural significance to Native Americans, and about the negative impact that such activities allegedly have on the enjoyment by the affected indigenous peoples of their rights under the Convention (arts. 5 (d) (v), 5 (e) (iv) and 5 (e) (vi)).

**The Committee recommends that the State party take all appropriate measures, in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedure, to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention.**

**The Committee further recommends that the State party recognize the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party’s obligations under the Convention relating to indigenous peoples.**

501. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside the United States by transnational corporations registered in the State party on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (arts. 2 (1) (d) and 5 (e)).

**In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively**

**impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.**

502. The Committee, while noting the efforts undertaken by the State party and civil society organizations to assist the persons displaced by Hurricane Katrina of 2005, remains concerned about the disparate impact that this natural disaster continues to have on low-income African American residents, many of whom continue to be displaced after more than two years after the hurricane (art. 5 (e) (iii)).

**The Committee recommends that the State party increase its efforts in order to facilitate the return of persons displaced by Hurricane Katrina to their homes, if feasible, or to guarantee access to adequate and affordable housing, where possible in their place of habitual residence. In particular, the Committee calls upon the State party to ensure that every effort is made to ensure genuine consultation and participation of persons displaced by Hurricane Katrina in the design and implementation of all decisions affecting them.**

503. While noting the wide range of measures and policies adopted by the State party to improve access to health insurance and adequate health-care and services, the Committee is concerned that a large number of persons belonging to racial, ethnic and national minorities still remain without health insurance and face numerous obstacles to access to adequate health care and services (art. 5 (e) (iv)).

**The Committee recommends that the State party continue its efforts to address the persistent health disparities affecting persons belonging to racial, ethnic and national minorities, in particular by eliminating the obstacles that currently prevent or limit their access to adequate health care, such as lack of health insurance, unequal distribution of health-care resources, persistent racial discrimination in the provision of health care and poor quality of public health-care services. The Committee requests the State party to collect statistical data on health disparities affecting persons belonging to racial, ethnic and national minorities, disaggregated by age, gender, race, ethnic or national origin, and to include it in its next periodic report.**

504. The Committee regrets that despite the efforts of the State party, wide racial disparities continue to exist in the field of sexual and reproductive health, particularly with regard to the high maternal and infant mortality rates among women and children belonging to racial, ethnic and national minorities, especially African Americans, the high incidence of unintended pregnancies and greater abortion rates affecting African American women, and the growing disparities in HIV infection rates for minority women (art. 5 (e) (iv)).

**The Committee recommends that the State party continue its efforts to address persistent racial disparities in sexual and reproductive health, in particular by:**

- (i) Improving access to maternal health care, family planning, pre- and post-natal care and emergency obstetric services, inter alia, through the reduction of eligibility barriers for Medicaid coverage;**

- (ii) **Facilitating access to adequate contraceptive and family planning methods; and**
- (iii) **Providing adequate sexual education aimed at the prevention of unintended pregnancies and sexually-transmitted infections.**

505. While welcoming the measures adopted by the State party to reduce the significant disparities in the field of education, including the adoption of the No Child Left Behind Act of 2001 (NCLB), the Committee remains concerned about the persistent “achievement gap” between students belonging to racial, ethnic or national minorities, including English Language Learner (“ELL”) students, and white students. The Committee also notes with concern that alleged racial disparities in suspension, expulsion and arrest rates in schools contribute to exacerbate the high dropout rate and the referral to the justice system of students belonging to racial, ethnic or national minorities (art. 5 (e) (v)).

**The Committee recommends that the State party adopt all appropriate measures, including special measures in accordance with article 2, paragraph 2, of the Convention, to reduce the persistent “achievement gap” between students belonging to racial, ethnic or national minorities and white students in the field of education, inter alia, by improving the quality of education provided to these students. The Committee also calls upon the State party to encourage school districts to review their “zero tolerance” school discipline policies, with a view to limiting the imposition of suspension or expulsion to the most serious cases of school misconduct, and to provide training opportunities for police officers deployed to patrol school hallways.**

506. While welcoming the clarifications offered by the State party with regard to the burden of proof in racial discrimination claims under civil rights statutes, the Committee remains concerned that claims of racial discrimination under the Due Process Clause of the Fifth Amendment to the U.S. Constitution and the Equal Protection Clause of the Fourteenth Amendment must be accompanied by proof of intentional discrimination (arts. 1 (1) and 6).

**The Committee recommends that the State party review its federal and state legislation and practice concerning the burden of proof in racial discrimination claims, with a view to allowing, in accordance with article 1, paragraph 1 of the Convention, a more balanced sharing of the burden of proof between the plaintiff, who must establish a, prima facie, case of discrimination, whether direct or based on a disparate impact, and the defendant, who should provide evidence of an objective and reasonable justification for the differential treatment. The Committee calls in particular on the State party to consider adoption of the Civil Rights Act of 2008.**

507. The Committee regrets that despite the efforts made by the State party to provide training programmes and courses on anti-discrimination legislation adopted at the federal and state levels, no specific training programmes or courses have been provided to, inter alia, government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and other public

officials in order to raise their awareness about the Convention and its provisions. Similarly, the Committee notes with regret that information about the Convention and its provisions has not been brought to the attention of the public in general (art. 7).

**The Committee recommends that the State party organize public awareness and education programmes on the Convention and its provisions, and step up its efforts to make government officials, the judiciary, federal and state law enforcement officials, teachers, social workers and the public in general aware about the responsibilities of the State party under the Convention, as well as the mechanisms and procedures provided for by the Convention in the field of racial discrimination and intolerance.**

508. The Committee requests the State party to provide, in its next periodic report, detailed information on the legislation applicable to refugees and asylum-seekers, and on the alleged mandatory and prolonged detention of a large number of non-citizens, including undocumented migrant workers, victims of trafficking, asylum-seekers and refugees, as well as members of their families (arts. 5 (b), 5 (e) (iv) and 6).

509. The Committee also requests the State party to provide, in its next periodic report, detailed information on the measures adopted to preserve and promote the culture and traditions of American Indian and Alaska Native (AIAN) and Native Hawaiian and Other Pacific Islander (NHPI) peoples. The Committee further requests the State party to provide information on the extent to which curricula and textbooks for primary and secondary schools reflect the multi-ethnic nature of the State party, and provide sufficient information on the history and culture of the different racial, ethnic and national groups living in its territory (art. 7).

510. The Committee is aware of the position of the State party with regard to the Durban Declaration and Programme of Action and its follow-up, but in view of the importance that such a process has for the achievement of the goals of the Convention, it calls upon the State party to consider participating in the preparatory process as well as in the Durban Review Conference itself.

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

512. The Committee recommends that the State party 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 General Assembly resolution 47/111. In this connection, the Committee cites General Assembly resolution 61/148, in which the 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.

513. 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 the official and national languages.

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

515. 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).

516. The State party should, within one year, provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 14, 19, 21, 31 and 36, pursuant to paragraph 1 of rule 65 of the rules of procedure.

517. The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports in a single document, due on 20 November 2011, and that the report be comprehensive and address all points raised in the present concluding observations.

### Notes

<sup>1</sup> Boundary Inquiry, the Inquiry of Sami Hunting and Fishing Rights and the Reindeer Hunting Inquiry.

<sup>2</sup> American Bar Association, "State Death Penalty Assessments: Key Findings", 29 October 2007, <http://www.abanet.org/moratorium/assessmentproject/keyfindings.doc>.

#### **IV. FOLLOW-UP TO THE CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION**

518. At its sixty-fifth session, the Committee decided, in accordance with paragraph 2 of rule 65 of its rules of procedure, to appoint Mr. Morten Kjaerum as coordinator and Mr. Nourredine Amir as alternate coordinator for follow-up to further the implementation of paragraph 1 of rule 65 of its rules of procedure concerning requests for additional information from States parties. Due to the resignation of Mr. Morten Kjaerum from the Committee after the seventy-second session, the Committee, at its seventy-third session, decided to appoint Mr. Nourredine Amir as coordinator and Mr. Pierre-Richard Prosper as alternate coordinator for follow-up.

519. 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.

520. At the 1878th meeting (seventy-second session) and the 1897th meeting (seventy-third session), held on 5 March and 13 August 2008 respectively, the coordinator on follow-up presented a report on his activities to the Committee.

521. Between 17 August 2007 and 15 August 2008, follow-up reports on the implementation of recommendations regarding which the Committee had requested information were received from the following States parties: Bosnia and Herzegovina (CERD/C/BIH/CO/6/Add.1), Denmark (CERD/C/DEN/CO/17/Add.1), Guyana (CERD/C/GUY/CO/14/Add.1), Israel (CERD/C/ISR/CO/13/Add.1), Liechtenstein (CERD/C/LIE/CO/3/Add.1) and Turkmenistan (CERD/C/TKM/CO/5/Add.1).

