



**United Nations**

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

**Seventy-sixth session  
(15 February–12 March 2010)**

**Seventy-seventh session  
(2–27 August 2010)**

**General Assembly  
Official Records  
Sixty-fifth session  
Supplement No. 18 (A/65/18)**



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*Note*

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## Letter of transmittal

27 August 2010

Sir,

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

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

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

In the framework of the International Year of People of African Descent, the Committee decided to hold a thematic discussion on racial discrimination against people of African descent during its seventy-eight session, to be held from 14 February to 11 March 2011.

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 54 States parties have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized.

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

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

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

At the present time, perhaps more than ever, there is a pressing need for the United Nations human rights bodies to ensure that their activities contribute to the harmonious and equitable coexistence of peoples and nations. In this sense, I wish to assure you once again, on behalf of all the members of the Committee, of our determination to continue working for the promotion of the implementation of the Convention and to support all activities that contribute to combating racism, racial discrimination and xenophobia throughout the world, including through follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance in 2001 and to the outcome of the Durban Review Conference in 2009.

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

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

(Signed) Anwar **Kemal**  
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 27 August 2010, the closing date of the seventy-seventh 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-seventh session, 54 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 27 August 2010.

### B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2010. The seventy-sixth (1972nd to 2010th meetings) and seventy-seventh (2011th to 2049th meetings) sessions were held at the United Nations Office at Geneva from 15 February to 12 March and from 2 to 27 August 2010, respectively.

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

### C. Membership and attendance

5. The list of members of the Committee for 2010 is as follows:

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Nourredine <b>Amir</b>	Algeria	2014
Alexei S. <b>Avtonomov</b>	Russian Federation	2012
José Francisco <b>Cali Tzay</b>	Guatemala	2012
Anastasia <b>Crickley</b>	Ireland	2014
Fatimata-Binta Victoire <b>Dah</b>	Burkina Faso	2012
Régis de <b>Gouttes</b>	France	2014
Ion <b>Diaconu</b>	Romania	2012

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Kokou Mawuena Ika Kana (Dieudonné) <b>Ewomsan</b>	Togo	2014
<b>Huang Yong'an</b>	China	2012
Anwar <b>Kemal</b>	Pakistan	2014
Gun <b>Kut</b>	Turkey	2014
Dilip <b>Lahiri</b>	India	2012
Jose A. Lindgren <b>Alves</b>	Brazil	2014
Pastor Elias Murillo <b>Martinez</b>	Colombia	2012
Chris Maina <b>Peter</b>	United Republic of Tanzania	2012
Pierre-Richard <b>Prosper</b>	United States of America	2012
Waliakoye <b>Saidou</b>	Niger	2014
Patrick <b>Thornberry</b>	United Kingdom of Great Britain and Northern Ireland	2014

#### D. Officers of the Committee

6. The Bureau of the Committee comprised the following Committee members in 2010:

Chairperson:	Anwar Kemal (2010–2012)
Vice-Chairpersons:	Fatimata-Binta Victoire Dah (2010–2012) Francisco Cali Tzay (2010–2012) Pierre-Richard Prosper (2010–2012)
Rapporteur:	Ion Diaconu (2010–2012)

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

7. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),<sup>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.

<sup>1</sup> *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/27/18), chap. IX, sect. B.*

8. Reports of the ILO Committee of Experts on the Application of Conventions and Recommendations submitted to the International Labour Conference were made available to the members of the Committee on the Elimination of Racial Discrimination, in accordance with arrangements for cooperation between the two committees. The Committee took note with appreciation of the reports of the Committee of Experts, in particular of those sections which dealt with the application of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Indigenous and Tribal Peoples Convention, 1989 (No. 169), as well as other information in the reports relevant to its activities.

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

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

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

11. At its 2049th meeting (seventy-seventh session), on 27 August 2010, the Committee adopted its annual report to the General Assembly.

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

12. 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>2</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>3</sup>

13. 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: José Francisco Cali Tzay

Members: Alexei S. Avtonomov  
Anastasia Crickley  
Huang Yong'an  
Chris Maina Peter

14. The following decisions were adopted by the Committee under its early warning and urgent action procedures at its seventy-sixth and seventy-seventh sessions:

### A. Decision 1 (76) on Nigeria

*The Committee on the Elimination of Racial Discrimination,*

*Alarmed* by the reports of recent attacks and killings of a large number of persons, including children, women and elderly, as a result of tensions between ethno-religious groups near the city of Jos in the Plateau State of Nigeria in January and March 2010; that ethnic and religious violence has been recurring in Nigeria over the last ten years and that it is estimated that over 13,500 people have died in such clashes (since 1999),

*Taking note* of the statement made by the Secretary-General of the United Nations on 2 March 2010 and the statement made by the United Nations High Commissioner for Human Rights on 9 March 2010 wherein she called for concerted efforts of Nigerian authorities to tackle the underlying causes of the repeated outbreaks of ethnic and religious violence in Nigeria,

*Recalling* that Nigeria has ratified the International Convention on the Elimination of All Forms of Racial Discrimination and is under the obligation to prevent and protect persons against acts of hatred, incitement to racial and ethnic violence or any form of violence based on ethnicity,

*Considering* the situation in Nigeria under its early warning and urgent action procedure:

1. The Committee recalls its concluding observations on the eighteenth periodic report of Nigeria adopted on 19 August 2005 (CERD/C/NGA/CO/18, para.

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<sup>2</sup> *Official Records of the General Assembly, Forty-eighth Session, Supplement No. 18 (A/48/18), para. 18 and annex III.*

<sup>3</sup> *Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18), annex III.*

14) where it raised serious concern about prejudices and feelings of hostility among some ethnic groups in Nigeria, including active discrimination by people who consider themselves to be the original inhabitants of their region against settlers from other states and about the persistence of inter-ethnic, intercommunal and interreligious violence in Nigeria stemming from these hostile sentiments as well as disputes over commercial interest and resource control.

2. The Committee also recalls its recommendations contained in its concluding observations that Nigeria continue to monitor all initiatives and tendencies that may give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies; and that Nigeria endeavour, by encouraging genuine dialogue, to improve relations between different ethnic communities with a view to promoting tolerance and prejudices and negative stereotypes.

3. The Committee regrets that it still has not received the information it requested on the implementation of its recommendations within one year of its adoption of the concluding observations referred to above, and that the nineteenth periodic report of Nigeria has been overdue since 2008.

4. The Committee deplores the attacks and massacres recurring between different ethno-religious groups in Nigeria, as well as the large number of victims, in violation of the International Convention on the Elimination of All Forms of Racial Discrimination.

5. The Committee strongly urges Nigeria to take all the appropriate measures to immediately stop the ethnic violence, to protect the victims and to avoid the reoccurrence of such killings in the future in compliance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination.

6. The Committee urges Nigeria to investigate the massacres, to bring to justice those responsible and to provide redress to the victims and their families.

7. The Committee calls on all local, regional and national authorities in Nigeria to conduct studies on the underlying causes of the ethnic violence in Nigeria; to firmly address all underlying causes of tension leading to this repeated violence; and to promote dialogue between different ethnic communities in view to achieve tolerance and peace.

8. The Committee requests that Nigeria provide information on the situation and the measures taken for its redress, not later than 30 July 2010.

#### **B. Decision 1 (77) on Kyrgyzstan**

*The Committee on the Elimination of Racial Discrimination,*

*Alarmed* by the reports of the attacks and killings that occurred in June 2010 in the southern part of Kyrgyzstan, as a result of tensions between the Uzbek and the Kyrgyz ethnic groups,

*Deeply concerned* that the ethnic violence has led to massacres, lootings, plunders, destruction of houses and property of citizens, displacement of the population, in particular of the Uzbek ethnic group, as well as at the inability of the police to provide security in the conflict area,

*Seriously concerned* by information according to which the ethnic Uzbek community appears to have become the main target of subsequent law enforcement

activities, including threats, unlawful arrests, unlawful detentions, disappearances, torture and denial of access to justice,

*Particularly concerned* by information indicating, inter alia, that detainees are frequently forced to confess to crimes which they have not committed and that the payment of ransom is demanded of families of detainees for their release, as well as by reports on increasing discrimination against ethnic Uzbeks by the local authorities, employers and other entities in different areas, and at the role of Kyrgyz media in the portrayal of the situation,

*Worried* by reports about the planned redevelopment of Osh, which does not appear to envisage the reconstruction of the traditional Uzbek living areas destroyed during the June events,

*Recalling* that Kyrgyzstan has ratified the International Convention on the Elimination of All Forms of Racial Discrimination and is under the obligation to prevent and protect persons against acts of hatred, incitement to ethnic violence or any form of violence based on ethnicity,

*Having considered* the situation in Kyrgyzstan under its early warning and urgent action procedure:

1. The Committee urges the Government to ensure the protection of all its citizens from ethnic hatred, including by ensuring a balanced approach by the law enforcement agencies and local authorities and by holding those committing violations personally accountable.
  2. The Committee also urges the Government to pay due attention to possible discrimination on ethnic grounds in other areas, including employment and education, to carefully consider the role of national and local media with regard to the situation, and to ensure that the reconstruction of Osh does not further victimize affected ethnic Uzbek communities.
  3. The Committee strongly urges the Government to facilitate access to justice for the victims, to investigate the violations of human rights, to bring to justice those responsible, to provide redress to the victims and their families, including by returning their property, and to promote dialogue between different ethnic communities with a view to achieving tolerance and peace.
  4. The Committee particularly urges the State party to cooperate with the Policy Mission of the Organization for Security and Co-operation in Europe deployed in Kyrgyzstan, and to support the creation of an international independent commission of inquiry and cooperate therewith, with a view to complementing the national investigation.
  5. The Committee requests information on the situation and the measures taken for its redress, not later than 31 December 2010.
15. During the reporting period, the Committee also considered a number of situations under its early warning and urgent action procedure, including in particular the following.
16. Upon receiving updated information from non-governmental organizations, the Committee considered at its seventy-sixth session the situation of the indigenous peoples of Raposa Serra do Sol in the state of Roraima in **Brazil**. Following its previous communications to the Government of Brazil in 2008 and 2009 in relation to the situation concerning the aforementioned indigenous land, the Committee decided to reiterate its request for up-to-date information. Brazil responded by letter dated 23 August 2010.



17. At its seventy-fifth session, the Committee had requested information about the bauxite mining project on the religious lands of indigenous peoples in the State of Orissa, in **India**. In the light of the information received in October 2009 about the construction of the mine and its impact on indigenous peoples, the Committee decided at its seventy-sixth session, and in the absence of a response from the State party, to reiterate its request for information.

18. At its seventy-sixth session the Committee had further considered the situation of Achuar indigenous people in **Peru**, as well as the situation of Awajun and Wampis in relation to the mining activities on their traditional lands. In a letter to the State party dated 12 March 2010, the Committee reiterated its request for information concerning the Dorissa Agreement. At its seventy-seventh session, the Committee further considered the situation of the indigenous community in Ancomarca and requested information by 31 January 2011. In the light of reports received alleging oil spillage in the district of Uranina, province of Loreto, and its impact on the life of indigenous peoples living in this area, the Committee requested the State party to provide information on measures taken to address this issue.

19. In the light of information received from the Government of **the Lao People's Democratic Republic** on 2 October 2009 about the situation of the Hmong people, the Committee reiterated its request to the State party to take all necessary steps to immediately stop any alleged military operations and to allow the provision of humanitarian aid and medical assistance in the area inhabited by the Hmong people. By a letter dated 27 August 2010, the Committee expressed its gratitude to the State party for further information received on 30 July 2010. Nevertheless, the Committee expressed its continued concern about the situation of the Hmong people and decided to request additional information.

20. At its seventy-sixth session, the Committee considered the response of the Government of **Niger** concerning the alleged negative impact of uranium extraction activities conducted by a French State company on the traditional lands of the Touareg people. The Committee welcomed the response of the State party and encouraged it to collect more information on the impact of the mining activities on the environment by conducting a study with an independent institution. The Committee reiterated at its seventy-seventh session its wish to receive information from the State party by 31 January 2011.

21. In the light of information received on the situation of indigenous peoples in **Paraguay**, more specifically the Yakye Axa and Sawhoyamaxa and their traditional lands, the Committee, at its seventy-sixth session, transmitted a letter to the Government expressing its concern and requested information to be provided by 31 July 2010. In its response, the State party argued that it did not recognize the competence of the Committee to receive and consider individual complaints. In an additional letter, the Committee clarified the question of its competence to request more information from State parties and reiterated its request to the State party for information to be provided by 31 January 2011.

22. At its seventy-sixth session, the Committee considered issues related to the situation of significant underfunding of Aboriginal legal aid in **Australia**. The Committee expressed its concern in a letter dated 31 May 2010 and requested the State party to submit detailed information addressing the issue. During the consideration of the periodic report of Australia at the seventy-seventh session in August 2010, the Committee was advised by the State party that the Aboriginal Legal Rights Movement had withdrawn the complaint received by the Committee. The Committee addressed the need for adequate funding of Aboriginal legal services in its concluding observations (CERD/C/AUS/CO/15-17).

23. At its seventy-sixth session, the Committee considered the situation of the Romani and Irish Traveller community of Dale Farm, County of Essex in the **United Kingdom of Great Britain and Northern Ireland**. Given allegations that the Romani and Irish Traveller community was at risk from a pending eviction, the Committee decided to request

clarification of the situation. The Government responded by a note verbale dated 10 May 2010 stating that it did not recognize the competence of the Committee to receive and consider individual complaints under article 14 of the Convention. However, the Committee requested such information in accordance with article 9, paragraph 1, of the Convention and article 65 of its rules of procedure in its letter dated 12 March 2010.

24. At its seventy-sixth session, the Committee further considered the situation of San/Basarwa indigenous peoples reportedly forced out of their traditional lands in the Central Kalahari Game Reserve in **Botswana**. The Committee expressed its concern in a letter to the State party about the alleged lack of implementation of a decision by the High Court of Botswana which ruled that their eviction was unlawful and unconstitutional. The Committee requested the State party to submit comprehensive information on the situation of the San/Basarwa indigenous peoples and on the implementation of the decision of the High Court.

25. In the light of information received, the Committee considered the situation of the indigenous peoples residing in the districts of Mbandjock and Nkoteng in **Cameroon**. The Committee received information to the effect that the settlement agreement between the State party and the Cameroon Sugar Company (Sosucam), whereby indigenous peoples should be compensated for the use of their land by the company, was allegedly not implemented. The Committee, during its seventy-seventh session, decided to request information from the State party by 31 January 2011.

26. After having received reports alleging the reactivation of the Urura II Dam project within ancestral lands of the Embera Katio people residing in the Upper Sinu River in **Colombia**, the Committee considered this matter at its seventy-seventh session and requested the Government to provide information on these issues by 31 January 2011.

27. In the light of information received concerning the potential impact of a hydroelectric dam project on the situation of the indigenous peoples of Térraba in **Costa Rica**, the Committee expressed its concern that the people of Térraba had not been consulted. As the project would supposedly threaten the cultural and physical survival of the people, the Committee requested the State party to guarantee the rights of indigenous peoples and to provide information on the measures taken to ensure the effective participation of the people of Térraba by January 2011.

28. At its seventy-seventh session, the Committee further considered the situation of the community of the Subanon of Mount Canatuan, Siocon, Zambonga Del Norte in the **Philippines**. By a letter dated 27 August 2010, the Committee reiterated its previous request, communicated in a letter dated 15 August 2008, to respect the customary practices and rights of all people within their ancestral territory, which continue to be threatened by mining operations. The Committee further urged the State party to implement its previous recommendation relating to this issue contained in the concluding observations (CERD/C/PHL/CO/20) adopted at its seventy-fifth session, following the consideration of the State party's report.

29. Upon receiving reports concerning the alleged threat of forced eviction of Roma people in Plavecký Štvrtok in **Slovakia**, the Committee considered the situation at its seventy-seventh session and expressed its concern about the lack of consultations with the Roma people. In a letter dated 27 August 2010, the Committee recalled its concluding observations (CERD/C/SVK/CO/6-8) following its consideration of the State party's report at its seventy-sixth session and requested information before 31 January 2011.

30. At its seventy-seventh session, the Committee decided to send letters to the Council of Europe and the European Union expressing its deep concern regarding the resurgence of racism against Roma in several European States, in particular mass expulsions and limitations to their right to free movement.

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

#### 31. Argentina

(1) The Committee considered the nineteenth and twentieth periodic reports of Argentina, submitted as one document (CERD/C/ARG/19-20), at its 1977th and 1978th meetings (CERD/C/SR.1977 and 1978), held on 17 and 18 February 2010. At its 1999th meeting (CERD/C/SR.1999), held on 4 March 2010, the Committee adopted the following concluding observations.

#### A. Introduction

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

(3) The Committee takes note of the informative report submitted by the State party, which follows the Committee's guidelines for documents to be submitted by States parties and focuses primarily on the steps taken by the State party since 2004 to implement the Convention. It would like to mention, however, that the report does not focus enough on the subject of racial discrimination and does not contain sufficient statistical information to allow the Committee to achieve a real understanding of the situation of indigenous communities or persons of African descent in the State party.

(4) The Committee welcomes the fact that the reports have been submitted fairly regularly and that the civil society of the State party has participated in their preparation. The Committee therefore invites the State party to continue its practice of submitting reports according to the schedule set by the Committee pursuant to the Convention, and of ensuring that civil society takes part in the preparation of those reports.

#### B. Positive aspects

(5) The Committee welcomes the State party's recent ratification of the following international human rights instruments, which reinforce the implementation of the Convention:

(a) Optional Protocol to the Convention on the Elimination of Discrimination against Women (in 2006);

(b) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (in 2007);

(c) Convention for the Protection of All Persons from Enforced Disappearance (in 2007).

(6) The Committee welcomes the promulgation of Act No. 26162 of November 2006, by which the State party accepts the jurisdiction of the Committee to receive individual complaints under article 14 of the Convention.

(7) The Committee welcomes the establishment of a number of institutions to combat racial discrimination and to promote and coordinate public policies related to indigenous peoples, such as the National Institute against Discrimination, Xenophobia and Racism (INADI), the National Institute of Indigenous Affairs (INAI), and the Office of the Secretary for Human Rights of the Ministry of Justice, Security and Human Rights.

(8) The Committee takes note with interest of Decree No. 1086/05, approving the document entitled “Hacia un plan nacional contra la discriminación” (“towards a national plan against discrimination”).

(9) The Committee also takes note with interest of Act No. 26160 of November 2006, under which a state of emergency was declared in order to halt the eviction of indigenous peoples and to permit the implementation of a territorial reorganization process and the regularization of their communal property.

(10) The Committee takes note with satisfaction of the measures adopted in order to ensure that discriminatory messages are not conveyed by the media, and, in particular, of the establishment of the Discrimination in Radio and Television Observatory, an inter-institutional agency which coordinates the work of the Federal Broadcasting Committee (COMFER), the National Women’s Council (CNM) and INADI.

(11) The Committee notes with interest the way in which the State party has dealt with migration issues under the terms of the National Migration Act of January 2004 and in its migration regularization programmes. It also welcomes the fact that the State party has fairly progressive legislation on the protection of refugees, in the form of its general act on the Protection and Recognition of Refugees.

(12) The Committee notes with satisfaction the efforts taken by the State party in the areas of intercultural bilingual education, particularly its scholarship and mentoring programmes.

(13) The Committee welcomes the State party’s efforts to combat anti-Semitism at the national and regional levels.

(14) The Committee notes that the State party’s report contains information on cases which can indicate how the law is implemented in practice and the way existing institutions are used by the population.

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

(15) While appreciating the progress made in developing legislation on racial discrimination, the Committee notes with concern that racial discrimination has not yet been defined as an offence in domestic law in accordance with the Convention.

**The Committee recommends that the State party make every possible effort to have racial discrimination defined as an offence under its law.**

(16) The Committee is concerned at the fact that the post of Ombudsman, the State party’s national human rights institution, has been vacant since April 2009.

**The Committee recommends that the State party increase its efforts to expedite the appointment of a person to the post of Ombudsman by means of an open and transparent process and ensure the effectiveness of that institution.**

(17) The Committee takes note of the range of institutions described by the delegation and in the national report that are entrusted with defending human rights and combating racial discrimination. It is concerned, however, about the need for their effective and efficient coordination and complementarity.

**The Committee recommends that the State party increase its efforts to ensure the effective and efficient coordination of all the institutions that have been created in the State party to defend human rights and combat racial discrimination.**

(18) The Committee notes with satisfaction that the State party is about to conduct a new population census in 2010, which will include self-identification questions, particularly for the indigenous population and persons of African descent. As in its concluding observations

of 2004, the Committee would remind the State party that such information is needed in order to assess the implementation of the Convention and to monitor policies benefiting minorities and indigenous peoples.

**The Committee requests the State party to publish the results of the next 2010 census and hopes that it will include, inter alia, information on indigenous peoples and persons of African descent. Furthermore, in the light of paragraph 8 of the reporting guidelines and general recommendations No. 4 (1973) and No. 24 (1999), the Committee recommends that, in its next periodic report, the State party provide information on the demographic composition of the population, including, in particular, information on indigenous peoples and persons of African descent, as well as other minorities, such as Roma.**

(19) The Committee welcomes the efforts made by the State party to introduce intercultural bilingual education. It is nevertheless concerned at the risk that minority cultures may be marginalized as a result, which would place indigenous peoples and/or Afro-descendants at a disadvantage.

**The Committee recommends that the State party continue its efforts in respect of intercultural bilingual education and ensure that in the learning process, all cultures and languages find their appropriate place in order to build a truly multicultural State.**

(20) The Committee takes note of Act No. 26160 of November 2006, under which a four-year state of emergency was declared in order to halt the eviction of indigenous peoples and to permit implementation of a territorial reorganization process and the regularization of their communal property, and of the work of the National Registry of Indigenous Communities (RENACI) in promoting the registration of indigenous communities and assisting them to complete the necessary formalities. While the Committee also notes that the law's application has been extended for another four years, it is seriously concerned by the fact that six of the State party's provinces have not agreed to apply this national law (Salta, Formosa, Jujuy, Tucumán, Chaco and Neuquén).

**The Committee recommends that the State party increase its efforts to have this law implemented in all provinces which have a large indigenous population and where the struggle for control over natural resources has led to violence and forced evictions. The Committee urges the State party to take whatever steps are necessary to halt evictions and, as appropriate, to safeguard the communal property of indigenous peoples. It also recommends that the State party increase its efforts to align RENACI with the provincial registries.**

(21) The Committee observes that the State party's national plan against discrimination is intended to ensure that indigenous peoples have access to justice, and that in this respect INADI is backing indigenous groups' efforts to lodge complaints in the courts and helping to publicize their territorial disputes (regarding their ancestral lands and their opposition to logging operations and the pollution of rivers). It is concerned, however, about the failure to prosecute and punish those responsible for the perpetration of violent acts during the forced evictions, particularly in view of the fact that a person died in Tucumán Province on 12 October 2006 and that two violent evictions recently occurred in Neuquén Province.

**The Committee recommends that the State party increase its efforts to ensure that indigenous communities make effective use of free legal advice services (*guardia jurídica gratuita*) and take steps to ensure that such services are accessible to the population as a whole. It also urges the State party to investigate and punish those responsible for deaths and injuries occurring in connection with forced evictions in the provinces.**

(22) The Committee takes note of the fact that the budget of INAI has been increased in order to improve its operations; it recalls with concern, however, that no high-profile political figure is currently advocating the nationwide implementation of INAI's mandate, as well as the comment made by the State party's delegation regarding the need to realign the role of INAI.

**The Committee recommends that the State party take steps to secure the passage of a bill designed to strengthen the national role of INAI by empowering it to advance the indigenous population's agenda at the political level, not only nationwide but also in the provinces, where most of the disputes take place, thereby providing the indigenous communities with an interlocutor that responds to their needs more effectively. This bill could also set out definitions of a greater number of discrimination-related offences, as discussed by the delegation.**

(23) The Committee notes that INAI is currently in the process of creating and consolidating effective mechanisms enabling the participation of indigenous peoples in the development, implementation and monitoring of public policies that affect them, through the establishment of the Council on Indigenous Participation, pursuant to INAI Decision No. 152 of 6 August 2004 and Amendment No. 301/04, and, at a second stage, of the Coordinating Council, whose establishment is provided for in Act No. 23302. The Committee is concerned, however, by information it has received indicating that, notwithstanding the mechanisms that are in place, the final decision regarding the representation of indigenous peoples lies in the hands of the State rather than in those of the indigenous groups in question.

**The Committee recommends that the State party continue to take its internal debate to a deeper level in an effort to find a better way to achieve an appropriate form of representation of indigenous peoples, in particular in matters that concern them.**

(24) The Committee welcomes the steps being initiated by the State party to achieve the recognition and integration of persons of African descent in the State party. It is seriously concerned, however, about the widespread perception that no population group of African descent exists in the State party and about the apparent disregard of this group in public policies at national level.

**The Committee recommends that the State party continue its efforts to acknowledge and integrate the persons of African descent in the State party, along with migrants of African descent, and to achieve the full development and enjoyment of their human rights.**

(25) The Committee reiterates its concern at the lack of sufficient information in the State party's report regarding complaints related to acts of racial discrimination and the corresponding legal action taken by, and on behalf of, victims, including complaints of alleged violent racist attacks and acts of police brutality committed on racial grounds.

**The Committee requests the State party to include in its next periodic report disaggregated statistical information on investigations and prosecutions launched and penalties imposed in cases of offences which relate to racial discrimination, where the relevant provisions of the existing domestic legislation have been applied, in particular violent racist attacks and alleged offences committed by law enforcement personnel. In this regard, the Committee recalls its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights and encourages the State party to improve the training of law enforcement officials so that the standards of the Convention are fully implemented. Referring to its general recommendation No. 31 (2005) (para. 1 (b)), the Committee recalls that the absence of cases may be due to the fact that victims have inadequate information on judicial remedies, and it therefore recommends that the State party ensure that domestic law**

**makes appropriate provision for effective protection and remedies against violations of the Convention and that the general public is duly informed both of their rights and of the legal remedies available to them in the event of a violation of those rights, including the individual complaints procedure under article 14 of the Convention.**

(26) The Committee is deeply concerned at information that, although the law explicitly prohibits eviction, indigenous communities have recently been expelled from their ancestral lands. The situation is made even more serious when violence is used during evictions. The Committee is greatly concerned at the incidents that occurred recently in the course of the evictions of the Chuschagasta indigenous community in Tucumán Province and of the Currumil community in Aluminé, in Neuquén Province. It is also gravely concerned that, notwithstanding the State party's ratification of the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169), the State party has not set up effective consultation mechanisms in order to obtain the free, prior and informed consent of communities that might be affected by development projects or the exploitation of natural resources.

**The Committee recommends that the State party take the necessary effective steps to ensure that the law prohibiting forced eviction is applied equally throughout the national territory. The Committee recommends that the State party establish appropriate mechanisms, in accordance with ILO Convention No. 169, to consult with communities that might be affected by development projects or the exploitation of natural resources in order to obtain their free, prior and informed consent. It also recommends that, where it is determined that eviction is necessary, the State party ensure that those evicted from their lands receive adequate compensation, and that it provide relocation sites equipped with basic services, such as drinking water, electricity, washing facilities and sanitation, and adequate social services, including schools, health centres and transport. The Committee also recommends that the State party investigate recent occurrences of evictions of indigenous peoples, punish those responsible and offer compensation to those affected.**

(27) The Committee takes note of the State party's efforts fully to embrace its multi-ethnic dimension, but views with deep concern reports of a perception of the State party as a country with primarily white European origins, to all intents and purposes denying the existence of native indigenous peoples and communities of African origin.

**The Committee recommends that the State party step up its efforts to recognize itself as a multi-ethnic State, which values and learns from its indigenous and African cultures. To that end, it recommends that the State party run campaigns to raise awareness among the population and promote a positive image of the country.**

(28) The Committee notes with concern the low level of participation by the indigenous peoples in political life and their poor representation in Parliament.

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

(29) The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular those living in Chaco Province, remain among the poorest and most marginalized groups.

**The Committee recommends that the State party take the necessary steps to ensure 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 the economic, social and cultural rights of the indigenous population, as well as statistics on progress made in this regard, with particular reference to efforts undertaken to improve living standards in Chaco Province.**

(30) While noting the programmes implemented by the State party, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, such as persons of African descent.

**The Committee recommends that the State party take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among all racial groups in the State party. The Committee further recommends that the State party extend information campaigns and educational programmes on the Convention and its provisions, and that it strengthen training activities for the police force and criminal justice officials regarding existing legal mechanisms and procedures in the field of racial discrimination.**

(31) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party, when incorporating the Convention into its domestic legislation, 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, and the Outcome Document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party, in its next periodic report, provide concrete information on plans of action and other steps taken to give effect to the Durban Declaration and Programme of Action at the national level.

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

(33) The Committee recommends that the State party's reports be promptly made available and accessible to the public at the time they are submitted and that the Committee's comments on those reports likewise be published in the official language and other widely used languages.

(34) Noting that the State party submitted its core document in 1996, the Committee encourages the State party to submit its core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the preparation of the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

(35) 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 21, 26 and 29 above within one year of the adoption of the present concluding observations.

(36) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 20, 23 and 35 above, and requests the State party to provide detailed information in its next periodic report on the concrete steps taken to implement those recommendations.

(37) The Committee recommends that the State party submit its twenty-first periodic report in a single document by 4 January 2013, taking into account the guidelines for the specific document to be submitted to the Committee on the Elimination of Racial Discrimination by States parties under article 9, paragraph 1, of the Convention, as adopted



by the Committee at its seventy-first session (CERD/C/2007/1). The report should contain updated information and answer all the points contained in the concluding observations.

## 32. **Australia**

(1) The Committee considered the combined fifteenth to seventeenth periodic reports of Australia (CERD/C/AUS/15-17), submitted in one document, at its 2024th and 2025th meetings (CERD/C/SR.2024 and 2025), held on 10 and 11 August 2010. At its 2043rd meeting (CERD/C/SR.2043), held on 24 August 2010, it adopted the following concluding observations.

### **A. Introduction**

(2) While welcoming the submission of the combined fifteenth to seventeenth periodic report by the State party, the Committee notes that the report was not in complete conformity with its reporting guidelines. The Committee expresses its appreciation to the State party for the presentations made by the delegation, both orally and in writing, which provided further insights into the implementation of the Convention.

### **B. Positive aspects**

(3) The Committee welcomes the State party's expression of support, in April 2009, for the United Nations Declaration on the Rights of Indigenous Peoples, as a first step in building a sustained and constructive partnership with indigenous peoples.

(4) The Committee notes with satisfaction the national apology for past negative Government policies, issued by the State party on 13 February 2008 to indigenous peoples and in particular the Stolen Generations, as a first step towards genuine reconciliation and reparations to be made in recognition of the history of gross violations of human rights.

(5) The Committee welcomes the ratification by the State party of the Convention on the Rights of Persons with Disabilities and the Optional Protocol thereto, the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, and the standing invitation extended to all thematic special procedures, noting, in particular, the visits in 2009 of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

(6) The Committee welcomes the commitment of the Government to address indigenous disadvantage as set out in the six "Closing the Gap" targets.

(7) The Committee notes with interest the extensive National Human Rights Consultation, conducted between December 2008 and September 2009, which revealed overwhelming support for the protection of human rights.

(8) The Committee welcomes the contributions of the Australian Human Rights Commission to the Committee's work, as well as the active engagement of and contributions from non-governmental organizations.

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

(9) The Committee regrets that insufficient information regarding the concrete measures for the implementation of its previous concluding observations (CERD/C/AUS/CO/14, CERD/C/304/Add.101) was provided by the State Party. It also regrets that many of the concerns previously addressed to it by the Committee persist and have not resulted in structural change.

**The State party is encouraged to comply with all recommendations and decisions addressed to it by the Committee and to take all necessary steps to ensure that national legal provisions further the effective implementation of the Convention. The**

**Committee also recommends that the State party consider the establishment of a domestic implementation mechanism for the International Convention on the Elimination of All Forms of Racial Discrimination across the federal system.**

(10) The Committee is concerned by the absence of any entrenched protection against racial discrimination in the federal Constitution and that sections 25 and 51 (xxvi) of the Constitution in themselves raise issues of racial discrimination. It notes with interest the recommendations from the National Human Rights Consultation Report and the finding of a significant degree of community support for a federal human rights act to thoroughly address the gaps in the existing model of human rights protection. The Committee also notes information provided on the plans of the State party to review all federal anti-discrimination laws, with the intention of harmonizing them under the Human Rights Framework (arts. 1 and 2).

**The Committee urges the State party to ensure that the review of all federal anti-discrimination laws considers the gaps in legal and constitutional protections against discrimination and that consequent harmonization does not weaken the Racial Discrimination Act. It recommends that the State party take measures to ensure that the Racial Discrimination Act prevails over all other legislation which may be discriminatory on the grounds set out in the Convention. The Committee also recommends that the State party draft and adopt comprehensive legislation providing entrenched protection against racial discrimination.**

(11) While taking account of the State party's commitment to the Australian Human Rights Commission (AHRC), the Committee regrets the absence of a full-time Race Discrimination Commissioner since 1999 and notes with concern the challenges the AHRC faces regarding limited powers, capacity and funding (art. 2).

**The Committee urges the State party to support the proper performance of the AHRC, through adequate financing and staffing, including through the appointment of a full-time Race Discrimination Commissioner. It also recommends that the State party consider expanding the powers, functions and funding of the AHRC.**

(12) The Committee is concerned that the collection of biometric data of applicants for Australian visas in 10 countries, as part of national security measures, may constitute racial profiling and may contribute to increased stigmatization of certain groups (art. 2).

**While acknowledging the State party's national security concerns, the Committee underlines the obligation of the State party 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 draws the State party's attention to its statement on racial discrimination and measures to combat terrorism of 8 March 2002 (A/57/18, chap. XI, sect. C) and recommends that it undertake sensitization campaigns against stereotypes associating certain groups with terrorism.**

(13) The Committee notes with concern the absence of a legal framework regulating the obligation of Australian corporations, at home and overseas, whose activities, notably in the extractive sector, when carried out on the traditional territories of indigenous peoples, have had a negative impact on indigenous peoples' rights to land, health, living environment and livelihoods (arts. 2, 4 and 5).

**In the light of the Committee's 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 by Australian corporations which negatively impact on the enjoyment of rights of indigenous peoples domestically and overseas and to regulate the extra-territorial activities of Australian corporations abroad. The Committee also encourages the State party to fulfil its commitments**

**under the different international initiatives it supports to advance responsible corporate citizenship.**

(14) Noting with interest the changing demographics of the State party in recent decades, the Committee regrets that its multicultural policy (Multicultural Australia: United in Diversity (2003–2006)) expired in 2006. It notes with concern reports highlighting ongoing issues of discrimination and inequity in access to and delivery of services experienced by members of certain minority communities, including African communities, people of Asian, Middle Eastern and Muslim background, and in particular Muslim women (arts. 1, 2 and 5).

**The Committee encourages the State party to develop and implement an updated comprehensive multicultural policy that reflects its increasingly ethnically and culturally diverse society. The Committee requests the State party to include in its next periodic report information on its approach to multiculturalism and diversity in national policy. It recommends that the State party strengthen the race and cultural dimensions of its Social Inclusion Agenda, in particular by ensuring adequate resources for the development of strategies that respond to the specific needs of the diverse communities of the State party.**

(15) The Committee notes with appreciation the acknowledgement by the State party that Aboriginal and Torres Straits Islanders occupy a special place in its society as the first peoples of Australia and welcomes the establishment of the National Congress of Australia's First Peoples. However, it is concerned that the National Congress is only an advisory body representing member organizations and individuals and may not be fully representative of Australia's First Peoples. The Committee regrets the limited progress towards Constitutional acknowledgement of Australia's indigenous peoples, and slow implementation of the principle of indigenous peoples' exercising meaningful control over their affairs (arts. 1, 2, 5 and 6).

**Drawing the attention of the State party to the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates its recommendation that the State party increase efforts to ensure a meaningful reconciliation with indigenous peoples and that any measures to amend the Australian Constitution include the recognition of Aboriginal and Torres Strait Islanders as First Nations Peoples. In this regard, the Committee recommends that the State party consider the negotiation of a treaty agreement to build a constructive and sustained relationship with indigenous peoples. The Committee also recommends that the State party provide the National Congress of Australia's First Peoples with the adequate resources to become fully operational by January 2011 and support its development.**

(16) The Committee expresses its concern that the package of legislation under the Northern Territory Emergency Response (NTER) continues to discriminate on the basis of race including through the use of so-called "special measures" by the State party. The Committee regrets the discriminatory impact this intervention has had on affected communities, including restrictions on Aboriginal rights to land, property, social security, adequate standards of living, cultural development, work and remedies. While noting that the State party will complete the reinstatement of the Racial Discrimination Act in December 2010, the Committee is concerned by the continuing difficulties in using the Act to challenge and provide remedies for racially discriminatory NTER measures (arts. 1, 2 and 5).

**The Committee urges the State party to guarantee that all special measures in Australian law, in particular those regarding the NTER, are in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures. It encourages the State party to strengthen its efforts to implement**

**the NTER Review Board recommendations, namely that: it continue to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory; that it reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and that Government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.**

(17) The Committee reiterates its concern about the State party's reservations to article 4 (a) of the Convention. It notes that acts of racial hatred are not criminalized throughout the State party, pursuant to article 4 of the Convention, and also that the Northern Territory still has not enacted legislation prohibiting incitement to racial hatred (art. 4).

**In the light of the Committee's general recommendations No. 7 (1985) and No. 15 (1993), according to which article 4 is of a mandatory nature, the Committee recommends that the State party remedy the absence of legislation in order to give full effect to the provisions against racial discrimination under article 4 and withdraw its reservation to article 4 (a) relating to criminalizing the dissemination of racist ideas, incitement to racial hatred or discrimination, and the provision of any assistance to racist activities. The Committee reiterates its request for information on complaints, prosecutions and sentences regarding acts of racial hatred or incitement to racial hatred in states and territories with legislation specifying such offences.**

(18) Reiterating in full its concern about the Native Title Act 1993 and its amendments, the Committee regrets the persisting high standards of proof required for recognition of the relationship between indigenous peoples and their traditional lands, and the fact that despite a large investment of time and resources by indigenous peoples, many are unable to obtain recognition of their relationship to land (art. 5).

**The Committee urges the State party to provide more information on this issue, and to take the necessary measures to review the requirement of such a high standard of proof. The Committee is interested in receiving data on the extent to which the legislative reforms to the Native Title Act in 2009 will achieve "better native title claim settlements in a timely manner". It also recommends that the State party enhance adequate mechanisms for effective consultation with indigenous peoples around all policies affecting their lives and resources.**

(19) While welcoming recent initiatives taken by the State party to increase access to justice by indigenous Australians, the Committee is concerned that the recent funding increase for Aboriginal legal aid may be inadequate to address the continued limited access by indigenous peoples to legal specialist and interpretation services in a sustainable manner (arts. 5 and 6).

**The Committee encourages the State party to increase funding for Aboriginal legal aid in real terms, as a reflection of its recognition of the essential role that professional and culturally appropriate indigenous legal and interpretive services play within the criminal justice system. Moreover, it recommends that the State party strengthen training for law enforcement personnel and the legal profession in this regard.**

(20) While welcoming the endorsement of the National Indigenous Law and Justice Framework by all Australian governments, the Committee reiterates its concern about the disproportionate incarceration rates and the persisting problems leading to deaths in custody of a considerable number of indigenous Australians over the years. The Committee expresses concern in particular about the growing imprisonment rates of indigenous women and the substandard conditions in many prisons (arts. 5 and 6).

Taking into account the Committee's 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 dedicate sufficient resources to address the social and economic factors underpinning indigenous contact with the criminal justice system. It encourages the State party to adopt a justice reinvestment strategy, continuing and increasing the use of indigenous courts and conciliation mechanisms, diversionary and prevention programmes and restorative justice strategies, and recommends that, in consultation with indigenous communities, the State party take immediate steps to review the recommendations of the Royal Commission into Aboriginal Deaths in Custody, identifying those which remain relevant with a view to their implementation. The Committee also recommends that the State party implement the measures outlined in the National Indigenous Law and Justice Framework. The Committee encourages the State party to ensure the provision of adequate health care to prisoners.

(21) The Committee welcomes the new national approach to preserve indigenous languages but is concerned that no additional financial resources have been committed by the State party nor received by the Maintenance of Indigenous Languages and Records programme for this new approach. The Committee is also highly concerned by the recent abolition of bilingual education funding by the Northern Territory government in the light of the precarious condition of many indigenous languages, and the lack of adequate opportunities for children to receive instruction in or of their language (arts. 2 and 5).

**The Committee encourages the State party to allocate adequate resources for the new national approach to preserve indigenous languages. It recommends that the State party, in consultation with indigenous communities, hold a national inquiry into the issue of bilingual education for indigenous peoples. The Committee also recommends that the State party adopt all necessary measures to preserve native languages and develop and carry out programmes to revitalize indigenous languages and bilingual and intercultural education for indigenous peoples, respecting cultural identity and history. In line with the United Nations Educational, Scientific and Cultural Organization Convention against Discrimination in Education, to which Australia is a party, the Committee encourages the State party to consider providing national minorities with adequate opportunities for the use and teaching of their own language.**

(22) While recognizing the steps taken by the State party to address socio-economic disadvantages of indigenous people, the Committee reiterates its serious concern about the continued discrimination faced by indigenous Australians in the enjoyment of their economic, social and cultural rights (art. 5).

**The Committee reiterates its recommendation that the State party ensure that resources allocated to eradicate socio-economic disparities are sufficient and sustainable. It recommends that all initiatives and programmes in this regard ensure the cultural appropriateness of public service delivery and that they seek to reduce indigenous socio-economic disadvantage while advancing indigenous self-empowerment.**

(23) The Committee is concerned by information related to the personal security of international students and, in particular, the series of racially motivated assaults of Indian students, including one death, in the State of Victoria. It regrets the failure by the Government and police (both at the state and federal levels) to address the racial motivation of these acts, as well as the lack of available national data on the prevalence of migrants as victims of crime (arts. 2, 4 and 5).

**The Committee recommends that the State party further intensify its efforts to combat racially motivated violence, including by requiring law enforcement**

authorities to collect data on the nationality and ethnicity of victims of such crimes and ensuring that judges, prosecutors and the police consistently apply existing legal provisions which consider the motive of ethnic, racial or religious hatred or enmity as an aggravating circumstance. It recommends that the State party 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.

(24) The Committee is concerned that “excised offshore places”, such as the immigration detention facilities on Christmas Island, are removed from the operation of Australia’s migration legislation and that asylum-seekers arriving by boat or intercepted before reaching the mainland without a valid visa are subject to differential processing arrangements and denied the full protections of the application and review procedures available on the mainland. The Committee is also concerned by the continued suspension of the processing of refugee status assessment procedures for applicants from certain countries, notably for Afghan asylum-seekers, which lacks a legislative basis and is inconsistent with article 5 of the Convention. It regrets that the Australian High Court has found that it is lawful for a stateless person to be detained indefinitely. Finally, the Committee is concerned that children are still kept in detention-like conditions in various remote areas and at times, separate from their parents (arts. 1, 2 and 5).

**Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee reiterates its view that States parties should ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin. It recommends that the State party:**

(a) **Review its mandatory detention regime for asylum-seekers with a view to finding an alternative to detention, ensuring that the detention of asylum-seekers is always a measure of last resort and is limited by statute to the shortest time reasonably necessary, and that all forms of arbitrary detention are avoided;**

(b) **Expedite the removal of the suspension on processing visa applications from asylum-seekers from Afghanistan and that it take the necessary measures to ensure standardized asylum assessment and review procedures and equal entitlement to public services by all asylum-seekers, regardless of country of origin or mode of entry;**

(c) **Develop appropriate reception arrangements, in particular for children;**

(d) **Ensure in its domestic law, in accordance with article 5 (b) of the Convention, that the principle of non-refoulement is respected when proceeding with the return of asylum-seekers to countries;**

(e) **Accompany any changes in the processing of asylum claims with adequate protection standards for those asylum-seekers whose protection is suspended;**

(f) **Continue its cooperation with the Office of the United Nations High Commissioner for Refugees in regard to the above.**

(25) The Committee regrets that no steps have been taken by the State party with regard to the Committee’s previous recommendation that the State party envisage reversing the burden of proof in civil proceedings involving racial discrimination to alleviate the difficulties faced by complainants in bearing the burden of proof (arts. 4 and 5).

**The Committee recommends that, as part of its harmonization of federal anti-discrimination laws, the Racial Discrimination Act be amended, as far as civil**

**proceedings are concerned, to require the complainant to prove prima facie discrimination, at which point the burden shifts to the respondent to prove no discrimination existed.**

(26) While noting with interest the range of compensation payment schemes that have been implemented or recommended for implementation in the State party, the Committee regrets the absence of appropriate compensation payment schemes for Stolen Generations and stolen wages, which is inconsistent with article 6 of the Convention.

**The Committee reiterates its recommendation to the State party that it address appropriately and through a national mechanism past racially discriminatory practices, including through the provision of adequate compensation to all involved.**

(27) The Committee reiterates that education plays a crucial role in promoting human rights and combating racism and notes with interest the national curriculum initiative for schools. However, it is concerned that the historical position, importance and contributions to Australian society of indigenous peoples and those of other groups protected under the Convention may not be properly reflected in the proposed curriculum (arts. 5 and 7).

**The Committee recommends that the State party take the necessary measures to ensure that the national curriculum conveys to Australian society an accurate message regarding the contribution of all groups protected under the Convention and reflects the principle of full participation and equality. In the light of article 7 of the Convention, it also recommends that the State party include human rights education in the national curriculum. The Committee also encourages the State party to ensure that an anti-racism strategy be established under the new Human Rights Framework, as per the recommendations of the Human Rights Consultation Report, and that an education programme for all Australians, with particular reference to combating discrimination, prejudice and racism, be adopted.**

(28) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; and the Convention concerning Indigenous and Tribal Peoples in Independent Countries, 1989 (No. 169) of the International Labour Organization.

(29) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

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

Committee with respect to these reports be similarly publicized in the official and other commonly used languages, as appropriate.

(32) 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, 16 and 23 above.

(33) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 18, 22 and 26 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(34) The Committee recommends that the State party submit its eighteenth and nineteenth periodic reports in a single document, due on 30 October 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines on reporting contained in document HRI/GEN/2/Rev.6, para. 19).

### 33. **Bosnia and Herzegovina**

(1) The Committee considered the combined seventh and eighth periodic reports of Bosnia and Herzegovina (CERD/C/BIH/7-8), submitted in one document, at its 2036th and 2037th meetings (CERD/C/SR.2036 and CERD/C/SR.2037), held on 18 and 19 August 2010. At its 2045th meeting (CERD/C/SR.2045), held on 25 August 2010, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the submission of the combined seventh and eighth periodic reports of the State party, which included responses to the concerns raised in the Committee's previous concluding observations (CERD/C/BIH/CO/6), and the opportunity thus offered to resume the dialogue with the State party. In the same way the Committee acknowledges and thanks the State party for its submissions dated 12 November 2007 and 28 May 2009 on follow-up measures taken by the State party with regard to the previous concluding observations of the Committee. It also expresses great appreciation for the sincere and constructive dialogue held with the delegation as well as the oral responses provided to the list of themes and the questions posed by the Committee members.

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

(3) The Committee welcomes the following legislative and institutional developments towards full implementation of the Convention in Bosnia and Herzegovina:

(a) The establishment of a single, unified office of the Human Rights Ombudsman for Bosnia and Herzegovina;

(b) The adoption of two new laws in 2009: on prohibition of discrimination, and on freedom of religion and the legal status of churches and religious communities;

(c) The adoption of the laws on protection of the rights of the members of national minorities by the Republic Srpska and by the Federation of Bosnia and Herzegovina in 2008;

(d) The adoption of the action plans for Roma issues with regard to employment, housing and health care and the establishment of the respective coordinating board for monitoring its implementation in 2008;



(e) The commitment to implement the declaration and programme of work of the European Decade of Roma Inclusion 2005–2015 in Bosnia and Herzegovina;

(f) The establishment of a working group by the Council of Ministers of Bosnia and Herzegovina to offer solutions for the phenomenon of “two schools under one roof” in 2008.

(4) The Committee also welcomes efforts to adopt specific legislation prohibiting all fascist and neo-fascist organizations in Bosnia and Herzegovina.

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

### C. Concerns and recommendations

(6) The Committee notes the steps undertaken by the State party towards conducting a population census in 2011. It is concerned, however, at the legacy of the war, which caused significant ethnic-based demographic changes and the impact that this may have on the conduct of the census (arts. 1, paras. 1 and 2).

**The Committee recommends that appropriate measures be undertaken and adequate mechanisms established to ensure efficient methods of collection of data that will give complete and reliable disaggregated statistics on the ethnic composition of its population. It recalls its general recommendation No. 8 (1990) concerning the self-identification of members of racial and ethnic groups, which should be done without fear of repercussions. The State party is encouraged to seek technical cooperation from the United Nations Population Fund in this regard.**

(7) The Committee, while commending the State party for its willingness to amend relevant laws, where necessary, notes with concern the constitutional stipulations that grant certain important political rights on the basis of ethnic affiliation (arts. 1, para. 4; 2, paras. 1 (c) and 5 (c)).

**The Committee reiterates its recommendation that the State party proceed with amending the relevant provisions of the State and entities’ constitutions and the election laws, with a view to removing all discriminatory provisions and, in particular, to ensuring the equal enjoyment of the right to vote and to stand for elections by all citizens irrespective of their ethnic background.**

(8) While welcoming the various measures adopted by the State party to ensure an effective solution to the problems related to the return of refugees and displaced persons, the Committee is concerned that a large number of war-displaced persons remain unable to return to their former residences or to effectively integrate into their former or new communities (art. 5 (d) (i) and (e)).

**The Committee encourages the State party to continue implementing measures to accelerate the sustainable return of refugees and internally displaced persons to their places of origin, inter alia by improving their reception conditions. The Committee recommends that further activities be devised to improve the socio-economic integration of those who have returned, and by ensuring equal enjoyment of their social, economic and cultural rights, especially in the field of social protection and pension, health care, equal employment and equal education. Returnees should receive appropriate assistance or compensation, as the case may be, in order to prevent a further worsening of their human rights situation.**

(9) While praising the State party for establishing a single office of Human Rights Ombudsman and other advisory bodies on issues of national minorities, the Committee is

concerned that adequate mechanisms for monitoring acts of ethnic-based discrimination and violence remain virtually non-existent (arts. 2 and 6).

**The Committee recommends the State party to take the relevant political, professional, financial, technical and other measures to ensure effective independence and autonomy for the Office of the Human Rights Ombudsman in accordance with the Paris Principles (General Assembly resolution 48/134 of 20 December 1993), and to enable the effective and efficient work of local national minorities' councils.**

(10) While noting the relevant criminal law provisions criminalizing incitement to racial or ethnic hatred, the recent laws on prohibition of discrimination and on freedom of religion and the upcoming law on the prohibition of all fascist and neo-fascist organizations, the Committee is concerned about the continuous public manifestations of hate speech and intolerance, especially by politicians (arts. 4 (b) and 6).

**The Committee recommends that the State party continue to endeavour to combat inter-ethnic prejudices, by, inter alia, applying existing criminal provisions on hate speech and hate crimes, continuing to strengthen, and to promote, through awareness-raising campaigns, and other concrete steps, national unity, tolerance and the peaceful coexistence of members of various nationalities and religious groups, and by strengthening the monitoring powers of the Communications Regulatory Agency with regard to acts of public incitement to ethnic and religious hatred.**

(11) While taking note of the measures adopted by the State party to eliminate the remnants of the so-called "two schools under one roof" system, the Committee believes that segregated education in the territory of the State party perpetuates non-integration, mistrust and fear of the "other" (arts. 3, 5 (e) and 7).

**The Committee reiterates its recommendation to the State party to end the segregated system of mono-ethnic schools and to ensure that the same basic curriculum be taught to all children, promoting tolerance among the different ethnic groups in the country and appreciating their specificities.**

(12) While welcoming the steps taken to eliminate discrimination against Roma in the field of housing, employment, education and health care, the Committee continues to be concerned about the persistence of acts of discrimination targeting this marginalized minority group. It notes, in particular, that the Roma children birth registration campaign that should have been concluded by 2008 has not yet achieved its objectives, with serious implications for their eligibility for health-care insurance, social aid and school enrolment (arts. 2, 3 and 5 (e)).

**The Committee reiterates its recommendations to the State party, with reference to its general recommendation No. 27 (2000), to continue to endeavour to combat prejudices against Roma, and to ensure that all Roma have access to personal documents that are necessary for them to enjoy their civil and political rights, as well as their economic, social and cultural rights. The Committee recommends also that the State party fully implement its various Roma strategies and action plans in line with the declaration and programme of work of the Decade of Roma Inclusion 2005–2015, with action mainly devoted to ensuring adequate housing, health care, employment, social security and education for Roma people.**

(13) While welcoming the steps (legislative and others) adopted in the State party, the Committee continues to be concerned that racial and ethnic-based discrimination remains alive in Bosnian society (arts. 2, 3, 4, 5 (d) (i) and (e) and 7).

**The Committee reiterates its recommendation to the State party to continue fostering intercultural dialogue, tolerance and understanding, paying due attention to the culture and history of different ethnic groups within Bosnia and Herzegovina.**

(14) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(16) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention, recognizing the competence of the Committee to receive and consider individual complaints.

(17) 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 resolutions 61/148 and 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(19) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 9, 11 and 13 above.

(20) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 7, 8 and 12, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(21) The Committee recommends that the State party submit its 9th, 10th and 11th periodic reports in a single document, due on 16 July 2014, 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. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines on reporting contained in document HRI/GEN/2/Rev.6, para. 19).

#### 34. **Cambodia**

(1) The Committee considered the eighth to thirteenth periodic reports of Cambodia submitted in one document (CERD/C/KHM/8-13), at its 1979th and 1980th meetings (CERD/C/SR.1979 and 1980), held on 18 and 19 February 2010. At its 1998th meeting

(CERD/C/SR.1998), held on 4 March 2010, it adopted the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the periodic reports submitted by Cambodia, and the opportunity thus offered to resume a dialogue with the State party. Noting that the report was more than 10 years overdue when submitted (the eighth report was due in 1998), the Committee requests that the State party be mindful of the deadline set for the submission of its future reports in order to meet its reporting obligation under the Convention.

(3) The Committee expresses its appreciation to the State party for the constructive dialogue and the efforts made by the Geneva-based delegation, headed by the Permanent Representative of Cambodia to the United Nations, to respond to the questions raised by the Committee. It notes that the delegation did not include any representatives from relevant ministries or offices in Cambodia, which limited the availability of information or answers to questions raised by the Committee during the meeting. In its next appearance before the Committee, the Committee invites the State party to send experts from Cambodia in order to allow for a more thorough dialogue.

(4) The Committee appreciates the contribution made by numerous Cambodian non-governmental organizations, which enriched the quality of the dialogue with the State party.

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

(5) The Committee notes that the State party is now in a continuing phase of reconstruction following a difficult and long period of armed conflict, and notes that periods of fragile peace both inside the country and at its borders have inhibited full implementation of the Convention.

**C. Positive aspects**

(6) The Committee notes the incorporation of international human rights treaties into Cambodian constitutional law and welcomes the 10 July 2007 decision of the Constitutional Council (Decision No. 092/003/2007) reaffirming that judges should interpret legislation and make decisions in the light of Cambodia's international human rights obligations.

(7) The Committee also welcomes the ratification of the Optional Protocol to the Convention against Torture in April 2007 and the adoption of a law to ratify the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women in August 2009, both very significant steps towards the promotion and protection of human rights.

(8) The Committee appreciates the steps taken by the State party to strengthen its legal framework for the protection and promotion of human rights, in particular the adoption of the Penal Procedure Code in August 2007.

(9) The Committee notes with satisfaction the adoption of a land law in 2001 as well as a series of sub-decrees aimed at better protecting access to land for minority groups, including indigenous peoples.

(10) The Committee notes with satisfaction the establishment of the Extraordinary Chambers in the Courts of Cambodia (ECCC) in cooperation with the United Nations and the international community. It encourages the State party to continue its efforts to bring the perpetrators of the Khmer Rouge related atrocities to justice.

#### D. Concerns and recommendations

(11) The Committee welcomes the adoption of the recent Penal Code and its provisions on Offences against human dignity and Offences against public security. However it is concerned by the absence of a clear definition of what constitutes racial discrimination under Cambodian law (arts. 1 and 2).

**The Committee recommends that legislation be completed to ensure a clear definition of racial discrimination, in conformity with article 1 of the Convention, and the right of everyone not to be discriminated against in the enjoyment of all rights set forth in article 5 of the Convention. The Committee further recommends that the State party ensure that all these provisions are fully understood and disseminated to the public and implemented.**

(12) The Committee welcomes the provision of information by the State party on languages and ethnic composition of the population. The Committee is however concerned that the information provided did not enable a thorough insight into the situation especially with regard to ethnic minorities.

**In line with its general recommendation No. 8 (1990) and with paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session (CERD/C/2007/1), the Committee requests that State party include in its next periodic report disaggregated data on ethnic minorities, including indigenous minorities, and on their socio-economic status.**

(13) Recognizing that the rule of law is the cornerstone for the protection of the rights set forth in the Convention, the Committee is concerned with reports of political interference and corruption affecting the judicial bodies and the functioning of some public services. It acknowledges and welcomes on the other hand the process undertaken to adopt an anti-corruption law but believes that such law needs to be fully implemented and mechanisms put in place (art. 2).

**The Committee recommends that the State party continue and increase its efforts to strengthen and guarantee the independence of the judiciary and ensure that it is free from political control and interference through the early adoption of all relevant laws of reform. The Committee further recommends that the State Party take steps to increase its capacity to investigate and take disciplinary action in cases of incompetence and corruption.**

(14) While welcoming the efforts made by the State party to adopt a wide range of legislation in areas such as asylum, access to land, access to education, the prohibition of racial discrimination, the Committee is concerned at the lack of uniform and faithful implementation and enforcement of these laws. In this regard, the Committee notes with particular concern that, as referenced in a statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment on 22 December 2009, the State party took the decision to deport 20 ethnic Uyghurs from Cambodia before concluding a refugee status determination process, thus preventing an objective determination of whether the deportees would be at risk of persecution or other forms of ill-treatment (arts. 2 and 5).

**The Committee requests that the State party ensure that adopted legislation, including the law on asylum, are fully and faithfully implemented in order to provide the full protection of the law, a respect for the principle of “non-refoulement”, and enjoyment on an equal footing of equal rights and benefits.**

(15) While noting that the State party has several human rights mechanisms within various branches of its Government, the Committee remains concerned that an independent national human rights institution has yet to be established (art. 2).

**The Committee encourages the State party to establish an independent human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (“the Paris Principles”) (General Assembly resolution 48/134). In this regard, the Committee recommends that the Government consult with the Office of the United Nations High Commissioner for Human Rights in Cambodia and consider receiving technical assistance to reinvigorate the ongoing efforts to draft a law on the establishment of such a national human rights institution, in full compliance with the Paris Principles.**

(16) The Committee recognizes the recent and significant economic growth experienced by the State party and the benefit such growth brings to the country. The Committee is concerned, however, that the quest for economic growth and prosperity is pursued, in some cases, to the detriment of particularly vulnerable communities such as indigenous peoples. The Committee is particularly concerned about reports of the rapid granting of concessions on land traditionally occupied by indigenous peoples without full consideration, or exhaustion of procedures provided for, under the land law and relevant sub-decrees (arts. 2 and 5).

**The Committee recommends that the State party ensure that a proper balance between development and the rights of its citizens is achieved and that its economic development does not come at the expense of the rights of vulnerable persons and groups covered by the Convention. It also recommends that the State party develop appropriate protective measures, such as a delay in the issuance of a concession on lands inhabited by indigenous communities who have applied to be registered legally in order to obtain land titles until the issue of collective ownership titles and indigenous peoples’ rights to possess, develop, control and use their communal lands, where at issue, has been assessed and determined, and after consultation with and the informed consent of the indigenous peoples.**

**The Committee further encourages corporate business entities when engaging in economic land concessions to take into consideration their corporate social responsibility as it relates to the rights and well-being of local populations.**

(17) The Committee is concerned at reports of intimidation and acts of violence against indigenous peoples during forced evictions or land disputes affecting them. The Committee is also concerned over reports of a tendency to press charges against and arrest indigenous villagers, when they protest against their forced eviction or contest the granting of a concession on indigenous land (art. 6).

**The Committee urges the State party to provide full protection to vulnerable groups against physical attacks and intimidation as they seek to exercise their rights as they relates to communal lands. It urges the State party to bring perpetrators of such violations to justice. In its effort to improve the judiciary, the State party should ensure greater efficiency of the judicial system to ensure equal access to justice for all, including minorities and indigenous peoples, in conformity with the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.**

(18) While noting that the State party has repeatedly affirmed that Khmer Krom are considered Cambodian citizens, the Committee is concerned that the process for individual Khmer Krom to document their citizenship is more burdensome than for other Cambodian citizens. The Committee is further concerned that an individual Khmer Krom’s affirmation of his/her Cambodian citizenship is therefore delayed or denied resulting in his/her not being given full and equal rights and benefits as provided under the State Party’s Constitution and laws (art. 5).

**The Committee recommends that the State party ensure that each individual Khmer Krom who seeks to affirm and document his/her citizenship is able to obtain citizenship documents in a timely manner and under identical and equal procedures that exist for all persons deemed to be Cambodian citizens.**

(19) The Committee has received information that in applying for Cambodian identification/documents, Khmer Krom individuals are either required or feel compelled to change essential information, such as name and place of birth, in order to secure their document (art. 5).

**Considering that the name of an individual is a fundamental aspect of the cultural and ethnic identity and that personal histories, including date and place of birth, are also part of this identity, the Committee strongly recommends that the State party take the necessary measures to ensure that Khmer Krom who seek to confirm their citizenship fully enjoy their rights to record their true name and place of birth if they so choose.**

(20) While noting the State party's efforts to implement its National Education Programme "Education for All", the Committee is concerned over the discrepancy on the access to education, especially in remote areas. It is particularly concerned about education for children in areas such as Mondulkiri and Ratanakiri provinces, which are mostly inhabited by indigenous peoples and minorities. The Committee is concerned that the admission and enrolment rates are below the national level and the repetition and drop out rates are higher than the average national level (arts. 2 and 5).

**The Committee recommends the State party to continue its efforts to achieve its goal of "Education for All", and consider bilingual education programmes, as appropriate, in remote areas as a means of improving the learning environment for ethnic minorities and indigenous peoples.**

(21) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(22) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

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

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties 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 and 62/243, in which the Assembly strongly urged States parties to the Convention to accelerate

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

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

(27) Noting that the State party submitted its core document in 1998, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests that the State party provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 15, 16, 17 and 18 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations contained in paragraphs 11, 13 and 20 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its fourteenth and fifteenth periodic reports in a single document, due on 28 December 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.

### **35. Cameroon**

(1) The Committee considered the fifteenth to eighteenth periodic reports of Cameroon, submitted in a single document (CERD/C/CMR/15-18), at its 1983rd and 1984th meetings (CERD/C/SR.1983 and 1984), held on 22 and 23 February 2010. At its 2001st meeting (CERD/C/SR.2001), held on 5 March 2010, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, as well as its written replies to the list of issues (CERD/C/CMR/Q/15-18). It also welcomes the State party's initiative to resume the dialogue with the Committee after a 12-year gap, and expresses its satisfaction with the additional information supplied orally.

(3) The Committee welcomes the fact that the State party was represented by a high-level delegation with which the Committee was able to have a constructive and frank dialogue. It also welcomes the State party's promise to submit future reports on time and urges it to meet the deadline for submission of its next periodic report.

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

(4) The Committee notes with satisfaction that the 1972 Constitution, as revised on 18 January 1996, prohibits discrimination, and welcomes the incorporation of the Convention into the Constitution.

(5) The Committee also welcomes the legislative progress made by the State party since consideration of its previous report, particularly the adoption of Act No. 2005/006 of 27 July 2005 on refugee status and Act No. 2009/004 of 14 April 2009 on the organization of



legal assistance, as well as the entry into force of the Code of Criminal Procedure on 1 January 2007.

(6) The Committee welcomes the transformation in 2004 of the National Committee on Human Rights and Freedoms into the National Commission on Human Rights and Freedoms. It also welcomes the establishment in 2005 of the Directorate for Human Rights and International Cooperation within the Ministry of Justice.

(7) The Committee notes with satisfaction that the State party recognizes the existence of indigenous people in its territory and that the Constitution, in its preamble, guarantees the protection of minorities and protects the rights of indigenous people. It further welcomes the adoption by Cameroon on 13 September 2007 of the United Nations Declaration on the Rights of Indigenous Peoples and the campaigns to identify Pygmy population groups in the southern region in 2009. The Committee also notes with interest the observance of the second International Day of the World's Indigenous People on 9 August 2009 and the organization in Yaoundé of a subregional seminar on the rights of Central Africa's indigenous peoples and communities.

(8) The Committee notes that a national plan on the promotion and protection of human rights has been prepared. It also takes note with satisfaction of the adoption in 2006 of an education sector strategy paper that places the emphasis on improved access and fairness in education, the Education for All Plan, and the establishment of a council charged with approving school textbooks and teaching materials and studying discriminatory stereotypes. It also notes with interest that priority education zones have been established to encourage girls and indigenous children to attend school.

(9) The Committee notes with satisfaction that the State party has acceded to the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (on 7 January 2005) and to the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Protection and Promotion of the Diversity of Cultural Expressions (on 22 November 2006).

### C. Concerns and recommendations

(10) The Committee notes with concern that the Senate and the Constitutional Council — two public institutions of fundamental importance — are not yet operational.

**The Committee recommends that the State party take all necessary measures as soon as possible to establish these institutions so that they may contribute to the effective implementation of the Convention.**

(11) The Committee notes with concern that the State party's report contains no detailed statistics on the ethnic composition of the population.

**The Committee recommends that the State party supply it with data on the ethnic composition of its population. The data should preferably be based on the way in which the individuals concerned identify themselves, and should be collected in accordance with the Committee's general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and paragraphs 10 and 11 of its revised guidelines for the preparation of reports (CERD/C/2007/1). The Committee stresses that this information will enable it to better evaluate the implementation of the Convention, and invites the State party to submit this information in its next periodic report.**

(12) While taking note of the constitutional and legislative provisions relating to equal rights and non-discrimination and noting that the Criminal Code is currently being reviewed with a view to bringing it into line with the Convention, the Committee regrets that the prohibition of racial discrimination as defined in article 1 of the Convention is not

fully incorporated into the State party's legislation, including the Criminal Code and the Code of Criminal Procedure that have just entered into force (arts. 1, 2 and 4).

**The Committee recommends that the State party take the necessary legislative measures to prohibit racial discrimination in accordance with articles 1, 2 and 4 of the Convention. It recommends that the State party speed up the process of harmonizing the Criminal Code to ensure that acts of racial discrimination are defined and criminalized in light of the Convention. The Committee also recommends that the State party, in accordance with article 3 of the Convention, prevent, prohibit and punish racial segregation and racist propaganda in its legislation.**

(13) The Committee notes that the State party is considering amending the regulatory framework of the National Commission on Human Rights and Freedoms. However, the Committee notes that in October 2006 the National Commission was downgraded from A-status to B-status by the Subcommittee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. The Committee remains concerned by the National Commission's lack of independence, particularly in view of the voting rights of representatives of the Administration within the Commission (art. 2).

**While recalling that the National Commission on Human Rights and Freedoms is a major player in the cooperation between the State party and the United Nations Subregional Centre for Human Rights and Democracy for Central Africa, the Committee recommends that the State party step up its efforts to bring the National Commission into conformity with the Paris Principles, so as to guarantee its operational and financial independence. The Committee strongly recommends that the State party pass a law to put the National Commission on a constitutional footing.**

(14) The Committee appreciates the welcome given to refugees in Cameroon but regrets that the decree to implement Act No. 2005/006 of 27 July 2005 on refugee status has not yet been adopted. It is also concerned by the situation of refugees in rural areas, as well as the problems they face in terms of health care, education, housing, employment, food and insecurity (art. 5 (b), (d) and (e)).

**The Committee recommends that the State party urgently adopt the decree to implement Act No. 2005/006 of 27 July 2005 on refugee status. It also recommends that the State party take the necessary measures to improve the situation of refugees, particularly in rural areas, and to guarantee their security, housing and access to health care, education, employment and food without discrimination.**

(15) While taking note of the various steps taken by the State party to promote and protect the rights of indigenous people, the Committee is concerned by the discrimination and marginalization they face in the exercise of their civil, political, economic, social and cultural rights. The Committee deplores in particular the absence at this stage of a specific law on the promotion and protection of the rights of indigenous people (art. 5 (d) and (e)).

**The Committee strongly recommends that the State party complete the adoption of the bill on the rights of indigenous people and seek technical assistance and cooperation to that end from the Office of the United Nations High Commissioner for Human Rights and the International Labour Organization. In particular, the Committee recommends that the State party, bearing in mind its general recommendation No. 23 (1997) on the rights of indigenous peoples, include in the aforementioned bill the definition of indigenous peoples as contained in the United Nations Declaration on the Rights of Indigenous Peoples. It also recommends that the State party refrain from using the term "marginal population groups", which is contrary to the spirit of the Convention, as it stigmatizes the minorities referred to and prevents the special characteristics of indigenous people from being taken into**

**consideration. Finally, the Committee recommends that the State party ensure the participation of indigenous people and their representatives in the process of drafting the bill.**

(16) The Committee recognizes the efforts made by the State party to improve the access of indigenous children to education. However, the Committee remains concerned by the many remaining obstacles to the full and effective realization of their right to education, in particular: (a) the mismatch between the school system and their way of life and culture; (b) the considerable difficulties faced by indigenous people to obtain birth certificates, which are necessary for enrolment in schools; (c) the fact that free primary education is not yet a reality for indigenous children due to other, related expenses borne by their parents; (d) the insults and bullying suffered by indigenous children at the hands of teachers and pupils (art. 5 (e)).

**The Committee recommends that the State party prevent and eliminate the discrimination faced by indigenous children in the exercise of their right to education. In particular, the Committee recommends that the State party:**

**(a) Guarantee indigenous children's access to all levels and all forms of State education, without discrimination, in particular by guaranteeing free access to primary schools and the availability of the birth certificates necessary for enrolment;**

**(b) Take the necessary steps to adapt the education system to their way of life and culture;**

**(c) Develop and implement, in cooperation with indigenous peoples, education programmes that address their special needs, including the ORA (Observe, Reflect, Act) teaching method, and that incorporate their history, knowledge, technologies and value systems;**

**(d) Take the necessary steps to combat violence against indigenous children in schools.**

(17) The Committee notes with concern that indigenous people's access to justice is limited, especially in traditional courts. In particular, the Committee is concerned that the equitable representation of all customs is not guaranteed in customary courts in areas where indigenous people live. Indigenous people are obliged, despite existing legislative provisions, to refer to Bantu customs in the absence of judges versed in indigenous customs and appropriate interpreting services (art. 5 (a)).

**The Committee recommends that the State party ensure equal access to justice for indigenous people, in particular by:**

**(a) Reducing the distances between national courts and the areas where indigenous people live;**

**(b) Establishing official services for interpretation into the languages of indigenous people in national courts, including customary courts;**

**(c) Ensuring that judges versed in indigenous customs preside effectively in the customary courts.**

(18) While taking note of the steps taken by the State party on behalf of indigenous forest-dwelling groups, the Committee is concerned by the attacks on indigenous people's land rights. It regrets that the land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life. The Committee is particularly concerned by the abuse and assaults suffered by indigenous people at the hands of civil servants and employees of the national parks and protected areas. Furthermore, the Committee notes with concern that the course of the Chad-

Cameroon pipeline has made indigenous populations more vulnerable and that only a small fraction of the Bagyeli indigenous population has benefited from the compensation plan (art. 5 (b) and (d)).

**The Committee recommends that the State party take urgent and adequate measures to protect and strengthen the rights of indigenous peoples to land. In particular, bearing in mind general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party:**

(a) **Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources;**

(b) **Consult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resources;**

(c) **Guarantee indigenous people just and fair compensation for lands, territories and resources that they traditionally own or otherwise occupy and use, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;**

(d) **Ensure that the legal land registry procedure in force duly respects the customs, traditions and land tenure systems of the indigenous peoples concerned, without discrimination;**

(e) **Protect indigenous people against any attacks on their physical and mental integrity and prosecute the perpetrators of acts of violence and assaults against them.**

(19) While noting that the provisions of the Convention can be directly invoked before domestic courts, the Committee regrets the lack of examples of instances where the Convention has been applied by the courts, as well as the absence of statistical data on complaints of racist acts, the corresponding prosecutions and the cases brought before the courts. The Committee is also concerned by the upsurge in mob justice despite the adoption of the new Code of Criminal Procedure (art. 6).

**The Committee recalls its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, in which it is stated that the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination may indicate either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism. The Committee recommends that the State party include in its next periodic report statistical data on:**

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

(b) **Compensatory measures decided by the courts as a result of such sentences.**

**The Committee also recommends that the State party implement its national action plan for the reform of the justice system and strengthen measures aimed at reducing the incidence of mob justice, in particular by extending awareness-raising campaigns to increase public knowledge of the Code of Criminal Procedure.**

(20) While recognizing the diversity and ethnic richness of the population of Cameroon, which comprises 250 ethnic groups, and the fact that, by defining its population on the basis of geographical (regional) rather than ethnic criteria, the State party is seeking to prevent discrimination, the Committee is concerned about the recent inter-ethnic conflicts in Bawock and Bali Nyonga (arts. 5 (b) and 7).

**The Committee recommends that, in addition to taking steps to resolve the inter-ethnic conflicts by offering compensation for victims, the State party should take preventive action. In particular, the Committee recommends that the State party carry out awareness-raising campaigns in the various communities to promote understanding, tolerance and peaceful coexistence between ethnic groups. It also recommends that traditional leaders be invited to contribute to the process of building and maintaining social peace.**

(21) The Committee notes the provisions of the Constitution concerning the equal promotion of English and French. However, the Committee is concerned by the massive centralization that is resulting in the predominance of French and thus inequality for the English-speaking population in the south of the country (arts. 5 (e) and 7).

**The Committee recommends that the State party intensify its efforts to implement bilingual policies and to ensure that the English-speaking people in the south of the country are not subject to inequality, particularly in the areas of employment, education, judicial procedures and media representation. The Committee recommends that the State party provide detailed information on this issue in its next periodic report.**

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties of which the provisions have a direct bearing on the subject of racial discrimination, including the Convention on the Prevention and Punishment of the Crime of Genocide (1948), the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169 of 1989), the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), and the UNESCO Convention against Discrimination in Education (1960).

(23) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(25) The Committee encourages the State party to make the optional declaration provided for in article 14 of the Convention.

(26) 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 (see CERD/SP/45, annex) and endorsed by the General

Assembly in its resolution 47/111. In this connection, the Committee cites paragraph 14 of General Assembly resolution 61/148, in which the General Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(27) The Committee recommends that the State party's reports should be made readily available to the public at the time of their submission, and that the concluding observations adopted by the Committee following its consideration of the reports should be distributed in the official languages and other commonly used languages, as appropriate.

(28) Noting that the State party submitted its core document in 2000, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, namely those relating to the common core document as adopted at the 5th inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/MC/2006/3).

(29) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests that the State party provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 14 and 15 above.

(30) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 16, 17 and 18, and requests that the State party provide detailed information in its next periodic report on concrete, appropriate measures taken to effectively implement these recommendations.

(31) The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports in a single document, on 24 July 2012, taking into account the guidelines for the preparation of reports to the Committee on the Elimination of Racial Discrimination adopted at the Committee's seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### **36. Denmark**

(1) The Committee considered the eighteenth and nineteenth periodic reports of Denmark (CERD/C/DNK/18-19), submitted in one document, at its 2034th and 2035th meetings (CERD/C/SR.2034 and CERD/C/SR.2035), held on 17 and 18 August 2010. At its 2047th meeting (CERD/C/SR.2047), held on 26 August 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the combined eighteenth and nineteenth periodic reports of the State party, which included responses to the concerns raised in the Committee's previous concluding observations (CERD/DEN/CO/17), and the opportunity thus offered to resume the dialogue with the State party. It commends the State party for its punctuality and consistency in the submission of periodic reports since it became a party to the Convention, and the quality of the reports, which are in strict conformity with the Committee's guidelines. It also expresses appreciation for the frank and sincere dialogue held with the delegation as well as the oral responses provided to the list of themes and the wide range of questions posed by the Committee members. On this point, the Committee wishes to acknowledge the gender balance in the composition of the delegation and notes with appreciation the inclusion in the delegation of a representative from the Government of Greenland following the recent referendum that led to self-government of the Greenlandic people.