522. At its seventy-second and seventy-third sessions, the Committee considered the follow-up reports of Denmark, Guatemala, Guyana, Liechtenstein, Mexico, Norway, Turkmenistan, Ukraine and Uzbekistan, and continued the constructive dialogue with these States parties by sending them letters with comments and requests for 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**

523. The following States parties are at least 10 years late in the submission of their reports:

Sierra Leone	Fourth to twentieth periodic reports (due from 1976 to 2008)
Liberia	Initial to sixteenth periodic reports (due from 1977 to 2007)
Gambia	Second to fifteenth periodic reports (due from 1982 to 2008)
Somalia	Fifth to sixteenth periodic reports (due from 1984 to 2006)
Papua New Guinea	Second to thirteenth periodic reports (due from 1985 to 2007)
Solomon Islands	Second to thirteenth periodic reports (due from 1985 to 2007)
Central African Republic	Eighth to nineteenth periodic reports (due from 1986 to 2008)
Afghanistan	Second to thirteenth periodic reports (due from 1986 to 2008)
Seychelles	Sixth to fifteenth periodic reports (due from 1989 to 2007)
Ethiopia	Seventh to sixteenth periodic reports (due from 1989 to 2007)
Saint Lucia	Initial to ninth periodic reports (due from 1991 to 2007)
Maldives	Fifth to twelfth periodic reports (due from 1993 to 2007)
Chad	Tenth to fifteenth periodic reports (due from 1996 to 2006)
Malawi	Initial to sixth periodic reports (due from 1997 to 2007)
Burkina Faso	Twelfth to seventeenth periodic reports (due from 1997 to 2007)
Kuwait	Fifteenth to twentieth periodic reports (due from 1998 to 2008)
Niger	Fifteenth to twentieth periodic reports (due from 1998 to 2008)
Panama	Fifteenth to twentieth periodic reports (due from 1998 to 2008)
Serbia	Fifteenth to twentieth periodic reports (due from 1998 to 2008)
Swaziland	Fifteenth to twentieth periodic reports (due from 1998 to 2008)

**B. Reports overdue by at least five years**

524. The following States parties are at least five years late in the submission of their reports:

Peru	Fourteenth to eighteenth periodic reports (due from 1998 to 2006)
Burundi	Eleventh to fifteenth periodic reports (due from 1998 to 2006)
Cambodia	Eighth to twelfth periodic reports (due from 1998 to 2006)
Iraq	Fifteenth to nineteenth periodic reports (due from 1999 to 2007)
Cuba	Fourteenth to eighteenth periodic reports (due from 1999 to 2007)

Gabon	Tenth to fourteenth periodic reports (due from 1999 to 2007)
Jordan	Thirteenth to seventeenth periodic reports (due from 1999 to 2007)
Uruguay	Sixteenth to twentieth periodic reports (due from 2000 to 2008)
Haiti	Fourteenth to eighteenth periodic reports (due from 2000 to 2008)
Guinea	Twelfth to sixteenth periodic reports (due from 2000 to 2008)
Rwanda	Thirteenth to seventeenth periodic reports (due from 2000 to 2008)
Syrian Arab Republic	Sixteenth to twentieth periodic reports (due from 2000 to 2008)
Holy See	Sixteenth to twentieth periodic reports (due from 2000 to 2008)
Zimbabwe	Fifth to ninth periodic reports (due from 2000 to 2008)
Malta	Fifteenth to nineteenth periodic reports (due from 2000 to 2008)
Cameroon	Fifteenth to nineteenth periodic reports (due from 2000 to 2008)
Lesotho	Fifteenth to eighteenth periodic reports (due from 2000 to 2006)
Tonga	Fifteenth to eighteenth periodic reports (due from 2001 to 2007)
Mauritius	Fifteenth to eighteenth periodic reports (due from 2001 to 2007)
Sudan	Twelfth to sixteenth periodic reports (due from 2002 to 2008)
Bangladesh	Twelfth to fifteenth periodic reports (due from 2002 to 2008)
Eritrea	Initial to third periodic reports (due from 2002 to 2006)
Kenya	Initial to third periodic reports (due from 2002 to 2006)
Belize	Initial to third periodic reports (due from 2002 to 2006)
Benin	Initial to third periodic reports (due from 2002 to 2006)
Japan	Third to sixth periodic reports (due from 2003 to 2007)
Algeria	Fifteenth to eighteenth periodic reports (due from 2003 to 2007)
Sri Lanka	Tenth to thirteenth periodic reports (due from 2003 to 2007)
San Marino	Initial to third periodic reports (due from 2003 to 2007)
Viet Nam	Tenth to thirteenth periodic reports (due from 2003 to 2007)

**C. Action taken by the Committee to ensure submission of reports by States parties**

525. 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.

526. Following its seventy-first session, the Committee decided to schedule for its seventy-second session the review of the implementation of the Convention in the following States parties whose periodic reports were seriously overdue: Bulgaria, Gambia, Monaco, Panama and the United Arab Emirates. Bulgaria's report was subsequently received, prior to the seventy-second session. In the cases of Monaco, Panama and the United Arab Emirates, the reviews were postponed at the request of the States parties, which indicated their intention to submit the requested reports shortly. The reports of Monaco and the United Arab Emirates have been received in the meantime.

527. A letter, together with a list of questions, was sent to Gambia by the Chairperson of the Committee on 14 March 2008, in order to initiate a dialogue with the Government of Gambia on the implementation of the Convention. In the letter, the Government of Gambia was asked to submit its overdue reports, in one combined document, as soon as possible. More specifically, the Government was asked to respond to the questions posed by the Committee by 30 September 2008, failing which the Committee would proceed with the adoption of concluding observations under its review procedure.

528. Following its seventy-second session, the Committee decided to schedule for its seventy-third session a review of the implementation of the Convention in the following States parties whose initial or periodic reports were seriously overdue: Belize, Chile, Peru and the Philippines. Chile and the Philippines were withdrawn from the list prior to the seventy-third session following the submission of their overdue reports.

529. At the seventy-third session, the Committee met with a delegation from Peru, which reconfirmed the intention of the Government to submit the overdue report by the end of 2008 and requested that the review be postponed, a request which was granted by the Committee. The Committee also decided to postpone the review of the situation in Belize, in light of correspondence received from the State party drawing attention to the limited resources of the Government and requesting technical assistance in the reporting process from OHCHR.

## VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

530. 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. During the period under review, one more State, Kazakhstan, made the declaration under article 14.

531. 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.

532. During its seventy-second session, on 22 February 2008, the Committee considered communication No. 38/2006 (*Zentralrat Deutscher Sinti und Roma et al. v. Germany*), which concerned alleged hate speech against the Roma and Sinti community through a letter by a police officer published in the journal of the Association of German Detective Police Officers (BDK). The Committee decided that the claim was inadmissible as regards article 4 (c) and found no violation of articles 4 (a) and 6 of the Convention.

533. Notwithstanding, the Committee called the State party's attention to the discriminatory, insulting and defamatory nature of the comments made and of the particular weight of such comments if made by a police officer, whose duty is to serve and protect individuals.

534. Also on 22 February 2008, during its seventy-second session, the Committee considered communication No. 39/2006 (*D.F. v. Australia*). In this case, the petitioner had claimed that he had been discriminated against on the basis of his nationality (New Zealand) by the enactment of social security legislation, in violation of article 2, paragraph 1 (a), and article 5 (e) (iv) of the Convention.

535. The Committee concluded that the legislation in question did not make any distinctions based on national origin and found no violation of any provisions of the Convention.

## VII. FOLLOW-UP TO INDIVIDUAL COMMUNICATIONS

536. In the past, the Committee only informally monitored whether, how or the extent to which States parties implemented its recommendations adopted following the examination of communications from individuals or from groups of individuals. In light of the positive experiences of other treaty bodies, and following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1, available on the OHCHR website), the Committee decided, at its sixty-seventh session,<sup>1</sup> to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

537. Also at its sixty-seventh session, the Committee decided to add two new paragraphs to its rules of procedure.<sup>2</sup> On 6 March 2006, at its sixty-eighth session, Mr. Linos-Alexandre Sicilianos was appointed Rapporteur for follow-up to opinions. He presented a report to the Committee with recommendations on further action to be taken. This report, which was adopted by the Committee at its sixty-ninth session, has been updated (see annex V) and reflects all cases in which the Committee found violations of the Convention or where it provided suggestions or recommendations although it did not establish a violation of the Convention. During the seventy-second session Mr. Régis de Gouttes was appointed Rapporteur for follow-up to opinions.