(3) The Committee notes with appreciation the input to its proceedings by the Danish Institute for Human Rights (DIHR) and various non-governmental organizations (NGOs).

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

(4) The Committee welcomes the establishment of a Division for Democratic Cohesion and Prevention of Radicalization under the Ministry of Refugee, Immigration and Integration Affairs which is mandated to coordinate the implementation of the initiatives of the action plan titled A Common and Safe Future, for the prevention of radicalization and extremist views among young people.

(5) The Committee welcomes the publication of the Action Plan on Ethnic Equal Treatment and Respect for the Individual in July 2010, which is a revision of the Action Plan to Promote Equal Treatment and Diversity and Combat Racism of 2003. The Committee notes that the revised action plan will entail a multi-faceted effort in combating racial discrimination, promoting diversity and equal opportunities.

(6) The Committee also welcomes the publication of a guide based on the Act on Prohibition of Discrimination on the Labour Market, which seeks to help organizations, employers, employees and others to understand the rules of the labour market in this field.

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

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

(8) The Committee notes with regret that notwithstanding its previous concluding observations recommending the incorporation of the International Convention on the Elimination of All Forms of Racial Discrimination, the State party finds it unnecessary to do so because, arguably, the Convention is already a source of law in Danish courts. However, the non-incorporation of international treaties results in reluctance by lawyers and judges to invoke such treaties in Danish courts (art. 2).

**The Committee reiterates its position that the State party should incorporate the Convention into its legal system to ensure its direct application before Danish Courts in order to afford all individuals its full protection.**

(9) The Committee, while taking note of the State party's efforts to encourage reporting of hate crimes through the preparation of guidelines on the handling of cases under section 266 B of the Criminal Code, is concerned at the broad powers of the Director of Public Prosecutions to stop investigations, withdraw charges or discontinue cases, and at the large number of cases that have been discontinued by the Director of Public Prosecutions, which would discourage reporting by victims. The Committee is also concerned at the current proposals by various politicians to repeal section 266 B, but welcomes the assurances by the State party that the provision will not be repealed. In addition, the Committee is concerned at the large number of complaints it receives under its communications procedure provided for under article 14 of the Convention, mainly in relation to hate crimes (arts. 4 (a) and (6)).

**The Committee recommends that the State party should limit the powers of the Director of Public Prosecutions by establishing an independent and multicultural oversight body to assess and oversee the decisions taken by the Director of Public Prosecutions with regard to cases under section 266 B of the Criminal Code to ensure that discontinuance of cases does not discourage victims from lodging complaints or promote impunity for perpetrators of hate crimes. In line with its general recommendation No. 31 (2005), the Committee urges the State party to resist calls to**

**repeal section 266 B, which would compromise the efforts and gains that the State party has made in combating racial discrimination and hate crimes.**

(10) The Committee regrets that the State party has neither provided satisfactory data on the numbers and legal status of the Roma generally nor accounted for the Roma from other European Union (EU) countries who settled in the State party during the post-1990 period (arts. 2 and 5).

**The Committee recommends that the State party take appropriate measures to establish the numbers and legal status of the Roma in the country. The State party should also provide shelter to the Roma and Travellers in the country, afford them full protection from discrimination, racial profiling, hate crimes, and facilitate their access to public services.**

(11) The Committee notes with concern that applicants to the police service from ethnic backgrounds other than Danish fail the police recruitment test in disproportionate numbers, and also account for the high drop-out rates from police colleges. The Committee is also concerned at the higher rates of unemployment among immigrants and their descendants from countries outside the EU, North America and the Nordic countries (arts. 2, 5 and 6).

**The Committee urges the State party to adopt specific measures to establish the main reasons why applicants from ethnic backgrounds other than Danish fail the police recruitment test and drop out of police colleges. The State party should strengthen its efforts in promoting people from ethnic backgrounds other than Danish to serve as police officers in order to achieve a racially balanced police service. The State party must also strengthen its efforts to remove all impediments for migrants in the labour market such as racial prejudices and stereotypes, by promoting a change of mindset amongst employers through awareness-raising campaigns.**

(12) The Committee notes the recent amendments to the Aliens Act, which introduce a new 100-point system for obtaining a permanent residence permit, aimed, on the one hand, at establishing a direct link between integration and obtaining a residence permit, and, on the other, at encouraging migrants to make an effort to obtain a residence permit. The Committee, however, regrets that this points-based system introduces onerous and stringent requirements that would virtually exclude beneficiaries of international protection (arts. 2, 5 and 6).

**The Committee recommends that the State party take specific measures to assess the implementation of this new system to ensure that it does not exclude applicants on the basis of poverty, dependence on State resources, level of education, failure to penetrate the labour market and passing the Danish language test. Furthermore, the State party must ensure that the new system does not exclude beneficiaries of international protection who due to age, trauma or other vulnerabilities do not meet the criteria and therefore cannot complete the integration targets set out in the law.**

(13) The Committee notes with concern the legal requirement that foreign women who are victims of domestic violence must have lived continuously in the State party for at least two (2) years before cessation of cohabitation due to their spouse's abuse in order to be eligible for a permanent residence permit (art. 5 (b)).

**The Committee recommends that the State party take measures to continuously and closely monitor the application of this legal requirement to ensure that women who are victims of domestic violence are not forced to cohabit with their abusive spouses so that they can complete the two (2) year eligibility period for a residence permit. The State party should adopt concrete measures to promote other options for eligibility for a residence permit after cessation of cohabitation for women who fall short of the two (2) year requirement.**



(14) The Committee reiterates its concern at the restrictive conditions under Danish law with regard to family reunification. This relates to the requirements that both spouses must have attained the age of 24, and that their aggregate ties with Denmark must be stronger than their ties with any other country unless the spouse living in Denmark has been a Danish national or has been residing in Denmark for more than 28 years. The Committee reiterates its concern that this may lead to a situation where persons belonging to ethnic and national backgrounds other than Danish are discriminated against in the enjoyment of their right to family life, marriage and choice of spouse (art. 5 (d) (iv)).

**The Committee urges the State party to adopt concrete measures to assess the racial impact of this legislation on the enjoyment of the right to family life, marriage and choice of spouse. Furthermore, the study must assess whether this law unduly restricts entry into marriage and whether this limitation on the rights affected outweighs the mischief it seeks to prevent, namely forced and early marriages. The State party should also evaluate whether this requirement unduly restricts those people who satisfy the minimum age requirement for contracting a lawful marriage in Denmark.**

(15) The Committee, while it appreciates that the State party's objective under the "anti-ghettoization" law is to prevent marginalized groupings and not ethnic groupings, it regrets the lack of data on the impact that the implementation of this law has on the affected people's rights to freedom of residence, the practice of their culture and preservation of their cultural identities (arts. 5 (d) (i) and (e) (iii) and (vi)).

**The Committee recommends that the State party assess the impact that the implementation of the anti-ghettoization law has on the rights of various ethnic groups to practise their culture, and ensure that it does not have an assimilationist effect that leads to the loss of cultural identities by those affected by this law.**

(16) The Committee, while noting that the Government has conferred autonomy and discretion on municipalities and private institutions with regard to offering mother-tongue tuition, it regrets that it has failed to provide general policy direction on this matter to municipalities and other actors in the field. The Committee notes that mother-tongue teaching is only offered to children from EU and European Economic Area (EEA) countries and those from Faroes and Greenland in order to maintain their language proficiency should they subsequently return to these places. However, there is no explanation as to why people of other ethnic groups that seek to benefit from mother-tongue tuition have not been included in the programme (art. 5 (e) (v) and (vi)).

**The Committee recommends that the State party provide a general educational policy on this matter to cover all groups and take appropriate measures to assess whether people of other ethnic groups require mother-tongue teaching and that this be extended to their children who can then benefit on an equal footing with children from the EU, EEA countries, Faroes and Greenland.**

(17) The Committee reiterates its concern with regard to the decision of the Supreme Court handed down on 28 November 2003 relating to the Thule Tribe of Greenland. The decision failed to follow established international norms in the conceptualization of indigenous peoples. As a result, the Supreme Court rendered a decision which found that the Thule Tribe are not a distinct indigenous people notwithstanding their own perception as such. The Committee further notes the case of Greenlandic people considered to be "legally fatherless" because they were born out of wedlock to Danish men who were in Greenland in the 1950s and 1960s. This status has an impact on matters of family law, land ownership and inheritance (art. 5 (d) (vi)).

**The Committee reiterates that, pursuant to its general recommendation No. 8 (1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and**

conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification.

**The Committee urges the State party to take measures to address the problems faced by the legally fatherless who, by virtue of having been born out of wedlock, are negatively affected by various laws including the laws governing family life, land ownership and inheritance.**

(18) The Committee, while welcoming the establishment of the Board of Equal Treatment to consider complaints alleging discrimination in all fields, notes that the prescribed procedure is very impersonal in that individuals can only lodge complaints in writing, including through letters and do not have to appear in person. The Committee further notes that the Board is not in a position to obtain evidence such as explanations or testimonies by the parties concerned, and that the secretariat of the Board can dismiss complaints found to be unsuitable for consideration by the Board (art. 6).

**The Committee recommends that the State party strengthen the Board's complaint-lodging procedure to enable complainants to provide oral testimony, which will also assist the panel of the Board to assess and appreciate the demeanour of the parties to the complaint. The Committee urges the State party to revise the procedure of the Board to ensure that the Secretariat does not usurp the powers of the Board by rejecting complaints before they are considered by the panel.**

(19) The Committee notes with concern the lack of data on the ethnic composition of prison populations which would assist it in understanding the nature of crimes perpetrated by various ethnic groups or nationals.

**The Committee recalls its general recommendation No. 31 and urges the State party to compile data disaggregated by nationality and/or ethnic origin and nature of the offence for all prisons in the State party.**

(20) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(21) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

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

States Parties 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 and 63/243, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(25) Noting that the State Party submitted its core document in 1995, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 13, 15, 18 and 19 above.

(27) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 9, 10, and 11, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(28) The Committee recommends that the State party submit its 20th and 21st periodic reports in a single document, due on 8th January, 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).

### 37. **El Salvador**

(1) The Committee considered the fourteenth and fifteenth periodic reports of El Salvador (CERD/C/SLV/14-15), submitted in one document, at its 2014th and 2015th meetings (CERD/C/SR.2014 and CERD/C/SR.2015), held on 3 and 4 August 2010, respectively. At its 2040th meeting (CERD/C/SR.2040) held on 20 August 2010, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the timely submission of the State party's fourteenth and fifteenth periodic report, which is however not in complete conformity with its reporting guidelines. The Committee expresses its appreciation to the State party for the presentation made by the delegation, both orally and in writing, and appreciates the significant answers to numerous questions from the members of the Committee.

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

(3) The Committee notes with satisfaction the significant change in the approach of the State party to human rights and issues relating to the Convention announced by the delegation of the State party. It also notes the position taken by the State party with regard to the contents and accuracy of the information contained in previous reports and regarding compliance with the Committee's recommendations. In addition, the Committee notes with

satisfaction the State party's expressed resolve to maintain a constructive dialogue with the Committee and to harmonize its national legislation with the provisions of the Convention and other international treaties.

(4) The Committee also notes with satisfaction the agreement signed by four State institutions (Secretaría de Inclusión Social; Registro Nacional de las Personas Naturales (RNP); la Corporación de Municipios de la República de El Salvador (COMURES); la Procuraduría General de la República (PGR)) on 28 July 2010 which allows all indigenous persons victims of past persecution to recover their indigenous names and for children to be given indigenous names in the future. It also welcomes the creation of the Pilot Project for an Indigenous Peoples' Birth and Identity Papers Register (Registro de Partidas de Nacimiento e Identificación Civil de los Pueblos Indígenas) in six municipalities.

(5) The Committee notes with interest the initiatives taken in favour of indigenous communities in the Nahuizalco municipality, including the right of its inhabitants to be protected from direct or indirect racial discrimination and to enjoy fundamental human rights and freedoms in the political, economic, social and cultural spheres. The Committee encourages this example, to be followed in other parts of the country.

(6) The Committee notes that the State party has developed a framework for bilingual intercultural education within the formal education system in order to preserve and revitalize indigenous languages. The Committee also welcomes the measure taken to preserve and disseminate the Nahuat-Pipil indigenous language.

(7) The Committee welcomes the adoption on 25 March 2009 of the Comprehensive Protection for Children and Adolescents Act (Ley LEPINA) and the formulation of a National Plan for Young Persons 2005–2015 (PNJ 05-15).

(8) The Committee welcomes the announcement of the holding on 12 October 2010 of the First National Indigenous Congress.

(9) The Committee notes with satisfaction the invitation extended to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples to visit El Salvador in 2011.

(10) The Committee notes with satisfaction that El Salvador was the first country in Central America to ratify in October 2007 the International Convention on the Rights of Persons with Disabilities and the related Optional Protocol, which sets a good example in the region.

(11) The Committee appreciates that oral presentation of the State party includes inputs from the *Procuraduría* de Defensa de los Derechos Humanos (National Human Rights Institution) and two non-governmental organizations dealing with indigenous issues.

### C. Concerns and recommendations

(12) The Committee expresses its grave concern at the significant discrepancies in the figures regarding the ethnic composition of the country derived from the results of the Sixth Population Census and the Fifth Housing Census conducted in 2007, and other reliable sources. However, it also takes note of the position expressed by the State party in its presentation to the Committee which supersedes its concerns regarding the results of the Sixth Population Census and the Fifth Housing Census. The Committee notes the intention of the State party to hold a new census in 2012.

**The Committee recommends that the State party improve its census methodology, in close cooperation with the United Nations, the indigenous peoples, and people of African descent, so that it reflects the ethnic complexity of Salvadoran society, taking into account the principle of self-identification. It also recommends that the State party take note of the Committee's general recommendation No. 8 (1990) and of**

paragraphs 10–12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee recommends that the State party consider taking confidence-building measures in order to create a climate of trust with regard to the indigenous peoples and people of African descent prior to the census. The Committee requests the State party to include disaggregated statistics on the composition of the population and data on the census to be taken in 2012 in its next periodic report.

(13) The Committee is concerned that the State party's domestic legislation continues to omit a definition of racial discrimination conforming to all the elements set out in article 1 of the Convention.

**The Committee reiterates its recommendation contained in paragraph 8 of its previous concluding observations (CERD/C/SLV/CO/13) that the State party should incorporate in its domestic legislation a definition of racial discrimination which includes all elements set out in article 1 of the Convention. It also requests the State party to provide information on affirmative action in the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination.**

(14) The Committee is concerned that there is no legal recognition of indigenous peoples and their rights in the Constitution of the State party. The Committee is also concerned that members of indigenous peoples' communities may not enjoy equal access to public service.

**Taking note of the State party's recognition of indigenous peoples as rights-bearers in its new approach reflected in its oral presentation, the Committee recommends that the State party grant legal recognition to indigenous peoples in domestic law, in keeping with article 2 of the Convention. The Committee requests the State party to provide an update on the motion for Constitutional Reform for the Recognition of Indigenous Peoples in El Salvador submitted to the Legislative Assembly in December 2008 by the *Procuraduría* de Defensa de los Derechos Humanos (National Human Rights Institution). The Committee also reiterates its recommendation contained in paragraph 13 of its previous concluding observations (CERD/C/SLV/CO/13) that the State party should ensure that indigenous peoples participate in government and the management of public affairs at all levels, and enjoy equal access to the public service (art. 5 (c)).**

(15) The Committee is concerned that the State party has still not ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

**The Committee reiterates its recommendation contained in paragraph 10 of its previous concluding observations (CERD/C/SLV/CO/13) and urges the State party to take the necessary legislative steps in order to ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (art. 2, para. 2).**

(16) The Committee is concerned that the State party's legislation does not contain a prohibition of racial segregation in conformity with article 3 of the Convention.

**The Committee recommends that the State party amend its legislation to explicitly include a prohibition of racial segregation and to undertake all necessary measures to prevent, prohibit and eradicate all practices of this nature in territory under its jurisdiction.**

(17) The Committee is concerned that there is currently no domestic legislation that conforms to article 4 of the Convention in relation to banning racist organizations and incitement to racial hatred. The Committee is concerned that the Penal Code only deals with acts of racism committed by public officials but not by private individuals (arts. 2 and 4).

The Committee reiterates the recommendation formulated in paragraph 9 of its previous concluding observations (CERD/C/SLV/CO/13) in which it reminds the State party that it has an obligation to adopt positive legislative, judicial, administrative and other measures to give effect to the provisions of the Convention, which should also aim to prevent acts of discrimination. The Committee urges the State party to expedite national consultations with a view to modifying domestic legislation in order to bring it into conformity with the Convention.

The Committee also recommends that the State party provide in its next periodic report information and statistics on legal actions and penalties for acts of racial discrimination committed by both public officials and private individuals.

(18) The Committee is concerned that the 1993 Amnesty Law continues to be in force. It notes, however, that there have been instances when the Amnesty Law had been declared inapplicable.

The Committee recommends that the State party repeal the Amnesty Law and reiterates its recommendation (CERD/C/SLV/CO/13, para. 15) that the State party put into effect the recommendation made by the Inter-American Commission on Human Rights to adopt a programme of reparation and, where possible, material compensation for the victims, thus creating a climate of trust that will enable the indigenous peoples to express their identity without fear (art. 6).

(19) The Committee reiterates its concern that indigenous peoples are unable to fully enjoy their economic social and cultural rights, in particular regarding land ownership and access to drinking water.

The Committee recommends that the State party step up its efforts to improve the enjoyment by indigenous peoples of economic, social and cultural rights, including access to safe drinking water and guarantee their rights to land and resources traditionally owned and used, and invites it to take into account its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5). The Committee requests the State party to provide updated information about the land transfer programmes conducted by the Salvadoran Institute of Agrarian Reform (ISTA) and on the manner in which indigenous communities participated in and benefitted from this programme. The Committee requests the State party to provide information on any other programmes affecting indigenous economic, social and cultural rights, including access to safe drinking water and guarantees of rights to land and resources traditionally owned and used.

(20) The Committee expresses its concern regarding socio-economic situation of Afro-descendants and regarding their lack of recognition and visibility.

The Committee urges the State party to enhance efforts to improve the enjoyment of economic, social and cultural rights by Afro-descendants. The Committee also urges the State party to adopt a plan for the ethnic recognition and visibility of Afro-descendants.

(21) The Committee is concerned that indigenous languages continue to be denied the importance that they deserve given that out of a reported total of 47,940 students enrolled in educational institutions 2009, 22,483 belonged to indigenous peoples, and yet not all of them can study in their own language. As regards Bilingual Intercultural Education, the Committee notes the Ministry of Education Programme for the Revitalization of the Nahuat-Pipil Language of El Salvador, but is concerned about the other indigenous languages (art. 7).

The Committee recommends that programmes for the revitalization of the Nahuat-Pipil indigenous language be expanded to other indigenous languages. It requests the

**State party to provide updated information on any such new initiatives, in addition to Casas Temáticas, and programmes, including with regard to the Lenca, Kakawira (Cacaopera), Mayan and any other indigenous languages of El Salvador. The Committee also recommends that the State party ratify the 1960 UNESCO Convention against Discrimination in Education.**

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(23) The Committee recommends that the State party continue to consult and expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, as well as with the Office of the Procurador para la Defensa de los Derechos Humanos en El Salvador, in connection with the preparation of the next periodic report.

(24) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties 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 and 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(27) Noting that the State party submitted its core document in July 2003, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 18 and 19 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 16, 17 and 20, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its sixteenth and seventeenth periodic report in a single document, due on 30 December 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. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document (HRI/GEN.2/Rev.6, para. 19).

#### **38. Estonia**

(1) The Committee considered the eighth and ninth periodic report of Estonia (CERD/C/EST/8-9), submitted in one document, at its 2038th and 2039th meetings (CERD/C/SR.2038 and CERD/C/SR.2039), held on 19 and 20 August 2010. At its 2047th meeting (CERD/C/SR.2047), held on 26 August 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the report of the State party, which is in conformity with the Committee's reporting guidelines, as well as the written comments on the list of themes and the oral replies of the delegation to the questions raised by the Committee. It also welcomes the State party's timeliness and regularity in submitting its periodic reports. It appreciates the opportunity thus provided to engage in a continuing and constructive dialogue with the State party.

(3) The Committee notes with appreciation the involvement of civil society organizations in the preparation of the report and references made in the report to comments made by these organizations.

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

(4) The Committee welcomes the vision outlined by the State party for an Estonian society where "everyone will have the opportunity for self-realization, will feel secure and will participate in the economic, social, political and cultural life of the society," and efforts undertaken to this end.

(5) The Committee welcomes the establishment of several instruments of dialogue and consultation with minority groups, including the Council of Ethnic Minorities under the Ministry of Culture and the Roundtable of Nationalities.

(6) The Committee welcomes the adoption of the Equal Treatment Act and notes with interest the announcement made by the State party on extending the prohibited grounds of discrimination under the Act to include language and citizenship.

(7) The Committee commends the State party for the recognition of cultural diversity in education, including through the inclusion of subjects on minorities' culture in the public education programmes for basic school and gymnasium. The Committee further notes with satisfaction that minorities have opportunities for learning their mother tongues.

(8) The Committee welcomes the amendment to the Language Act (para. 23) entered into force in March 2007 which provides for the use of a foreign language or a special regional linguistic form alongside the original text in Estonian on public signs, signposts, announcements, notices and advertisements.

(9) The Committee commends the State party for recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals, in accordance with article 14 of the Convention. The Committee also notes with interest the commitment expressed by the State party to ratify the United Nations core human rights treaties to which it is not a party.



### C. Concerns and recommendations

(10) While noting with interest the work of the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner, the Committee regrets that no national human rights institution fully compliant with the Paris Principles (General Assembly resolution 48/134) exists in the State party (art. 2, para. 1).

**The Committee reiterates the importance of establishing an independent national human rights institution compliant with the Paris Principles and recommends that the State party continue, in consultation with the civil society, consideration of all possible options for developing such institution including by transforming and empowering the Chancellor of Justice and the Gender Equality and Equal Treatment Commissioner so as to conform with the Paris principles and take steps towards accreditation by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).**

(11) The Committee notes that the provision of article 151 of the Penal Code limits the prosecution of hate speech to acts that result in serious consequences. The Committee also notes that the State party wishes to fill this lacuna in the Penal Code (arts. 4 (a) and (b)).

**Recalling general recommendation No. 15 (1993) on article 4 of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee reminds the State party that the exercise of the right to freedom of opinion and expression carries with it 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. Therefore, the Committee recommends that the State party:**

(a) **Ensure that revision of its Penal Code brings it in line with article 4 of Convention by making racially motivated hate speech in all circumstances an offence punishable by law;**

(b) **Prohibit racist organizations.**

**The Committee also invites the State party to ratify the Additional Protocol to the Convention on Cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems (CETS No. 189).**

(12) The Committee notes with concern that racial motivation does not constitute an aggravating circumstance for crimes in general. The Committee also notes the intention of the State party to establish racial motivation as an aggravating circumstance under Estonian criminal law (arts. 4 and 6).

**The Committee recommends that, in the context of the revision of the Penal Code, the State party include 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, thereby completing its good intentions in this respect.**

(13) While noting with appreciation the vision of the Estonian Integration Strategy, the Committee is concerned that the strong emphasis on the Estonian language in the objectives and implementation of the Strategy may run counter to the overall goal of the strategy by contributing to resentment among those who feel discriminated against, especially because of the punitive elements in the language regime (art. 5).

**The Committee considers the overemphasis on language in the Integration Strategy and the punitive elements therein as unnecessary in view of the growing number of persons using the Estonian language, the official language of the State. In this regard, the Committee recommends that the State party:**

(a) **Adopt a non-punitive approach to the promotion of the official language and revisit the role of the Language Inspectorate and the implementation of the 2008 regulation on requirements for Estonian language proficiency. The Committee also urges the State party to allocate sufficient resources for the provision of free-of-charge language courses;**

(b) **Lessen language requirements for naturalization, particularly for older persons and those who were born in the State party;**

(c) **Consider a dual language approach as regards delivery of public services, particularly in light of the prohibition of discrimination in access to public goods and services as provided for by the State party's legislation. The Committee also calls on the State party to review its legislation which restricts the use of minority language in public services only to counties where minorities make up half of the population.**

(14) The Committee notes with concern the very low level of participation of minorities in political life and the limited representation of minorities in Parliament (art. 5 (c)).

**In view of the fact that the civil and political integration of minorities is an objective of the Estonian Integration Strategy, the Committee recommends that the State party redouble its efforts to ensure greater participation by members of minorities in public life, including in Parliament, and take effective steps to ensure that they participate in the administration at all levels.**

(15) While noting with appreciation that reducing the number of persons with undetermined citizenship remains an objective for the State party and welcoming the steps taken to facilitate naturalization for long-term resident minorities, the Committee remains concerned at the persistently high number of persons with undetermined citizenship and at the reported negative perception of the naturalization procedure by applicants (art. 5 (d)).

**The Committee reiterates its previous recommendation calling on the State party to enhance efforts to reduce the number of persons with undetermined citizenship. The Committee calls on the State party to examine further the reasons behind the reluctance of potential applicants to engage in the naturalization process with a view to improving the situation. The Committee also reiterates its invitation to the State party to ratify the Convention on the Reduction of Statelessness and the Convention relating to the Status of Stateless Persons.**

(16) The Committee notes the information provided by the State party on education and employment among minorities, but regrets that the data does not allow for a comprehensive understanding and assessment of the situation of all ethnic groups and especially vulnerable groups in the State party (art. 5 (e)).

**The Committee recommends that the State party ensure that, in the context of the 2011 census, data is collected on the socio-economic situation of all ethnic groups and especially vulnerable groups on the basis of voluntary self-identification, with full respect for the privacy and anonymity of the individuals concerned. The Committee, in accordance with its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), requests that the State party include such data, disaggregated by ethnic group, nationality and language spoken, in its next periodic report with a view to evaluate the situation of groups within the definition of article 1 of the Convention.**

(17) While welcoming the various measures and initiatives taken by the State party in favour of the Roma, the Committee regrets the lack of information on the effectiveness of these initiatives and the paucity of information regarding the situation of Roma in general

in the State party. The Committee also notes with concern the discrimination reportedly experienced by Roma children in accessing quality education (arts. 2 and 5).

**Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee calls on the State party to conduct research with a view to assessing the real situation of the Roma community in its territory and encourages the State party to participate in initiatives aiming at finding national and regional solutions to the widespread exclusion of the Roma population. The Committee also recommends that the State party bring to an end and prevent any segregation of Roma children in the field of education.**

(18) The Committee is concerned at the near absence of complaints of acts of racial discrimination lodged with courts and other relevant authorities during the reporting period when a significant percentage of persons reported having experienced discrimination in everyday life because of their ethnic background. The Committee further notes that the Convention has apparently been referred to in courts only in cases relating to the granting of pensions to military veterans (art. 6).

**Considering that no country is free from racial discrimination, the Committee recommends that the State party verify whether the small number of complaints is not the result of victims' lack of awareness of their rights, fear of reprisals, limited access to available mechanisms, lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination.**

**Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party review remedies available to victims to seek redress to ensure that they are effective. In this regard, the Committee also encourages the State party to consider extending the use of conciliation in dealing with racial discrimination cases, when appropriate. The Committee further recommends that the State party continue to raise awareness of the Convention and of Penal Code provisions relating to racial discrimination.**

**The Committee requests the State party to provide in next report updated information on complaints about acts of racial discrimination and on relevant decisions in penal, civil or administrative court proceedings and by State human rights institutions, including on any restitution or other remedies provided to victims of such acts.**

(19) While commending the State party's response to the surge in racism following the 'Bronze Soldier crisis,' including by intensifying monitoring by the police and carrying out mass education, the Committee is nonetheless concerned about the continuing existence of latent antagonism between ethnic Estonians and ethnic Russians. The Committee is also concerned about the low level of contact between ethnic Estonians and non-Estonians (arts. 5 (b) and 7).

**The Committee recommends that the State party continue to maintain its vigilance against acts of racism and continue efforts to prevent and combat prejudices and to promote understanding and tolerance in all spheres of life, aimed particularly at young people and the media. Further, the Committee notes with interest the establishment of the Memory Institute, entrusted with providing a thorough and objective account of the status of human rights during the period between 1944 and 1991, and encourages the State party to:**

**(a) Widen the mandate of the Institute to cover the same periods as those investigated by the Estonian International Commission for the Investigation of Crimes Against Humanity;**

**(b) Include experts in various disciplines and sectors of society with various standpoints into its work with a view to reconciliation of perspectives and to ensure sufficient authority for its conclusions;**

**(c) Build on the lessons learned from the work of the Estonian International Commission for the Investigation of Crimes Against Humanity in this enterprise.**

(20) The Committee encourages the State party to continue to be mindful of indirect discrimination effects of public policies on vulnerable groups.

(21) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990). The Committee further invites the State party to accede to the UNESCO Convention against Discrimination in Education.

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests 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.

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

(24) The Committee 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 and 63/243, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(25) The Committee recommends that the State party continue its practice of making its reports, at the time of their submission, and the observations of the Committee readily available and accessible to the public and urges the State party to seek resources to publicize them in all official and commonly used languages, as appropriate.

(26) Noting that the State party submitted its core document in 2001, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 13 and 17 above.

(28) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 14, 16, 18 and 20, and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(29) The Committee recommends that the State party submit its tenth and eleventh periodic reports in a single document, due on 20 November 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. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines on reporting contained in document HRI/GEN/2/Rev.6, para. 19).

### 39. **France**

(1) The Committee on the Elimination of Racial Discrimination considered the seventeenth to nineteenth periodic reports of France, submitted in a single document (CERD/C/FRA/17-19), at its 2026th and 2027th meetings (CERD/C/SR.2026 and 2027), held on 11 and 12 August 2010. At its 2044th and 2045th meetings (CERD/C/SR.2044 and 2045), held on 24 and 25 August 2010, the Committee adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the high quality of the detailed and comprehensive report (CERD/C/FRA/17-19) submitted by the State party, which was on time and prepared in accordance with the reporting guidelines (CERD/C/2007/1). The Committee also appreciated the frank and sincere dialogue it was able to conduct with the delegation and the delegation's efforts to give detailed information in response to the list of issues (CERD/C/FRA/Q/17-19) and to answer most of the questions put by Committee members in the course of the discussion.

(3) The Committee commends the keen participation of the representatives of civil society who attended the session and their commitment to combating racial discrimination.

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

(4) The Committee commends the work of the National Advisory Commission on Human Rights at the national and international levels. It underlines the importance of the opinions issued by the Commission on draft legislation and invites the Government to continue consulting the Commission in that regard.

(5) The Committee welcomes the implementation of legislative instruments needed to combat racial discrimination, such as the Enforceable Right to Housing Act of 5 March 2007 and the Equal Opportunities Act of 31 March 2006, and the establishment of State mechanisms to prevent and combat racial discrimination at the departmental level, such as the commissions for the promotion of equal opportunities and citizenship (COPEC) and the anti-discrimination focal points in prosecution services.

(6) The Committee welcomes the constitutional amendment of 23 July 2008, which gives every person subject to the jurisdiction of the courts the right, as from 1 March 2010, to apply to the Constitutional Council for a ruling on the constitutionality of a law in the course of proceedings. The Committee also welcomes the fact that a constitutional challenge to any bill may be initiated by a sufficient number of parliamentarians.

(7) In particular, it welcomes the introduction of "high schools of excellence" in disadvantaged neighbourhoods, individual attention for some pupils with problems,

“boarding schools of excellence” and preparatory classes for the *grandes écoles* for students from disadvantaged backgrounds on the basis of merit.

(8) The Committee welcomes the point made by the head of the French delegation on the duty of remembrance, when he recalled that, at the Durban Review Conference, France had expressed the wish that a tribute be paid to the victims of slavery, the slave trade, apartheid and colonialism.

**C. Special recommendation on the implementation of the national plan to combat racism**

(9) The Committee takes note of the information that the State party is preparing a national plan to combat racism. The Committee hopes that the plan will obtain the necessary support from all the authorities and stakeholders in France and that the drafting process will allow the State party to make its policy more coherent and consistent with the Convention and the Durban Declaration and Programme of Action. To that end, it recommends that the State party take the following into consideration as priorities:

(a) Provision of greater detail in demographic statistics, particularly those concerning persons of immigrant origin or from ethnic groups, within the meaning of the Convention, and improved socio-economic indicators of discrimination in the State party;

(b) Identification of victims of racial discrimination;

(c) Investigation of the types and causes of racial discrimination;

(d) Identification of measures to help persons of immigrant origin or from ethnic groups, within the meaning of the Convention, to integrate and advance in French society, including through the application of special measures, as provided for in article 1, paragraph 4, and article 2, paragraph 2, of the Convention and confirmed in the Committee’s general recommendation No. 32 (2009);

(e) Standardization and consolidation of existing measures in order to improve the handling of problems related to racial discrimination;

(f) Study of and particular attention to populations in the overseas territories, especially indigenous peoples;

(g) To ensure the effectiveness of the plan, the appointment of a senior government representative to take responsibility for its implementation and to advise the Government on all policies intended to prevent and counter racial discrimination.

**D. Concerns and recommendations**

(10) The Committee is concerned at the occurrence of discriminatory political speeches in France. It is also concerned at the recent increase in acts and manifestations of racism and xenophobia in the territory of the State party, and racist discourse on the Internet.

**The Committee recommends that, in addressing issues that affect ethnic, racial, cultural or foreign groups in the population, the State party make it quite clear, in its discourse and its action, that it has the political will to promote understanding, tolerance and friendship between nations and racial and ethnic groups. The Committee also recommends that the State party step up its efforts and use all possible means to counter and stem the tide of racism and xenophobia, in particular by strongly condemning all racist and xenophobic statements by political leaders and implementing appropriate measures to combat the proliferation of acts and manifestations of racism on the Internet (arts. 2, 4 and 7).**

(11) The Committee is concerned at reports that measures may be taken in the area of citizenship that would lead to discrimination on the basis of national origin.

**The Committee recommends that the State party ensure that, in conformity with article 1, paragraph 3, of the Convention, any measures taken in this area should not lead to the stigmatization of any particular nationality.**

(12) The Committee takes note of article 1 of the Constitution of the State party, whereby France is an indivisible republic and ensures the equality of all citizens before the law, without distinction on grounds of origin, race or religion, which is the reason given by the State party for not taking a population census based on ethnic and racial indicators.

**The Committee repeats its view that the purpose of gathering statistical data is to make it possible for States parties to identify and obtain a better understanding of the ethnic groups in their territory and the kind of discrimination they are or may be subject to, to find appropriate responses and solutions to the forms of discrimination identified, and to measure progress made. The Committee therefore recommends, in line with its general recommendations Nos. 24 (1999), on article 1 of the Convention, and 30 (2005), on discrimination against non-citizens, that the State party take a census of its population based on anonymous and purely voluntary ethnic and racial self-identification by individuals.**

(13) The Committee notes with regret that, notwithstanding recent policies to combat racial discrimination in housing and employment, persons of immigrant origin or from ethnic groups, within the meaning of the Convention, continue to be the target of stereotyping and discrimination of all kinds, which impede their integration and advancement at all levels of French society.

**The Committee recommends that the State party pursue its efforts to enable persons of immigrant origin or from ethnic groups, within the meaning of the Convention, to advance in all areas, including by appointing greater numbers of qualified individuals who are members of such groups to positions of authority in the economy and within the State apparatus (arts. 5 and 7).**

(14) The Committee is concerned at the increase in manifestations of racism and racist violence against the Roma in the State party's territory. It takes note of the statement by the State party to the Committee that a framework has been put in place for the voluntary return of Roma to their country of origin. The Committee notes that, since the State party presented its report, there have been reports that groups of Roma have been returned to their country of origin without the free, full and informed consent of all the individuals concerned.

**The Committee reminds the State party of its statements and recommends that it ensure that all its policies concerning Roma are consistent with the Convention, that it avoid collective repatriations in particular, and that it endeavour to find lasting solutions to issues related to Roma, with full respect for their human rights (arts. 2 and 5).**

(15) The Committee is also concerned at the difficulties faced by members of the Roma community with regard to enjoyment of their economic, social and cultural rights.

**The Committee urges the State party to guarantee access by Roma to education, public health and housing and other temporary facilities, in accordance with the principle of equality, and to take into account its general recommendation No. 27 (2000) on discrimination against Roma.**

(16) The Committee remains very concerned at the difficulties faced by travellers, particularly regarding their freedom of movement, exercise of the right to vote and access to education and decent housing. In this respect, the Committee notes with concern that, despite the recommendations formulated in its previous concluding observations, the State party has still not provided travellers with the necessary number of encampment areas, as

provided for in the Act of 5 July 2000 known as the “Besson Act”. The Committee is also concerned at the legal requirement for travellers to hold a travel permit, which has to be renewed periodically.

**The Committee urges the State party to ensure equal treatment for travellers in respect of the right to vote and access to education. The Committee recommends that the Besson Act be implemented swiftly to ensure that illegal encampment areas are no longer an issue. The Committee also recommends that travel permits for travellers be abolished to ensure equal treatment for all citizens of the State party (arts. 2 and 5).**

(17) Bearing in mind that the State party has accepted the principle of linguistic and cultural diversity, the Committee is concerned at the partial implementation of this principle in France.

**The Committee recommends that the State party step up its efforts to ensure the right to equal participation in cultural activities for all, without distinction as to race, colour or ethnic origin (art. 5 (e) (vi)).**

(18) While appreciating the detailed information provided by the State party on efforts undertaken in its overseas territories to ensure increased representation of, and greater autonomy for, indigenous populations, the Committee is still concerned that the current system does not allow recognition of the collective rights of indigenous peoples, in particular the ancestral right to land. The Committee is also concerned at the increasing difficulties faced by some inhabitants of overseas territories in gaining access without discrimination to education, employment, housing and public health.

**The Committee recommends that the State party allow recognition of the collective rights of indigenous peoples, in particular with regard to property. It further recommends that the State party take the necessary legislative measures to ratify the International Labour Organization Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169). The Committee also recommends that the State party step up efforts to ensure equal access to education, work, housing and public health in overseas territories (art. 5).**

(19) The Committee takes note of the bill on the “Defender of Rights” but is concerned by the large number of functions to be taken on by this new institution and fears that the mandate to combat discrimination, including racial discrimination, currently devolved to the High Authority to Combat Discrimination and Promote Equality (HALDE), will be only one aspect of the mandate of the Defender of Rights.

**In light of its recommendation on the national plan to combat racial discrimination, and while calling for closer coordination between State mechanisms that address problems related to racial discrimination, the Committee recommends maintaining a separate, independent institution responsible for combating discrimination, including racial discrimination. In this regard, the Committee underlines the importance of the role of HALDE in fighting discrimination, particularly racial discrimination (art. 2).**

(20) The Committee notes with appreciation the progress made by the State party in implementing its previous concluding observations regarding the question of veterans’ pensions (CERD/C/FRA/CO/16, para. 24). It also notes the Constitutional Council ruling of 28 May 2010 that found certain provisions of the relevant finance acts of 1981, 2002 and 2006 inconsistent with the principle of equal treatment.

**The Committee encourages the State party to allow full implementation of this ruling and to ensure that all veterans, regardless of their current place of residence or their nationality, are treated equally. Moreover, it urges the State party to ensure that future finance acts do not discriminate against veterans (art. 5).**



(21) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular those whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

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

(25) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 13 and 18 and requests the State party to provide detailed information in its next periodic report on concrete and appropriate measures taken to effectively implement these recommendations.

(26) The Committee recommends that the State party submit its twentieth and twenty-first periodic reports in a single document, due on 27 August 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1). It further recommends that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).

#### 40. **Guatemala**

(1) The Committee considered the twelfth and thirteenth periodic reports of Guatemala, submitted as one document (CERD/C/GTM/12-13), at its 1981st and 1982nd meetings (CERD/C/SR.1981 and 1982), held on 19 and 22 February 2010. At its 2003rd meeting (CERD/C/SR.2003), held on 8 March 2010, the Committee adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the periodic report submitted by Guatemala and appreciates the State party's efforts to submit its reports on time. It also has welcomed the opportunity to continue its dialogue with the State party and expresses its gratitude for the dialogue maintained with the delegation and for the extensive and detailed oral and written responses given to both the list of issues and the questions posed orally by Committee members. It would also like to draw attention to the diversity reflected in the delegation's composition.

**B. Positive aspects**

(3) The Committee welcomes the ongoing collaboration which has occurred between the State party and the Office of the United Nations High Commissioner for Human Rights (OHCHR) ever since OHCHR established an office in the country in January 2005. It also takes note of the assistance provided by OHCHR to the State party in the preparation of its twelfth and thirteenth periodic reports.

(4) The Committee observes with satisfaction that policies, governmental agreements and administrative measures designed to promote and coordinate public policies relating to indigenous affairs have been adopted. It particularly welcomes the following initiatives:

(a) A public policy for coexistence and the elimination of racism and racial discrimination, adopted in 2006;

(b) The National Reparations Programme, which has been established in order to act upon the recommendations of the Guatemalan Commission for Historical Clarification, including the recommendation concerning care for the civilian victims of the internal armed conflict, 83 per cent of whom are Mayan;

(c) Governmental agreement No. 22-2004, which establishes the comprehensive application of bilingual education and the compulsory use of national languages in instruction as national linguistic policy through the Directorate-General for Bilingual Intercultural Education (DIGEBI) of the Ministry of Education. Under this agreement, the teaching and practice of multiculturalism and interculturalism in the classroom in the Garifuna, Xinca or Mayan languages and/or Spanish is compulsory.

(5) The Committee takes note of the commitment made by the State party in the course of the universal periodic review conducted by the Human Rights Council to promote the equality of rights of indigenous peoples and encourages the State party to honour that pledge.

**C. Concerns and recommendations**

(6) The Committee is concerned at the lack of sufficient statistical information, as noted by the State party's delegation, on the demographic make-up of the Guatemalan population, particularly with regard to the Mayan, Xinca and Garifuna peoples. The Committee observes that such information is needed in order to assess the Convention's implementation and oversee policies designed to benefit indigenous peoples.

**The Committee recommends that the State party continue to upgrade the methodology to be used in the forthcoming census in 2012 in order to capture the ethnic complexity of Guatemalan society, bearing in mind the principle of self-identification as set forth in general recommendation No. 8 (1990) and in accordance with paragraphs 10–12 of the guidelines for the specific document to be submitted to the Committee under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee requests the State party to include disaggregated statistics on the composition of the population and data on the census to be taken in 2012 in its next periodic report.**

(7) The Committee reiterates its concern about the absence of domestic legislation under which the dissemination of ideas based on notions of superiority or racial hatred, incitement to racial discrimination and violent acts directed against indigenous peoples or persons of African descent in the State party are classified as punishable acts (art. 4 (a)).

**The Committee recommends that the State party redouble its efforts to adopt a law which specifically classifies the various manifestations of racial discrimination as punishable acts in accordance with article 4 of the Convention and that it introduce**

**the legislative amendments required in order to align domestic laws with the Convention.**

(8) While noting the efforts made by the judiciary in the area of training, in the provision of interpreters, in the application of cultural expertise and in the appointment of bilingual staff to the courts to improve indigenous peoples' access to the official system of justice, the Committee reiterates its concern about the problems experienced by indigenous peoples in gaining access to justice, particularly because the indigenous legal system is not recognized and applied and because of the lack of a sufficient number of interpreters and bilingual court officials who are knowledgeable about judicial proceedings. It regrets, in particular, that, when a number of judges were appointed to the Supreme Court in late 2009, no indigenous person was selected (art. 5 (a)).

**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 urges the State party in its national legal system to recognize the indigenous legal system and to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to an appropriate system of legal interpreters and of bilingual counsel and court officials in judicial proceedings. The Committee encourages the State party to continue to work with the OHCHR office in Guatemala in order to comply with the recommendations set forth in the study entitled "Acceso de los pueblos indígenas a la justicia desde el enfoque de derechos humanos: perspectivas en el derecho indígena y el sistema de justicia oficial" (Access for indigenous peoples to justice from human rights perspective: views on indigenous law and the official justice system). The Committee also encourages the State party and the Institutional Training Unit of the Judiciary (UCI), in particular, to continue to offer courses for judges and staff of the justice system that are designed to help ensure that the indigenous population has effective and equal access to justice. The Committee urges the Public Prosecutor's Office to develop awareness-raising and training courses for attorneys and other staff of that Office on criminal prosecution of the offence of discrimination and on the rights of indigenous peoples.**

(9) The Committee is gravely concerned about recent serious attacks on social activists and defenders of indigenous peoples' rights, in particular the murder of some of those defenders (art. 5 (b)).

**The Committee recommends that the State party investigate these murders and punish those responsible. The Committee also calls upon the State party to adopt legislation that specifically guarantees protection for human rights defenders and to take appropriate steps to prevent such acts, taking into consideration the Declaration on The Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Committee recommends that steps be taken to expedite the entry into effect of the draft governmental agreement which provides for a programme of preventive measures and protection for human rights defenders and other vulnerable groups, as advocated by the Presidential Human Rights Commission. It also recommends that the State party comply with the recommendations made during the follow-up visit by the Special Representative of the Secretary-General on the situation of human rights defenders in 2008.**

(10) While taking note of the State party's repeated expressions of its commitment to ensuring participation by indigenous peoples in political processes, in particular in representative institutions and the parliament, the Committee reiterates its concern at the

still insufficient number and range of government posts occupied by indigenous persons in particular indigenous women (art. 5 (c)).

**In the light of paragraph 4 (d) of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure full participation by indigenous people, especially women, in all decision-making bodies, in particular representative bodies such as the parliament, and in public affairs, and that it take effective steps to ensure that all indigenous peoples participate in all levels of public service. The Committee also recommends that the State party effectively enforce the Urban and Rural Development Councils Act in order to secure fuller participation by indigenous peoples in decision-making.**

(11) The State party's ratification of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and its support for the United Nations Declaration on the Rights of Indigenous Peoples, notwithstanding the Committee, is deeply concerned about the growing tension among indigenous peoples occasioned by the exploitation of natural resources in the country. The situation surrounding the establishment of a cement plant in San Juan Sacatepéquez is a particularly serious case of this sort. The Committee reiterates its concern at the fact that the State party continues to allow indigenous peoples to be dispossessed of land that has historically belonged to them, even though title to the property in question has been duly recorded in the appropriate public registries, and that indigenous peoples' right to be consulted prior to the exploitation of natural resources located in their territories is not fully respected in practice. The Committee is also concerned that the traditional form of land tenure and ownership is not recognized under the State party's domestic laws and that the State party has not adopted the necessary administrative measures to guarantee this form of tenure (art. 5 (d) (v)).

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

**(a) Establish suitable procedures, in accordance with the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention No. 169, to effectively consult the communities that may be affected by development projects or the exploitation of natural resources with a view to obtaining their free, prior and informed consent. The Committee reminds the State party that the absence of implementing regulations for Convention No. 169 does not prevent it from conducting prior consultations. In the light of its general recommendation No. 23 (para. 4 (d)), the Committee recommends that the State party consult the indigenous population groups concerned at each stage of the process and that it obtain their consent before executing projects involving the extraction of natural resources;**

**(b) Amend the laws governing the exploitation of natural resources so as to establish procedures for the prior consultation of relevant population groups regarding the impact of such projects on their communities;**

**(c) Expedite the adoption of the Indigenous Peoples Consultation Act proposed by indigenous peoples and the amendment of the Mining Act to include a chapter on consultations prior to the issuance of mining permits;**

**(d) Ensure the effective application of the alternative methods for the settlement of disputes, such as mediation, negotiation, conciliation and arbitration, established by the Office of the Secretary for Agrarian Affairs. The State party should also ensure that these procedures are in line with international standards relating to human rights and indigenous peoples' rights and specifically with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples;**

(e) **Strengthen the implementation of round-table dialogues at which representatives of the Office of the Secretary for Agrarian Affairs take an active part in a range of forums and ensure that those dialogues give rise to specific, viable and verifiable agreements that are effectively implemented;**

(f) **In the exceptional cases in which the relocation of indigenous peoples is considered necessary, ensure the observance of article 16 paragraph 2, of ILO Convention No. 169 and article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, which require free and informed consent and fair and equitable compensation, and provide relocation sites equipped with basic utilities, such as drinking water, electricity, and washing and hygiene facilities, and with appropriate services, including schools, health-care centres and means of transportation.**

(12) While the Committee notes the adoption in 2005 of the Food and Nutritional Security System Act, it is greatly concerned that 50.9 per cent of the population is living below the poverty line and 15.2 per cent in extreme poverty and that a majority of the persons concerned belong to the indigenous population. It is also quite concerned about the rate of chronic malnutrition, which is 43.4 per cent among children nationally and is over 80 per cent among the indigenous population (art. 5 (e)).

**The Committee urges the State party to take appropriate measures to ensure the comprehensive implementation of the new legal and regulatory framework in order to fully guarantee for all Guatemalans, in particular indigenous Guatemalans, the right to food. The Committee also recommends that the State party take all necessary steps to ensure that any violation of people's right to food be considered justiciable under the new Food and Nutritional Security System Act.**

(13) The Committee recognizes the State party's efforts to provide culturally sensitive health-care coverage for indigenous peoples. However, it is concerned that the highest maternal and infant mortality figures are in the departments of Alta Verapaz, Huehuetenango, Sololá and Totonicapán, where the indigenous population accounts for between 76 and 100 per cent of the population. The Committee is concerned about the lack of adequate and accessible health services for these communities and over the lack of sufficient data on health indicators and on measures taken to improve them (art. 5 (e)).

**The Committee recommends that the State party, in close consultation with the communities concerned, devise a comprehensive and culturally appropriate strategy to guarantee that indigenous peoples are provided with quality health care. The implementation of such a strategy should be ensured by providing adequate resource allocations, in particular for the Indigenous Peoples and Intercultural Health Unit, together with the active participation of departmental and municipal authorities, compilation of appropriate indicators and transparent progress monitoring. Particular attention should be paid to improving access to health care for indigenous women and children.**

(14) The Committee is concerned that 90 per cent of Guatemala's 38 hydrographic basins are polluted, which hinders adequate access to safe drinking water, and notes that the most severely affected areas are San Marcos, Huehuetenango, Quiché and Sololá. The Committee is even more concerned that this situation has caused the spread of diseases associated with a lack of sanitation, with indigenous communities being the most affected (art. 5 (e)).

**The Committee recommends that the State party take urgent steps to ensure access to safe drinking water for all the indigenous communities in question, in particular in the areas of San Marcos, Huehuetenango, Quiché and Sololá. The State party should also develop suitable tools for preventing and monitoring water pollution, and ensure proper treatment of those hydrographic basins that are already polluted. It also**

**recommends that the State party adopt national legislation guaranteeing all communities access to safe drinking water.**

(15) The Committee notes the launch of the National Comprehensive Literacy Strategy (2004–2008) with the aim of reducing the high illiteracy rates existing among the State party's indigenous population. However, it remains concerned that illiteracy is particularly high in rural areas, where the rate for the indigenous population is at least 61 per cent in the departments of Quiché, Alta Verapaz, Huehuetenango, San Marcos, Totonicapán, Baja Verapaz and Sololá. It is even more concerned that the situation is still worse for women, since 87.5 per cent of them are illiterate and only 43 per cent complete their primary education (art. 5 (e) (v)).

**The Committee urges the State party to take steps in the short, medium and long terms to reduce illiteracy, especially in rural areas, where the indigenous population is concentrated. The Committee also recommends that the State party consider increasing the number of bilingual schools, particularly in rural areas. In this connection the Committee recommends that the State party duly implement educational reform, bearing in mind the provisions of the Agreement on Identity and Rights of Indigenous Peoples signed by the Government and the Unidad Revolucionaria Nacional Guatemalteca (Guatemalan National Revolutionary Union).**

(16) The Committee notes with concern that, according to official information of the 412 cases of discrimination brought before the Public Prosecutor's Office, only 4 have, to date, resulted in convictions, 1 under an abridged procedure and 3 in public and oral proceedings. The Committee notes a lack of clarity concerning complaints of racial discrimination and the follow-up to such complaints before the competent judicial authorities (art. 6).

**In light of its general recommendation No. 31 (para. 5 (e)), the Committee observes that the absence of cases involving racial discrimination may be due to the victims' lack of information about the existing remedies. The Committee recommends that the State party ensure that appropriate provisions exist in its national legislation regarding effective protection and remedies against violations of the Convention. The Committee also recommends that the State party implement programmes to inform members of the public about their rights and the legal remedies available to them in cases of discrimination. The Committee recommends that reported cases of discrimination be brought before the courts. The State party should provide detailed information in its next periodic report on: (a) existing mechanisms and institutions for dealing with cases of racial discrimination; (b) investigations, number of cases and sentences for discrimination-related offences; (c) compensation obtained by victims; and (d) initiatives to disseminate information in various languages on the legal remedies available when people's rights are violated in cases of discrimination.**

(17) While taking note of the existence of the Alliance against Racism, which has established the Observatory on Racism in the Media, with a view to creating an inclusive public space, the Committee remains concerned about racial discrimination against indigenous peoples in the media, whose manifestations include stereotyped, disparaging characterizations of indigenous people in television programmes and in articles appearing in the press (art. 7).

**The Committee recommends that the State party take appropriate steps to combat racial prejudice that can lead to racial discrimination in the media, including both public and private channels and the press. The Committee also recommends that, within the field of information, the State party take steps to foster understanding and tolerance among the various racial groups present in the country, including through the adoption of a media code of ethics whereby the media would undertake to respect the identity and culture of indigenous peoples.**

(18) The Committee recommends that the State party expedite the adoption of the bill authorizing the Government to recognize the competence of the Committee by means of the declaration referred to in article 14 of the Convention.

(19) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, in incorporating the Convention into its national legislation, the State party take into consideration the Durban Declaration and Programme of Action adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(20) The Committee 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/MC/2006/3 and Corr.1).

(21) The Committee recommends that, when preparing its next periodic report, the State party consult extensively with civil society organizations working to protect human rights, and especially those working to combat racial discrimination.

(22) 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 recommendations made by the Committee in paragraphs 7, 9 and 14, above, within one year of the adoption of the present concluding observations.

(23) The Committee should also like to draw the attention of the State party to the special importance of recommendations 8 and 11 and requests that in its next periodic report the State party include detailed information on the specific measures taken to implement them.

(24) The Committee recommends that the State party submit its fourteenth and fifteenth periodic reports in a single document by 17 February 2013, taking into account the guidelines for the specific document to be submitted to the Committee by States parties in accordance with article 9, paragraph 1, of the Convention (CERD/C/2007/1). The report should contain updated information and respond to all the points contained in the concluding observations.

#### 41. **Iceland**

(1) The Committee considered the combined nineteenth and twentieth periodic reports of the State party, due on 4 January 2008 and submitted in a single document (CERD/C/ISL/20), at its 1989th and 1990th meetings (CERD/C/SR.1989 and CERD/C/SR.1990) on 25 and 26 February 2010. At its 2006th meeting (CERD/C/SR.2006), held on 10 March 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the report of the State party, which is in conformity with the Committee's reporting guidelines, as well as the comprehensive written and oral replies of the delegation to the questions raised by the Committee. It also welcomes the State party's timeliness and regularity in submitting its periodic reports. It appreciates the opportunity thus provided to engage in a continuous and constructive dialogue with the State party.

**B. Positive aspects**

(3) The Committee welcomes the adoption in January 2007 of a policy on the integration of immigrants, and the Government's policy declaration of 23 May 2007 which also gives priority to immigrant's issues.

(4) The Committee notes with satisfaction that the four-year plan (2007–2011) for the police in the State party puts a special emphasis on staffing the police with people who reflect the multicultural cross-section of society.

(5) With regard to its previous concluding observation (CERD/C/ISL/18, para. 11), the Committee notes with satisfaction the explanation given by the State party on the curriculum of border guard and police training, focusing in particular on refugee protection and the conditions in countries of origin.

(6) The Committee takes note of the positive work undertaken by the Multicultural and Information Centre, the Intercultural Centre and the Immigrant Council and encourages the State party to continue to support these centres and consult them in elaborating and implementing policies of relevance to the fight against racism and racial discrimination.

(7) The Committee welcomes the enactment in December 2005 of the Temporary-Work Agency Act, No. 139/2005, guaranteeing, inter alia, that foreign workers enjoy social rights on the same basis as Icelanders and establishing that Icelandic collective agreements also apply to employees hired through a temporary-work agency.

(8) The Committee welcomes the approval in March 2009 of the first Governmental Action Plan against trafficking in human beings.

(9) The Committee also welcomes the entry into force on 1 July 2008 of three bills addressing children's education from the preschool level to the end of secondary school, taking account of changes in society and employment, family structures and the growing number of people whose language is not Icelandic, and also the multicultural diversity of school pupils. The Committee notes that the bills include special provisions for children whose mother tongue is not Icelandic.

(10) The Committee takes note with satisfaction that since 2005, the resettlement programme under the definition "Women at Risk" in the State party has received refugee women and children within the UNHCR programme.

**C. Concerns and recommendations**

(11) The Committee notes that the Convention has still not been incorporated into the State party's domestic legal order.

**The Committee reiterates the importance of incorporating all of the substantive provisions of the Convention into domestic law, with a view to ensuring comprehensive protection against racial discrimination. The Committee is encouraged by the Icelandic Coalition Government's policy document which states that ratified international human rights conventions shall be fully incorporated into the domestic legislation.**

(12) The Committee notes that although the State party has adopted several legislative acts aimed at ensuring equality of individuals and preventing certain manifestations of racial discrimination, it still lacks a comprehensive anti-discrimination legislation to protect all rights expressly set forth in articles 2 and 5 of the Convention.

**The Committee urges the State party to consider adopting a comprehensive anti-discrimination legislation, addressing all manifestations of racism, racial discrimination, xenophobia and related intolerance in all spheres of life, and providing, inter alia, for effective remedies in civil and administrative proceedings.**



(13) The Committee notes with regret that the State party has not yet established a national human rights institution with a broad mandate to promote and protect human rights, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) (arts. 2 and 6).

**The Committee reiterates its previous recommendation that the State party consider 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. The Committee also encourages the State party to invest such an institution with the powers as laid down in article 14, paragraph 2 of the Convention.**

(14) The Committee notes that the number of foreign nationals living in the State party has increased substantially over the past few years (from 3.6 per cent of the total population in 2005 to 7.6 per cent in 2009). In this light, the Committee notes with concern that nearly 700, mostly young, people had registered in the on-line “Society against Polish people in Iceland” (arts. 4 and 7).

**While commending the State authorities for having acted decisively to close down the site, the Committee urges the State party, in line with its general recommendation No. 30 (2004) on discrimination against non-citizens, to continue to maintain its vigilance against acts of racism, including hate speech on the internet, which often erupts in times of economic hardship. It recommends that efforts to prevent and combat prejudices and to promote understanding and tolerance in all spheres of life be continued, aimed particularly at young people and the media. The Committee also recommends that the State party further strengthen the provision of human rights education in schools, including adequate reflection in standard school curricula and training of teachers.**

(15) The Committee notes that, since 2004, two cases involving allegations of racial discrimination were brought to the attention of the liaison officer between the police and people of foreign origin in Reykjavik, but that in neither case the parties involved wished to take further action. The Committee also notes that since the State party’s last periodic report no complaints were received regarding alleged violations of article 180 of the General Penal Code (denial of access to goods, services or public places). Also, four cases concerning alleged violations of article 233 (a) of the same Code (discriminatory acts) were filed, but all were dismissed owing to insufficient evidence (arts. 5 (a), (b), and (f); and 6).

**The Committee recommends that measures be taken to raise awareness among people of foreign origin about their rights, inform victims of all remedies available to them, facilitate their access to justice, and train judges, lawyers, and law enforcement personnel accordingly. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party verify in all cases the reasons why parties do not wish to take further action. The Committee reiterates its previous recommendation (CERD/C/ISL/18, para. 14) that the State party shift the burden of proof to the respondent in proceedings involving denial of access to public places, as also reflected in general recommendation No. 30 (2004) on discrimination against non-citizens.**

(16) The Committee notes that approximately 40 per cent of women staying at the women’s shelter in Reykjavik are immigrant women. It notes that in May 2008, the State party amended the immigration law to permit individuals from countries outside the European Economic Area to retain their residence permits upon divorce from Icelandic-born spouses in circumstances where abuse or violence was perpetrated on the foreign spouse or the spouse’s child (art. 5 (b)).

**The Committee recommends that the State party study the factors leading to a high proportion of immigrant women staying in the women's shelter. The Committee further recommends that the State party implement a comprehensive awareness-raising programme on the legislative changes directed at immigrant women throughout the country.**

(17) The Committee notes with satisfaction that Act No. 86/2008, amending the Act on Foreigners No. 96/2002, removed the requirement that a foreign spouse or partner in cohabitation or registered partnership of a person lawfully staying in the State party must be 24 years of age or older to obtain a permit to stay as a family member. It notes with concern, however, that article 13(3) of the Act on Foreigners stipulates that in all cases in which either spouse is aged 24 years or younger, a special investigation shall be made as to whether a sham or forced marriage might be involved (art. 5 (d) (iv)).

**The Committee recommends that an investigation should only take place if there is a well-founded reason to believe that marriage or registered partnership has not been entered into willingly by both partners and recalls the importance of article 5 (d) (iv) of the Convention in this regard.**

(18) While welcoming the 2008 amendments to the Foreign Nationals' Right to Work Act, No. 97/2002, regulating that temporary work permits are issued in the name of the foreign worker, the Committee is concerned, however, that issuing the permit to be valid for employment with a specific employer will increase the vulnerability of the foreign worker, especially as foreigners make up a disproportionate percentage of the unemployed (art. 5, para. (e) (i)).

**The Committee recalls its general recommendation No. 30 (2004) on discrimination against non-citizens and urges the State party to grant foreign workers treatment not less favourable than that which applies to nationals of the State party in respect of working conditions, restrictions and requirements. The Committee recommends that the temporary work permits be issued for a specific type of work/remunerated activity and a specific time, rather than with a specific employer. The Committee further recommends that the right to appeal against decisions by the Directorate of Labour on applications for temporary permits or revocations of such permits also be accorded to the employee alone, rather than requiring the joint signature of both the employer and employee.**

(19) The Committee is concerned about reports of a disproportionately high dropout rate of students with immigrant background in upper secondary education (arts. 2, para. 2; and 5 (e)).

**The Committee encourages the State party to intensify its efforts to address and ameliorate the situation of students with immigrant background in secondary education in order to increase enrolment and school attendance and to avoid dropouts.**

(20) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(21) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in

Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(23) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee recalls General Assembly resolutions 61/148 of 19 December 2006, and 62/243 of 24 December 2008, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(25) Noting that the State party submitted its core document in 1993, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the tenth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC//2006/3).

(26) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 13, 18 and 19 above.

(27) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11 and 12 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(28) The Committee recommends that the State party submit its twenty-first, twenty-second and twenty-third periodic reports in a single document, due on 4 January 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 42. **Islamic Republic of Iran**

(1) The Committee considered the eighteenth and nineteenth periodic reports of the Islamic Republic of Iran, which were due on 2006 respectively, submitted in one document (CERD/C/IRN/18-19), at its 2016th and 2017th meetings (CERD/C/SR.2016 and 2017), held on 4 and 5 August 2010. At its 2042nd meeting (CERD/C/SR.2042), held on 23 August 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the detailed report submitted by the State party, in spite of its delay. The Committee is encouraged by the attendance of a high-ranking, diverse

delegation, representing several institutions of the State party and expresses its appreciation for the opportunity to continue its dialogue with the State party.

(3) While the Committee notes with satisfaction that the State party's report generally conforms to the reporting guidelines of the Committee, it regrets that the report contains insufficient information on the practical implementation of the Convention, particularly on economic and social indicators of the State Party's population disaggregated by ethnicity.

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

(4) The Committee welcomes the various developments which have taken place in the State party, including:

(a) The approval of the Law on Citizenry Rights in 2005;

(b) The ratification of amendment to article 8 of the Convention by the State party on 7 November 2005, 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, concerning the financing of the Committee;

(c) The update on the progress being made by the State party in the establishment of a National Human Rights Institution in accordance with the Paris Principles;

(d) The amendment of the Fourth Development Plan which allows budget allocations and a percentage of oil and gas revenues for the development of less developed provinces, particularly inhabited by disadvantaged ethnic groups; and

(e) The country's active engagement with the international community on human rights issues, such as its initiative on promoting a dialogue among civilizations.

(5) The Committee commends the State Party's continued hosting of a large population of refugees from neighbouring countries such as Afghanistan and Iraq.

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

(6) The Committee takes note of the State party's views on the difficulties involved in determining the ethnic composition of the population beyond indicating the concentration of ethnic groups in different provinces of the Islamic Republic of Iran, but also felt that the State party's difficulties on this matter were not *sui generis*. While taking note of the recent population census in 2007, the Committee regrets that this opportunity was apparently not taken advantage of to acquire detailed information on the ethnic composition of the population by means of a self-identification question on ethnicity.

**The Committee recommends that the State party make renewed efforts to update the information on its ethnic composition, relying on the principle of self-identification. It recommends that such a self-identification question be included in the next census carried out by the State party and requests that the results of the census be made public and this information be provided in the next State party report.**

(7) While noting the clarifications made by the State party on the incorporation of the Convention into domestic legislation, the Committee reiterates that the status of the Convention, when juxtaposed with certain divergent provisions of the Constitution and of domestic legislation, still remains unclear. It further notes that the Convention has never been invoked by domestic courts.

**The Committee recommends that the State party undertake the necessary measures to harmonize its domestic legislation with the Convention. It also recommends that the State party take further steps for public dissemination of the provisions of the Convention and the possibilities for its invocation to combat racial discrimination,**

**including in minority languages, and that it provide its Government officials with education and training in this area.**

(8) The Committee notes the information furnished by the State party on the definition of racial discrimination in article 19 of the Iranian Constitution and reiterates its concern that this definition does not explicitly cover the forms of racial and ethnic discrimination prohibited under the Convention (art. 1).

**The Committee again urges the State party to consider reviewing the definition of racial discrimination contained in its Constitution and domestic law in order to bring it into full conformity with article 1, paragraph 1, of the Convention.**

(9) While commending the efforts undertaken by the State party to empower women, the Committee is concerned that women of minority origin may be at risk of facing double discrimination (art. 2).

**The Committee draws the State party's attention to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and recommends that the State party continue its efforts to empower women and promote their rights, paying particular attention to women belonging to minorities.**

(10) The Committee notes the information furnished by the State party on the 1985 Press Act. The Committee also notes the efforts undertaken by the State party to combat racist discourse in the media by applying sanctions to newspapers whose publications have included racist discourse. However, the Committee is concerned at continued reports of racial discrimination, inter alia, directed against Azeri communities in the media, including stereotyped and demeaning portrayals of those peoples and communities. The Committee is also concerned at the reports of racial discrimination in everyday life and statements of racial discrimination and incitement to hatred by government officials (art. 4).

**The Committee recommends that the State party take appropriate steps to combat manifestations in the media, as well as in everyday life, of racial prejudice that could lead to racial discrimination. The Committee also recommends that, in the area of information, the State party promote understanding, tolerance and friendship among the various racial and ethnic groups in the State party, especially on the part of public officials, and including through the adoption of a media code of ethics that would commit the media to showing respect for the identity and culture of all communities in the State party, taking into account the possible intersection of racial and religious discrimination. It reiterates its previous request that the State party submit information in its next periodic report on the application of this law to combat racial discrimination.**

(11) The Committee notes the information provided on the High Council for Human Rights and its work. It expresses concern however that its composition could impact on its independence. The Committee takes further note of the information provided that the High Council is currently working on a plan to establish a national human rights institution (art. 6).

**The Committee urges the State party to speed up the process for the establishment of a national human rights institution in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles, General Assembly resolution 48/134). It also urges the State party to ensure the independent functioning of this institution through provision of adequate financial and human resources.**

(12) While the Committee notes that, according to the State party, measures are being taken to promote minority languages, and the teaching of minority languages and literature in schools is permitted, it expresses concern over the lack of sufficient measures to enable

persons belonging to minorities to have adequate opportunities to learn their mother tongue and to have it used as a medium of instruction. It would have appreciated more information on the literacy levels of ethnic minorities (art. 5).

**The Committee recommends that the State party continue its efforts to implement measures to enable persons belonging to minorities to have adequate opportunities to learn their mother tongue and to have it used as a medium of instruction. It requests the State party to provide more information on the literacy levels of ethnic minorities.**

(13) The Committee is further concerned that language barriers may create an obstacle in access to justice for ethnic minorities in the State party. The Committee also expresses its concern at reports of discriminatory treatment of foreign nationals in the Iranian justice system (arts. 5 and 6).

**The Committee recommends that the State party continue its efforts to ensure access to justice in these languages through the provision of translators and interpretation, as appropriate. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee recommends that the State party intensify its efforts to ensure due process and transparency for all persons in the justice system, including foreign nationals.**

(14) The Committee notes the lack of sufficient information on the implementation of article 6 of the Convention.

**The Committee reiterates its view that the lack of any complaints is not proof of the absence of racial discrimination and may be the result of the victims' lack of awareness of their rights, the lack of confidence on the part of individuals in the police and judicial authorities or the authorities' lack of attention or sensitivity to cases of racial discrimination. The Committee recommends that the State Party undertake an effective public information campaign to increase awareness of the accessibility of this channel for receiving complaints of racial discrimination and providing redress. The Committee reiterates its previous request that the State party include in its next periodic report statistical information on complaints lodged, prosecutions launched and penalties imposed in cases of offences which relate to racial or ethnic discrimination, as well as examples of cases illustrating this statistical information.**

(15) The Committee expresses concern at the limited enjoyment of political, economic, social and cultural rights by, inter alios, Arab, Azeri, Balochi, Kurdish communities and some communities of non-citizens, in particular with regard to housing, education, freedom of expression and religion, health and employment, despite the economic growth in the State party. It notes information that the provinces where many of them live are the poorest in the country (art. 5).

**The Committee recommends that the State party take the necessary steps to achieve effective protection from discrimination against, inter alios, Arab, Azeri, Balochi and Kurdish communities and some communities of non-citizens, in view of general recommendation No. 30 (2004) on discrimination against non-citizens, in various domains, in particular, employment, housing, health, education and freedom of expression and religion. The Committee also requests that the State party include information in its next report on the impact of programmes aimed at giving effect to the economic, social and cultural rights of the population, as well as statistical data on progress in this regard.**

(16) The Committee expresses concern over reports that the application of the "gozinesh" criterion, a selection procedure that requires prospective State officials and employees to demonstrate allegiance to the Islamic Republic of Iran and the State religion may limit

employment opportunities and political participation for, inter alios, persons of Arab, Azeri, Balochi, Jewish, Armenian and Kurdish communities (art. 5).

**The Committee would appreciate further information in the next report on the utilization of this criteria to better understand it and better advise the State party.**

(17) The Committee expresses concern at the low level of participation of persons from Arab, Azeri, Balochi, Kurdish, Baha'i, and certain other communities in public life. This is reflected in, for example, the scant information provided about them in the national report, the national census and public policies (art. 5).

**The Committee urges the State party to carry out a study of members of all such communities that would enable the State party to identify their particular needs and draw up effective plans of action, programmes and public policies to combat racial discrimination and disadvantage relating to all areas of the public life of these communities.**

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

(19) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(20) The Committee recommends that the State party continue consulting and expanding its dialogue with 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.

(21) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

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

(23) Noting that the State Party submitted its core document in July 1999, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(24) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 9, 10 and 11 above.

(25) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 6, 13, 15 and 17 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(26) The Committee recommends that the State party submit its twentieth, twenty-first, twenty-second and twenty-third periodic reports in a single document, due on 4 January 2014, 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. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).

#### 43. **Japan**

(1) The Committee considered the combined third to sixth reports of Japan (CERD/C/JPN/3-6) at its 1988th and 1989th meetings (CERD/C/SR.1988 and CERD/C/SR.1989), held on 24 and 25 February 2010. At its 2004th meeting (CERD/C/SR.2004), held on 9 March 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the third to sixth periodic reports by the State party. It expresses its appreciation for the constructive dialogue held with the large delegation, the written replies provided to the list of issues (CERD/C/JPN/Q/6) and the oral replies to the questions posed by Committee members, which together provided further insights into the implementation of the rights in the Convention. Noting that the State party report was considerably overdue, the Committee requests the State party to be mindful of the deadline set for the submission of future reports in order to meet its obligations under the Convention.

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

(3) The Committee notes with interest the State party's pilot resettlement programme for Myanmar refugees (2010).

(4) The Committee welcomes the support of the State party to the United Nations Declaration on the Rights of Indigenous Peoples (September 2007).

(5) The Committee congratulates the State party for the recognition of the Ainu people as an indigenous people (2008) and notes with interest the creation of the Council for Ainu Policy (2009).

(6) The Committee notes with appreciation the adoption of regulations against illegal and harmful information on the Internet, including the revised Guidelines for Defamation and Privacy (2004), the Provider Liability Limitation Law (2002) and the Model Provision for Contracts related to Actions against Illegal and Harmful Information (2006).

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

(7) The Committee notes with concern that insufficient information regarding the concrete measures for the implementation of its previous concluding observations (CERD/C/304/Add.114) was provided by the State party and regrets their overall limited implementation and that of the Convention as a whole.

**The State party is encouraged to comply with all recommendations and decisions addressed to it by the Committee and to take all necessary steps to ensure that national legal provisions further the effective implementation of the Convention.**



(8) While noting existing national and local provisions guaranteeing equality before the law, including article 14 of the Constitution, the Committee highlights that the grounds of discrimination in article 1 of the Convention are not fully covered. Further, while the Committee regrets the State party's interpretation of racial discrimination based on descent, it is encouraged by information on steps taken by the State party in the spirit of the Convention to prevent and eliminate discrimination against Burakumin (art. 1).

**The Committee maintains the position expressed in its general recommendation No. 29 (2002) "that the term 'descent' ... has a meaning and application which complement the other prohibited grounds of discrimination" and "that discrimination based on 'descent' includes discrimination against members of communities based on forms of social stratification ... and analogous systems of inherited status which nullify or impair their equal enjoyment of human rights." Moreover, the Committee reaffirms that the term "descent" in article 1, paragraph 1, of the Convention does not solely refer to "race" and that discrimination on the ground of descent is fully covered by article 1 of the Convention. The Committee, therefore, urges the State party to adopt a comprehensive definition of racial discrimination in conformity with the Convention.**

(9) The Committee notes the view expressed by the State party that a national anti-discrimination law is not necessary and is concerned about the consequent inability of individuals or groups to seek legal redress for discrimination (art. 2).

**The Committee reiterates the recommendation contained in its previous concluding observations (para. 10) and urges the State party to consider adopting specific legislation to outlaw direct and indirect racial discrimination, in accordance with article 1 of the Convention, and to cover all rights protected by the Convention. It also encourages the State party to ensure that law enforcement officials approached with complaints of racial discrimination have adequate expertise and authority to deal with offenders and to protect victims of discrimination.**

(10) While noting with interest that the State party held consultations and informal hearings with non-governmental organizations and other groups in the drafting of the report, the Committee regrets the limited opportunities for collection and exchange of information with such organizations and groups.

**The Committee notes the positive contributions made in the field of human rights and the role played by non-governmental organizations (NGOs) in Japan and encourages the State party to ensure the effective participation of NGOs in the consultation process during the preparation of the next periodic report.**

(11) The Committee notes the information provided by the State party on the composition of the population but regrets that the available body of data does not allow for an adequate understanding and assessment of the situation of vulnerable groups in the State party.