538. The table below shows a complete picture of follow-up replies from States parties received up to 17 August 2007, in relation to cases in which the Committee found violations of the Convention or provided suggestions or recommendations in cases of non-violation. 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. This table, which will be updated by the Rapporteur on an annual basis, will be included in future annual reports of the Committee.

539. The categorization of follow-up replies by States parties is not always easy. It is therefore not possible to provide a neat statistical breakdown of follow-up replies. Many replies received may be considered satisfactory, in that they display the willingness of the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Other replies cannot be considered satisfactory because they either do not address the Committee's recommendations at all or only relate to certain aspects of these recommendations.

540. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 25 complaints and found violations of the Convention in 10 cases. In eight 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**

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory or incomplete response	No follow-up response received	Follow-up dialogue still ongoing
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**

State party and number of cases with violation	Communication, number, author and location	Follow-up response received from State party	Satisfactory response	Unsatisfactory response	No follow-up response received	Follow-up dialogue still ongoing
Australia (3)	6/1995, Z.U.B.S.	28 January 2004			X (never requested by the Committee)	X
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan					
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				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**

541. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider 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, transmitted to it by the competent bodies of the United Nations, and to submit to them and to the General Assembly its expressions of opinion and recommendations relating to the principles and objectives of the Convention in those territories.

542. At the request of the Committee, Mr. Lahiri examined the documents made available to the Committee in order for it to perform its functions pursuant to article 15 of the Convention. At its 1901st meeting (seventy-third session), held on 15 August 2008, Mr. Lahiri presented his report, for the preparation of which he had taken into account the reports 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 2007 and 2008 (A/62/23 and A/63/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council in 2007 and listed in document CERD/C/73/3, as well as in annex VII to the present report.

543. 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 as a result of the absence of any copies of petitions pursuant to paragraph 2 (a), and 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.

544. The Committee would like to repeat its earlier observation that in the reports 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, reference is made to the relations between the Special Committee and the Committee's continuous monitoring of related developments in Territories, having regard to the relevant provisions of article 15 of the Convention. The Committee noted, however, that issues concerning racial discrimination, and directly relating to the principles and objectives of the Convention, are not reflected in the sections of the report of the Special Committee which deal with a review of its work and the future work of the Special Committee.

545. 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 generate more awareness about the provisions of the Convention in Non-Self-Governing Territories, and especially the procedure prescribed in article 15. The Committee further stressed the need for States parties administering Non-Self-Governing Territories to mention specifically the work done to this effect in their periodic reports to the Committee.

## **IX. ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS SIXTY-SECOND SESSION**

546. The Committee considered this agenda item at its seventy-second and seventy-third sessions. For its consideration of this item, the Committee had before it General Assembly resolution 62/220 of 22 December 2007, in which the Assembly had, inter alia: (a) reiterated the call made by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to achieve universal ratification of the Convention and for all States to consider making the declaration envisaged under article 14 of the Convention; (b) expressed concern at the serious delays in the submission of overdue reports to the Committee on the Elimination of Racial Discrimination, which impedes the effectiveness of the Committee, and made a strong appeal to all States parties to the Convention to comply with their treaty obligations; (c) invited States parties to the Convention to ratify the amendment to article 8 of the Convention; (d) welcomed the work of the Committee in applying the Convention to new and contemporary forms of racism and racial discrimination; and (e) welcomed the emphasis placed by the Committee on the importance of follow-up to the World Conference and the measures recommended to strengthen the implementation of the Convention as well as the functioning of the Committee.

## **X. FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE**

547. The Committee considered the question of the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance at its seventy-second and seventy-third sessions.

548. At its seventy-second session, the Committee contributed to the preparatory process of the Durban Review Conference through the elaboration and submission of extensive replies<sup>1</sup> to the questionnaire prepared by the Office of the High Commissioner for Human Rights OHCHR pursuant to decision PC.1/10 of the Preparatory Committee of the Durban Review Conference at its first session.<sup>2</sup>

549. In accordance with a decision taken at the seventy-second session, Ms. Fatimata-Binta Victoire Dah and Mr. Pastor Elias Murillo Martinez represented the Committee at the first substantive session of the Preparatory Committee of the Durban Review Conference, held in Geneva from 21 April to 2 May 2008.

550. At the seventy-third session, the Committee heard a briefing on the status of the preparations for the Durban Review Conference by Mr. Jose Dougan-Beaca, coordinator of the Anti-Discrimination Unit of the Office of the High Commissioner for Human Rights, and engaged in an interactive dialogue on the role of the Committee in this process.

551. Also at the seventy-third session, it was decided that Mr. Chris Maina Peter would represent the Committee at the regional preparatory meeting for Africa, to be held in Abuja, Nigeria, from 24 to 26 August 2008, and that Mr. Ion Diaconu and Mr. Koukou Mawuena Ika Kana Ewomsan would represent the Committee at the second substantive session of the Preparatory Committee of the Durban Review Conference.

### **Notes**

<sup>1</sup> CERD/C/72/MISC.7/Rev.1.

<sup>2</sup> See A/62/375.



## XI. THEMATIC DISCUSSIONS AND GENERAL RECOMMENDATIONS

552. 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 XXVII to XXX. In March 2005, the Committee held a thematic discussion on the prevention of genocide and adopted a declaration on this subject.<sup>1</sup>

553. 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) the Convention. The discussion was held at the 1884th and 1885th meetings, on 4 and 5 August 2008. While on 4 August the Committee heard the views of representatives from UNESCO and ILO, interested States parties and non-governmental organizations, on 5 August Committee members exchanged their views on the subject in light of their prior experience in formulating specific recommendations to individual State parties on the subject of special measures.

554. Mr. Patrick Thornberry and Mr. Linos-Alexandre Sicilianos, Committee members and rapporteurs on the subject of special measures for the purposes of the thematic debate and the possible elaboration of a general recommendation, emphasized the role of special measures in promoting and protecting the human rights of disadvantaged racial and ethnic groups and stressed the need to shed light on the precise meaning of the relevant provisions in the Convention. In particular, in interpreting and applying the provisions of the Convention, it would be important to identify appropriate criteria that may help in determining the necessity of special programmes and to reflect on questions relating to the scope, nature and target groups of such programmes.

555. Ms. Hanna Beata Schoepp-Schilling, member of the Committee on the Elimination of Discrimination against Women (CEDAW), who had been invited to participate in the debate, informed the Committee of the special experience of CEDAW in promoting special measures for the advancement of women, and in elaborating a general recommendation (No. 25) on temporary special measures in 2004. Among the State parties who informed the debate through written contributions or oral statements, thus providing valuable insights in relation to the design and implementation of special measures programmes at the national level, were Canada, Chile, Colombia, Finland, Israel, New Zealand, Nepal, Romania, Spain, the United Kingdom, the United States and Uruguay.

556. Based on the valuable information submitted by United Nations specialized agencies, States parties and non-governmental organizations in advance of the thematic debate, and in light of the constructive discussion held on 4 and 5 August as well as the Committee's own

long-standing experience in formulating relevant recommendations, the Committee decided to embark on the elaboration of a general comment on the subject of special measures. In closing observations, Mr. Patrick Thornberry also commented on the methodological approach to be taken and emphasized that a general comment should aim to give overall interpretative guidance to States parties rather than prescribe specific approaches to be taken.

#### **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.

## **XII. WORKING METHODS OF THE COMMITTEE AND REFORM OF THE TREATY BODY SYSTEM**

557. The working methods of the Committee are based on its Rules of Procedure, adopted in accordance with Article 10 of the Convention on the Elimination of Racial Discrimination, as amended,<sup>1</sup> and the Committee's established practice, as recorded in its relevant working papers and guidelines.<sup>2</sup>

558. At its seventy-third session, the Committee further discussed its working methods, and in particular possible ways and means to address its increasing workload. While noting with appreciation that the high workload of the Committee was a result of the improved reporting rate for periodic reports submitted by States parties as well as the high number (173) of States parties to the Convention, the Committee expressed concern at the persisting backlog of reports awaiting consideration. In light of the fact that the Committee's total annual meeting time is only six weeks, the Committee felt severely constrained in its efforts to reduce the backlog and thus to consider the periodic reports of State parties in a timely manner and without undue delay. Accordingly, after having been advised of related financial implications, the Committee decided to request the General Assembly to approve one additional week of meeting time per session as of 2010.<sup>3</sup>

559. Also at the seventy-third session, after having heard a briefing by the Office of the High Commissioner for Human Rights on the universal periodic review of the Human Rights Council and in light of relevant recommendations adopted at the seventh inter-committee meeting and the twentieth meeting of chairpersons of treaty bodies held in June 2008, the Committee acknowledged the complementarity and mutually reinforcing nature of the treaty body system and the universal periodic review and discussed the need to establish a continuing dialogue and effective cooperation with the Human Rights Council, in particular on matters related to the universal periodic review. The Committee decided to include in its agenda for the seventy-fourth session an item on its cooperation with the universal periodic review process, which would remain a permanent agenda item for future sessions.

560. In connection with discussions on the dissemination of information on the International Convention on the Elimination of Racial Discrimination and the work of the Committee, the Committee took note of the increasing use by the United Nations of new technologies, including the webcasting of several of its public meetings, such as those of the Human Rights Council. Noting the potentially important role which these new technologies may play in strengthening the promotion and protection of human rights worldwide, the Committee decided to request the Secretariat to take all possible measures to have its public meetings webcasted in the near future.

561. At its seventy-third session, the Committee also had before it the decisions and recommendations of the twentieth meeting of the chairpersons of the human rights treaty bodies, held at Geneva on 21 and 22 June 2008, and the points of agreement of the seventh inter-committee meeting, held at Geneva from 23 to 25 June 2008. The meetings were attended by Ms. Fatimata-Binta Victoire Dah (chairperson), Mr. Régis de Gouttes and Mr. Anwar Kemal, who reported on their participation in these meetings and on the discussions held on matters of particular interest to the work of the Committee. At the same session, the Committee also heard a

briefing by Ms. Jane Connors of the Office of the High Commissioner for Human Rights on the decisions and recommendations of the twentieth meeting of chairpersons, including with regard to the further development and harmonization of the working methods of the human rights treaty bodies.

### Notes

<sup>1</sup> Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies (HRI/GEN/3/Rev.3).

<sup>2</sup> This includes in particular the overview of the methods of work of the Committee (*Official Records of the General Assembly, fifty-first Session, Supplement No. 18 (A/51/18)*, chap. IX); the working paper on working methods (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 18 (A/58/18)*, annex IV); the terms of reference for the work of the coordinator on follow-up to the Committee's observations and recommendation, (*Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV); and the Guidelines for the Committee's early warning and urgent action procedure, (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18)*, annex III).

<sup>3</sup> As an interim measure, the Committee further decided to request the Secretariat to consider all possible measures to enable the Committee to meet for one additional meeting week at its seventy-fifth session, to be held in August 2009.

## 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 15 August 2008<sup>a</sup>**

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, 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, Viet Nam, Yemen, Zambia, Zimbabwe.

#### **B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (53) as at 15 August 2008**

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia, 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.

#### **C. States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties<sup>a</sup> (43), as at 15 August 2008**

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, Iraq, Ireland, Islamic Republic of Iran, 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-SECOND AND SEVENTY-THIRD SESSIONS**

#### **A. Seventy-second session (18 February-7 March 2008)**

1. Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure.
2. Election of officers, according to rule 15 of the rules of procedure.
3. Adoption of the agenda.
4. Organizational and other matters.
5. Prevention of racial discrimination, including early warning measures and urgent action procedures.
6. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
7. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
8. Consideration of communications under article 14 of the Convention.
9. Follow-up procedure.
10. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

#### **B. Seventy-third session (28 July-15 August 2008)**

1. Adoption of the agenda.
2. Organizational and other matters.
3. Prevention of racial discrimination, including early warning measures and urgent action procedures.
4. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
5. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
6. Follow-up procedure.

7. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
8. 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.
9. Report of the Committee to the General Assembly at its sixty-third session under article 9, paragraph 2, of the Convention.



### Annex III

## DECISIONS AND OPINIONS OF THE COMMITTEE UNDER ARTICLE 14 OF THE CONVENTION

### Decision concerning communication No. 38/2006

*Submitted by:* Zentralrat Deutscher Sinti und Roma et al. (represented by counsel)  
*Alleged victim:* The petitioners  
*State party:* Germany  
*Date of communication:* 29 August 2006 (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 22 February 2008,*

*Having concluded* its consideration of communication No. 38/2006, submitted to the Committee on the Elimination of Racial Discrimination by the Zentralrat Deutscher Sinti und Roma et al. 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 petitioners, their counsel and the State party,

*Adopts* the following:

### Opinion

1.1 The petitioners are the association *Zentralrat Deutscher Sinti und Roma*, acting on its own behalf and on behalf of G.W.; the association *Verband Deutscher Sinti und Roma - Landesverband Bayern*; R.R.; and F.R. They claim to be victims of a violation by Germany<sup>a</sup> of articles 4 (a) and (c); and 6 of the Convention on the Elimination of All Forms of Racial Discrimination. They are represented by counsel.

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 14 September 2006.

### Factual background

2.1 Detective Superintendent G.W., a member of the Sinti and Roma minority, wrote an article entitled “Sinti and Roma - Since 600 years in Germany”, which was published in the July/August 2005 issue of the journal of the Association of German Detective Police Officers (BDK), “The Criminalist”. In the October 2005 issue of the journal, a letter to the editor written by P.L., vice-chairman of the Bavarian section of the BDK and Detective Superintendent of the Criminal Inspection of the city of Fürth, was published as a reply to Weiss’ article. The authors indicated that “The Criminalist” was a journal distributed to more than 20,000 members of one of the biggest police associations in Germany. The text of the letter by P.L. reads as follows:

*“With interest I read the article by colleague W., himself also a Sinti, but I cannot leave this non-contradicted. Even at a time where minority protection is put above everything else and the sins of the Nazi-era still affect ensuing generations, one need not accept everything that is so one-sided.*

*As an officer handling offences against property I have dealt repeatedly with the culture, the separate and partly conspirative way of living as well as the criminality of the Sinti and Roma. We infiltrated the life of criminal gypsies through working groups and also with the help of under-cover agents (‘Aussteiger’). We were told by Sinti that one feels like a ‘maggot in bacon’ (‘Made im Speck’) in the welfare system of the Federal Republic of Germany. One should use the rationalisation for theft, fraud and social parasitism without any bad conscience because of the persecution during the Third Reich. The references to the atrocities against the Jews, homosexuals, Christians and dissidents who did not become criminal, were considered not relevant.*

*As W. states there are no statistics about the share of criminal Sinti and Roma in Germany. If they existed, he could not have written such an article. But it is sure that this group of people, even if only about 100,000, occupies the authorities disproportionately by comparison.*

*Who for example commits nationwide thefts largely to the disadvantage of old people? Who pretends to be a police officer to steal the scarce savings of pensioners which were hidden for the funeral in the kitchen cupboard or in the laundry locker? Who shows disabled and blind persons tablecloths and opens the door to accomplices? What about the trick with the glass of water and the paper trick?*

*Is it really a prejudice when citizens complain about the fact that Sinti drive up with a Mercedes in front of the social welfare office? Is it not true that hardly any Roma works regularly and pays social insurance? Why does this group separate itself in such a way and for example inter-marries without the registry office? Why are fathers of Sinti children not named to the youth welfare office? (...)*

*Whoever does not want to integrate but lives from the benefits of and outside this society cannot claim a sense of community. My lines do not only reflect my opinion as I learned by talking to many colleagues. They are not only a record of prejudices, generalisations (‘Pauschalisierungen’) or accusations but a daily reality of criminal activity.*

*It is totally incomprehensible for me that a police officer who knows about this situation is so partial in his argumentation. His origins excuse him partly and his career deserves praise, but he should stick to the truth.”*

2.2 The authors claimed that P.L.’s letter contained numerous discriminatory statements against Sinti and Roma. They argue that P.L. used racist and degrading stereotypes, going as far as stating that criminality was a key characteristic of Sinti and Roma. In particular, they noted that the terms “maggot” and “parasitism” were used in the Nazi propaganda against Jews and Sinti and Roma. The authors claim that such a publication fuels hatred against the Sinti and Roma community, increases the danger of hostile attitude by police officers, and reinforces the minority’s social exclusion.

2.3 In November 2005, after a public protest organized by the *Zentralrat Deutscher Sinti und Roma*, the Bavarian Ministry of the Interior suspended P.L. from his function in the police commissariat of Fürth, stating that generally negative statements about identifiable groups of the population, like the Sinti and Roma in the present case, were not acceptable.

2.4 On 24 November 2005, the *Zentralrat Deutscher Sinti und Roma* and R.R. lodged a complaint with the District Attorney of Heidelberg, and on 1 December 2005, the *Verband Deutscher Sinti und Roma - Landesverband Bayern* and F.R. filed a complaint before the District Attorney of Nürnberg-Fürth. Both complaints were then transferred to the competent authority: the District Attorney of Neuruppin in Brandenburg. The District Attorney of Neuruppin dismissed the first complaint on 4 January 2006 and the second one on 12 January 2006 with the same reasoning, namely that the elements constitutive of the offence under article 130 of the German Criminal Code were missing, refusing to charge P.L. with an offence under the German Criminal Code (GCC).