**The Committee, in accordance with paragraphs 10 and 12 of its revised reporting guidelines (CERD/C/2007/1) as well as its general recommendations No. 8 (1990) on the interpretation of article 1 of the Convention and No. 30 (2004) on discrimination against non-citizens, recommends that the State party conduct research into languages commonly spoken, mother tongue or other indicators of diversity of the population together with information from social surveys, on the basis of voluntary self-identification, with full respect for the privacy and anonymity of the individuals concerned, in order to evaluate the composition and situation of groups within the definition of article 1 of the Convention. The Committee further encourages the State party to provide updated disaggregated data on the non-citizen population in its next periodic report.**

(12) While taking account of the commitment of the State party to consider the establishment of a national human rights institution in accordance with the Paris Principles (General Assembly resolution 48/134), the Committee regrets the repeal of the proposed Human Rights Protection Bill, which included provisions for the establishment of a human rights commission, as well as the delays and overall absence of concrete actions and time frame for the establishment of an independent national human rights institution. The Committee also notes with concern the lack of a comprehensive and effective complaints mechanism (art. 2).

**The Committee encourages the State party to draft and adopt a human rights protection bill and promptly establish a legal complaints mechanism. It also urges the establishment of a well-financed and adequately staffed independent human rights institution, in compliance with the Paris Principles, with a broad human rights mandate and a specific mandate to address contemporary forms of discrimination.**

(13) While noting the explanations provided by the State party, the Committee is concerned over the reservations of the State party to articles 4 (a) and (b) of the Convention. The Committee also notes with concern the continued incidence of explicit and crude statements and actions against groups, including children attending Korean schools, and the harmful and racist expressions and attacks via the Internet directed, in particular, against Burakumin (art. 4 (a) and b)).

**The Committee reiterates its view that the prohibition of the dissemination of ideas based upon racial superiority or hatred is compatible with freedom of opinion and expression and, in this respect, encourages the State party to examine the need to maintain its reservations to article 4 (a) and (b) of the Convention with a view to reducing their scope and preferably their withdrawal. 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, and calls upon the State party once again to take into account the Committee's general recommendations No. 7 (1985) and No. 15 (1993), according to which article 4 is of mandatory nature, given the non-self-executing character of its provisions. It recommends that the State party:**

**(a) Remedy the absence of legislation to give full effect to the provisions against discrimination under article 4;**

**(b) Ensure that relevant constitutional, civil and criminal law provisions are effectively implemented, including through additional steps to address hateful and racist manifestations by, inter alia, stepping up efforts to investigate them and punish those involved;**

**(c) Increase sensitization and awareness-raising campaigns against the dissemination of racist ideas and to prevent racially motivated offences including hate speech and racist propaganda on the Internet.**

(14) While noting the measures being taken by the State party to provide human rights education to public officials, the Committee reiterates its concern from previous concluding observations (para. 13) that discriminatory statements by public officials persist and regrets the absence of administrative or legal action taken by the authorities in this regard, in violation of article 4 (c) of the Convention. It is further concerned that the existing laws on defamation, insult and intimidation making statements punishable are not specific to racial discrimination and only apply in case of injury to specific individuals (arts. 4 (c) and 6).

**The Committee reiterates its recommendation that the State party strongly condemn and oppose any statement by public officials, national or local, which tolerates or incites racial discrimination and that it intensify its efforts to promote human rights**

awareness among politicians and public officials. It also recommends with urgency that the State party enact a law that directly prohibits racist and xenophobic statements, and guarantees access to effective protection and remedies against racial discrimination through competent national courts. The Committee also recommends that the State party undertake the necessary measures to prevent such incidents in the future and to provide relevant human rights education, including specifically on racial discrimination, to all civil servants, law enforcement officers and administrators as well as the general population.

(15) Noting that family court mediators do not have any public decision-making powers, the Committee expresses concern over the fact that qualified non-nationals are not able to participate as mediators in dispute settlement. It also notes that no data was provided regarding the participation of non-nationals in public life (art. 5).

**The Committee recommends that the State party review its position so as to allow competent non-nationals recommended as candidates for mediation to work in family courts. It also recommends that it provide information on the right to participation of non-nationals in public life in its next report.**

(16) While noting with interest the increasing number of non-Japanese residents in the State party, including those applying for naturalization, the Committee reiterates the view expressed in its previous concluding observations (para. 18) that the name of an individual is a fundamental aspect of cultural and ethnic identity that must be respected. In this regard, the Committee expresses its concern that for naturalization purposes, applicants continue to change their names out of fear of discrimination rather than as acts of free choice (art. 5).

**The Committee recommends that the State party develop an approach where the identity of non-Japanese nationals seeking naturalization is respected and that officials, application forms and publications dealing with the naturalization process refrain from using language that persuades applicants to adopt Japanese names and characters for fear of disadvantages or discrimination.**

(17) While noting the revised Act for the Prevention of Spousal Violence and Protection of Victims (2007) to extend protection to victims regardless of nationality and strengthen the role of local governments, the Committee notes with concern the obstacles to access complaints mechanisms and protection services faced by women victims of domestic and sexual violence. It notes with particular concern that changes to the Immigration Control Act (2009) pose difficulties for foreign women suffering domestic violence. It also regrets the lack of information and data provided about the incidence of violence against women (art. 5).

**In the light of its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party adopt all necessary measures to address phenomena of double discrimination, in particular regarding women and children from vulnerable groups. It also reiterates its previous recommendation (para. 22) that the State party collect data and conduct research on the measures to prevent gender-related racial discrimination, including exposure to violence.**

(18) While acknowledging the position of the State party on the family registration system and noting the legislative changes made to protect personal information (2008), the Committee reiterates its concern about the difficulties in the system and that invasion of privacy, mainly of Burakumin, continues (arts. 2 and 5).

**The Committee recommends the enacting of a stricter law, with punitive measures, prohibiting use of the family registration system for discriminatory purposes,**

**particularly in the fields of employment, marriage and housing, to effectively protect the privacy of individuals.**

(19) Noting with interest the recognition by the State party of discrimination against Burakumin as a social problem and the achievements of the Dowa Special Measures Law, the Committee is concerned that the following conditions agreed between the State party and Buraku organizations upon termination of the Dowa Special Measures in 2002 have not been fulfilled to date: full implementation of the Convention; the enactment of a law on human rights protection; and a law on the promotion of human rights education. The Committee regrets that there is no public authority specifically mandated to deal with Burakumin discrimination cases and notes the absence of a uniform concept used by the State party when dealing with or referring to Burakumin and policies. Further, the Committee notes with concern that although socio-economic gaps between Burakumin and others have narrowed for some Burakumin, *e.g.* in the physical living environment and education, discrimination remains in areas of public life such as employment, marriage, housing and land values. It further regrets the lack of indicators to measure progress in the situation of Burakumin (arts. 2 and 5).

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

**(a) Assign a specific government agency or committee mandated to deal with Buraku issues;**

**(b) Fulfil the commitments made upon the termination of the Special Measures Law;**

**(c) Engage in consultation with relevant persons to adopt a clear and uniform definition of Burakumin;**

**(d) Supplement programmes for the improvement of living conditions of Burakumin with human rights education and awareness-raising efforts engaging the general public, particularly in areas housing Buraku communities;**

**(e) Provide statistical indicators reflecting the situation and progress of the above-mentioned measures;**

**(f) Take into account general recommendation No. 32 (2009) on special measures, including the recommendation that special measures are to be terminated when equality between the beneficiary groups and others has been sustainably achieved.**

(20) While welcoming the recognition of the Ainu as an indigenous people and noting with interest measures reflecting the commitment of the State party, including the establishment of a working group to set up a symbolic public facility and of another to conduct a survey on the status of Ainu outside of Hokkaido, the Committee expresses its concern about:

(a) The insufficient representation of Ainu people in consultation forums and in the Advisory Panel of Eminent Persons;

(b) The absence of any national survey on the development of the rights of Ainu people and improvement of their social position in Hokkaido;

(c) The limited progress so far towards implementing the United Nations Declaration on the Rights of Indigenous Peoples (arts. 2 and 5).

**The Committee recommends that further steps be taken in conjunction with Ainu representatives to translate consultations into policies and programmes with clear and targeted action plans that address Ainu rights and that the participation of Ainu representatives in consultations be increased. It also recommends that the State party,**

in consultation with Ainu representatives, consider the establishment of a third working group with the purpose of examining and implementing international commitments such as the United Nations Declaration on the Rights of Indigenous Peoples. It urges the State party to carry out a national survey of living conditions of Ainu in Hokkaido and recommends that the State party take into account the Committee's general recommendation No. 23 (1997). The Committee further recommends that the State party consider ratifying the International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

(21) While highlighting that UNESCO has recognized a number of Ryukyu languages (2009), as well as the Okinawans' unique ethnicity, history, culture and traditions, the Committee regrets the approach of the State party to accord due recognition to the distinctness of Okinawa and expresses its concern about the persistent discrimination suffered by the people of Okinawa. It further reiterates the analysis of the Special Rapporteur on contemporary forms of racism that the disproportionate concentration of military bases on Okinawa has a negative impact on residents' enjoyment of economic, social and cultural rights (arts. 2 and 5).

**The Committee encourages the State party to engage in wide consultations with Okinawan representatives with a view to monitoring discrimination suffered by Okinawans, in order to promote their rights and establish appropriate protection measures and policies.**

(22) The Committee notes with appreciation the efforts made by the State party to facilitate education for minority groups, including bilingual counsellors and enrolment guidebooks in seven languages, but regrets the lack of information on the implementation of concrete programmes to overcome racism in the education system. Moreover, the Committee expresses concern about acts that have discriminatory effects on children's education including:

(a) The lack of adequate opportunities for Ainu children or children of other national groups to receive instruction in or of their language;

(b) The fact that the principle of compulsory education is not fully applied to children of foreigners in the State party in conformity with article 5 (e) (v) of the Convention; article 28 of the Convention on the Rights of the Child; and article 13, paragraph 2, of the international Covenant on Economic, Social and Cultural Rights, to which Japan is a party;

(c) Obstacles in connection with school accreditation and curricular equivalencies and entry into higher education;

(d) The differential treatment of schools for foreigners and descendants of Korean and Chinese residing in the State party, with regard to public assistance, subsidies and tax exemptions;

(e) The approach of some politicians suggesting the exclusion of North Korean schools from current proposals for legislative change in the State party to make high school education tuition free of charge in public and private high schools, technical colleges and various institutions with comparable high school curricula (arts. 2 and 5).

**The Committee, in the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, recommends that the State party ensure that there is no discrimination in the provision of educational opportunities and that no child residing in the territory of the State party faces obstacles in connection with school enrolment and the achievement of compulsory education. In this regard, it also recommends that a study on the multitude of school systems for foreigners and the**

**preference for alternative regimes set up outside of the national public school system be carried out by the State party. The Committee encourages the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language and invites the State party to consider acceding to the UNESCO Convention against Discrimination in Education.**

(23) The Committee notes with appreciation progress on the process of refugee status determination, but reiterates its concern that, according to some reports, different, preferential standards apply to asylum-seekers from certain countries and that asylum-seekers with different origins and in need of international protection have been forcibly returned to situations of risk. The Committee also expresses its concern over the problems recognized by refugees themselves including lack of proper access to asylum information, understanding about procedures, language/communication questions, and cultural disjunctions, including a lack of understanding by the public of refugee issues (arts. 2 and 5).

**The Committee reiterates its recommendation that the State party take the necessary measures to ensure standardized asylum procedures and equal entitlement to public services by all refugees. In this context, it also recommends that the State party ensure that all asylum-seekers have the right, inter alia, to an adequate standard of living and medical care. The Committee also urges the State party to ensure, in accordance with article 5 (b), that no person will be forcibly returned to a country where there are substantial grounds for believing that his/her life or health may be put at risk. The Committee recommends that the State party seek cooperation with the Office of the United Nations High Commissioner for Refugees in this regard.**

(24) The Committee expresses its concern about cases of difficulty in relations between Japanese and non-Japanese and, in particular, cases of race and nationality-based refusals of the right of access to places and services intended for use by the general public, such as restaurants, family public bathhouses, stores and hotels, in violation of article 5 (f) of the Convention (arts. 2 and 5).

**The Committee recommends that the State party counter this generalized attitude through educational activities directed to the population as a whole and that it adopt a national law making illegal the refusal of entry to places open to the public.**

(25) The Committee is concerned that insufficient steps have been taken by the State party to revise textbooks with a view to conveying an accurate message regarding the contribution of groups protected under the Convention to Japanese society (art. 5).

**The Committee recommends that the State party carry out a revision of existing textbooks to better reflect the culture and history of minorities and that it encourage books and other publications about the history and culture of minorities, including in the languages spoken by them. It particularly encourages the State party to support teaching in and of the Ainu and Ryukyu languages in compulsory education.**

(26) While noting the measures to combat racial prejudices taken by the State party, such as setting up human rights counselling offices and human rights education and promotion, the Committee remains concerned at the lack of concrete information about the media and the integration of human rights in broadcasting of television and radio programmes (art. 7).

**The Committee recommends that the State party intensify public education and awareness-raising campaigns, incorporating educational objectives of tolerance and respect, and ensuring adequate media representation of issues concerning vulnerable groups, both national and non-national, with a view to eliminating racial discrimination. The Committee also recommends that the State party pay particular attention to the role of the media in improving human rights education and that it**

**strengthen measures to combat racial prejudice that leads to racial discrimination in the media and in the press. In addition, it recommends education and training for journalists and people working in the media sector to increase awareness of racial discrimination.**

(27) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), ILO Convention No. 111 (1958) on Discrimination in Employment and Occupation, the Convention relating to the Status of Stateless Persons, the Convention on the Reduction of Statelessness and the Convention on Prevention and Punishment of Crime of Genocide.

(28) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(29) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

(30) While noting the position of the State party, the Committee recommends that the State Party ratify the amendments to article 8, paragraph 6, of the Convention adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and approved by the General Assembly in its resolution 47/111. In this connection, the Committee recalls General Assembly resolutions 61/148 and 62/243, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(32) Noting that the State party submitted its core document in 2000 (HRI/CORE/1/Add.111), the Committee encourages the State party to submit an updated version, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies, held in June 2006 (HRI/MC/2006/3).

(33) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12, 20 and 21 above.

(34) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations contained in paragraphs 19, 22 and 24 and requests that

the State party provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(35) The Committee recommends that the State party submit its seventh, eight and ninth periodic reports, due on 14 January 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations.

#### 44. **Kazakhstan**

(1) The Committee considered the fourth and fifth periodic reports of Kazakhstan (CERD/C/KAZ/4-5), submitted in one document, at its 1991st and 1992nd meetings (CERD/C/SR.1991 and CERD/C/SR.1992), held on 26 February and 1 March 2010. At its 2006th and 2007th meetings (CERD/C/SR.2006 and CERD/C/SR.2007), held on 10 March 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the submission of the fourth and fifth periodic reports of the State party. It also expresses appreciation for the frank and sincere dialogue held with the high-level delegation and the efforts made to provide comprehensive responses to many questions raised in the list of issues (CERD/C/KAZ/Q/4-5 and Add.1) and by Committee members during the dialogue.

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

(3) The Committee notes the State party's acknowledgment that it is a multi-ethnic country, with approximately 140 different ethnic groups, and appreciates the efforts made by the State party to provide information relating to the ethnic composition of the population as well as other statistical data.

(4) The Committee notes with appreciation the positive initiatives taken by the State party in the field of minority rights, including important policies to help preserve minority languages, the establishment and funding of ethno-cultural associations for the preservation of ethnic cultures and traditions and minority language media.

(5) The Committee notes with satisfaction that the State party has ratified most United Nations core human rights treaties and commends the State party for recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals, in accordance with article 14 of the Convention.

(6) The Committee also notes with satisfaction the adoption by the State party on 5 May 2009 of the National Plan of Action 2009–2012 in the field of human rights that includes several measures related to the implementation of the Convention.

(7) The Committee expresses appreciation for the mandate given to the Assembly of the People and commends the State party on the recent adoption of the Law on the Assembly of the People of Kazakhstan in October 2008, which established that nine deputies to the Lower Chamber of the Parliament (*Majilis*) would be appointed from the Assembly.

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

(8) The Committee is concerned at reports of rising ethnic tension that resulted in some inter-ethnic clashes. It notes the information provided by the State party delegation that this tension is motivated mainly by social and economic conditions of some groups of the population, especially in the rural areas.

**The Committee recommends that the State party take all steps to address the root causes of inter-ethnic tension through, inter alia, further integration of all groups of**



the population, further development of the rural areas, reduction of unemployment rates and advancement of equality in land distribution. Furthermore, the Committee recommends that the State party strengthen the early detection and prevention of inter-ethnic conflicts, including through an effective monitoring mechanism of relations between ethnic groups and the adoption of measures of education of the population as a whole in a spirit of understanding and non-discrimination, and report on the results of these measures to the Committee in its next periodic report (art. 2).

(9) While welcoming the constitutional provisions and several articles of the Law on Education guaranteeing the free choice of every person to learn and use his or her native language, as well as the existence of informal structures, such as Sunday schools, the Committee notes, however, with concern, information on the deficiencies in the number of schools, textbooks, lack of qualified staff and quality of education in and of minority languages.

**The Committee encourages the State party to take the necessary measures for the effective implementation of the constitutional provisions and of the Law on Education with a view to ensuring:**

- (a) **The adequate quality of the minority language schools;**
- (b) **The adequate funding and resources, particularly for schools using languages of smaller ethnic groups;**
- (c) **The sufficient provision of adequate professional staff and minority language textbooks;**
- (d) **That school textbooks include appropriate consideration of the cultures, traditions and history of minorities and their contributions to Kazakh society;**
- (e) **Improved access to university education for students belonging to all ethnic groups without discrimination, including through the adoption of appropriate special measures in line with the general recommendation No. 32 (2009) (arts. 5 (e) and 7).**

(10) While noting the efforts of the State party to elaborate legal provisions forbidding racial discrimination, such as several articles contained in the Law on Elections, Labour Code, Law on the Judiciary and Status of Judges, Law on Culture etc., the Committee notes with concern that the State party has not adopted comprehensive legislation to prevent and combat discrimination in all areas, including a definition encompassing both direct and indirect discrimination on grounds of race and ethnic origin, as well as legislation incriminating all aspects of racial discrimination in accordance with articles 4 (a) and (b) of the Convention.

**Recalling its previous recommendation (CERD/C/65/CO/3, para. 8), the Committee encourages the State party to continue its efforts by adopting a comprehensive anti-discrimination law that includes a definition of direct and indirect discrimination, as stipulated in article 1, paragraph 1, of the Convention. Moreover, the Committee recommends that the State party conduct a comprehensive review of the existing legislation in order to bring it in full conformity with the Convention, mainly with the provisions of article 4 (a) and (b).**

(11) The Committee is concerned about the limited participation of minorities in political life and decision-making at both national and regional levels, and in particular their continuing under-representation in both Houses of Parliament, i.e. Majilis and Senate. The Committee notes that the process of selection and appointment of Assembly members and of nine deputies to the Lower Chamber of the Parliament from the Assembly of People of

Kazakhstan may not be fully based on the principle of representativeness and election by ethnic minority groups themselves.

**The Committee encourages the State party to take further measures, including special measures, aimed at ensuring a fair and adequate participation of all members of minority groups in political life and in any decision-making processes and their prior consultation on matters affecting their rights and interests. Moreover, the Committee recommends that the State party increase the potential and importance of the Assembly of the People by establishing election rules based on the principle of representativeness and attributing to it new functions as a standing body with regular sessions which should consider a wide range of issues of particular relevance to minorities (arts. 1, para. 4; 2, para. 2; and 5 (c)).**

(12) While taking note of the data presented by the State party on the representation of ethnic groups, the Committee is concerned about the existing situation of representation of ethnic groups in State bodies at central and local levels. While ethnic groups represent about 36.4 per cent of the population of the State party, according to the census of 1 January 2010, more than 84 per cent of public servants as a whole and more than 92 per cent in central governmental bodies are ethnic Kazakhs.

**The Committee recommends that the State party take effective measures with a view to improving the representation of minority groups in State bodies and public services and preventing and combating all forms of discrimination in the selection and recruitment process in the central and local administration. The Committee invites the State party to provide in its next periodic report information on the measures taken to this end, and statistical data on the representation in the areas where ethnic groups live in substantial numbers (art. 5 (f)).**

(13) While appreciating the efforts of the State party to reply to some questions on the situation of ethnic groups in the country, the Committee notes the absence in the report of information on the social and economic situation of different ethnic groups and areas of the country.

**The Committee recommends that the State party include in its next periodic report detailed information and, wherever possible, disaggregated statistical data on the social and economic situation of different ethnic groups and of geographical areas where they live in the State party (art. 5 (e)).**

(14) While welcoming the information provided in the report of the State party, indicating that there were about 5,000 Roma in Kazakhstan, and that measures were being introduced to prevent acts of discrimination against them, the Committee notes the absence of information on the economic and social situation of Roma.

**The Committee recommends that the State party, taking into account general recommendation No. 27 (2000), provide detailed information in its next periodic report on the situation of Roma, including data on their enjoyment of economic, social and cultural human rights. The Committee also invites the State party to take into account the situation of Roma communities in all programmes and projects planned and implemented and in all measures adopted, and to ensure that the Roma minority is represented in State institutions, especially in localities where they live (art. 5).**

(15) While welcoming the adoption by the State party of the National Refugee Law in December 2009, the Committee takes note of information received regarding the alleged refusal by the authorities to register the applications for asylum from citizens of certain countries. In addition, the Committee notes with concern that the lack of registration of their applications may lead to limits of their social and economic rights.

The Committee draws the attention of the State party to its general recommendation No. 30 (2004) on discrimination against non-citizens and urges the State party to eliminate discriminatory practices affecting registration of asylum-seekers and to ensure full access of all persons without discrimination to the refugee determination procedure, according to the international standards. The Committee recommends that the State party provide adequate training for public officials and law enforcement personnel with the aim of avoiding any tendency towards discriminatory conduct towards non-citizens and asylum-seekers (arts. 2 and 5).

(16) The Committee is concerned about alleged information on the vulnerable situation of migrant workers whose rights would be violated, due to the lack of permanent registration and difficulties to legalize their situation, placing them at constant risk of extortion and deportation, and about alleged bad treatment of foreigners in transit throughout the country, by the police, customs and other border officials.

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

(a) **Take measures to facilitate the regularization of the situation of migrant workers through, inter alia, a revision of the system for granting work permits, increasing the flexibility of the quota system, and additional legal assistance;**

(b) **Ensure the effective investigation, prosecution and punishment of employers and intermediaries responsible for violations of the rights of migrant workers and foreigners and, in particular, strengthen measures aimed at fighting illegal immigration and human trafficking;**

(c) **Establish training programmes for law enforcement agencies and administration on migrant and foreigners rights, so as to avoid being submitted to bad treatment, including extortion and deportation, because they are not registered or transiting the territory of the State party;**

(d) **Ensure that migrant workers have access to effective appeals against deportation;**

(e) **Ensure effective access to health care, education and social benefits for migrant workers and their families, without discrimination (art. 5 (e)).**

(17) While noting the information provided in the report of the State party, the Committee remains of the view that measures taken to educate the public officials, including law enforcement officials and members of the judiciary, as well as media professionals on the provisions of the Convention should be strengthened.

**The Committee suggests that the State party consider intensifying human rights education, in particular on the provisions of the Convention, and training of law enforcement officers, teachers, social workers, public servants and mass media, and draws attention to its general recommendation No. 13 (1993) on the training of law enforcement official in the protection of human rights in that regard (art. 7).**

(18) The Committee notes with concern that there have been very few complaints or court decisions in civil or administrative proceedings concerning acts of racial discrimination during the reporting period. Moreover, the Committee notes the limited information provided by the State party on the number of offences ethnically or racially motivated and the result of prosecution. The Committee also notes that during the reporting period the Ombudsman received one complaint of racial discrimination.

**Considering that no country is free from racial discrimination, the Committee invites the State party to explore why there have been very few complaints of racial discrimination. Reiterating its previous concluding observations and recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in**

the administration and functioning of the criminal justice system, the Committee recommends that the State party verify that the lack of such complaints is not the result of lack of effective remedies enabling victims to seek redress, victims' lack of awareness of their rights, fear of reprisals, lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination. The Committee requests that the State party provide in its next periodic report updated information on complaints about acts of racial discrimination and on relevant decisions in penal, civil or administrative court proceedings. Such information should include the number and nature of cases brought, court decisions, and any restitution or other remedies provided to victims of such acts (arts. 2, para. 1 (d); 4 and 6).

(19) While welcoming the conditions created for the return and settling down of Oralmans in the territory of the State party, the Committee would like to see that other individuals in the same situation are not discriminated against.

**The Committee invites the State party to consider applying special measures to all persons returning to the country, so as to avoid any discrimination against them on racial or ethnic grounds.**

(20) The Committee notes reports of renaming places and public signs from Russian or Uighur into only the Kazakh language, which may cause resentment among minority groups.

**The Committee recommends that the State party take the necessary measures to ensure the use of minority languages, particularly in regions with compact minority communities, the use of a dual language approach when renaming towns and villages and in the use of public signs, as well as the protection of the cultural rights of all its minority groups.**

(21) While noting the existence of the Commission on Human Rights under the President and the Human Rights Commissioner of Kazakhstan (Ombudsman), the Committee is concerned that they do not seem to work independently and to have the authority and the competences to contribute effectively to the implementation of the Convention.

**Reiterating its previous concluding observations, the Committee encourages the State party to consider establishing an independent national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights ("the Paris Principles") (General Assembly resolution 48/134).**

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights instruments which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the International Labour Organization Convention No. 111 (1958) on non-discrimination in employment and occupation and 1960 UNESCO Convention against discrimination in education.

(23) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific

information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties 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.

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

(27) Noting that the State party did not submit its core document, the Committee encourages the State party to submit it, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 9, 16 and 20 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 10 and 15 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its sixth and seventh periodic reports in a single document, due on 25 September 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.

#### 45. Monaco

(1) The Committee on the Elimination of Racial Discrimination considered the initial to sixth periodic reports of Monaco (CERD/C/MCO/6), submitted in a single document, at its 1973rd and 1974th meetings (CERD/C/SR.1973 and 1974), held on 15 and 16 February 2010. At its 1997th and 1998th meetings (CERD/C/SR.1997 and CERD/C/SR.1998), held on 3 and 4 March 2010, it adopted the following concluding observations.

##### A. Introduction

(2) The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines, as well as its written replies to the list of issues (CERD/C/MCO/Q/6 and Add.1). Furthermore, it appreciated the clarifications provided orally by the delegation in response to the Committee's questions, as well as the open and constructive dialogue between the Committee and the delegation. However, the Committee

takes note of the 12-year delay in the submission of the State party's report and invites the State party to respect the timetable that the Committee has set for the submission of future reports in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination.

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

(3) The Committee welcomes the initiative taken by the State party to engage in dialogue with the Committee, as well as the renewal of its commitment to and support for international organizations.

(4) The Committee also welcomes the fact that on 6 November 2001 the State party made the declaration provided for in article 14 of the Convention.

(5) The Committee welcomes the adoption of the following laws by the State party:

(a) Act No. 1,229 of 15 July 2005 on freedom of public expression, which criminalizes the provocation and incitement of racial hatred and violence;

(b) Act No. 1,353 of 4 December 2008, amending Act No. 1,165 of 23 December 1993 on the processing of personal information, which prohibits and punishes any processing of such information, including data of a racial or ethnic nature, without the express written permission of the person concerned.

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

(6) While taking note of the information provided by the State party on the distribution by nationality and sex of the population residing in its territory and on the total number of nationals and non-nationals, the Committee notes the lack of statistical data in the State party's report on the ethnic composition of the population and the socio-economic situation of the various groups.

**In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, disaggregated by national and ethnic origin, as well as statistical data on the socio-economic situation of the various groups, to enable the Committee to evaluate their situation in economic, social and cultural terms and the level of protection of their rights.**

(7) The Committee is concerned by the fact that the State party maintains its reservations to article 2, paragraph 1, and article 4 of the Convention.

**The Committee recommends that the State party consider withdrawing its reservations to article 2, paragraph 1, and article 4 of the Convention, given the developments in its legislation since its ratification of the Convention (art. 1).**

(8) The Committee notes that several bills containing provisions aimed at preventing and combating racial discrimination are still under examination or consideration.

**The Committee recommends that the State party should expedite the consideration and adoption of these bills, including bill No. 818 concerning offences involving information systems, which provides for an aggravating circumstance in the offence of making threats via a telecommunications network when such threats are motivated by race or religion, and the sports bill aimed at combating expressions of intolerance at sporting events, in order to give full effect to the provisions of the Convention. The Committee also recommends that the State party should inform the Committee about the provisions of these bills relating to racial discrimination in its next periodic report.**

(9) The Committee takes note of the information provided by the State party on the activities of the Human Rights Unit of the Department of External Relations and those of

the Human Rights Ombudsman. However, the Committee remains concerned at the absence of an independent national human rights institution in conformity with the Paris Principles.

**The Committee invites the State party to consider establishing an independent national human rights institution in conformity with the Paris Principles relating to the status of national institutions for the promotion and protection of human rights (General Assembly resolution 48/134), to allocate it the financial and human resources necessary for its operation, and to endow it with authority and a mandate in the field of racial discrimination (art. 2).**

(10) The Committee notes that Act No. 1,229 of 15 July 2005 on freedom of public expression criminalizes the provocation and incitement of racial hatred and violence. However, the Committee is concerned that national legislation still contains no provisions that give full effect to article 4 of the Convention.

**The Committee draws the State party's attention to its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which the provisions of article 4 are mandatory, and emphasizes the preventive nature of legislation expressly prohibiting incitement of racial discrimination and racist propaganda. The Committee recommends that the State party adopt the bill intended to supplement the Criminal Code by including a specific offence based on article 1 of the Convention, as well as an aggravating circumstance related to the racist, anti-Semitic or xenophobic nature of offences, so as to give full effect to the provisions of article 4 (art. 4).**

(11) While noting the information provided by the State party in its report, written replies and oral explanations concerning the non-application of the penalty of banishment, the Committee remains concerned that this penalty is still provided for in the State party's Criminal Code and is applicable to non-nationals.

**The Committee recommends that the State party adopt the proposal to abolish this penalty within the framework of the reform of its Criminal Code that is now under way (art. 5).**

(12) While taking note of the information provided in the written replies, which state that only distinctions related to nationality and residence are applied in the field of employment, the Committee is concerned by the absence of legislation to protect foreign workers from racial discrimination, particularly during recruitment and with regard to working conditions.

**With reference to its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party:**

**(a) Strengthen the protection of foreign workers by adopting legislation to protect them from racial discrimination, particularly during recruitment;**

**(b) Ensure implementation of existing mechanisms, such as labour inspections, with regard to the working conditions of foreign workers;**

**(c) Inform foreign workers about their rights and, in particular, about complaint mechanisms and facilitate access to those mechanisms;**

**(d) Consider signing and ratifying the International Labour Organization (ILO) Convention concerning Discrimination in respect of Employment and Occupation (No. 111) (1958);**

**(e) Consider acceding to the European Social Charter;**

**(f) Provide statistical data, in its next report, on the number of inspections carried out, complaints lodged, judgements handed down and compensation measures, if any (arts. 5 (e) (i) and 6).**

(13) The Committee takes note of the information provided by the State party on the existence in the State party of different religions, due to the presence of persons of different ethnic origin and of non-nationals, and the fact that freedom of religion is protected under article 23 of the Constitution.

**The Committee recommends that the State party consider in this respect the official recognition of all religions, including Islam, in order to meet the needs of all persons of a different ethnic origin or of non-nationals in the Principality of Monaco, and to encourage and promote understanding, tolerance and friendship among different religious groups (art. 5).**

(14) The Committee notes that the Department of Public Security in the State party intends to include a special section in its “register of offences” for complainants to state whether the offence against them was racist in nature. However, the Committee is concerned at the lack of information on complaints, investigations and judgements related to acts of racial discrimination.

**The Committee recalls paragraph 1 (b) of its general recommendation No. 31 (2005) on racial discrimination in the administration and functioning of the criminal justice system, according to which the absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination may reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that they fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism. The Committee recommends that the State party, in its next report, provide statistical data on:**

(a) **The number of complaints, prosecutions and convictions relating to acts of racial discrimination;**

(b) **Compensation measures ordered by the courts in the State party pursuant to such convictions;**

(c) **Public information on all available remedies with regard to racial discrimination.**

**The Committee also recommends that the State party provide information on the methods available to inform persons, particularly foreigners, about their rights with regard to racist acts or acts involving racial discrimination, and complaint mechanisms (art. 6).**

(15) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to those international human rights treaties which it has not yet signed or ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(16) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.



(17) The Committee recommends that the State party continue consulting and expanding the dialogue it has initiated with the Human Rights Unit in connection with the preparation of the next periodic report. The Committee also encourages the State party to promote the establishment of non-governmental human rights organizations in Monaco.

(18) 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 (see CERD/SP/45, annex) and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee recalls paragraph 14 of General Assembly resolution 61/148, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(20) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 7, 10 and 11 above.

(21) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 6, 8 and 14 and requests the State party to provide detailed information in its next periodic report on concrete and appropriate measures taken to effectively implement these recommendations.

(22) The Committee recommends that the State party submit its seventh, eighth and ninth periodic reports in a single document by 27 October 2012, taking into account the guidelines for the preparation of CERD-specific reports adopted at the Committee's seventy-first session (CERD/C/2007/1), and addressing all the issues raised in the present concluding observations.

#### 46. **Morocco**

(1) The Committee considered the combined seventeenth and eighteenth periodic reports of Morocco (CERD/C/MAR/17-18) at its 2032nd and 2033rd meetings (CERD/C/SR.2032 and CERD/C/SR.2033), held on 16 and 17 August 2010. At its 2046th meeting (CERD/C/SR.2046), held on 25 August 2010, the Committee adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the combined periodic reports submitted by the State party and the additional information provided orally by the delegation. It expresses its appreciation for the frank and constructive dialogue held with the delegation, which included representatives of various ministerial departments. The Committee also commends the quality of the report submitted by the State party, in conformity with the Committee's reporting guidelines.

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

(3) The Committee welcomes the adoption of a number of laws aimed at preventing and combating racial discrimination, in particular:

(a) The Labour Code, which, in articles 9, 36 and 478, prohibits and protects against any form of racial discrimination in the area of employment or in the exercise of a profession;

(b) The Act on the organization and operation of prison facilities, which, in article 51, stipulates that there shall be no discrimination in the treatment of detainees on the basis of race, colour, nationality, language or descent;

(c) Act No. 62-06 of 2007, amending the Nationality Code of 1958 to bring about equality between men and women through a provision enabling Moroccan mothers to transmit Moroccan nationality to their children;

(d) The Associations Act, as amended in 2002, which prohibits the establishment of associations that promote racial discrimination and stipulates that associations encouraging any form of racial discrimination shall be disbanded;

(e) Political Parties Act No. 36-04 of 2006, which, in article 4, outlaws any political party that is based on a particular religion, language, race or region or, in general terms, on postulates that are discriminatory or contrary to human rights;

(f) The 2003 Press Code, which, in article 39 bis, provides for the punishment of incitement to racial discrimination, hatred or violence in any form;

(g) Article 721 of the Code of Criminal Procedure, establishing the inadmissibility of any extradition request that is racially motivated;

(h) Act No. 09-09, of 2010, on measures to combat violence at sporting events.

(4) The Committee also commends the State party's adoption, in 2004, of a Family Code that promotes the principle of equality between the sexes and aims to achieve an equitable distribution of family rights and responsibilities and thus to prevent and provide protection against double or multiple discrimination.

(5) The Committee notes with satisfaction that the State party has taken steps to promote human rights, and has adopted programmes and plans to this end, in particular the plan of action for democracy and human rights launched in 2009.

(6) The Committee welcomes the information provided by the State party underscoring the declaration made by Morocco under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, by virtue of which any individual or group of persons in Morocco believing themselves to be victims of racial discrimination shall henceforth be able to seek protection under the provisions of the Convention and refer any complaints to the Committee.

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

(7) The Committee notes the explanations given by the delegation for the State party's refusal to identify ethnic groups or make distinctions between citizens on ethnic, linguistic or religious grounds. It is, however, concerned by the lack of statistical data in the State party's report relating to the ethnic composition of the population.

**In the light of general recommendation No. 08 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and 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, on the use of mother tongues, on languages commonly spoken, and on any other indicator of ethnic diversity. The Committee also recommends that it be provided with any other information drawn from targeted socio-economic research in which participation was voluntary and the privacy and anonymity of the persons concerned were fully**

respected, that might assist it in evaluating the economic, social and cultural situation of the Moroccan population.

(8) The Committee regrets that the State party has not incorporated in its Constitution provisions on the primacy of international treaties over domestic law, in particular the Code of Criminal Procedure and the Nationality Code.

**The Committee recommends that the State party incorporate provisions in its Constitution on the primacy of international treaties over domestic law, in order to ensure broad application of this principle and enable litigants to invoke the relevant provisions of the Convention before the courts.**

(9) The Committee is concerned that the definition of racial discrimination established in the State party's legislation is not in full conformity with the provisions of article 1 of the Convention.

**The Committee recommends that the State party either amend its existing legislation or adopt new legislation specifically prohibiting racial discrimination, in order to bring its legal framework into full conformity with article 1 of the Convention.**

(10) The Committee is concerned that the provisions of the State party's Criminal Code do not cover in their entirety the offences envisaged in article 4 of the Convention.

**Recalling its general recommendations No. 1 (1972), No. 7 (1985) and No. 15 (1993), which stipulate that the provisions of article 4 are mandatory and preventive in nature, the Committee recommends that, in its next round of general reform of the justice system, the State party incorporate within its Criminal Code provisions giving full effect to article 4 of the Convention, and in particular provisions that make the dissemination of racist ideology a specific offence. The Committee also recommends that the State party make racist motives an aggravating circumstance in racial discrimination under its criminal legislation.**

(11) The Committee notes the information that the State party has provided about steps taken to promote the Amazigh language and culture, particularly in education, and to strengthen the resources of the Royal Institute for Amazigh Culture. The Committee is nonetheless concerned that the Amazigh language is not consistently recognized as an official language in the State party's Constitution, and that some Amazighs continue to suffer racial discrimination in accessing employment and health services, as well as in other areas, especially if they do not speak Arabic (art. 5).

**The Committee recommends that the State party step up its efforts to promote the Amazigh language and culture, particularly through the teaching of this language and culture, and take additional steps to ensure that Amazighs are not subject to racial discrimination, in particular as regards access to employment and health services. It also encourages the State party to consider making the Amazigh language an official language under the Moroccan Constitution, and to provide literacy training for the Amazigh in their own language. Lastly, the Committee recommends that the State party give special attention to the development of regions inhabited by the Amazigh in the context of the work of the Consultative Committee on Regionalization.**

(12) The Committee is unclear as to the meaning and scope of the concept "Moroccan name" referred to in article 21 of Act No. 37-99 of 2002 on civil status, the application of which continues to prevent civil registrars from registering certain names, including Amazigh names in particular (art. 5).

**The Committee recommends that the State party clarify the meaning and scope of the concept "Moroccan name" as used in its legislation. It also recommends that the State party ensure that its civil registrars adhere fully to the provisions of the Ministry of**

**Internal Affairs Circular of March 2010 on choice of given names, which stipulates that all citizens shall have the right to register the names of their choice, including Amazigh names.**

(13) The Committee notes with concern the lack of a legislative and institutional framework providing protection for refugees and asylum-seekers, the difficulties encountered by these groups in accessing employment, and the discrimination they suffer in accessing health care, social services and housing.

**The Committee recommends that the State party establish a legal and institutional framework that clarifies asylum procedures, provides protection for the rights of refugees and asylum-seekers, particularly in relation to access to employment and housing, and shields these groups against all forms of racial discrimination.**

(14) The Committee is concerned about information indicating that non-citizens without residency permits, particularly nationals of sub-Saharan countries, are the victims of racial discrimination and xenophobia. It regrets the fact that they are often detained without the benefit of legal safeguards and are sometimes denied access to the courts. It also notes with concern that the principle of non-refoulement is not applied correctly by the State party (art. 5).

**In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party take steps to protect non-citizens without residency permits against racial discrimination and xenophobia, to ensure that they benefit from all legal safeguards when placed in detention, and to facilitate their access to the courts. The Committee also recommends that the State party ensure that the principle of non-refoulement is correctly applied.**

(15) The Committee is concerned that counter-terrorism measures are applied in a manner that does not always guarantee full respect of human rights, particularly in the case of non-citizens (art. 5).

**The Committee recommends that the State party take steps to ensure that persons suspected of terrorist activity benefit from fundamental legal safeguards, particularly when the suspects are foreign nationals, in the light of the statement on racial discrimination and measures to combat terrorism adopted by the Committee on 8 March 2002 (A/57/18, para. 514).**

(16) The Committee notes with concern that the Nationality Code does not allow Moroccan women to transmit their nationality to husbands of foreign origin, on an equal basis with Moroccan men (art. 5).

**The Committee urges the State party to revise its Nationality Code so that Moroccan women are able to transmit their nationality to husbands of foreign origin and thus enjoy rights equal to those enjoyed by Moroccan men.**

(17) The Committee is concerned that the Family Code is not uniformly applied to all Moroccans throughout the country. It is also concerned that ignorance of the Code on the part of judges in remote parts of the country could lead to double or multiple discrimination (art. 5).

**The Committee recommends that the State party take all necessary steps to ensure that the Family Code is applied fully and uniformly throughout Morocco and that none of the more vulnerable segments of its population, particularly women and children living in remote areas, suffer double or multiple discrimination. The Committee draws the State party's particular attention to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.**

(18) The Committee notes the various avenues of redress open to persons wishing to lodge a complaint of racial discrimination. However, it is concerned that access to justice remains difficult for certain vulnerable persons. The Committee is also concerned by that fact that the State party has provided insufficient information on complaints lodged, prosecutions initiated, and convictions and sentences handed down (art. 6).

(a) Referring to general comment No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recalls that an absence of complaints and litigation by victims of racial discrimination may be indicative of a lack of specific relevant legislation, ignorance of the remedies available, fear of social censure or reprisals, or unwillingness to institute legal proceedings on the part of the competent authorities. The Committee recommends that the State party:

- Seek to raise awareness of legislation on racial discrimination, ensure that the public in general, and members of vulnerable groups in particular, notably the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, are informed of the avenues of legal redress available to them, simplify these remedies and facilitate access thereto
- Consider using “discrimination testing” as admissible proof of discriminatory behaviour

(b) The Committee also recommends that the burden of proof be reversed in the State party’s legislation where complaints of racial discrimination are pursued under civil law;

(c) Lastly the Committee recommends that, in its next report, the State party include comprehensive details of complaints lodged, prosecutions brought, and convictions and sentences handed down for acts of racial discrimination.

(19) The Committee is concerned that vulnerable segments of the population who do not speak Arabic, particularly the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, continue to encounter communication difficulties in contacts with the judiciary at every stage of the legal process – a situation likely to result in violations of their right to equal treatment, protection and effective redress before the courts (arts. 5 and 6).

**The Committee recommends that the State party ensure full application of articles 21, 73, 74 and 120 of the Code of Criminal Procedure, guarantee the availability of interpretation services by training a greater number of sworn interpreters, and ensure that litigants from vulnerable population groups who do not speak Arabic, in particular the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, may benefit from proper administration of justice.**

(20) The Committee notes the measures and initiatives adopted by the State party to guarantee human rights training and raise awareness, including, in particular, the national plan of action to promote a culture of human rights launched in 2006. However, the Committee is concerned that racist stereotypes persist and that the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers continue to be viewed in a negative light by the rest of the Moroccan population (art. 7).

**The Committee recommends that the State party step up its efforts to provide human rights training, placing a particular focus on the fight against racial discrimination, as well as its efforts to raise awareness of the need for tolerance, interracial or inter-ethnic understanding and intercultural relations among law enforcement officials — specifically, police officers and gendarmes, members of the judiciary, prison officers and lawyers — and also among teachers. It also recommends that the State party continue its efforts to raise public awareness and knowledge of the importance of**

**cultural diversity, understanding and tolerance, especially in respect of vulnerable population groups and the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers in particular.**

(21) Bearing in mind the indivisibility of all human rights, the Committee urges the State party to consider ratifying those international human rights treaties to which it is not yet a party, but which could have a bearing on the question of racial discrimination for which a solution is sought and have particular resonance in the recent history of Morocco, such as the International Convention for the Protection of All Persons from Enforced Disappearance adopted in 2006.

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(23) The Committee recommends that, in connection with the preparation of its next periodic report, the State party continue its consultations and extend its dialogue with civil-society organizations working in the field of human rights, especially those working to combat racial discrimination.

(24) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of the States Parties to the Convention (see CERD/SP/45, annex) and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee draws attention to paragraph 14 of General Assembly resolution 61/148, in which the Assembly strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(25) The Committee recommends that the State party's reports be made readily available to the public at the time of their submission, and that the concluding observations issued by the Committee after consideration of the reports be distributed in the official language and other commonly used languages, as appropriate.

(26) Noting that the State party submitted its core document in 2002, the Committee encourages the State party to submit an updated version, of between 60 and 80 pages, 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).

(27) In accordance with article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests that the State party provide information on its follow-up to the recommendations contained in paragraphs 11, 13 and 14 above within one year of the adoption of the present concluding observations.

(28) The Committee also wishes to draw the State party's attention to the particular importance of the recommendations contained in paragraphs 7, 9, 10, 18, 20 and 26, and requests that the State party provide detailed information in its next periodic report on the specific steps taken to effectively implement these recommendations.

(29) The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports in one document no more than 40 pages long, due on 17 January 2014, taking into account the guidelines for the CERD-specific document which the Committee adopted at its seventy-first session (CERD/C/2007/1), and that it address in this document all points raised in the present concluding observations.

#### 47. Netherlands

(1) The Committee considered the consolidated seventeenth to eighteenth reports of the Netherlands (CERD/C/NLD/18) at its 1986th and 1987th meetings (CERD/C/SR/1986 and CERD/C/SR/1987), held on 23 and 24 February 2010. At its 2003rd meeting (CERD/C/SR/2003), held on 5 March 2010, it adopted the following concluding observations.

##### A. Introduction

(2) The Committee welcomes the submission of the seventeenth to eighteenth periodic reports by the State party. It expresses its appreciation for the constructive dialogue held with the delegation and the extensive written and oral responses to the list of issues (CERD/C/NLD/Q/17-18 and Add.1) and the questions posed by Committee members.

##### B. Positive aspects

(3) The Committee notes with appreciation the following measures taken by the State party since the examination of its last periodic report (CERD/C/452/Add.3):

(a) The enactment of the Municipal Anti-Discrimination Services Act, which entered into force on 28 July 2009, and which obliges municipalities to provide easily accessible facilities for handling complaints about discrimination from members of the public;

(b) The entry into force, on 1 December 2007, of the new Instructions on Discrimination to the police and Public Prosecution Service and the requirement for the police to keep a record of every report and formal complaint of discrimination;

(c) The ratification, in November 2006, of the Council of Europe's Convention on Cybercrime, the very recent approval by the House of Representatives of the Additional Protocol to the Convention and its introduction to the Senate with a view to early ratification;

(d) The establishment, in February 2008, of an anti-trafficking task force to coordinate government measures to combat trafficking;

(e) The "Discrimination? Call now!" campaign launched in June 2004 to raise awareness of discrimination and to direct the attention of victims of discrimination to the national helpline and other resources.

##### C. Concerns and recommendations

(4) While acknowledging that the Government's letter to Parliament on integration (November 2009) contains information on policies and measures to combat discrimination, the Committee notes that the letter does not constitute an adequate replacement for the comprehensive plan of action to combat discrimination that had been in place until 2007. The Committee is also concerned that the current policy on integration has effectively shifted the primary responsibility for integration from the State to immigrant communities (art. 2).

**The Committee recommends that the State party proceed with the expeditious preparation and implementation of a plan of action to address discrimination in all areas covered by the Convention. It also recommends that the State party ensure that**

**its integration policies reflect an appropriate balance between the responsibilities of the State under the Convention and the responsibilities of immigrant communities.**

(5) The Committee notes that, under the Civic Integration (Preparation Abroad) Act, migrants from certain countries requiring a temporary residence permit to enter the Netherlands for family formation or unification must pass the civic integration examination before entering the country. As this requirement applies only to migrants from certain countries, the Committee is concerned that the application of the Act results in discrimination on the basis of nationality, particularly between so-called “Western” and “non-Western” state nationals (arts. 2 and 5).

**The Committee recommends that the State party review this legislation with a view to abolishing the discriminatory application of the civic integration examination abroad to “non-Western” state nationals. The Committee, furthermore, urges the State party to ensure the systematic review of its immigration laws to ensure compatibility with the Convention.**

(6) The Committee takes note of the information provided by the State party that its anti-discrimination policies are not aimed at specific groups. It is concerned, however, that this may result in indirect discrimination and insufficient attention being paid to the needs and concerns of groups which may, at different periods of time, be particularly susceptible to direct or indirect discrimination (art. 2).

**The Committee encourages the State party to maintain a flexible approach to addressing discrimination, whether direct or indirect, including through appropriate special measures in line with general recommendation No. 32 (2009), where such discrimination affects specific groups disproportionately.**

(7) The Committee is concerned that the de facto segregation of educational establishments, particularly primary and secondary schools, remains a problem in the State party and that measures such as the establishment of the Mixed Schools Knowledge Centre and the role assigned to the Education Inspectorate in promoting integration have proved inadequate (art. 3).

**The Committee urges the State party to increase its efforts to prevent and abolish segregation in education, including through the review of admissions policies which may have the effect of creating or exacerbating this phenomenon and other disincentives to such segregation.**

(8) The Committee is concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, the continuing incidence of manifestations of racism and intolerance towards ethnic minorities and the general deterioration in the tone of political discourse around discrimination (art. 4).

**The Committee urges the State party to take more effective measures to prevent and suppress manifestations of racism, xenophobia and intolerance and to encourage a positive climate of political dialogue, including at times of local and national election campaigns.**

(9) The Committee welcomes the concerted efforts of the State party to police and remove discriminatory or racist material from Dutch websites. Nevertheless, it is concerned that the dissemination of such material through the internet remains widespread (art. 4).

**The Committee recommends that the State party intensify its efforts to combat the dissemination of ideas based on racial superiority through the internet as well as other media, including racist speech by political parties.**

(10) While acknowledging the general information provided by the State party regarding offences involving discrimination, the Committee regrets the lack of detailed information,



in the report of the State party, on acts of violence or incitement to such acts against any race or group of persons of another colour or ethnic origin (art. 4).

**The Committee recommends that the State party provide detailed information on the prevalence of these offences and the number of prosecutions and convictions, as appropriate.**

(11) While noting the high number of asylum-seekers admitted by the State party, the Committee is concerned at the practice of detaining unaccompanied children and families with children upon their arrival in the Netherlands (arts. 2 and 5).

**The Committee recommends that the State party effectively implement its stated policy of using detention as a measure of last resort and redouble its efforts to establish alternative living arrangements for families and children in such situations.**

(12) Despite the measures taken by the State party, including the Social Cohesion Initiative and the establishment of the National Diversity Management Network, the Committee takes note of information that rates of unemployment in ethnic minority groups, particularly women, are significantly higher than average. The Committee is also concerned at the under-representation of ethnic minorities in senior positions in the public and private sectors (art. 5).

**The Committee recommends that the State party take more effective measures to eliminate discrimination in access to employment, through, inter alia, awareness raising campaigns in the private and public sectors. The Committee urges the State party also to implement measures to achieve the equitable representation of ethnic minorities in elected bodies and other public sector services. The Committee encourages the State party to consider the use of special measures to address the above disparities, as envisaged in article 1 of the Convention, taking into account general recommendation No. 32 (2009).**

(13) The Committee notes with concern the prevalence of discrimination in the admissions policies and practices of fitness centres, catering establishments and places of entertainment (art. 5).

**The Committee recommends that the State party continue and strengthen its efforts to address such practices.**

(14) The Committee notes the absence, in the report of the State party, of detailed information on the socio-economic situation of minority groups resident in the State party, including Muslims, Roma and persons of Surinamese and African descent. It is, nevertheless, aware of information that a significant number of persons belonging to ethnic minorities experience social marginalization and discrimination, particularly in the areas of education, health and housing (art. 5).

**The Committee recommends that the State party provide, in its next periodic report, more detailed information, including statistical data disaggregated by age, gender and ethnic origin, on the socio-economic situation of all minority groups, particularly in relation to their access to education, health, employment and housing.**

(15) The Committee regrets that, despite the information provided by the State party (CERD/C/NLD/18, para. 3) that reports on the implementation of the Convention in Aruba and the Netherlands Antilles would be provided, none were submitted. The Committee wishes to underscore the importance of providing complete information on the implementation of the Convention in all territories of the State party (art. 9).

**The Committee recommends that the State party provide, in its next periodic report, full information on the implementation of the Convention in Aruba and the**

**Netherlands Antilles and provide technical and financial assistance to the Aruban and Antillean authorities to facilitate the compilation of the reports, if necessary.**

(16) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(17) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

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

(20) Noting that the State party submitted its core document in 1996 (HRI/CORE/1/Add.66 and 67), the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(21) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 4, 8 and 10 above.

(22) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations contained in paragraphs 5, 7 and 12 above and requests that the State party provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(23) The Committee recommends that the State party submit its nineteenth, twentieth and twenty-first periodic reports, due on 9 January 2013, in a single document, 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.

**48. Panama**

(1) The Committee considered the fifteenth to twentieth periodic reports of Panama, submitted in a single document (CERD/C/PAN/15-20), at its 1993rd and 1994th meetings (CERD/C/SR.1993 and SR.1994), held on 1 and 2 March 2010. At its 2008th meeting

(CERD/C/SR.2008), held on 11 March 2010, it adopted the following concluding observations.

#### **A. Introduction**

(2) The Committee welcomes the fifteenth to twentieth periodic reports submitted by the State party, and appreciates the opportunity to renew the dialogue with the State party after a period of 10 years. It also expresses its appreciation for the frank and sincere dialogue with the delegation and the efforts it has made to reply to the many questions contained in the list of issues and to the questions put by members of the Committee during the dialogue.

(3) Noting that the report was submitted late, the Committee invites the State party to respect, in future, the deadlines set for the submission of its reports. It also urges it to observe the Committee's guidelines for the submission of reports and to involve members of civil society in their preparation and implementation.

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

(4) The Committee welcomes the State party's collaboration with the Office of the United Nations High Commissioner for Human Rights since the establishment of that Office's regional office in Panama in 2007.

(5) The Committee views positively the adoption of legislation to combat racial discrimination, such as Act No. 11 of 2005 on discrimination in employment, Act No. 16 of 2002 on the right of admission to public places, and the creation of the National Commission against Discrimination under article 8 of the said Act. In particular it welcomes the reference made to the Committee in that Act.

(6) The Committee welcomes the institutions set up by the State party to combat discrimination and to protect and promote human rights, such as: the Ombudsman's Office, the National Council of the Black Ethnic Community and the National Commission for Refugee Affairs.

(7) The Committee welcomes the information that the State party intends to carry out in 2010 a population census which will include questions relating to self-identification for indigenous peoples and Afro-Panamanians.

(8) The Committee welcomes Act No. 72 of 2008 on Communal Lands, which makes provision for land ownership by indigenous communities who do not live in an indigenous region.

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

(9) The Committee notes with concern the persistence of racial discrimination and its historical roots, which have led to the marginalization, impoverishment and vulnerability of Afro-Panamanians and indigenous peoples. It is also concerned by the absence of any general provision prohibiting discrimination on grounds of race and classifying acts of racial discrimination as offences punishable by law, in conformity with article 4 of the Convention.

**The Committee recommends that the State party adopt legislation to make fully effective the provisions of the Constitution relating to non-discrimination and expressly prohibiting discrimination on grounds of race and to guarantee the availability of effective remedies to ensure implementation of such legislation. The Committee also reiterates its recommendation to the State party that it adopt specific criminal legislation in conformity with article 4 of the Convention.**

(10) The Committee is concerned by the lack of statistical data in the State party's report on the demographic composition of the population, and in particular on Afro-Panamanians,

and notes with concern that the most recent population census was held in 2000. The Committee points out that this information is required in order to evaluate the implementation of the Convention and to monitor policies benefiting minorities, indigenous peoples and Afro-Panamanians.

**The Committee requests the State party to publish the results of the forthcoming 2010 population census and that the census gather, among other data, information on indigenous peoples and Afro-Panamanians. The Committee draws attention, in particular, to the importance of including in the census a question on self-identification to obtain a true picture of the ethnic dimension of the State party. In addition, in the light of paragraph 8 of the reporting guidelines and general recommendation No. 4 concerning the submission of reports by States parties (article 1 of the Convention) and general recommendation No. 24 concerning article 1 of the Convention, the Committee recommends that the State party include in its next periodic report information on the demographic composition of the population, in particular on indigenous peoples and Afro-Panamanians.**

(11) The Committee expresses its concern at the fact that, in spite of the adoption of policies and the creation of national institutions, in practice Afro-Panamanians and indigenous peoples still encounter considerable difficulties in exercising their rights and are the victims of de facto racial discrimination and marginalization and that they are particularly vulnerable to violations of human rights. The Committee is also concerned by the structural causes which perpetuate discrimination and denial of access to social and economic rights and development, in particular in the areas of employment, housing and education. The Committee expresses its concern about the information that most indigenous peoples and Afro-Panamanians do not have effective access to basic services such as water supply, electricity, sanitation, education, public housing programmes and microcredit.

**The Committee recommends that the State party combat discrimination and effectively implement special measures to ensure that Afro-Panamanians and indigenous peoples are able fully to exercise human rights on equal terms. While the Committee takes note of the existence of various national policies relating to special measures in a number of areas, it is concerned that those policies do not sufficiently address the structural causes responsible for the denial of access to social and economic rights and to development. The Committee recommends that the State party increase, insofar as possible, the resources allocated for policy implementation, in particular at the departmental and municipal levels, and ensure that they are efficiently and transparently monitored. The Committee again underscores the importance of organizing consultations with the indigenous peoples and Afro-Panamanians concerned in order to draw up the relevant development plans and special measures, taking into account general recommendation No. 32.**

(12) The Committee expresses its serious concern about the information received that, despite the existence of the indigenous region as an entity, with provision for self-government and communal ownership of land by indigenous peoples, there are some indigenous communities that have not obtained a region or entity of similar status; this is illustrated by the exclusion of some Ngobe and Emberá communities and the fact that the Bri Bri and Naso communities have been denied such an entity. The Committee also draws attention to the failure to register children born in the indigenous regions. The Committee further wishes to express its concern at the very low standard of living in the indigenous regions, such as the area of Darién where there is poor access to basic services and to governmental poverty-elimination policies.

**The Committee recommends that the State party finalize the procedures still pending to ensure that all Panamanian indigenous communities secure a region or entity of similar status. It also urges the State party to do its utmost to ensure that its**

**governmental poverty-elimination policies are effective throughout the country, and in particular in the indigenous regions.**

(13) The Committee expresses its serious concern about the information received concerning expulsions and displacements affecting indigenous communities, in connection with energy projects, exploitation of natural resources and tourism. The Committee ventures to mention, as examples, the incidents on the coast of Bocas del Toro and in the communities of San San and San San Druy, in which the Naso community's cultural centre was even destroyed. The Committee is concerned in particular by the information on violence during these incidents and the use of the police and/or security forces. The situation is even more serious when violence is used during expulsions.

**The Committee recommends that the State party adopt the necessary effective measures to ensure the prohibition of forced removals throughout the country. The Committee urges the State party to assume its role as mediator in such conflicts by protecting citizens, including indigenous and Afro-Panamanian citizens, and that it collaborate in seeking a solution to conflicts over land to allow development projects to be harmonized with the indigenous world view.**

(14) The Committee notes with concern that on several occasions consultations concerning projects for the exploitation of resources, construction and tourism have been left in the hands of the private firms carrying out such projects. The Committee also notes with concern that the agreements reached through such consultations are partial and not in conformity with the international standards that should govern such agreements. It notes with serious concern that the balance of power in the negotiations and agreements weighs heavily against the indigenous communities. The Committee would like to cite as an example the case of the Chan 75 hydroelectric project. The Committee expresses its serious concern at the lack of effective mechanisms for consultation with the indigenous peoples, and highlights in particular the need to obtain prior, informed and voluntary consent for development projects, resource exploitation and tourism affecting their way of life.

**The Committee recommends that the State party institute appropriate mechanisms, in conformity with international standards, and in particular article 5 of the International Labour Organization Indigenous and Tribal Populations Convention, 1957 (No. 107), which the State party has ratified, to conduct consultations with communities potentially affected by development projects and the exploitation of natural resources so as to obtain their prior, informed and voluntary consent. The Committee also recommends that the State party should not delegate its responsibility in the process of consultation, negotiation and compensation in such situations to the third party concerned, the private enterprise.**

(15) The Committee expresses its concern that the victims of displacements are not being provided with adequate redress and compensation. The Committee notes with concern that agreements are being reached with only a few members of the family and community and that inadequate amounts are being paid, and that redress and compensation are left in the hands of firms.

**The Committee recommends that effective redress and compensation be provided for persons facing displacement owing to economic projects. It also recommends that, if a displacement is shown to be necessary, the State party should ensure that the persons displaced from their properties receive proper compensation, and provide for their relocation places that are equipped with basic services such as water supply, electricity, washing facilities and sanitation and proper facilities such as schools, health centres and transport.**

(16) The Committee takes note that in the cases of the Naso community in San San and in San San Druy, and of the community in Charco La Pava, the Inter-American

Commission on Human Rights has ordered provisional and unembargoed precautionary measures which have not been complied with by the State party. It also further notes with serious concern that in the case of Charco La Pava, in August 2008 the Committee sent a letter under its early-warning procedure and that this case is before the Inter-American Court of Human Rights and was the object of a visit by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in January 2009.

**The Committee urges the State party to pay careful attention to the statements and decisions of regional and international bodies on the issue, in order to prevent situations that violate the human rights of its indigenous communities. The Committee urges the State party to reconsider its position and to heed the requests by the Inter-American Commission on Human Rights, and the recommendations of the Special Rapporteur, and also to heed the calls made by this Committee and suspend construction of the dam on the Changuinola river and to endeavour to ensure that the human rights of its indigenous communities continue to be protected. It also recommends that a careful examination be made of the agreements reached on this matter to ascertain whether or not they comply with the State party's international obligations in respect of human rights. If that is not the case, the Committee recommends that the State party seek mechanisms in order to negotiate appropriate agreements for those communities.**

(17) The Committee expresses its serious concern at the refugee recognition process under way in the State party, and in particular at the situation of the refugees from the Emberá population fleeing from their place of origin in Choco (Colombia).

**The Committee recommends that the State party ensure that its asylum application mechanisms conform to the relevant international standards. It urges the State party in particular to respond to the specific situation of refugees belonging to the Emberá population.**

(18) The Committee expresses its concern at the existence of negative stereotypes and perceptions of minorities propagated by the media and history books. It notes with particular concern the statements by Government officials against persons of foreign origin, especially Colombians and persons from outside the American continent.

**The Committee recommends that the State party urgently carry out campaigns to raise awareness of racial discrimination and to combat existing stereotypes. It also recommends that it provide its Government officials with education and training in that sphere.**

(19) The Committee notes with concern the levels of HIV/AIDS infection among the Kuna indigenous community and, in this respect, also notes with concern the limited access to sexual and reproductive health services for indigenous peoples and Afro-Panamanians.

**The Committee urges the State party to ensure that sexual and reproductive health services are available for and accessible to the whole population, and in particular the Kuna community. It also urges it to carry out a campaign to raise awareness of sexually transmitted diseases.**

(20) The Committee is concerned by the information received about the intimidation and persecution of indigenous leaders and communities for militancy in protecting indigenous rights, and in particular in connection with major economic projects in the fields of hydroelectricity, mining and major works or tourist projects.

**The Committee urges the State party to step up measures to ensure the safety of indigenous leaders and communities, and in this respect to pay particular attention to the precautionary measures ordered by the Inter-American human rights system. In**

**view of the valuable role the Ombudsman's Office plays in preventing violations, the Committee recommends that the State party increase the funds assigned to the Office.**

(21) The Committee expresses its concern at the fact that the administration of justice has not adopted suitable measures to protect the rights of Afro-Panamanians and indigenous peoples and that the perpetrators of violations are as a rule unpunished. The Committee is also concerned that legal advice is inadequate and not always available in the indigenous languages.

**The Committee draws the attention of the State party to its general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. It encourages the State party to strengthen the provision of legal advice and to ensure that proper interpretation into indigenous languages is provided during trials. The Committee recommends that the State party pay particular attention to the conditions of imprisonment of the large number of Afro-Panamanians deprived of their liberty. In addition, the Committee urges the State party to ensure that remedies are effective, independent and impartial and that victims receive fair and proper compensation. The Committee urges the State party to investigate and punish the practice of racial profiling used by the police against the population of African descent.**

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified; in particular it urges it to consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

(23) In light of its general recommendation No. 33 on follow-up to the Durban Review Conference, the Committee recommends that the State party take into account the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when incorporating the Convention into domestic law. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(25) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention and recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee draws attention to General Assembly resolutions 61/148, of 19 December 2006, and 62/243, of 24 December 2008, in which it strongly urged States parties to the Convention to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(27) Noting that the State party submitted its core document in 1996, the Committee encourages it to submit an updated version in conformity with the harmonized guidelines on reporting to the human rights treaty bodies, and in particular those on the core document, adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3 and Corr.1).

(28) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 13 and 14 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 9, 11, 15 and 18 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its twenty-first, twenty-second and twenty-third periodic reports in a single document by 4 January 2013, taking into consideration the guidelines for the CERD-specific document to be submitted by States parties under article 9, paragraph 1, of the Convention, adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations.

#### 49. **Romania**

(1) The Committee considered the sixteenth to nineteenth periodic reports of Romania, submitted in a single document (CERD/C/ROU/16-19), at its 2022nd and 2023rd meetings (CERD/C/SR.2022 and 2023), held on 9 and 10 August 2010. At its 2042nd meeting (CERD/C/SR.2042), held on 23 August 2010, the Committee adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the periodic reports submitted as a single document by the State party and the supplementary information provided orally by the delegation. It appreciates that the State party sent a high-level delegation and welcomes the resumption of dialogue with the State party after a break of 11 years. The Committee welcomes the high quality of the document submitted by the State party, which was in keeping with the Committee's guidelines, and the delegation's frank and constructive replies to the questions and comments raised by the Committee members.

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

(3) The Committee notes with satisfaction that the amended Constitution of 2003 contains provisions on the prevention of discrimination.

(4) The Committee welcomes the adoption of a number of laws and ordinances aimed at preventing or combating discrimination, including:

(a) Ordinance No. 137/2000 on the prevention and sanctioning of all forms of discrimination, which provides the overall legal framework in this area;

(b) Emergency Ordinance No. 31/2002, prohibiting organizations and symbols of a fascist, racist or xenophobic nature and the glorification of those found guilty of committing crimes against peace and humanity;

(c) Articles 317 and 247 of the Criminal Code, on incitement to discrimination and the abuse of authority on discriminatory grounds;



(d) Act No. 107/2006, amending Emergency Ordinance No. 31/2002, which broadens the definition of the Holocaust to include persons of Roma origin;

(e) Act No. 504/2002 on audio-visual media (as amended and supplemented by Act No. 402/2003), which prohibits the broadcasting of programmes containing any form of incitement to hatred on grounds of race, religion, nationality, gender or sexual orientation;

(f) Act No. 14/2003 on political parties, which regulates political representation and participation in public life on the basis of equality and non-discrimination among citizens;

(g) The new Labour Code, as adopted by Act No. 53/2003 and subsequently amended, which defines and bans direct and indirect discrimination.

(5) The Committee notes that the State party has established various bodies and institutions to combat discrimination, such as the National Council for Combating Discrimination, the National Agency for Roma, the Ombudsman, the Committee for National Minorities, the National Audio-Visual Council and the Ministerial Department for Inter-ethnic Relations.

(6) The Committee notes with satisfaction that the State party has taken a number of measures and implemented programmes and plans inter alia for the integration of persons belonging to minorities, for the upbringing and education of Roma children and for the promotion of the mother tongues of ethnic minorities, as well as for the prevention of discrimination against persons belonging to ethnic minorities, including through the National Strategy on Measures to Prevent and Combat Discrimination (2007–2013) and the National Strategy to Improve the Situation of Roma.

(7) The Committee welcomes the information from the State party that Romania has already made the declaration under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination and that it has ratified the European Charter for Regional or Minority Languages, the Council of Europe's Framework Convention for the Protection of National Minorities and Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedoms.

### C. Concerns and recommendations

(8) The Committee takes note of the data supplied by the State party on the ethnic composition of the population, drawn from the 2002 census. However, the Committee is concerned that the conditions in which the census was carried out did not make it possible to collect comprehensive, precise and reliable data on the actual ethnic make-up of the population of Romania, including minorities and the Roma minority in particular.

**The Committee recommends that the State party improve its data-collection methods for the next census, in 2011, so as to be able to provide, in its next report, comprehensive, precise and reliable data on the ethnic composition of the population, particularly the number of Roma, and also on other national minorities.**

(9) The Committee takes note of the various measures taken by the State party, including national strategies, plans and programmes, to prevent and combat racial discrimination and protect the most vulnerable groups. The Committee regrets, however, that the State party has not provided sufficient information on the impact of such measures in practice.

**The Committee recommends that the State party provide, in its next report, comprehensive information on the impact in practice of the numerous measures taken to prevent and combat racial discrimination and encourage the social integration of**

**vulnerable groups. It also recommends that the State party keep it informed about the fate of the bill on national minorities currently under consideration in parliament.**

(10) The Committee is concerned that the temporary austerity measures taken by the State party in 2009 and 2010 to cope with the global economic and financial crisis may have a negative impact on the situation of those groups in society that are most vulnerable and most at-risk of racial discrimination.

**In light of its general recommendation No. 33 (2009), the Committee recommends that the State party take appropriate measures, or strengthen existing measures, to ensure that the economic and financial crisis does not have harmful effects on the social situation of the most vulnerable groups, particularly refugees, immigrants and minorities, including the Roma, and that it does not lead to a rise in racial discrimination against these groups.**

(11) The Committee takes note of the information provided by the State party on the sphere of activity, mandate and functions of the National Council for Combating Discrimination, but observes that this institution is not yet fully in compliance with the Paris Principles (General Assembly resolution 48/134) (art. 2).

**The Committee recommends that the State party take appropriate measures to ensure that the National Council for Combating Discrimination is fully in compliance with the Paris Principles (General Assembly resolution 48/134).**

(12) The Committee observes that the areas of competence of the various institutions and bodies combating discrimination, particularly the National Council for Combating Discrimination and the Ombudsman, may overlap, which might be detrimental to the effectiveness of one or other institution in the fight against discrimination (art. 2).

**The Committee recommends that the State party specify the respective areas of competence of the various institutions and bodies combating discrimination in order to ensure the effectiveness of the system for preventing and combating discrimination, including in the processing of complaints, and that it take the necessary steps to ensure better coordination between such institutions and bodies.**

(13) The Committee notes that the State party's criminal legislation, particularly the Criminal Code, does not entirely cover the activities proscribed in article 4 of the Convention.

**Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which article 4 is of a preventive and mandatory nature, the Committee recommends that the State party include in the Criminal Code, when it is next reformed, provisions that give full effect to article 4 of the Convention.**

(14) The Committee takes note of the numerous measures taken by the State party to improve the situation of the Roma, and also to prevent and combat racial discrimination against them. However, the Committee is concerned that the Roma continue to be the victims of racial stereotyping and racial discrimination in access to education and in the quality of education — including through segregation of Roma children — as well as in access to housing, care, health services, social services and employment. The Committee is also concerned that the Roma are victims of discrimination in access to certain public places and services (art. 5).

**Bearing in mind its general recommendation No. 27 (2000) on discrimination against Roma, the Committee encourages the State party to continue its efforts and take the necessary measures to prevent and combat racial discrimination against Roma. In this connection, the Committee recommends that the State party:**

(a) Enforce existing legislation and other measures banning any discrimination against Roma;

(b) Ensure that Roma children have access to education, and also that the ministerial order of July 2007 banning segregation is disseminated among teachers and Roma parents, and publicize and implement that order;

(c) Facilitate access by Roma to housing, including by avoiding unlawful expropriation and forced evictions without offering alternative accommodation;

(d) Guarantee access by Roma to health care and services, and also to social services, and continue to support Roma health mediators;

(e) Develop training and learning opportunities for Roma, with a view to facilitating their entry to the labour market;

(f) Combat discrimination against Roma in access to public places and services, by prosecuting and punishing anyone engaging in discriminatory behaviour.

(15) The Committee notes with concern the excessive use of force, ill-treatment and abuse of authority by police and law enforcement officers against persons belonging to minority groups, and Roma in particular. It is also concerned about the use of racial profiling by police officers and judicial officials (art. 5).

**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 encourages the State party to:**

(a) Continue to take measures and to enforce existing measures, particularly Act No. 218/2002 and Act No. 360/2002, with a view to combating the excessive use of force, ill-treatment and abuse of authority by the police against persons belonging to minority groups, including Roma;

(b) Facilitate access to remedies by persons belonging to minorities in respect of such behaviour;

(c) Guarantee the effective and objective processing of complaints, under the supervision of the Inspectorate General of the Police;

(d) Ensure that such behaviour is indeed prosecuted and punished by the judicial authorities;

(e) Continue, meanwhile, to recruit Roma into the police force.

**The Committee also recommends that the State party eliminate the use of racial profiling by the police and justice system and that it provide comprehensive data, in its next report, on complaints, prosecutions and punishments for such behaviour.**

(16) The Committee is concerned at reports of the spread of racial stereotyping and hate speech aimed at persons belonging to minorities, particularly Roma, by certain publications, media outlets, political parties and certain politicians (arts. 4, 5 and 6).

**The Committee recommends that the State party take effective measures to punish the publications, media outlets, political parties and politicians guilty of such behaviour. It also recommends that the State party take measures to promote tolerance among ethnic groups.**

(17) The Committee is concerned at the persistence of racism in sport, particularly football, as manifested in hate speech and racist incidents targeting certain minorities, including the Roma (arts. 4 and 5).

**The Committee recommends that the State party continue its efforts to combat racism in sport, particularly football. It also recommends that the State party use sport to promote a culture of tolerance and multicultural and ethnic diversity.**

(18) The Committee notes that various remedies are available for acts of racial discrimination, notably with the National Council for Combating Discrimination, the Ombudsman and the courts of the State party. The Committee is nevertheless concerned that the State party has not provided sufficient information on complaints, prosecutions, convictions and sentences handed down by the courts (art. 6).

**With 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 recalls that the absence of any complaints and legal proceedings brought by victims of racial discrimination may indicate the lack of any specific legislation in the matter, an ignorance of the remedies available, fear of social disapproval or a lack of will on the part of the authorities responsible for bringing prosecutions. The Committee recommends that the State party disseminate its legislation on racial discrimination and inform the public — in particular minorities such as the Roma — of all available legal remedies. It also recommends that the State party provide, in its next report, complete information on complaints, proceedings, convictions and sentences for acts of racial discrimination.**

(19) The Committee notes with concern that persons belonging to national minorities, particularly the Roma, are not always granted the opportunity to communicate in their own language at all stages of legal proceedings, owing to a lack of interpreters, which undermines their right to the proper administration of justice (arts. 5 and 6).

**The Committee recommends that the State party enforce Act No. 304/2004 on the organization of the judiciary, which provides that persons belonging to national minorities have the right to express themselves in their mother tongue before the courts. The Committee recommends that the State party guarantee the full enjoyment of this right, notably by undertaking to train interpreters, in order to ensure that persons facing trial who belong to a national minority, particularly the Roma, benefit from the proper administration of justice.**

(20) The Committee is concerned that training in human rights and in interracial or inter-ethnic harmony remains insufficient and that a very negative perception of minorities, particularly the Roma, persists among the general public in the State party (art. 7).

**The Committee recommends that the State party intensify its efforts to impart human rights training and to foster an awareness of tolerance, interracial or inter-ethnic understanding and intercultural relations among law enforcement officials, including police, gendarmerie, judicial and prison administration personnel, and among lawyers and also teachers. It further recommends that the State party continue its public education and awareness-raising initiatives in the areas of multicultural diversity, harmony and tolerance of minorities, particularly the Roma.**

(21) Bearing in mind the indivisible nature of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties to which it is not already a party, particularly those whose provisions have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party take into account the Durban Declaration and Programme of Action adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as

well as the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(24) 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 (see annex to CERD/SP/45) and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee recalls paragraph 14 of General Assembly resolution 61/148, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(26) Noting that the State party submitted its core document in 1996, the Committee encourages it to submit an updated version of 60 to 80 pages, in accordance with the harmonized guidelines on reporting under the international human rights treaties, namely those relating to the common core document, as adopted at the fifth inter-committee meeting of treaty bodies, held in June 2006 (HRI/GEN/2/Rev.4).