2.5 On 12 January 2006, the authors lodged an appeal with the General Procurator (*Generalstaatsanwaltschaft*) of the Land of Brandenburg against the two decisions of the District Attorney of Neuruppin. This was dismissed on 20 February 2006.

2.6 On 20 March 2006, the authors appealed to the Supreme Court of Brandenburg. Their appeal was rejected on 15 May 2006. As regards the individuals, the Court found the claim to be without merits. As regards the *Zentralrat Deutscher Sinti und Roma* and *Verband Deutscher Sinti und Roma - Landesverband Bayern*, the Supreme Court found the claim inadmissible on the grounds that, as associations, their rights could only have been affected indirectly.

2.7 The authors argue that, since the judicial authorities refused to initiate criminal proceedings, German Sinti and Roma were left unprotected against racial discrimination. By so doing, the State party would be tolerating a repetition of such discriminatory practices. The authors highlight a similar case involving discriminatory public statements against Jews, in which the Supreme Court of the Land of Hessen had stated that, in the past, the terms “parasite” and “social parasitism” had been used maliciously and in a defamatory way against Jews, and held that such public statements denied members of a minority the right to be considered as equals in the community.

### **The complaint**

3. The authors claim that Germany violated their rights as individuals and groups of individuals under articles 4 (a) and (c); and 6 of the Convention on the Elimination of All Forms of Racial Discrimination, as the State party does not afford the protection under its Criminal Code against publications which contain insults directed against Sinti and Roma.

### **State party’s observations on the admissibility and merits of the communication**

4.1 On 26 January 2007, the State party commented on the admissibility and merits of the communication. On admissibility, it submits that the *Zentralrat Deutscher Sinti und Roma* and *Verband Deutscher Sinti und Roma - Landesverband Bayern* have no standing to submit a communication under article 14 (1) of the Convention. It submits that only individuals or groups of individuals who assert that they are victims of a violation of a right set forth in the Convention can submit communications to the Committee. Neither of these two associations claims to be a victim of State action or lack thereof, and that they cannot be accorded personal dignity. In addition, the present

communication distinguishes itself from a previous decision adopted by the Committee,<sup>b</sup> inasmuch as the complainants here do not claim impairment of their work and do not claim to be victims as organizations.

4.2 The State party submits that all complainants have failed to substantiate their claims under article 4 (a) and (c) of the Convention, and that none of them has exhausted domestic remedies as required by article 14 (2) of the Convention. It adds that the domestic remedies include an appeal to the Federal Constitutional Court and that none of the complainants made use of this option. It would not have been clear from the outset that a constitutional complaint would fail for lack of prospect of success. The State party submits that the Brandenburg Supreme Court, in its decision of 15 May 2006, only rejected the application by the two first complainants as inadmissible because of lack of victim status. It submits that, at least in respect of the complainants that are natural persons, the Federal Constitutional Court could have examined the assessment made by the Brandenburg Supreme Court with respect to the right of freedom of expression, protected by article 5 of the German Basic Law. As regards W., the State party notes that he did not file a criminal action although this option was open to him. For that reason alone, he did not exhaust domestic remedies that were both available and potentially effective.

4.3 On the merits, the State party denies that there was a violation of articles 4, paragraph (a) and (c) and 6 of the Convention. As regards article 4 (a), it maintains that all categories of misconduct under that provision are subject to criminal sanctions under German criminal law, particularly through the offence of incitement to racial or ethnic hatred (“*Volksverhetzung*”) in article 130 of the GCC.<sup>c</sup> In addition, the GCC contains other provisions that criminalize racist and xenophobic offences, e.g. in article 86 (dissemination of propaganda by unconstitutional organizations) and article 86 (a) (use of symbols by unconstitutional organizations). The obligations arising from article 4, paragraph (a) of the Convention have thus been completely fulfilled by article 130 of the GCC; there is no protection gap in this respect. That some discriminatory acts are not covered by the provision is not contrary to the Convention. The list in article 4 paragraph (a) of the Convention does not enumerate all conceivable discriminatory acts, but rather acts in which violence is used or where racist propaganda is the goal.

4.4 The State party adds that in accordance with general recommendation No. XV, paragraph 2, article 130 of the GCC is effectively enforced. Under German criminal law, the principle of mandatory prosecution applies, by which prosecutorial authorities must investigate a suspect *ex officio* and bring public charges when necessary. In the present case, the State party submits that prosecutorial authorities reacted immediately, and that the situation was investigated thoroughly until the proceedings were terminated by the District Attorney of Neuruppin.

4.5 Regarding the interpretation and application of article 130 of the GCC, the State party notes that the District Attorney of Neuruppin, the Brandenburg General Prosecutor and the Brandenburg Supreme Court did not find that the elements constitutive of the offences under article 130 or article 185 GCC were met. These decisions show that not every discriminatory statement fulfils the elements of the offence of incitement to racial or ethnic hatred, but that there must be a certain targeting element for incitement of racial hatred. The State party recalls that all the above decisions referred to the wording of the letter as “inappropriate”, “tasteless” and “outrageous and impudent”. The State party points out that the central question is whether the courts correctly interpreted the relevant provisions of the GCC. It recalls that States parties have some discretion in the implementation of the obligations arising from the Convention and particularly as regards the interpretation of their national legal standards. With respect to the consequences suffered by P.L., it indicates that disciplinary measures were indeed taken against him.

4.6 On article 4 (c) of the Convention, the State party denies that it violated this provision. It points to the fact that “The Criminalist” is not published by a public authority or institution, but by a professional association. The author of the letter published it as a private person, and not in his official capacity. The absence of public charges and of a conviction by public prosecutorial authorities cannot be considered to be a violation of this provision, as promotion or incitement requires significantly more than merely refraining from further criminal prosecution.

4.7 Finally, with respect to article 6 of the Convention, the State party maintains that in the present case the criminal prosecution authorities acted quickly and fully discharged their obligation of effective protection through the prompt initiation of an investigation against P.L. After an in-depth examination the authorities concluded that the offence of incitement to racial or ethnic hatred could not be established and closed the proceedings.

### **Petitioner’s comments**

5.1 On 7 March 2007 the authors commented on the State party’s submission. They note that the German authorities did not investigate the matter *ex officio*, but that they were prompted to act by a complaint from one of the complainants (*Zentralrat Deutscher Sinti und Roma*). They add that, to the present day, the police union has not disassociated itself in any way from the article of P.L.

5.2 The authors claim state that, although the organizations which co-authored the complaint have not been attacked by name in P.L.’s article, their own rights are harmed by such a sweeping criminalization of the entire Sinti and Roma minority. They claim that the derogation of the social reputation of the minority has consequences for the reputation and the possibility of the organizations to exert political influence, especially since they act publicly as advocates of the minority and are funded by the State party to do so.

5.3 On exhaustion of domestic remedies, the authors claim that a complaint to the Federal Constitutional Court would not only be declared inadmissible but would have no prospect of success, based on that Court’s established jurisprudence. They state that they know of no case in which the Federal Constitutional Court accepted a complaint against a decision concerning a legal enforcement procedure.

5.4 As regards the provisions of the GCC, the authors doubt that articles 130 and 185, with their strict requirements, are sufficient to combat racist propaganda effectively. They doubt that the intent of the responsible party “to incite hatred against segments of the population” (as required by article 130) is absent in the present case, given that P.L. is a police officer.

5.5 The authors reiterate that characterizations made in the article represent an attack on the human dignity of members of the Sinti and Roma communities, and that they cannot be considered to be a “permissible statement of opinion”, nor the “subjective feelings and impressions of a police officer”. Had those characterizations been made against Jews, massive judicial intervention would have resulted. The authors add that the State party approves of its police officers globally criminalizing an entire population group. The approval of such public statements carries the danger that other police officers adopt a similar attitude against Sinti and Roma.

## **Additional comments by the parties**

6. By submissions dated 31 May 2007 and 16 November 2007, the State party generally reiterated the points made in the initial submission. In particular, it states that article 130 of the GCC has been successfully used in the past to act against instances of extreme right-wing extremist propaganda. By submission of 27 June 2007, the complainants replied to the State party's comments, restating the arguments previously offered.