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 15, 16 and 17 above.

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 10, 19 and 20, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(29) The Committee recommends that the State party submit its twentieth to twenty-second periodic reports in a single document of no more than 40 pages by 15 October 2013, taking into account the guidelines for the preparation of reports to the Committee on the Elimination of Racial Discrimination adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address in this report all points raised in the present concluding observations.

#### 50. **Slovakia**

(1) The Committee considered the sixth to eighth periodic reports of the Slovak Republic (CERD/C/SVK/6-8), submitted in one document, at its 1975th and 1976th meetings (CERD/C/SR.1975 and CERD/C/SR.1976), held on 16 and 17 February 2010. At its 1995th and 1996th meetings (CERD/C/SR.1995 and CERD/C/SR.1996), held on 2 and 3 March 2010, it adopted the following concluding observations.

##### **A. Introduction**

(2) The Committee welcomes the timely submission of the sixth to eighth periodic reports, which included responses to the concerns raised in the Committee's previous

concluding observations (CERD/C/65/CO/7), and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the frank and sincere dialogue held with the delegation as well as the responses provided to the list of issues and the wide range of questions posed by Committee members.

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

(3) The Committee welcomes the various legislative measures adopted by the State party to strengthen the framework for the promotion and protection of human rights, and in particular the elimination of racial discrimination:

(a) The adoption of a criminal code in 2005, as amended in 2009, which provides for better protection from crimes related to racial discrimination, for example by criminalizing a wider range of offenses related to racial discrimination;

(b) The adoption of a new code of criminal procedure in 2005, which, inter alia, offers wider protection to victims of racial discrimination in the filing of damage claims;

(c) The adoption of amendments to the Anti-Discrimination Act in April 2008, which, inter alia, provide for the introduction of special measures, as well as a reverse burden of proof in civil cases where racial discrimination can be reasonably assumed;

(d) The ratification of further international treaties, such as the European Convention on the Compensation of Victims of Violent Crimes in 2009, which will improve access to remedies for victims of racial discrimination.

(4) The Committee welcomes the adoption of an action plan for the prevention of all forms of discrimination, racism, xenophobia, anti-Semitism and other expressions of intolerance for the period 2009–2011, and other measures aimed at eliminating discrimination, such as the “Community Programme for Employment and Social Solidarity, PROGRESS”.

(5) The Committee notes with satisfaction the various steps taken to improve the situation of the Roma minority in the fields of education, housing and employment, such as the adoption of amendments to the School Act, which are designed to prepare children for their integration into the official primary school system, the National Action Plan regarding the Decade of Roma Inclusion, the “Scheme for the support of construction of low-income municipal housing designated for impoverished people and construction of technical facilities in Roma settlements”, the “Basic Theses of the Concept of the Slovak Government Policy for the Integration of Roma Communities in the Area of Housing”, and the “Operational Programme Employment and Social Inclusion”.

(6) The Committee notes with appreciation the establishment of an Emergency Transit Centre to provide humanitarian protection to refugees awaiting their resettlement.

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

(7) The Committee has taken note of the data provided on the ethnic composition of the population and the main minorities residing in the State party, but is concerned about the divergence in statistics concerning the number of members of the Roma minority among the population. The Committee also 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.

**In view of the census to be conducted in 2011, the Committee encourages the State party to strengthen its support for the multi-disciplinary task force established to develop a plan for gathering more reliable data concerning the percentage of the population that identifies itself as Roma. In line with its general recommendation No. 8 (1990) on interpretation and application of article, paragraphs and 4 of the**

Convention and with paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session (CERD/C/2007/1), the Committee requests the State party to include in its next periodic report disaggregated data on the socio-economic status of the State party's minorities.

(8) The Committee notes the State party's strong focus on combating extremism and xenophobia, but is concerned that other forms of racial discrimination should receive similar attention (art. 1).

**While congratulating the State party for combating xenophobia and extremism, the Committee encourages the State party to broaden its focus on its approach to combating racial discrimination with a view to countering it in all its forms.**

(9) The Committee notes that the Commission on coordinating actions aimed at eliminating racially motivated crime has been replaced by a multi-disciplinary group of experts to coordinate all actions the State party's authorities involved in combating racial discrimination, as well as to cooperate with NGOs.

**The Committee recommends that the State party ensure the effective functioning of this new coordination body with a view to eliminating racial discrimination in light of the problems reported regarding its preceding institution.**

(10) The Committee expresses concern that the State party's legal provisions, programmes and policies aimed at eliminating racial discrimination are not fully implemented. It regrets the lack of information regarding the invocation of the anti-discrimination act in courts (arts. 2 and 5).

**The Committee calls upon the State party to ensure effective implementation of all laws, programmes and policies aimed at eliminating racial discrimination, including by monitoring their implementation, particularly at the local level, and by raising awareness among the public at large, but in particular among minorities as well as the judiciary, about such measures. It also encourages the State party to actively involve the National Centre for Human Rights in the implementation of the anti-discrimination law. The Committee requests the State party to provide updated information concerning the application by courts of anti-discrimination provisions in its next periodic report.**

(11) The Committee, while noting with appreciation the adoption of special measures for the advancement of the Roma minority in a number of areas, remains concerned about the continued marginalization and precarious socio-economic situation of members of this minority, and the discrimination they are faced with, including in the fields of education, housing, health, and employment (arts. 2 and 5).

**The Committee urges the State party to enhance its efforts aimed at combating discrimination against Roma. In light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee also recommends that the State party 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 their effectiveness is regularly assessed. The Committee also reiterates the need to ensure that special measures 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.**

(12) The Committee welcomes the steps taken to combat and prevent racially motivated violence, including the introduction of stronger punishments in the Criminal Code as well as the establishment of an Inter-ministerial task force entrusted with the implementation of the Action Plan for the Prevention of All Forms of Discrimination. However, it continues to

be concerned about the increase in racially motivated attacks, including anti-Semitic violence and violence targeting Roma and non-EU migrants, sometimes perpetrated by neo-Nazi skinhead groups (arts. 4, 5 (b), and 7).

**The Committee urges the State party to intensify its efforts to combat and prevent racially motivated offences, in particular violence against Roma, Jews, and non-EU migrants, including by ensuring that all racially-motivated acts of violence are duly investigated and prosecuted, and that perpetrators are punished, taking into account the racial motivation of such acts as an aggravating circumstance. It also recommends that the State party carry out awareness-raising campaigns on this matter. The Committee further recommends that the State party take further measures to promote tolerance among ethnic groups. It also requests the State party 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.**

(13) The Committee remains concerned about the persistence of prejudice and negative attitudes against Roma in the State party and expresses its concern at racist statements in the discourse of public officials and political parties, targeting this minority. In view of reports of negative political discourse against the Hungarian minority, the Committee regrets the lack of information from the State party in this regard (arts. 4 and 7).

**The Committee recommends that the State party continue to endeavour to combat prejudices against ethnic minorities and to improve relations between the general public and minority communities, in particular Roma and Hungarians, with a view to promoting understanding and overcoming discriminatory attitudes. The Committee also recommends that the State party ensure the effective investigation and prosecution of all acts of political discourse against these minorities which are not in line to the Convention.**

(14) The Committee notes with appreciation the State party's obligatory provision of human rights training for, and the regular screening of, law enforcement officials, as well as the identification of police experts for Roma communities, among other measures. However, it continues to be concerned about reports of police brutality against members of the Roma minority, including minors, during arrest or while in custodial detention. It is also concerned about the low representation of Roma in the police (art. 5 (b) and (e)).

**Recalling its general recommendation No. No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee reiterates its recommendation that the State party intensify its efforts to combat and prevent ill-treatment of Roma by law enforcement officials, including by ensuring the effective implementation of relevant regulations of the Ministry of the Interior. It also reiterates its recommendation that the State party consider establishing a monitoring mechanism to carry out investigations into alleged police misconduct, which is independent from the State party's authorities. The Committee calls upon the State party to take further steps to increase the representation of Roma in the police force, for example by adopting special measures regarding their recruitment.**

(15) The Committee, while welcoming the State party's policy and practice of non-refoulement, expresses concern that some persons may not have been able to exercise their right to claim asylum and were handed over to the authorities of a neighbouring country (art. 5 (b)).

**Bearing in mind its general recommendation No. 30 (2004) on non-citizens, the Committee encourages the State party to take necessary measures with a view to ensuring that all persons in need of international protection can exercise their right to**



**access to asylum procedures, giving full effect to non-refoulement principle, and that they have their applications systematically referred to and assessed by a competent authority, in line with the State party's international obligations.**

(16) While welcoming the various measures adopted by the State party to ensure equal access to quality education for Roma children, the Committee reiterates its previous concern about the de facto segregation of Roma children in education. It expresses its concern at their large overrepresentation in special schools and classes for children with mental disabilities. The Committee is particularly concerned about decision-making processes for placing children in such special schools, which may not take into account the cultural identity of, and specific difficulties faced by Roma (arts. 2, 3 and 5 (e)).

**Recalling its general recommendation No. 27 (2000) on discrimination against Roma, the Committee urges the State party to bring to an end and to prevent segregation of Roma children in the field of education. It further recommends that the State party:**

**(a) Assess, on a more frequent basis, all pupils placed in special schools with a view to removing all children without mental disability from them;**

**(b) Revisit the procedure used for the determination of which children are to be enrolled in special schools, with a view to avoiding discrimination against Roma based on their cultural identity, and to closely monitor whether the criteria established are followed in practice, in light of paragraph 27 of the recommendations of the First Forum on Minority Issues on "Minorities and the Right to Education" (A/HRC/10/11/Add.1);**

**(c) Consider offering incentives to local authorities so that they develop action plans aimed at desegregating schools and promote active consultation and cooperation between parents of children of minorities and school authorities at the local level;**

**(d) Address de facto segregation of Roma in education in a global manner, taking into account its close relation to discrimination in the fields of housing and employment.**

(17) The Committee welcomes the steps taken to eliminate discrimination against Roma in the field of housing, including by the involvement of the Plenipotentiary of the Government for the Roma Communities and the Milan Šimečka Foundation to avoid forced evictions. However, it remains concerned about de facto segregation, forced evictions, as well as other forms of discrimination related to housing, encountered by the Roma minority. The Committee also continues to be concerned about the housing conditions in many segregated neighbourhoods. It also notes with concern that the State party described the autonomy of the construction authorities or self-governing bodies at the local level as a major obstacle to achieve non-discrimination in access to social housing subsidized by the State party (arts. 2, 3 and 5 (e)).

**In light of its general recommendation No. 27 (2000), the Committee recommends that the State party effectively implement and monitor compliance, at the local level, with its laws, policies and projects aimed at ensuring the right to housing for all without discrimination, including social housing. It reminds the State party that it may not invoke provisions of its internal law as a justification for a failure to implement the Convention. The Committee reiterates its recommendation that the State party strengthen its measures aimed at ameliorating the housing conditions of the Roma in view of the importance of such conditions for their enjoyment of other rights enshrined in the Convention. The Committee also recommends that the State party intensify its efforts to involve Roma communities and associations as partners together with other persons in housing project construction, rehabilitation and**

**maintenance. It further recommends that the State party act firmly against local measures denying residence to Roma and the unlawful expulsion of Roma, and refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.**

(18) The Committee continues to be concerned about allegations of sterilizations of Roma women without their informed consent, while acknowledging the delegation's assurance that they have not been carried out during the reporting period. It welcomes the adoption of new legal provisions prohibiting unlawful sterilizations and prescribing the "informed consent" of the patient for such a procedure, including Act No. 576/2004 Coll. on Healthcare, but takes note of information alleging inconsistent implementation by health personnel (arts. 5 (b) and (e); and 6).

**The Committee urges the State party to establish clear guidelines concerning the requirement of "informed consent" and to ensure that these guidelines are well-known among practitioners and the public, in particular Roma women. It recommends that the State party continue to monitor all health centres performing sterilizations with a view to ensuring that all patients who undergo such a procedure have been able to give their informed consent as required by law, and to investigating and, if appropriate sanctioning in case of a breach. The Committee also recommends that all reports of sterilization without informed consent be duly acknowledged and that victims be provided with adequate remedies, including apologies, compensation and restoration, if possible.**

(19) The Committee notes that in none of the cases decided by the Public Defender of Rights (Ombudsman) a violation related to racial discrimination was found, while also noting the State party's explanation that this can be attributed to the limitation of its mandate to deal with human rights violations by the administration and other public authorities. It is also concerned at the low number of complaints alleging racial discrimination (arts. 6 and 4).

**The Committee recalls 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 this 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. It also draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.**

(20) The Committee notes the delegation's assurances that the State party is committed to follow up the Committee's recommendations in Individual view No. 31/2005 (Mrs L.R. et al.) concerning social housing for Roma in the municipality of Dobšina.

**The Committee recommends that the State party ensure effective and timely implementation of its recommendations upon communications under article 14 of the Convention and to continue to keep it informed of any new developments.**

(21) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(22) In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the

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

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

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

(25) Noting that the State party submitted its core document in 2002, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

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

(27) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 10, 14, and 17, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(28) The Committee recommends that the State party submit its ninth to tenth periodic reports in a single document, due on 28 May 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.

## 51. **Slovenia**

(1) The Committee considered the sixth and seventh periodic reports of Slovenia (CERD/C/SVN/7), submitted in one document, at its 2028th and 2029th meetings (CERD/C/SR.2028 and CERD/C/SR.2029), held on 12 and 13 August 2010. At its 2044th meetings (CERD/C/SR.2044), held on 24 August 2010, it adopted the following concluding observations.

### **A. Introduction**

(2) The Committee welcomes the submission of the combined sixth and seventh periodic reports of the State party, which included responses to the concerns raised in the Committee's previous concluding observations (CERD/C/62/CO/9), and the opportunity thus offered to resume the dialogue with the State party. It also expresses appreciation for the frank and sincere dialogue held with the delegation, as well as the oral responses provided to the list of themes and the wide range of questions posed by Committee members.

**B. Positive aspects**

(3) The Committee notes with satisfaction the establishment of two programmes: the programme for special care and the programme for integration within the Ministry of Culture aimed at combating social exclusion and marginalization of the ethnic minorities residing in Slovenia.

(4) The Committee welcomes the adoption of a project called “promotion of employability, education and social inclusion of migrant workers and their families”. Its objective is to establish an “Info Point” to facilitate and help prevent exploitation and discrimination of migrant workers and improve their employment opportunities in the State party.

(5) The Committee welcomes the following legislative and institutional developments in combating racial discrimination of the Roma community in Slovenia:

(a) The adoption in March 2010 of the National Programme of Measures for Roma People for the 2010–2015 period. This programme outlines a series of measures to combat discrimination against Roma in access to education, housing, health care, employment and living conditions;

(b) The adoption in 2007 of the Roma Community Act;

(c) The establishment of the Roma Community Council, which represents the interests of the Roma community in Slovenia before State authorities;

(d) The adoption in 2004 of the Strategy Plan for the Education of Roma, in the drafting of which representatives of the Union of Roma of Slovenia participated.

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

**C. Concerns and recommendations**

(7) The Committee has taken note of the 2002 census data provided by the State party on the ethnic composition of the population and the main minorities residing in Slovenia. It is concerned, however, about the insufficient data on persons from certain minority groups, particularly minorities from former Yugoslav republics.

**The Committee recommends that, in accordance with paragraphs 10 to 12 of the reporting guidelines for the CERD-specific document adopted at its seventy-first session (CERD/C/2007/1), the State party provide information on the use of mother tongues as indicative of ethnic differences, together with information derived from targeted social surveys performed on a voluntary basis, with full respect for the privacy and anonymity of the individuals concerned, and recalls its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group.**

(8) The Committee, while expressing appreciation for the measures adopted by the State party to eliminate discrimination against the Roma communities, such as the National Roma Programme 2010–2015, remains concerned about the continued marginalization and precarious socio-economic situation of members of this minority, and the discrimination with which they are faced, including in the fields of education, housing, health and employment (arts. 2 and 5).

**The Committee urges the State party to enhance its efforts aimed at combating discrimination against Roma. In light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that**

**the State party engage in a data-gathering exercise to ensure that special measures in favour of Roma in the fields of education, housing, health and employment are designed and implemented on the basis of need, and that their implementation is monitored and their effectiveness is regularly assessed.**

(9) While welcoming the various measures adopted by the State party to ensure equal access to education for Roma children including through the Strategy for the Education of Roma in the Republic of Slovenia, the Committee is concerned about the practice of segregating these children in Slovene schools — ordinary or “special” — which has not yet been completely abolished (arts. 2, 3 and 5 (e) (v)).

**The Committee, in light of its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party take all necessary measures to eradicate completely the practice of segregating Roma children in the school system and ensure that they enjoy equal opportunities in access to quality education at all levels. The Committee also recommends that the State party ensure that all measures provided for in the Strategy for the Education of Roma in the Republic of Slovenia are implemented in practice and the time frames, resources, responsibilities and monitoring mechanisms are clearly set out.**

(10) The Committee welcomes the steps taken to eliminate discrimination against Roma in the field of housing, including by the involvement of the Ministry of Environment and its expert working group. However, it remains concerned about de facto segregation and other forms of discrimination related to housing encountered by the Roma minority. The Committee continues to be concerned about the housing conditions in many segregated neighbourhoods. The Committee is also concerned at the placing of Roma in camps outside populated areas that are isolated without access to health care and other basic facilities (arts. 2, 3 and 5 (e) (iii)).

**In light of its general recommendation No. 27 (2000), the Committee recommends that the State party effectively implement and monitor compliance, at the local level, with its laws, policies and projects in particular within the framework of the National Programme of Measures for Roma people for the 2010–2015 period aimed at ensuring the right to housing for all without discrimination, including social housing. The Committee reiterates its recommendation that the State party strengthen its measures aimed at improving the housing conditions of the Roma in view of the importance of such conditions for their enjoyment of other rights enshrined in the Convention. The Committee also recommends that the State party intensify its efforts to involve Roma communities and associations as partners, together with other persons, in housing project construction, rehabilitation and maintenance. It further recommends that the State party refrain from placing Roma in camps outside populated areas that are isolated and without access to health care and other basic facilities.**

(11) While welcoming the adoption of the Criminal Code in 2008 which criminalizes incitement to racial hatred, the Committee is concerned about continuing public manifestations of hate speech and intolerance by some politicians in the media, including online, towards persons belonging to minorities (arts. 4 and 7).

**The Committee recommends that the State party continue to endeavour to combat prejudices against persons belonging to ethnic minorities and improve relations between the general public and minority communities. The Committee also recommends that the State party ensure the effective investigation and prosecution of all acts of political discourse against these minorities that are not in line with the Convention.**

(12) While taking note that the State party Constitution provides for representation in Parliament of the Italian and Hungarian minorities, the Committee remains concerned

regarding the issue of representation of other minorities in the Slovenian Parliament and in regional elected bodies (art. 5 (c)).

**The Committee recommends that the State party adopt measures to protect persons belonging to minorities not explicitly provided for in the Constitution, in the exercise of their political rights without discrimination, and take measures to ensure that all groups of minorities are represented in Parliament and in regional elected bodies.**

(13) While taking note of the adoption in March 2010 of the law regulating the legal status of the “erased” people, the Committee remains concerned at the situation of the non-Slovenes from the former Yugoslavia, including Bosnians, ethnic Albanians from Kosovo, Macedonians and Serbs, whose legal status remains unresolved and who are therefore facing difficulties in terms of access to social and economic rights, such as access to health-care services, social security, education and employment. The Committee is also concerned that the new law does not envisage any outreach campaign directed towards “the erased” people living abroad in order to inform them of its existence (art. 5 (d) and (e)).

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

(a) **Resolve definitely the legal status of all concerned citizens from the former Socialist Federal Republic of Yugoslavia States presently living in Slovenia;**

(b) **Ensure the full enjoyment of their economic and social rights including the access to health services, social security, education and employment;**

(c) **Conduct an outreach campaign to inform “the erased” currently living outside Slovenia of the existence of the new legislative measures and the possibility of benefiting from them; and**

(d) **Grant full reparation, including restitution, satisfaction, compensation, rehabilitation and guarantees of non-repetition, to all individuals affected by the “erasure”.**

(14) The Committee is concerned that very few acts of racial discrimination have been prosecuted and punished in the State party (art. 6).

**The Committee requests that the State party ensure that appropriate provisions are available in national legislation and inform the public about all legal remedies in the field of racial discrimination. Furthermore, the Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be mainly an indication of the absence of relevant specific legislation, or of a lack of awareness of the availability of legal remedies, or of insufficient will on the part of the authorities to prosecute.**

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

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

(17) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance,

taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

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

(19) 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 and 63/243, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(21) Noting that the State Party submitted its core document in 2004, the Committee encourages the State Party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(22) 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 10 and 13 above.

(23) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 7, 9, 11 and 12 and request the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(24) The Committee recommends that the State party submit its combined eighth to eleventh periodic reports in a single document, due on 6 July 2013, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).

## 52. **Uzbekistan**

(1) The Committee considered the combined sixth and seventh periodic reports of Uzbekistan (CERD/C/UZB/6-7), submitted in one document, at its 2018th and 2019th meetings (CERD/C/SR.2018 and 2019), held on 5 and 6 August 2010. At its 2040th and 2041st meetings (CERD/C/SR.2040 and 2041), held on 20 and 23 August 2010, it adopted the following concluding observations.

**A. Introduction**

(2) The Committee welcomes the comprehensive report submitted in due time by the State party, which was drafted in accordance with the guidelines for the preparation of reports. It also expresses appreciation for the frank and sincere dialogue held with the high-level delegation and the efforts made to provide comprehensive responses to many issues raised in the list of themes and by Committee members during the dialogue.

**B. Positive aspects**

(3) The Committee welcomes the ratification by the State party of several international instruments related to human rights protection and in particular the accession of the State party to the Second Optional Protocol to the International Covenant on Civil and Political Rights in December 2008.

(4) The Committee welcomes the legislative measures taken to improve the promotion and protection of human rights in the State party since the examination of the fourth and fifth periodic reports, in particular the abolition of the death penalty and the introduction of judicial control over decisions to place individuals in custody (habeas corpus) in January 2008 and other judicial and legal reforms.

(5) The Committee notes with satisfaction the information that the State party provided up to 100,000 refugees from Kyrgyzstan with access to its territory following the recent outbreak of violence and also notes the active cooperation of the Government in ensuring the provision of humanitarian assistance to those in need.

(6) The Committee welcomes the establishment of the National Plan of Action on Fulfillment of the Recommendations of the Committee on the Elimination of Racial Discrimination for the past concluding observations and the information provided by the delegation that a similar plan would be adopted in respect to the present concluding observations. The Committee encourages the State party to submit comprehensive information on the implementation of the above Plan.

**C. Concerns and recommendations**

(7) The Committee reiterates its concern about the absence of a definition of racial discrimination in domestic law that is in full compliance with the Convention definition, even if the provisions of the Convention may be directly invoked before national courts, and also its concern for sufficient clarity on the relationship between the Convention and domestic law.

**The Committee is of the view that the elaboration of specific legislation on racial discrimination, including all elements provided in article 1 of the Convention, is an indispensable tool for effectively combating racial discrimination and recommends that the State party include such a definition in its legislation covering all fields of public and private life.**

(8) The Committee notes that insufficient information regarding the concrete outcomes of the measures taken towards the implementation of its previous concluding observations (CERD/C/UZB/CO/5) was provided by the State Party. It also notes that many of the concerns previously addressed to it by the Committee persist and have not resulted in structural change.

**The State Party is encouraged to comply with all recommendations and decisions addressed to it by the Committee and to take all necessary steps to ensure the effective implementation of the Convention.**

(9) The Committee notes that the last census of the population in the State party dates back to 1989, which may affect the accuracy of the data used in the report. The Committee



is concerned that, despite the fact that some demographic data has been provided, the disaggregated demographic data on the implementation of the Convention is insufficient. There are no economic and social indicators, disaggregated by ethnicity and gender, which makes it difficult to identify and tackle discrimination.

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

(10) The Committee points out that insufficient information was provided on the effective level of participation of members of national and ethnic minorities in State institutions and other sectors and on the number of people, including women of non-Uzbek ethnic origin occupying positions of responsibility within the State party's judiciary, administrative and political institutions and private sectors. The Committee notes that racial discrimination is often experienced by women who are also members of ethnic minorities and draws attention to the lack of demographic data reflecting the intersection of gender and race, and the lack of information on measures taken to protect and ensure the fulfilment of the rights of minority women (art. 5 (c)).

**The State party should provide further information on these issues, including disaggregated statistical data by sex, ethnic origin, occupational sector, and functions assumed, including also information on selection and recruitment procedures.**

(11) The Committee is concerned about the substantial number of stateless persons in the State party, the complicated procedures regulating the acquisition of Uzbek citizenship and the limited other measures taken to avoid statelessness. The Committee is concerned in particular about the conditioning of the acquisition of Uzbek citizenship on the renunciation of any other citizenship, which may lead to statelessness. The Committee is also concerned about the situation of children of stateless parents (art. 5 (b)).

**The Committee encourages the State party to amend its national legislation and remove administrative barriers to the acquisition of Uzbek citizenship by stateless persons, including the children of stateless persons in its territory, in an effort to prevent statelessness, as well as to consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.**

(12) The Committee is concerned about the absence of specific legislation on refugees, in particular the lack of legal safeguards against forced removal of individuals to a country where their life/health may be at risk. The Committee notes the information submitted by the State party on the implementation of bilateral extradition agreements and regrets that no information was submitted on the domestic legal mechanisms ensuring the implementation of the non-refoulement principle. The Committee welcomes the statement made by the delegation that the issue of ratification of the 1951 Convention relating to the Status of Refugees and its Optional Protocol (1967) is currently under examination.

**The Committee reiterates its recommendations for the State party to elaborate a legislative framework for the protection of refugees in accordance with international standards, to pursue its cooperation with the Office of the United Nations High Commissioner for Refugees and to protect persons who have sought refuge in Uzbekistan. The Committee also recommends that the State party, in accordance with article 5 (b) of the Convention, ensure that no person will be forcibly returned to a country where there are substantial grounds for believing that he/she will face persecution and that his/her life or physical integrity may be put at risk. In this**

regard, the State party is invited to establish a mechanism to permit review of decisions to remove aliens, with a suspensive effect on removals, pending examination of the review. The Committee further encourages the State party to ratify the 1951 Convention relating to the Status of Refugees and its Optional Protocol (1967).

(13) The Committee takes note of the continuing existence of a compulsory residence registration system (propiska) in the State party. While acknowledging that it is maintained for the purposes of address registration, retention of this system may affect de facto the enjoyment of a number of rights and freedoms (art. 5 (d) (i) and (ii)) for foreigners residing in the country and persons from groups vulnerable to racial discrimination.

**The State party is invited to present, in its next periodic report, statistical data on the number of compulsory residence registration applications (disaggregated by region/ethnic origin of applicants) and their outcome.**

(14) The Committee notes the information provided by the State party that there is no information about complaints or court decisions concerning acts of racial discrimination during the reporting period, nor direct evidence of such complaints regarding racial discrimination received by the Ombudsperson, and is concerned that this may be due to a lack of awareness of victims' rights or a lack of effectiveness of these procedures (arts. 2, para. 1 (d), and 6).

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

(15) The Committee notes the data provided on the appointment of interpreters in cases involving persons who do not understand the language in which the legal proceedings are being conducted. The Committee regrets that no statistical data appears to exist on the ethnicity of detainees in pretrial detention and of prisoners in correctional facilities.

**The Committee recalls its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and requests the State party to provide in its next report updated information on the appointment of interpreters in cases involving persons who do not understand the language in which the legal proceedings are being conducted, as well as data on the ethnicity of detainees in pretrial detention facilities and of prisoners in correctional facilities.**

(16) The Committee regrets that the information on the situation of Roma in the periodic report of the State party remains scarce and that there is no information on any strategy the State party may have developed with a view to protecting Roma against discrimination (art. 5).

**The Committee recommends that the State party include detailed information in its next report on the situation of Roma, in particular on measures to address the education levels of Roma, which appear to be considerably lower than the nation's average. It recalls its general recommendation No. 27 (2000) on discrimination against**

**Roma and recommends that the State party adopt a strategy with a view to protecting them against discrimination by State bodies, as well as by any person or organization.**

(17) The Committee has noted with interest the information provided by the State party on the work of the National Centre for Human Rights and the Commissioner for Human Rights of the Oliy Majlis (Ombudsman). Insufficient information was provided, however, to ascertain whether these institutions comply with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) (art. 6).

**The Committee encourages the State party to ensure that a national institution clearly in conformity with the Principles relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) exists and that it is provided with adequate human and financial resources (General Assembly resolution 48/134).**

(18) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

(19) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee requests that the State party include in its next periodic report specific information on action plans and other measures taken to implement the Durban Declaration and Programme of Action at the national level.

(20) The Committee encourages the State party to consider making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints.

(21) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148 and 63/243, in which the General Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(22) The Committee invites the State party to consult, expand and deepen its dialogue with different organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination, in connection with the follow-up to the present concluding observations and the preparation of the next periodic report.

(23) Noting that the State party submitted its core document in 2004 (HRI/CORE/1/Add.129), the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-committee meeting of the human rights treaty bodies held in June 2006 (HRI/MC/2006/3).

(24) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 12 and 15 above.

(25) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 9, 10 and 16 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(26) The Committee recommends that the State party submit its eight and ninth periodic reports in a single document, due on 28 October 2012, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, para. 19).

#### IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

53. In 2010, Mr. Amir served as coordinator and Mr. Thornberry as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

54. Terms of reference for the work of the coordinator on follow-up<sup>4</sup> and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee<sup>5</sup> were adopted by the Committee at its sixty-sixth and sixty-seventh sessions, respectively.

55. At the 2009th meeting (seventy-sixth session) and the 2048th meeting (seventy-seventh session), held on 11 March and 26 August 2010 respectively, the coordinator and alternate coordinator on follow-up presented a report on their activities to the Committee.

56. Since the closing of the seventy-fifth session, follow-up reports on the implementation of those recommendations regarding which the Committee had requested information were received from the following States parties: Azerbaijan (CERD/C/AZE/CO/6/Add.1), Chile (CERD/C/CHL/CO/15-18.Add.1), Montenegro (CERD/C/MNE/CO/1/Add.1) and Russian Federation (CERD/C/RUS/CO/19/Add.1).

57. At its seventy-sixth and seventy-seventh sessions, the Committee considered the follow-up reports of Austria, Canada, Chile, Germany, Montenegro, Republic of Moldova, Russian Federation, Sweden and Togo and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

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<sup>4</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>5</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

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

Sierra Leone	Fourth periodic report due since 1976
Liberia	Initial report due since 1977
Gambia	Second periodic report due since 1982
Somalia	Fifth periodic report due since 1984
Papua New Guinea	Second periodic report due since 1985
Solomon Islands	Second periodic report due since 1985
Central African Republic	Eighth periodic report due since 1986
Afghanistan	Second periodic report due since 1986
Seychelles	Sixth periodic report due since 1989
Saint Lucia	Initial report due since 1991
Malawi	Initial report due since 1997
Burkina Faso	Twelfth periodic report due since 1997
Niger	Fifteenth periodic report due since 1998
Swaziland	Fifteenth periodic report due since 1998
Burundi	Eleventh periodic report due since 1998
Iraq	Fifteenth periodic report due since 1999
Gabon	Tenth periodic report due since 1999
Jordan	Thirteenth periodic report due since 1999
Haiti	Fourteenth periodic report due since 2000
Guinea	Twelfth periodic report due since 2000
Syrian Arab Republic	Sixteenth periodic report due since 2000
Holy See	Sixteenth periodic report due since 2000
Zimbabwe	Fifth periodic report due since 2000

## B. Reports overdue by at least five years

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

Lesotho	Fifteenth periodic report due since 2000
Tonga	Fifteenth periodic report due since 2001
Mauritius	Fifteenth periodic report due since 2001
Sudan	Twelfth periodic report due since 2002
Bangladesh	Twelfth periodic report due since 2002
Eritrea	Initial report due since 2002
Kenya	Initial report due since 2002
Belize	Initial report due since 2002
Benin	Initial report due since 2002
Algeria	Fifteenth periodic report due since 2003
Sri Lanka	Tenth periodic report due since 2003
San Marino	Initial periodic report due since 2003
Viet Nam	Tenth periodic report due since 2003
Qatar	Thirteenth periodic report due since 2003
Equatorial Guinea	Initial report due since 2003
Hungary	Eighteenth periodic report due since 2004
Cyprus	Seventeenth periodic report due since 2004
Egypt	Seventeenth periodic report due since 2004
Thailand	Initial report due since 2004
Timor-Leste	Initial report due since 2004
Jamaica	Sixteenth periodic report due since 2004
Honduras	Initial report due from 2004
Trinidad and Tobago	Fifteenth periodic report due since 2004
Senegal	Sixteenth periodic report due since 2005

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

60. 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.

61. At its seventy-sixth session, the Committee decided to postpone the scheduled review the implementation of the Convention in Uruguay as the State party submitted its report prior to that session. The Committee also decided to postpone the review scheduled in respect to Jordan, Malta and Niger in the light of a commitment received from the State parties to finalize their report in the near future. The report of Malta was submitted prior to the seventy-seventh session.



## VI. Consideration of communications under article 14 of the Convention

62. 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 54 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B.

63. 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.

64. During its seventy-seventh session, on 13 August 2010, the Committee considered communication No. 43/2008 (*Adan v. Denmark*), which concerned alleged discriminatory statements by a Danish Member of Parliament against individuals of Somali origin and the lack of investigation into the allegation by the Public Prosecutor, in violation of articles 2, paragraph 1 (d), and 4 of the Convention.

65. The Committee concluded that articles 2, paragraph 1(d), and 4 of the Convention had been violated by the State party, based on the fact that these offensive statements could be understood to generalize negatively about an entire group of people based solely on their ethnic or national origin. The Committee insisted that statements made in the context of a political debate did not absolve the State party from its obligation to investigate whether or not such statements amounted to racial discrimination.

66. During its seventy-seventh session, on 13 August 2010, the Committee also considered communication No. 44/2009 (*Hermansen et al v. Denmark*), which concerned alleged discrimination based on ethnicity (Thai ethnicity) arising from the application of an "ethnic discount" by an Airways company in Denmark, and the lack of investigation by the Prosecutor into these allegations, in violation of article 6 in relation to article 2, paragraph 1 (d), and article 5 (f) of the Convention.

67. The Committee concluded that the petitioners could neither qualify as victims since they had not actually been disadvantaged by the incriminated facts nor could they qualify as potential victims since the incriminated facts could no longer produce any effects. The communication was therefore declared inadmissible *ratione personae* under article 14, paragraph 1 of the Convention.

## VII. Follow-up to individual communications

68. At its sixty-seventh session,<sup>6</sup> following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

69. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.<sup>7</sup> On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

70. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal a willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

71. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 28 complaints and found violations of the Convention in 11 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

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<sup>6</sup> See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

<sup>7</sup> *Ibid.*, annex IV, sect. II.

**Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation**

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory or incomplete response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Denmark (5)	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
	43/2008, Saada Mohamad Adan	(not due until 25 February 2011)				X
Netherlands (2)	1/1984, A. Yilmaz-Dogan				X (never requested by the Committee)	
	4/1991, L.K.				X (never requested by the Committee)	
Norway (1)	30/2003, The Jewish Community of Oslo	X (A/62/18)				X
Serbia and Montenegro (1)	29/2003, Dragan Durmic	X (A/62/18)				X
Slovakia (2)	13/1998, Anna Koptova	X (A/61/18) A/62/18				X
	31/2003, L.R. et al.	X (A/61/18) A/62/18				X

**Petitions in which the Committee found no violations of the Convention but made recommendations**

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	X 28 January 2004				
Denmark (3)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi 41/2008 Ahmed Farah Jama		X			X
Norway (1)	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	

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### **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**

72. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, as transmitted to it by the competent bodies of the United Nations, and to submit to the General Assembly its expressions of opinion and recommendations in this regard.

73. Accordingly, and at the request of the Committee, Mr. Kut examined the report of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2009 (A/64/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council, listed in document CERD/C/77/3, as well as in annex V to the present report, and presented his report at the seventy-seventh session, on 26 August 2010. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

74. The Committee further noted that there was significant ethnic diversity in a number of the Non-Self-Governing Territories, warranting a close watch on incidents or trends which reflect racial discrimination and violation of rights guaranteed in the Convention. The Committee therefore stressed that greater efforts should be made to raise awareness concerning the principles and objectives of the Convention in Non-Self-Governing Territories. The Committee further stressed the need for States parties administering Non-Self-Governing Territories to include details on the implementation of the Convention in these territories in their periodic reports to the Committee.

## **IX. Action taken by the General Assembly at its sixty-fourth session**

75. The Committee considered this agenda item at its seventy-sixth and seventy-seventh sessions. For its consideration of this item, the Committee had before it General Assembly resolution 64/148 of 18 December 2009, in which the General Assembly had, inter alia: (a) expressed grave concern that universal ratification of the Convention had not yet been reached, despite commitments under the Durban Declaration and Programme of Action, and called upon those States that had not yet done so to accede to the Convention as a matter of urgency; (b) expressed concern at the serious delays in the submission of overdue reports to the Committee on the Elimination of Racial Discrimination, which impeded the effectiveness of the Committee, made strong appeal to all States parties to the Convention to comply with their treaty obligations, and reaffirmed the importance of the provision of technical assistance to requesting countries in the preparation of their reports to the Committee; (c) invited State parties to the Convention to ratify the amendment to article 8 of the Convention on the financing of the Committee, and called for adequate additional resources from the regular budget of the United Nations to enable the Committee to discharge its mandate fully; (d) recalled that the Committee holds 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 as outlined in article 19 of the Universal Declaration of Human Rights and in article 5 of the Convention; (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 and the Durban Review Conference**

76. The Committee considered the question of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference at its seventy-sixth and seventy-seventh sessions.

77. Mr. Lahiri and Mr. Murillo-Martínez participated in the ninth session of Working Group of Experts on People of African Descent held in Geneva from 12 to 16 April 2010. The session focused on structural discrimination against people of African Descent as well as identifying proposals for activities to take place during the International Year for People of African Descent in 2011.