## **Issues and proceedings before the Committee**

7.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

7.2 The Committee notes that two legal entities are among the authors of the complaint: the *Zentralrat Deutscher Sinti und Roma* and the *Verband Deutscher Sinti und Roma - Landesverband Bayern*. The Committee takes note of the State party's objection that, a legal person as opposed to an individual or a group of individuals is not entitled to submit a communication or to claim victim status under article 14, paragraph 1. It equally notes the authors' argument that the organizations submit the complaint on behalf of their members, as "groups of individuals" of the German Sinti and Roma community, and that their own rights are harmed by the statements in the impugned article. The Committee does not consider the fact that two of the authors are organizations to be an obstacle to admissibility. Article 14 of the Convention refers specifically to the Committee's competence to receive complaints from "groups of individuals", and the Committee considers that, bearing in mind the nature of the organizations' activities and the groups of individuals they represent, they do satisfy the "victim" requirement within the meaning of article 14 (1).<sup>d</sup>

7.3 On the issue of exhaustion of domestic remedies, the Committee notes that the State party argues that the complainants failed to lodge an appeal with the Federal Constitutional Court. The authors in turn maintain that such an appeal would have no prospect of success and refer to the established jurisprudence of the Court. They argue, and the State party concedes, that individuals have no right under German law to face the State to initiate criminal prosecution. The Committee has previously held that a petitioner is only required to exhaust remedies that are effective in the circumstances of the particular case.<sup>e</sup> It follows that, with the exception of W., the petitioners have fulfilled the requirements of article 14 (7) (a).

7.4 As regards W., the Committee notes that he did not file criminal charges nor was a party to the proceedings before the Brandenburg Supreme Court. Thus, the complaint is inadmissible with respect to W. because of non-exhaustion of domestic remedies.<sup>f</sup>

7.5 As regards article 4 (c) of the Convention, the Committee accepts the State party's contention that the BDK is a professional union and not a State organ, and that P.L. wrote the impugned letter in his private capacity. The Committee thus finds this claim inadmissible.

7.6 In light of the above, the Committee declares the case admissible inasmuch as it relates to articles 4 (a) and 6 of the Convention and proceeds to examine the merits.

7.7 On the merits, the main issue before the Committee is whether the provisions in the GCC provide effective protection against acts of racial discrimination. The petitioners argue that the existing legal framework and its application leave Sinti and Roma without effective protection. The Committee had noted the State party's contention that the provisions of its Criminal Code are sufficient to provide effective legal sanctions to combat incitement to racial discrimination, in accordance with article 4 of the Convention. It considers that it is not the Committee's task to decide in abstract whether or not national legislation is compatible with the Convention but to consider whether there has been a violation in the particular case.<sup>g</sup> The material before the Committee does not reveal that the decisions of the District Attorney and General Prosecutor, as well as that of the Brandenburg Supreme Court, were manifestly arbitrary or amounted to denial of justice. In addition, the Committee notes that the article in "The Criminalist" has carried consequences for its author, as disciplinary measures were taken against him.<sup>h</sup>

8. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it do not disclose a violation of articles 4 (a) and 6 of the Convention.

9. Notwithstanding, the Committee recalls that P.L.'s article was perceived as insulting and offensive not only by the petitioners, but also by the prosecutorial and judicial authorities who dealt with the case. The Committee wishes to call the State party's attention to (i) the discriminatory, insulting and defamatory nature of the comments made by P.L. in his reply published by "The Criminalist" and of the particular weight of such comments if made by a police officer, whose duty is to serve and protect individuals; and (ii) general recommendation 27, adopted at its fifty-seventh session, on discrimination against Roma.

### Notes

<sup>a</sup> The Convention was ratified by Germany on 16 May 1969, and the declaration under article 14 was made on 30 August 2001.

<sup>b</sup> See communication No. 30/2003, *The Jewish Community of Oslo et al. v. Norway*, opinion of 15 August 2005.

<sup>c</sup> Article 130. Incitement to racial or ethnic hatred. (1) Whoever, in a manner that is capable of disturbing the public peace: 1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or 2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population, shall be punished with imprisonment from three months to five years. (2) Whoever: 1. with respect to writings (art. 11, para. 3), which incite hatred against segments of the population or a national, racial or religious group, or one characterized by its folk customs, which call for violent or arbitrary measures against them, or which assault the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group: (a) disseminates them; (...)

<sup>d</sup> See communication No. 30/2003, *The Jewish community of Oslo et al v. Norway*, opinion of 15 August 2005, para. 7.4.

<sup>e</sup> See communication No. 11/1998, *Miroslav Lacko v. Slovak Republic*, opinion of 9 August 2001, para. 6.2; communication No. 13/1998, *Anna Koptova v. Slovak Republic*, opinion of 8 August 2000, para. 6.4.

<sup>f</sup> See communication No. 22/2002, *POEM and FASM v. Denmark*, decision of 17 March 2003, para. 6.3.

<sup>g</sup> See communication No. 40/2007, *Er v. Denmark*, decision of 8 August 2007, para. 7.2.

<sup>h</sup> See para. 2.3.



## Decision concerning communication No. 39/2006

*Submitted by:* D.F. (not represented by counsel)  
*Alleged victim:* The petitioner  
*State party:* Australia  
*Date of the communication:* 23 October 2006 (initial submission)  
*Date of the present decision:* 22 February 2008

*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 22 February 2008,*

*Having concluded* its consideration of communication No. 39/2006, submitted to the Committee on the Elimination of Racial Discrimination by D.F. 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:

### Opinion

1. The petitioner is D.F., a New Zealand citizen now residing in Australia. He claims to be a victim of violations by Australia of article 2, paragraph 1 (a), and article 5 (e) (iv), 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 On 30 June 1970, at the age of 6, the petitioner and his family immigrated to Australia. As a New Zealand citizen, he was automatically deemed to be a permanent resident upon arrival and exempted from any visa requirements. In 1973, his status was that of an “exempt non-citizen” under the bilateral Trans-Tasman Travel Arrangement between Australia and New Zealand, which allows citizens of both countries to live in either country indefinitely. In 1994, the petitioner was automatically granted a Special Category Visa (SCV), which allowed him to remain indefinitely in Australia, as long as he remained a New Zealand citizen. In 1998, he was temporarily seconded overseas by his employer. He had then resided in Australia for 28 continuous years and had married an Australian. He regularly returned to Australia during his temporary absence and identifies himself as an Australian. He does not specify when he returned to Australia.

2.2 On 26 February 2001, the enactment of a bilateral social security agreement between Australia and New Zealand was announced. On the same day, the State party introduced national measures regarding social security benefits, amending the Social Security Act (1991) (SSA), and restricting access to the full range of social security payments to New Zealand citizens, unless they held permanent visas. This new act, known as the Family and Community Services Legislation Amendment

(New Zealand Citizens) Act 2001, entered into force on 30 March 2001. According to the petitioner, this revised act was adopted unilaterally by the State party and not for the legitimate purpose of implementing the bilateral agreement.

2.3 The main amendment to the 1991 Act related to the meaning of the term “Australian resident”, which defines eligibility for most social security benefits under the SSA. Prior to the amendment, the definition of “Australian resident” included Australian citizens, New Zealand citizens (SCV holders) and permanent visa holders. The amendment introduced a new class of non-citizen under social security law: the “protected” SCV holders, who retained their rights to social security, while all other SCV holders lost certain rights in this area. 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, continued to be treated as Australian residents for the purposes of the Act, as they were now considered “protected” SCV holders. Other New Zealand citizens had to meet normal migration criteria to become an “Australian resident” for the purposes of the Act. The petitioner was not in Australia on the pertinent date and did not fulfil the transitional arrangements, as he was absent from the State party for more than 12 months in the 2 years immediately prior to and including 26 February 2001. He thus lost his status as an “Australian resident” for the purposes of the revised Act. In addition, and in conjunction with the revised Act, ministerial powers afforded under Subsection 5A(2) of the Citizenship Act 1948 were used to remove citizenship eligibility from New Zealand citizens who are not “protected” SCV holders and who do not have permanent resident status. According to the petitioner, the aim was to ensure that he was unable to regain his status as an “Australian resident” for the purpose of eligibility for social security by becoming an Australian citizen under Section 5A(2) of the Citizenship Act 1948,<sup>a</sup> which now deprives him of eligibility for Australian citizenship.

2.4 Since the petitioner lost his status as an “Australian resident” for the purposes of social security benefits and citizenship, he is now required to apply for and obtain a permanent residence visa if he wishes to regain his previous rights. 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 over thirty years. The petitioner has not yet attempted to apply for such a visa. He argues that the new legislation places him in a precarious situation, should he become sick, injured or unemployed. Although he admits that, prior to the passage of the bill, New Zealand citizens were given preferential treatment to citizens from other countries, he argues that the withdrawal of “the positive discrimination” towards New Zealand citizens for the purposes of creating equality between them and other non-citizens was never announced as an objective of the Act in question and did not in fact achieve that aim.

2.5 In May 2006, the petitioner lodged a complaint with the Human Rights and Equal Opportunities Commission (HREOC), regarding the withdrawal of benefits and rights to social security and citizenship under the revised legislation. On 21 June 2006, his complaint was rejected, on the grounds that: it could not proceed with any complaint under the ICERD; discrimination on the ground of a person’s citizenship or visa status was not a ground covered under the Racial Discrimination Act (1975), and the HREOC Act does not cover complaints where the events complained of are the result of the direct operation of legislation.

## **The complaint**

3. The petitioner claims that he has exhausted domestic remedies by virtue of his complaint to the HREOC. He claims that the Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001, which amended the Social Security Act (1991) (SSA), discriminated against him on the basis of his New Zealand nationality, by withdrawing entitlements to social security and citizenship, in violation of article 5 (e) (iv) of the Convention. By so doing, the State party also committed an act of racial discrimination against a group of persons, of which he is a member, in violation of article 2 (1) (a), of the Convention.

## **The State party's submission on admissibility and merits**

4.1 On 1 May 2007, the State party submits that the communication is inadmissible, as the petitioner is unable to demonstrate that he is a victim of a violation of either article 2, paragraph 1 (a), or article 5 (e) (iv), of the Convention. It denies that the Family and Community Services Legislation Amendment (New Zealand Citizens) Act 2001, discriminates against New Zealand citizens living in Australia on the basis of their national origin. It submits that the Act amends legislation which previously allowed New Zealand citizens living in Australia as holders of "Special Category Visas" to receive certain social security payments without having to apply for permanent residence in Australia or Australian citizenship. Subject to transitional arrangements, New Zealand citizens arriving in the State party must now meet the definition of "Australian resident" that applies to all entrants to Australia before being eligible for certain Australian Government funded social security payments. These changes do not affect the ability of New Zealand nationals residing in Australia to have automatic access to other benefits such as employment services, health care, public housing and primary and secondary education.

4.2 According to the State party, under the terms of the new legislative amendments, no distinction is applied with respect to access to social security between New Zealand citizens and people of other nationalities who live in Australia. The limitation on the petitioner's ability to access certain social security benefits is not based on his national origin but on the fact that he is neither a permanent resident nor an Australian citizen. Previously New Zealand citizens received preferential treatment; the subsequent withdrawal of such advantages does not constitute discrimination, as it merely places New Zealand citizens on an equal footing with people of other nationalities who are neither permanent residents nor Australian citizens. It is open to the petitioner, as with all migrants to Australia, to apply for a permanent residence visa. Persons who have held a permanent residence visa for two years are eligible to receive certain social security payments, such as unemployment benefits.

4.3 The State party dismisses as misleading the allegation that New Zealand citizens who had been residing in the State party but were temporarily absent at the time the amendments came into force, i.e. 26 February 2001, "lost their rights", unlike New Zealand citizens who were present in the State party at that time and could avail themselves of the transitional arrangements in the legislative amendments. It submits that extensive transitional arrangements were put in place for New Zealand citizens temporarily absent from Australia on 26 February 2001. These arrangements provided a regime for many New Zealand citizens to continue to receive the benefits available under the pre-February 2001 arrangements. In particular, the changes did not apply to New Zealand citizens who were temporarily absent from the State party if they had been in Australia for a period, or periods, of 12 months in the previous 2 years immediately before 26 February 2001. For those New Zealand citizens who were intending to reside in Australia at the time of the changes, a 3-month period of grace

applied from 26 February 2001 (i.e. 3 months to commence or recommence residing in Australia). A 6-month period of grace applied to those New Zealand citizens temporarily absent from Australia on 26 February 2001, and who were in receipt of social security payments. A 12-month period of grace applied to those New Zealand citizens, resident in Australia but temporarily absent, who were unable to return to Australia in the 3 month period and were not in receipt of a social security payment.

4.4 On the merits, the State party submits that the petitioner has failed to substantiate his claims of racial discrimination and that the communication is thus without merit. It notes that the legislative amendments do not affect the petitioner's access to employment services, health care, public housing and primary and secondary education or family tax benefits nor do they affect the petitioner's right to obtain gainful employment in Australia. New Zealand citizens are still permitted to 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 citizens of other countries under the Trans-Tasman Travel arrangements.

#### **Petitioner's comments on State party submission**

5.1 The petitioner notes that the State party does not contest the admissibility of the complaint as far as it concerns exhaustion of domestic remedies. He argues that although the State party admits that, as a New Zealand citizen he can remain "indefinitely" within the State party, he is not a "permanent resident" for the purposes of the amended legislation. In his view, any distinction based on whether a person holds a SCV (as in his case) or a permanent residence visa is a distinction based upon "legal formalism" - as it ignores the fact that both visas afford indefinite/permanent residence. He argues that rather than comparing his situation to that of a minority group of non-citizens (those who do not have permission to indefinitely reside in Australia and thus never had the same rights to social security as the petitioner), his situation should be compared to that of the majority who are also indefinitely residing in Australia, i.e. Australian citizens.

5.2 In the petitioner's view, the argument of "equality through deprivation" is illogical, as it can be used to claim that any group is "advantaged" over a more deprived group. He notes that the State party has used this argument on several recent occasions years to justify the progressive limitation of the right to social security for non-citizens, including, the extension of a two-year waiting period to New Zealand citizens before they became eligible to receive most social security benefits, to ensure that they too are now "equal" to permanent visa holders. As to the suggestion that he may apply for a "permanent visa", he argues that the possibility of changing his immigration status to one that is less discriminatory does not address the claim that he is discriminated against because of his current status as the holder of a Special Category Visa - particularly given that his current visa pertains directly to his nationality. In addition, there is no guarantee that he will be granted one.<sup>b</sup>

5.3 The petitioner affirms that New Zealand citizens retain other advantages under the terms of the Trans-Tasman Travel Arrangement, but, in his view, this does not absolve the State party from discriminating against New Zealand citizens under the new amended legislation. As to the arguments on the transitional arrangements, he submits that the fact that he was potentially eligible for a limited period to apply to regain his rights does not negate the fact that he lost them in the first place. In any event, he argues that the deadline to regain his rights was inadequate, as was the method of informing those who were absent from the State party at the date of the legislative amendments. He notes that the State party failed to offer any observations pertaining to the deprivation of his eligibility for Australian citizenship based upon his nationality.

## 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 or not the current communication is admissible.

6.2 The Committee notes that the State party has not disputed the petitioner's argument that he has exhausted domestic remedies and thus considers that he has done so, for purposes of admissibility.

6.3 The Committee notes the State party's argument that the petitioner has not demonstrated that he is a "victim" within the meaning of the Convention, as his lack of entitlement to social security benefits was not based on his national origin but rather on the fact that he is neither a permanent visa-holder nor an Australia citizen. The Committee notes, however, that the petitioner was affected by the amendments to the Act in question and thus could be considered a "victim" within the meaning of article 14, paragraph 1, of the Convention. The question of whether the petitioner was discriminated against on the basis of his national origin and the State party's arguments in that regard relate to the substance of the petition and, for this reason, should be considered on the merits. The Committee finds no other reason to consider the petition inadmissible and therefore moves to its consideration on the merits.

7.1 The Committee notes 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 observes that prior to the entry into force of the Family and Community Services Legislation Amendment (New Zealand Citizens) Act of 2001, New Zealand citizens residing in Australia had the same rights to social security benefits as Australian citizens. These benefits were granted to New Zealand citizens on the basis of their nationality. Pursuant to the Act of 2001, these benefits were withdrawn from the petitioner and all other New Zealand citizens who were not entitled to, or in possession of, "protected" Special Category Visas or permanent resident visas. Thus, the distinction which had been made in favour of New Zealand citizens no longer applied. The provisions of the Act of 2001 did not result in the operation of a distinction, but rather in the removal of such a distinction, which had placed the petitioner and all New Zealand citizens in a more favourable position compared to other non-citizens.

7.2 The provisions of the 2001 Act put New Zealand citizens on a more equal footing with other non-citizens, and they 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 benefits in question. In this context, the Committee notes that the petitioner has neither argued nor demonstrated that the implementation of the Act of 2001 itself 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, 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 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 (e) (iv) or 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.

## Notes

<sup>a</sup> Australian Citizenship Permanent Resident Status (New Zealand Citizens) Declaration 2001 - See Attachment 2.

<sup>b</sup> He refers to the Committee's concluding observations on Australia (sixty-sixth session, 21 February-11 March 2005), in which it raised a concern with respect to the limited public services offered to refugees and stated that "differential treatment based on citizenship or immigration status would 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 that aim. He also refers to general comment No. 3 on article 9 of the Covenant on Economic, Social and Cultural Rights, which states that "... any deliberately retrogressive measures [...] would require the most careful consideration and would need to be fully justified by reference to the totality of the rights provided for in the Covenant and in the context of the full use of the maximum available resources".

## 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 (A/62/18), as well as any decisions made by the Committee on the nature of those responses.

State party	Denmark
Case and No.	Murat Er, 40/2007
Opinion adopted on	8 August 2007
Issues and violations found	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.
Remedy recommended	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.
Date of examination of report(s) since adoption	Sixteenth and seventeenth periodic reports examined on 9 and 10 August 2006
Due date for State party response	9 January 2008
Date of reply	10 January 2008
State party response	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 party	Denmark ( <i>continued</i> )
State party response ( <i>continued</i> )	<p>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.</p>
Petitioner's response	<p>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 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 <i>prior</i> to the question 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 employer 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 eight out of ten consultants experienced companies only wanting trainees with a Danish background.</p>



State party	Denmark ( <i>continued</i> )
Petitioner's response ( <i>continued</i> )	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.
Committee's decision	<p>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.</p> <p>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 measures it intends to take to implement its Opinion, including the granting of compensation.</p>

## Annex V

### DOCUMENTS RECEIVED BY THE COMMITTEE AT ITS SEVENTY-SECOND AND SEVENTY-THIRD 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.109/2007/2	Cayman Islands
A/AC.109/2007/3	British Virgin Islands
A/AC.109/2007/4	Montserrat
A/AC.109/2007/5	Turks and Caicos Islands
A/AC.109/2007/6	Pitcairn
A/AC.109/2007/7	United States Virgin Islands
A/AC.109/2007/8	Anguilla
A/AC.109/2007/9	New Caledonia
A/AC.109/2007/10	Bermuda
A/AC.109/2007/11	Tokelau
A/AC.109/2007/12	Gibraltar
A/AC.109/2007/13	Falkland Islands (Malvinas)
A/AC.109/2007/14	St. Helena
A/AC.109/2007/15	American Samoa
A/AC.109/2007/16	Guam
A/AC.109/2007/17	Western Sahara

## 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-SECOND AND SEVENTY-THIRD SESSIONS**

<i>Periodic reports considered by the Committee</i>	<i>Country rapporteur</i>
Austria Fifteenth to seventeenth periodic reports (CERD/C/AUT/17)	Mr. Diaconu
Belgium Fourteenth and fifteenth periodic reports (CERD/C/BEL/15)	Mr. Kjaerum
Dominican Republic Ninth to twelfth periodic reports (CERD/C/DOM/12)	Mr. Avtonomov
Ecuador Seventeenth to nineteenth periodic reports (CERD/C/ECU/19)	Mr. Cali Tzay
Fiji Sixteenth and seventeenth periodic reports (CERD/C/FJI/17)	Mr. Thornberry
Germany Sixteenth to eighteenth periodic reports (CERD/C/DEU/18)	Mr. Thornberry
Italy Fourteenth and fifteenth periodic reports (CERD/C/ITA/15)	Mr. Kemal
Moldova Fifth to seventh periodic reports (CERD/C/MDA/7)	Mr. Amir
Namibia Eighth to twelfth periodic reports (CERD/C/NAM/12)	Mr. Ewomsan
Nicaragua Tenth to fourteenth periodic reports (CERD/C/NIC/14)	Mr. de Gouttes

*Periodic reports considered by the Committee*

*Country rapporteur*

Russian Federation  
Eighteenth and nineteenth periodic reports  
(CERD/C/RUS/19)

Mr. Sicilianos

Sweden  
Seventeenth and eighteenth periodic reports  
(CERD/C/SWE/18)

Mr. Kemal

Switzerland  
Fourth to sixth periodic reports  
(CERD/C/CHE/6)

Mr. Prosper

Togo  
Sixth to seventeenth periodic reports  
(CERD/C/TGO/17)

Mr. de Gouttes

United States of America  
Fourth to sixth periodic reports  
(CERD/C/USA/6)

Mr. Sicilianos

*Countries scheduled for consideration under the review procedure*

Belize (Review scheduled for seventy-third session, postponed at the request of the Government, after consideration by the Committee)

Mr. Peter

Gambia (List of issues sent at seventy-second session, with a view to a full review at the seventy-fourth session)

Mr. Ewomsan

Monaco (Review scheduled for seventy-second session, postponed to seventy-third session and cancelled following receipt of overdue report)

Mr. Kemal

Panama (Review scheduled for seventy-second session, postponed to seventy-fourth session)

Mr. Avtonomov

Peru (Review scheduled for seventy-third session, postponed after meeting with Government delegation at that session and commitment by the Government to submit a report by 31 December 2008)

Mr. Murillo Martinez

United Arab Emirates (Review scheduled for seventy-second session, postponed after meeting with Government delegation at that session and cancelled after receipt of overdue report)

Mr. Kjaerum

## Annex VII

### LIST OF DOCUMENTS ISSUED FOR THE SEVENTY-SECOND AND SEVENTY-THIRD SESSIONS OF THE COMMITTEE<sup>a</sup>

CERD/C/72/1	Provisional agenda and annotations of the seventy-second session of the Committee
CERD/C/72/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-second session of the Committee
CERD/C/73/1	Provisional agenda and annotations of the seventy-third session of the Committee
CERD/C/73/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-third session of the Committee
CERD/C/73/3	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.1846-1875	Summary records of the seventy-second session of the Committee
CERD/C/SR.1876-1903	Summary records of the seventy-third session of the Committee
CERD/C/AUT/CO/17	Concluding observations of the Committee on the Elimination of Racial Discrimination - Austria
CERD/C/BEL/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Belgium
CERD/C/DOM/CO/12	Concluding observations of the Committee on the Elimination of Racial Discrimination - Dominican Republic
CERD/C/ECU/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination - Ecuador
CERD/C/FJI/CO/17	Concluding observations of the Committee on the Elimination of Racial Discrimination - Fiji
CERD/C/DEU/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Germany
CERD/C/ITA/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Italy

CERD/C/MDA/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Moldova
CERD/C/NAM/CO/12	Concluding observations of the Committee on the Elimination of Racial Discrimination - Namibia
CERD/C/NIC/CO/14	Concluding observations of the Committee on the Elimination of Racial Discrimination - Nicaragua
CERD/C/SWE/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Sweden
CERD/C/CHE/CO/6	Concluding observations of the Committee on the Elimination of Racial Discrimination - Switzerland
CERD/C/TGO/CO/17	Concluding observations of the Committee on the Elimination of Racial Discrimination - Togo
CERD/C/RUS/CO/19	Concluding observations of the Committee on the Elimination of Racial Discrimination - Russian Federation
CERD/C/USA/CO/6	Concluding observations of the Committee on the Elimination of Racial Discrimination - United States of America
CERD/C/AUT/17	Fifteenth to seventeenth periodic reports of Austria
CERD/C/BEL/15	Fourteenth and fifteenth periodic reports of Belgium
CERD/C/DOM/12	Ninth to twelfth periodic reports of the Dominican Republic
CERD/C/ECU/19	Seventeenth to nineteenth periodic reports of Ecuador
CERD/C/FJI/17	Sixteenth and seventeenth periodic reports of Fiji
CERD/C/DEU/18	Sixteenth to eighteenth periodic reports of Germany
CERD/C/ITA/15	Fourteenth and fifteenth periodic reports of Italy
CERD/C/MDA/7	Fifth to seventh periodic reports of Moldova
CERD/C/NAM/12	Eighth to twelfth periodic reports of Namibia
CERD/C/NIC/14	Tenth to fourteenth periodic reports of Nicaragua
CERD/C/SWE/18	Seventeenth and eighteenth periodic reports of Sweden

CERD/C/CHE/6	Fourth to sixth periodic reports of Switzerland
CERD/C/TGO/17	Sixth to seventeenth periodic reports of Togo
CERD/C/RUS/19	Eighteenth and nineteenth periodic reports of the Russian Federation
CERD/C/USA/6	Fourth to sixth periodic reports of the United States of America
CERD/C/BIH/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 - Bosnia and Herzegovina
CERD/C/DEN/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 - Denmark
CERD/C/GTM/CO/11/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Guatemala
CERD/C/GUY/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 - Guyana
CERD/C/ISR/CO/13/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Israel
CERD/C/LIE/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 - Liechtenstein
CERD/C/MEX/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 - Mexico
CERD/C/NOR/CO/18/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Norway
CERD/C/TKM/CO/5/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Turkmenistan

CERD/C/UKR/CO/18/Add.1 Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Ukraine

CERD/C/UZB/CO/5/Add.2 Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Uzbekistan

**Note**

<sup>a</sup> This list only concerns documents issued for general distribution.

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