78. At its 2020th meeting (seventy-seventh session), the Committee held a dialogue in a closed meeting with the Chairperson of the Intergovernmental Working Group on Effective Implementation on Durban Declaration and Programme of Action and exchanged views and further reflections on the interaction of both mechanisms.

79. In connection with the implementation of the Durban Declaration and Programme of Action, the Committee decided to organize, as part of the International Year of People of African Descent, a thematic discussion on racial discrimination against people of African descent, during its seventy-eight session (see chap. XI).

## XI. Thematic discussions and general recommendations

80. In examining the periodic reports of States parties, the Committee has found that some issues related to the application and interpretation of the provisions of the Convention can usefully be examined from a more general perspective. The Committee has therefore held a number of thematic debates on such issues, including in particular on issues related to discrimination against Roma (August 2000), descent-based discrimination (August 2002) and non-citizens and racial discrimination (March 2004). The outcome of these thematic debates is reflected in the Committee's general recommendations Nos. 27 to 30. In March 2005, the Committee held a thematic discussion on the prevention of genocide and adopted a declaration on this subject.<sup>8</sup>

81. At the seventy-third session, the Committee had held a thematic discussion on the subject of special measures within the meaning of articles 1 (4) and 2 (2) of the Convention, with the participation of representatives from UNESCO and ILO, interested States parties and non-governmental organizations. The thematic discussion on this subject was continued within the Committee at the seventy-fourth and seventy-fifth sessions. At the seventy-fifth session, the Committee adopted a draft text on the subject of special measures as general recommendation No. 32 (2009).

82. At the seventy-fifth session, the Committee also adopted its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference.

83. Following General Assembly resolution 64/169 of 18 December 2009, proclaiming the year beginning on 1 January 2011 the International Year of People of African Descent, the Committee decided at its seventy-seventh session to hold a thematic discussion on racial discrimination against people of African descent during its seventy-eighth session, to be held from 14 February to 11 March 2011.

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<sup>8</sup> This declaration was followed up by a decision on the prevention of genocide adopted at the sixty-seventh session in August 2005, in which the Committee identified indicators of massive and systematic patterns of racial discrimination. See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, chap. II.



## XII. Working methods of the Committee

84. The working methods of the Committee are based on its Rules of Procedure, adopted in accordance with article 10 of the International Convention on the Elimination of All Forms of Racial Discrimination, as amended,<sup>9</sup> and the Committee's established practice, as recorded in its relevant working papers and guidelines.<sup>10</sup>

85. At its seventy-sixth session, the Committee discussed its working methods and the need to improve its dialogue with States parties. The Committee decided that, instead of sending list of questions before the session, the Country Rapporteur will send to the State party concerned a short list of themes with a view to guiding and focusing the dialogue between the State party's delegation and the Committee during the consideration of the State party's report. Such a list of themes does not require written replies.

86. At its seventy-seventh session, the Committee further discussed its working methods and, in particular, possible ways and means of addressing 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. Taking into account General Assembly resolution 63/243 of 24 December 2008 on the International Convention on the Elimination of All Forms of Racial Discrimination, which allows the Committee to meet for one additional week per session, with effect from August 2009 until 2011, and the large number of periodic reports of the States parties received recently, the Committee, having been advised of related financial implications, decided to request the General Assembly to approve one additional week of meeting time per session starting in 2012.

87. At its seventy-seventh session, on 3 August 2010, the Committee held an informal meeting with representatives of non-governmental organizations to discuss ways and means of strengthening cooperation. The Committee decided to have informal meetings with non-governmental organizations, at the beginning of each week of its sessions when States parties' reports are being discussed.

<sup>9</sup> Compilation of Rules of Procedure adopted by Human Rights Treaty Bodies (HRI/GEN/3/Rev.3).

<sup>10</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).

## Annexes

### Annex I

#### Status of the Convention

##### **A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (173) as at 27 August 2010<sup>a</sup>**

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

##### **B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (54) as at 27 August 2010**

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, 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,

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<sup>a</sup> The following States have signed but not ratified the Convention: Bhutan, Djibouti, Grenada, Guinea-Bissau, Nauru and Sao Tome and Principe.

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Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay, Venezuela (Bolivarian Republic of).

**C. States parties that have accepted the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties<sup>a</sup> (43) as at 27 August 2010**

Australia, Bahamas, Bahrain, Belize, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Guinea, Holy See, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

## Annex II

### Agendas of the seventy-sixth and seventy-seventh sessions

#### A. Seventy-sixth session (15 February–12 March 2010)

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.
11. Universal periodic review procedure of the Human Rights Council.

#### B. Seventy-seventh session (2–27 August 2010)

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. Consideration of communications under article 14 of the Convention.
7. Follow-up procedure.
8. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference.
9. Universal periodic review procedure of the Human Rights Council.

10. 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.
11. Report of the Committee to the General Assembly at its sixty-fifth session.

## Annex III

### Opinions of the Committee under article 14 of the Convention adopted at the seventy-seventh session

#### Opinion concerning communication No. 43/2008

<i>Submitted by:</i>	Saada Mohamad Adan
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Denmark
<i>Date of communication:</i>	15 July 2008 (initial submission)

*The Committee on the Elimination of Racial Discrimination*, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

*Having concluded* its consideration of communication No. 43/2008, submitted to the Committee on the Elimination of All Forms of Racial Discrimination by Ms. Saada Mohamad Adan under article 14 of the Convention on the Elimination of All Forms of Racial Discrimination,

*Having taken into account* all written information made available to it by the author of the communication and the State party,

*Adopts* the following:

#### Opinion

1. The petitioner is Ms. Saada Mohamad Adan, a national of Somalia, who is currently residing in Denmark. She claims to be the victim of violations by Denmark of her rights under article 6, read together with article 2, paragraph 1 (d), and article 4, of the International Convention on the Elimination of All Forms of Racial Discrimination. She is represented by counsel, the Documentation and Advisory Centre on Racial Discrimination (DRC).

#### The facts as submitted by the petitioner

2.1 The petitioner submits that, on 23 August 2006, a radio broadcasted the discussion of the statement made by Ms. Pia Kjaersgaard, the Member of the Parliament and leader of the Danish People's Party, which stated the following: "why should the Danish-Somali Association have any influence on legislation concerning a crime mainly committed by Somalis? And is it the intention that the Somalis are to assess whether the prohibition against female mutilation violates their rights or infringes their culture? To me, this corresponds to asking the association of paedophiles whether they have any objections to a prohibition against child sex or asking rapists whether they have any objections to an increase in the sentence for rape". During the discussion Mr. Soren Espersen, another member of the Parliament for the Danish People's Party, referring to the practice of female genital mutilation, stated the following: "Why should we then ask the Somalis about what they think about it when the majority of Somalis do it as something quite natural? I totally agree with her (Ms. Pia Kjaersgaard). Most precisely said."

2.2 The petitioner claims that the accusations made by such statements are false as there is no proof that the Somali parents in Denmark practice female genital mutilation against their daughters. She claims that the comparison of Somalis with paedophiles by Ms. Pia Kjaersgaard was offensive and Mr. Espersen endorsed it fully. The petitioner complained to the police. However, on 14 May 2007, the Copenhagen Metropolitan Police, with the consent of the Regional Prosecutor, rejected the complaint against Mr. Soren Espersen stating the following “the statement is made in a political debate in a radio broadcast, and contains mention of a factual circumstance – the tradition for female genital mutilation amongst some Somali people. The statements on paedophiles and rapists are not indicative of a comparison with Somalis”.

2.3 On 16 May 2007, DRC, on behalf of the petitioner appealed the decision to the Director of the Public Prosecution. They claimed that this decision referred only to “Muslims” (as possible victims) but did not make reference to Somalis. Thus, DRC asked the Director of the Public Prosecution to send the case back to the police and the Regional Prosecutor to reopen the case. In the view of DRC, the decision of 14 May 2007 could not be considered an adequate response to its complaint. The first time that the police mentioned the Somali origin of the petitioner was in their letter of 5 June 2007, but they claim it confirmed lack of investigation into the “Somali” aspect of her case, as it addressed the issue raised by another complaint submitted by group of Muslims in Denmark.

2.4 On 16 January 2008, the Director of the Public Prosecution dismissed the complaint and stated that neither the petitioner nor DRC had a right to appeal the decision by the Regional Prosecutor, as the petitioner did not have individual and legal interest in the case in order to be considered a party to the criminal case. It also stated that DRC could not represent a person who was not a party to the criminal case, and thus was not mandated to appeal the decision either.

### **The complaint**

3.1 The petitioner claims that the above-mentioned false accusations by the members of the Danish People’s Party may stir up hatred against Somalis and that the State party failed to acknowledge the need for protection of Somalis against hate speech in order to prevent hate crimes. She claims in this case that there is not only a lack of proof (which makes it a false accusation, as there is no evidence that Somali parents have practised female genital mutilation on their daughters in Denmark), but also the offensive language used by the spokespeople of the Danish People’s Party when they make a comparison between Somalis and paedophiles.

3.2 She claims that the State party did not fulfil its obligation to take effective action against yet another incident of hate speech by the same political party, which amounts to aggravating circumstances under the Danish Criminal Code section 266 (b) and confirms systematic racist propaganda by that political party against the Somalis living in Denmark.

3.3 She complains that, despite the Committee’s previous findings that the State party lacks effective remedies against racist propaganda, it continues to handle identical cases in the same manner as before and Danish courts are not able to decide whether or not her and other Somalis in Denmark have a right to be protected against racial insults. She considers that by denying her right to appeal against the prosecutor’s decision, she was denied the right to effective remedies against racist statements.

3.4 She claims that she has been fighting female genital mutilation practice for many years. Despite that, she might now be a target of racist attacks by Danes. She refers to the findings of the Danish Board for Ethnic Equality from 1999, which stated that, at that time, Somalis were one of the ethnic groups most likely to suffer from racist attacks in the streets of Denmark. The same study allegedly showed that women of Somali origin were more

likely to suffer hate crimes than men. Therefore, she claims she has a personal interest in the case, just like Mr. Mohammed Gelle in communication No. 34/2004. She argues that the State party had not objected to Mr. Gelle's right to appeal, while now it does not allow her to appeal her case. As for the "victim" requirement, the author refers to the jurisprudence of the European Court of Human Rights, the Human Rights Committee and the Committee itself (communication No. 30/2003) and claims that this requirement may be satisfied by all members of a particular group, as the mere existence of a particular legal regime may directly affect the rights of the individual victims within the group. She argues that she as a member of such a group (Somalis living in Denmark), she is also a victim and, as a victim, has a right to be represented by DRC.

#### **State party's observations on admissibility and merits**

4.1 On 16 February 2009, the State party submitted that the communication should be declared inadmissible as the petitioner failed to exhaust domestic remedies. Should the communication be declared admissible it submits that no violation of the Convention has occurred.

4.2 The State party reiterates the facts as submitted by the petitioner as well as her claims in relation to the invoked provisions of the Convention. It adds that on 12 September 2006, the petitioner reported Mr. Espersen to the police for violation of section 266 (b) of the Danish Criminal Code.

4.3 Another complaint was submitted by one Rune Engelbreth Larsen, together with 65 others, against eight named persons from the Danish People's Party for violation of section 266 (b) of the Criminal Code in respect of 12 different statements. Mr. Espersen was among the eight named persons against whom the complaint was initiated.

4.4 On 6 February 2007, the Commissioner of the Copenhagen Police submitted the complaints (reports) to the Regional Public Prosecutor and stated that he did not consider the statement made exceeded the particularly extensive freedom of expression enjoyed by politicians about controversial social issues and that he found no basis for interviewing the person (Mr. Espersen) about the purpose of the statement, which was in line with the political attitudes which he is known for and regularly expresses.

4.5 On 9 May 2007, the Regional Public Prosecutor decided to discontinue the investigation of all 12 incidents pursuant to section 749 (2) of the Danish Administration of Justice Act and requested the Copenhagen police to inform the interested parties about his decision and about their right to appeal the decision to the Director of Public Prosecutions.

4.6 On 14 May 2007, the Commissioner of the Copenhagen Police informed Mr. Larsen of the Regional Prosecutor's decision to discontinue the investigation as it could not be reasonably presumed that a criminal offence had been committed. In relation to Mr. Espersen, he stated that the statements were made during the political radio debate and mentioned the tradition of genital mutilation in certain Somali population groups. The statement about paedophiles and rapists was not intended to make a comparison with Somalis. The Commissioner also referred to the guidelines concerning the possibility of appealing the decision. He however added that there was no indication of circumstances showing that Mr. Larsen was entitled to appeal, but if he considered to be entitled to appeal, he could submit such appeal within four weeks of being informed of the decision, together with details as to why he considered himself entitled to appeal.

4.7 On 16 May 2007, DRC wrote to the Copenhagen police asking for clarification whether the letter concerned the complaint submitted by the petitioner against Mr. Espersen, as the letter mentioned only Mr. Larsen's case (which also included Mr. Espersen). DRC specifically asked whether the petitioner was entitled to appeal the decision as she was a Somali woman, addressed by Mr. Espersen in his statement.



4.8 On 5 June 2007, the Commissioner responded that the decisions by the Regional Prosecutor also concerned the complaint submitted by DRC on behalf of the petitioner and thus DRC was entitled to appeal the Regional Prosecutor's decision to the Director of Public Prosecutions on behalf of the petitioner, if she was a party to the case.

4.9 On 16 May 2007, DRC appealed the decision of the Regional Prosecutor with regard to violation by Mr. Espersen of section 266 (b) of the Criminal Code to the Director of Public Prosecutions. In the appeal, DRC repeated the views expressed in the initial complaint and added that the decision by the Regional Prosecutor did not mention the facts as there was no evidence that genital mutilation was practiced among Somalis in Denmark. The decision also did not include guidelines on appeal based on the fact that the petitioner was a Somali and as she did not personally practice genital mutilation of her children, she felt personally offended and was therefore entitled to appeal. It also failed to address specifically the Somalis population in Denmark, rather it referred to "aliens with Muslim background".

4.10 On 16 January 2008, the Director of the Public Prosecution responded he did not have a reason to assume that the Somali origin of the petitioner had not been taken into consideration. He added that he found that neither the petitioner nor DRC representing her could be considered entitled to appeal the decision. There was no information to substantiate that the petitioner had an individual and legal interest in the case and therefore could be considered a party entitled to appeal. Furthermore, the organizations representing individuals cannot be considered party to a case unless they have a power of attorney from a party to the case. He concludes that his decision cannot be appealed to any higher administrative authority under section 99 (3) of the Administration of Justice Act.

4.11 The State party argues that the petitioner should have exhausted the remedy under section 267 and 268 of the Criminal Code, even after public prosecutors refused to institute proceedings under section 266 (b) of the Criminal Code, as the requirements for prosecution under section 267 are not identical to those for prosecution under section 266 (b) of the Criminal Code.

4.12 On the merits, the State party refers to the author's allegations that it has not fulfilled its obligations under article 2, paragraph 1 (d), article 4 and article 6 of the Convention. It acknowledges that it is not sufficient merely to declare acts of racial discrimination punishable on paper. Rather, the legal provisions must also be effectively implemented by the competent national institutions. It submits that these requirements have been fully complied with by the relevant institutions in the petitioner's case.

4.13 The State party submits that the processing and the assessment of the petitioner's complaint by the Commissioner of the Copenhagen Police and the Regional Public Prosecutor fully satisfy the requirements that could be inferred from the Convention, although the outcome was not the one wanted by the petitioner.

4.14 The State party acknowledges its duty to initiate a proper investigation on accusations and reports related to acts of racial discrimination. However, it argues that it does not follow from the Convention that prosecution should be initiated in all cases reported to the police. If no basis is found for the prosecution, it is fully in accordance with the Convention not to prosecute. This may happen, for instance, if there is no basis for assuming that prosecution will lead to conviction.

4.15 The State party emphasizes that the question in the present case was solely whether Mr. Espersen's statements could be considered to fall within section 266 (b) of the Criminal Code. There was no problem related to evidence, and the prosecutor had to perform legal assessment of the statement, which was thorough and adequate.

4.16 The State party submits that as follow-up on the opinion of the Committee in communication No. 34/2004, *Gelle v. Denmark*, the Director of Public Prosecutions issued new guidelines on the investigation of cases relating to violation of section 266 (b) of the Criminal Code. The Guidelines state that the person who issues the written or oral statement should normally be interviewed in connection with reports concerning violation of section 266 (b) of the Criminal Code, unless it is obvious that section 266 (b) has not been violated.

4.17 It reiterates the Commissioner's letter to the Regional Public Prosecutor that the statements did not exceed the particularly extensive freedom of expression enjoyed by politicians about controversial social issues, that the statements were made during a political radio debate and that the statement about paedophiles and rapists did not represent a comparison with Somalis.

4.18 By Judgement of 23 August 2000, the Danish Supreme Court established that a particularly extensive freedom of expression was enjoyed by politicians about controversial social issues, although this does not entitle them to set aside section 266 (b) without punishment. It refers to the jurisprudence of the European Court of Human Rights that the right to freedom of expression is extremely important to elected politicians as they represent their electorate.<sup>a</sup>

4.19 The State party emphasizes that the statement was made during a radio debate in which Mr. Espersen supported Ms. Kjaersgaard's letter to the editor. Mr. Espersen's statement cannot be considered in violation of section 266 (b) as the Ms. Kjaersgaard's views in the letter were not assessed as a violation of section 266 (b) in the first place.

4.20 The State party submits that Mr. Espersen's statement about most Somalis carrying out genital female mutilation as something quite natural is not a statement containing an allegation of such generalizing and non-objective nature that the statement implies a violation of section 266 (b). Ms. Kjaersgaard's statement was made in 2003. Three years later in 2006, Mr. Espersen agreed with her statement. This cannot in any way be an adequate basis for the applicant's conclusion that Danish People's Party conducts a systematic racist propaganda campaign against Somalis in Denmark.

4.21 The State party submits that there was no doubt about the evidence as it had the transcript of the radio broadcast in question. Thus, it was not found necessary to interview either Mr. Espersen or the petitioner. It was not found necessary to initiate any other investigative measures to make a legal assessment of whether the statement fell within the scope of section 266 (b). Thus, it submits that the handling of the case by the public prosecutor meets the requirements under article 2, paragraph 1 (d), and article 6 of the Convention.

4.22 The State party refers to the author's claims under article 4 of the Convention that the Government confirmed the false accusations made by the members of the Danish People's Party and that the party was given a *carte blanche* to continue its racist propaganda against Somalis. The Commissioner assessed only that the statement fell outside the scope of 266 (b). Such decision does not indicate that statements from the Danish People's Party or any other party would in all cases fall outside the scope of the Criminal Code.

4.23 The State party refers to the petitioner's reference to the study conducted in 1999 and submits that such study does not constitute a sufficient evidence to prove that the petitioner has a real reason to fear attacks or assaults, and in fact she has not stated anything about any actual attacks — verbal or physical — to which she has been subjected due to Mr. Espersen's statement, even though almost two years had passed since the radio broadcast. Therefore, it concludes that the communication raises no issues related to article 4.

4.24 The State party refers to the petitioner's claim that neither she nor DRC were able to appeal the Commissioner's decision, in violation of article 6 of the Convention. The State party submits that article 6 mentions effective protection and remedies through competent national tribunals and other State institutions; however, the Convention does not imply a right for the citizens to appeal the decisions of national administrative authorities to higher administrative body. Nor does the Convention govern the question of when a citizen should be able to appeal a decision to a superior administrative body. Hence, the Convention cannot be considered a bar to a general rule to the effect that it is normally only parties to the case who are entitled to appeal a decision about criminal prosecution to superior administrative body. It submits that the Convention does not guarantee a specific outcome of cases regarding allegedly racially insulting statements, but merely sets out certain requirements for the authorities' processing of such cases. Thus the possibility of reporting the incident to the police is considered an effective remedy.

4.25 The State party submits that, in view of the general statements made by the petitioner in her complaint, it considers that she cannot be considered an offended party under section 266 (b), nor can she be considered to have essential, direct, individual and legal interest in the outcome of the investigation that should be considered as entitled to appeal. It also reiterates that there is no detailed evidence of the allegation that there is a risk that the applicant will suffer personal injury as a consequence of the statement made.

4.26 It reiterates that the question of the right to appeal national administrative decision is different from the question of whether the applicant satisfies the "victim" requirement under article 14 of the Convention.

4.27 It refers to the communication No. 34/2004, *Gelle v. Denmark*, in which, due to the public interest of the matter, the Director of Public Persecutions decided to consider the appeal without determining whether the organization or person who appealed the decision was entitled to appeal. However, in the present case he found no basis for exceptionally disregarding the fact that neither DRC nor the petitioner were entitled to appeal the decision. Thus, it concludes the petitioner had an access to effective remedy under article 6 of the Convention.

4.28 The State party concludes that it is not possible to infer an obligation under the Convention to prosecute in situations that provide no basis for prosecution, and that the national legislation provided remedies in accordance with the Convention and that the relevant authorities fully met their obligations in this specific case. Therefore, it concludes that there is no basis for any claim under article 2, paragraph 1 (d), article 4 or article 6 of the Convention.

#### **Petitioner's comments**

5.1 On 4 May 2009, the author submits that the State party recognized that the statements in the present case were not inoffensive, but it disregarded its own guidelines in Notice 9/2006, second paragraph, that "unless it is obvious that section 266 (b) has been violated" an investigation of a complaint should take place.

5.2 The State party referred to article 6 of the Convention that States parties should ensure effective protection and remedies against any violation of the Convention. She claims that the appropriate remedy which the applicant should exhaust is section 266 (b) and that it is inappropriate for the State party to refer to sections 267 and 268. Section 266 (b) refers to protection on the basis of group identity within the framework of the Convention, whereas section 267 and 268 refer to individual cases of defamation. Under the Convention, prevention of racial discrimination is an obligation of society, which cannot be lifted by an individual. Thus the domestic remedies have been exhausted.

5.3 The State party has to some extent accepted the fact that it is highly offensive and stigmatizing to compare people of Somali origin in Denmark to rapists and paedophiles. She claims that the present case is the strong proof that the State party did not comply with the Committee's decision in *Gelle v. Denmark*, since Somalis still have no effective remedies or protection against false accusations, which are harmful and create hostility towards them.

5.4 She reiterates that there are no examples of female genital mutilation amongst the Somali group in Denmark. She claims that the State party did not accept the data from 1999 on Somalis being the most persecuted ethnic group in Denmark, since no similar study has been made recently. The Board for Ethnic Equality which carried out the study was dismantled in 2001 and since then no similar study has been carried out due to lack of resources. It is highly inappropriate to argue that the data from 1999 are "too old" when it is the policy of the State party to stop research in this field by closing down the institutions and organizations working to document and combat racial discrimination in Denmark. The fact that she has not been personally subject to attacks in the street is not the same as to say that she can live a "normal life".

5.5 The petitioner refers to the report from the European Union Agency for Fundamental Rights, issued in April 2009, which rates the Somalis in Denmark amongst the 10 groups with the highest racist crime victimization rate during the previous 12 months.

5.6 She notes that xenophobia and Islamophobia is creating an extremely hostile environment against her as she is black Somali and Muslim. In other words, she is double-targeted by the Danish People's Party.

5.7 The petitioner submits that freedom of speech of a politician must be seen in context. The petitioner adds that in *Gelle v. Denmark* the Committee concluded that the handling of the case by the State party was not correct. Subsequently, when Espersen's statement was reported to the police, the prosecution should have assessed the circumstances and estimate the relevant position and need of the applicant for protection.

5.8 The petitioner submits that in *Gelle v. Denmark* the Committee held that the case concerned statements that were made in public, which is the central focus of both the Convention and section 266 (b) of the Criminal Code, and that it would be unreasonable to expect the petitioner to initiate proceedings under general provision of section 267, after having unsuccessfully invoked section 266 (b).

## **Issues and proceedings before the Committee**

### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 On the issue of exhaustion of domestic remedies, the Committee recalls that the petitioner brought a complaint under section 266 (b) of the Criminal Code, which was rejected by the Regional Public Prosecutor and, on appeal, by the Director of Public Prosecutions. It notes that the Director of Public Prosecutions stated that his decision was final and not subject to appeal.

6.3 The Committee notes the State party's argument that the petitioner should have initiated private prosecution under the general provision on defamatory statements (sections 267 and 268 of the Criminal Code), as the requirements for prosecution under section 267 are not identical to those for prosecution under section 266 (b) of the Criminal Code. The

Committee recalls that, in its Opinion in *Gelle v. Denmark*, it had concluded that the statements were made squarely in the public arena (radio broadcast), which is the central focus of both the Convention and section 266 (b). It would thus be unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267 or 268, after having unsuccessfully invoked section 266 (b) in respect of circumstances directly implicating the language and object of that provision. The Committee, therefore, concludes that the domestic remedies have been exhausted.

6.4 In the absence of any further obstacles to the admissibility of the petitioner's claims, the Committee declares the petition admissible, insofar as it relates to the State party's alleged failure to fully investigate the incident in question.

#### *Consideration of merits*

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under section 266 (b) of the Criminal Code. This provision criminalizes public statements by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion or sexual inclination.

7.3 The Committee welcomes the guidelines issued by the Director of Public Prosecutions on the investigation of cases relating to violation of section 266 (b) but reiterates that it does not suffice, for purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which State parties "undertake to adopt immediate and positive measures" to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1 (d), which requires States to "prohibit and bring to an end, by all appropriate means", racial discrimination, and article 6, guaranteeing to everyone "effective protection and remedies" against acts of racial discrimination.<sup>b</sup>

7.4 The Committee notes the State party's argument that the prosecutor's legal assessment was thorough and adequate and that the statements did not exceed the particularly extensive freedom of expression enjoyed by politicians about controversial social issues. It also argued that the statements cannot be considered a violation of section 266 (b) as Ms. Pia Kjaersgaard's views in the letter were not assessed as violation of section 266 (b) in the first place. The State party also contested the petitioner's claim that the Danish People's Party is granted a *carte blanche* to conduct a systematic racist propaganda against Somalis in Denmark, stating that Mr. Espersen's statement came three years after Pia Kjaersgaard's letter. It adds that the petitioner did not complain about any actual attacks — verbal or physical — following Mr. Espersen's statement.

7.5 While strongly condemning the practice of female genital mutilation as a serious violation of fundamental human rights, the Committee considers that Mr. Espersen's public support of the earlier statement by Ms. Kjaersgaard's and his statement that most Somalis carry out genital female mutilation as something quite natural were perceived as offensive. The Committee notes that these offensive statements can be understood to generalize negatively about an entire group of people based solely on their ethnic or national origin and without regard to their particular views, opinions or actions regarding the subject of

female genital mutilation. It further recalls that the Regional Public Prosecutor and the police from the outset excluded the applicability of section 266 (b) to Mr. Espersen's case, without basing this assumption on thorough measures of investigation.

7.6 Similarly, the Committee recalls its previous jurisprudence<sup>c</sup> and considers that the fact that statements were made in the context of a political debate does not absolve the State party from its obligation to investigate whether or not such statements amounted to racial discrimination. It reiterates that the exercise of the right to freedom of expression carries special duties and responsibilities, in particular the obligation not to disseminate racist ideas.<sup>d</sup>

7.7 In the light of the State party's failure to carry out an effective investigation to determine whether or not an act of racial discrimination had taken place, the Committee concludes that articles 2, paragraph 1 (d), and 4 of the Convention have been violated. The lack of an effective investigation into the petitioner's complaint under section 266 (b) of the Criminal Code also violated her right, under article 6 of the Convention, to effective protection and remedies against the reported act of racial discrimination.

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 disclose violations of article 2, paragraph 1 (d), article 4 and article 6 of the Convention.

9. The Committee on the Elimination of Racial Discrimination recommends that the State party should grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The Committee recalls its general recommendation No. 30 which recommends that States parties take "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race, colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians."<sup>e</sup> Taking into account the Act of 16 March 2004, which, inter alia, introduced a new provision in section 81 of the Criminal Code whereby racial motivation constitutes an aggravating circumstance, the Committee recommends that the State party should ensure that the existing legislation is effectively applied so that similar violations do not occur in the future. The State party is also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.

10. The Committee wishes to receive from Denmark, within six months, information about the measures taken to give effect to the Committee's opinion.

[Adopted in English, French, Russian and Spanish, the English text being the original. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

#### Notes

<sup>a</sup> *Roseiro Bento v. Portugal*, Judgement of 18 April 2006; *Mamere v. France*, judgement of 7 November 2006; *Jerusalim v. Austria*, Judgement of 27 February 2001.

<sup>b</sup> Communication No. 34/2004, *Gelle v. Denmark*, Views adopted on 6 March 2006, para. 7.3.

<sup>c</sup> Communication No. 34/2004, *Gelle v. Denmark*, Views adopted 6 March 2006.

<sup>d</sup> General recommendation No. 15: Organized violence based on ethnic origin (art. 4), para. 4.

<sup>e</sup> General recommendation No. 30: Discrimination against non-citizens, para. 12.

## Opinion concerning communication No. 44/2009

<i>Submitted by:</i>	Nicolai Hermansen, Signe Edrich and Jonna Vilstrup (represented by Niels-Erik Hansen of the Documentation and Advisory Centre on Racial Discrimination (DACoRD))
<i>Alleged victim:</i>	The petitioners
<i>State party:</i>	Denmark
<i>Date of communication:</i>	25 February 2009 (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 13 August 2010,

*Adopts* the following:

### Decision on admissibility

1.1 The petitioners are Nicolai Hermansen, Signe Edrich and Jonna Vilstrup, all Danish citizens, born in Denmark. They claim to be victims of violations by Denmark of their rights under article 6 in relation to article 2, paragraph 1 (d); and article 5 (f) of the Convention on the Elimination of All Forms of Racial Discrimination. The petitioners are represented by Niels-Erik Hansen of the Documentation and Advisory Centre on Racial Discrimination (DACoRD).

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 23 June 2009.

### The facts as submitted by the petitioners

2.1 The Danish Broadcasting Network DR aired the programme “Kontant” on 3 January 2006. With a hidden camera, a journalist pretended he wanted to buy a flight ticket from Thai Travel in Copenhagen. He asked whether he would be offered a discount as a Thai. The salesperson explained that, according to an agreement with Thai Airways, it was possible to offer a discount of DKr 1,000 if he was ethnic Thai.

2.2 On 2 January 2006, one day before the broadcast of the programme, a representative of DACoRD, who was also interviewed in this programme, sent a letter to the Metropolitan Police in Copenhagen informing them of the television broadcast of the next day and already filing a complaint against Thai Airways and Thai Travel for discriminatory practices. On 4 January 2006, DACoRD informed the police that a number of people had filed complaints because they felt discriminated against by Thai Airways/Thai Travel, as they did not benefit from the “Ethnic discount”.<sup>a</sup> According to the Copenhagen Metropolitan Police, there was no evidence of the ethnic motive of this discount.

2.3 By letter of 6 December 2007, the police informed DACoRD that the local Director of Public Prosecutions for Copenhagen had decided on 4 December 2007 to discontinue the investigation against Thai Travel and Thai Airways under Act No. 626 prohibiting all forms of discrimination.<sup>b</sup> DACoRD appealed the decision to the General Director of Public Prosecution in Denmark on 17 December 2007. This appeal was rejected on 26 August 2008 on the basis that neither DACoRD nor the petitioners had a legal standing in such a

case and therefore had no right to appeal. The Director of Public Prosecution explained that legitimate complaints were those brought by people who may be deemed to be parties to the proceedings. According to the Prosecutor, this is determined by the person's interest in the case and how closely this person is linked to the outcome of the case. This interest must be substantial, direct, personal and legal. According to the Prosecutor, the petitioners did not seem to have been denied discounts based on their ethnic origin or nationality. Those inquiries from DACoRD rather seemed to arise from a television broadcast, where the objective was to see if cheaper prices could be given by Thai Airways. Since the petitioners did not seem to have personally been denied service on the same terms as others because of their ethnic origin or nationality, they could not be considered injured under section 749, paragraph 3, of the Administration of Justice Act. The decision ended stating that it could not be appealed to a higher administrative body, in accordance with section 99, paragraph 3, of the Administration of Justice Act.

### **The complaint**

3.1 The petitioners claim a violation by the State Party of their right to an effective remedy under article 6 of the Convention in relation to article 2, paragraph 1 (d), and article 5 (f) of the Convention, as they were denied a discount on the basis of their nationality or ethnic origin and were then not given access to an adequate remedy.

3.2 With regard to the police's initial decision to discontinue the investigation, which was based on lack of evidence, the petitioners reject it, as the video-recording by a hidden camera clearly showed that some people were indeed offered the alleged "ethnic discount". The fact that both Thai Airways and Thai Travel denied the facts should not bar the prosecutor from bringing the case to the City Court, which could have made its own assessment of the evidence. The petitioners underline that in Danish Law, the Prosecution has two years from the commission of the violation to bring a case to court. Because the decision by the local prosecutor to discontinue the case took place one year and 11 months after the incriminated facts and that a maximum of four weeks is given to appeal that decision, the time limit had already elapsed by the time the General Director of Public Prosecution was in a position to consider the appeal. The General Director of Public Prosecution therefore had no margin of manoeuvre to change that decision. However, instead of basing his decision on the same arguments as the police (lack of evidence), the General Director of Public Prosecution based it on the lack of standing of the petitioners and their counsel.

3.3 The petitioners insist on the fact that, in Denmark, there seems to be no effective remedy for victims of racial discrimination, as they cannot rely on the protection of Act No. 626 of 29 September 1987. According to the petitioners, people who are being discriminated against through the practice of discrimination testing are nonetheless victims under Act No. 626 and therefore have legal standing. The petitioners underline that, in the Danish legal system, only the Public Prosecution can trigger an action to court based on Act No. 626. The petitioners have therefore exhausted domestic remedies.

### **State party's observations on admissibility and the merits**

4.1 On 19 October 2009, the State party submitted observations on the admissibility and merits of the communication. It considers that the petition should be declared inadmissible *ratione personae* and *ratione materiae* under article 14, paragraph 1, of the Convention. It further submits that the petitioners have failed to exhaust domestic remedies in accordance with article 14, paragraph 7 (a), of the Convention. On the merits, the State party argues that there has been no violation of the Convention.

4.2 On the factual background, the State party submits that the television broadcast featured Thai Travel, which, upon agreement with the airline Thai Airways, granted Thais



and persons travelling together with Thais and certain persons with special ties to Thailand, a special discount of DKr 1,000 when they bought certain airline tickets from Denmark to Thailand with that company. In the broadcast, the Centre Manager of DACoRD stated that the discount scheme was contrary to the Act on Prohibition against Differential Treatment owing to Race. He therefore invited all those who believed they had been discriminated against by not having been offered the special discount to contact DACoRD. On 1 March 2006, after having received two letters from DACoRD, the first one being a complaint and the second one informing them that additional victims wished to complain, the Copenhagen Police requested a copy of the said broadcast from the petitioners' counsel to further investigate the matter. By letter of 7 March 2006, the Copenhagen Police informed DACoRD that the police had received the said broadcast and that the case was being investigated.

4.3 On 30 May 2006, the owner of Thai Travel was interviewed by the police without being charged. The owner stated that the travel agency had made an agreement with Thai Airways to sell tickets exclusively, which meant that she could sell the tickets at a slightly lower price, but that no "ethnic discount" was granted. Concerning the television broadcast, she stated that the customer in question had been very insistent and had kept asking about the price and a possible "ethnic discount" despite her repeating that the price was the same for Danes and Thais. She eventually said that the customer could have a discount, but that this discount was the same for Danes and Thais. The latter statement did however not appear in the television broadcast. On 15 June 2006, the police interviewed the Sales Manager of Thai Airways. He stated that no difference was made on the basis of nationality but that discounts were granted to agencies and major firms depending on the number of tickets purchased.

4.4 On 19 September 2006, the Complaints Committee for Ethnic Equal Treatment,<sup>c</sup> which had taken up the case ex officio, found that an airline discount scheme implying discounts on tickets for customers of Thai ethnic origin, customers with family ties with a person of Thai ethnic origin or customers who were members of the Thai-Danish Association for Jutland and Funen, was contrary to the prohibition of direct discrimination on the basis of racial or ethnic origin under Act No. 374 of 28 May 2003 on Ethnic Equal Treatment. It considered that the requirement of being a member of the Thai-Danish Association violated Act No. 374 if there were special conditions for becoming a member that implied a specific ethnic origin or close ties to this ethnic origin. Following this decision, Thai Airways abolished the discount scheme in question.

4.5 On 8 May 2007, the Copenhagen Police contacted DACoRD to identify and interview any victims in the case. At that point, one year and four months had passed since DACoRD had informed the police that it would submit complaints on behalf of those victims. DACoRD stated that 26 persons had contacted the association following the television broadcast stating that they wanted their money back as they felt defrauded by the companies in question. They claimed compensation amounting to the difference between the ticket prices with and without discount. DACoRD insisted that if the criminal proceedings did not result in compensation to the victims, it would institute civil proceedings against the two companies. On 10 May 2007, the Copenhagen Police interviewed Mr. Hermansen and Ms. Edrich, two of the petitioners, who had seen the television broadcast and decided to contact DACoRD to receive compensation for not having received the said discount. On 8 June 2007, the case was handed over to the public prosecutor for a legal assessment. On 27 August 2007, DACoRD forwarded a power of attorney for Jonna Vilstrup, the third petitioner in the case before the Committee. On 19 September 2007, the Commissioner of the Copenhagen Police transmitted the case to the Regional Public Prosecutor for Copenhagen and Nornholm with the recommendation that the investigation of the case should be discontinued pursuant to section 749 (2)<sup>d</sup> of the Danish Administration of Justice Act.

4.6 On 4 December 2007, the Regional Public Prosecutor followed the recommendation of the Police Commissioner. He considered that it could not reasonably be presumed that a criminal offence subject to prosecution had been committed. On 17 December 2007, DACoRD, which had been notified of this decision on 6 December 2007, appealed to the Director of Public Prosecutions. The Director of Public Prosecutions took his decision on 26 August 2008, where he considered that the petitioners did not seem to have been denied a discount on grounds of their ethnic origin or their nationality in connection with a specific inquiry addressed to Thai Travel or Thai Airways but have contacted DACoRD because they saw the television broadcast and thought they could obtain their tickets at a lower price. As these persons did not seem to be personally denied access to service on the same conditions as others on grounds of their ethnic origin or nationality, they could not be considered to have an essential, direct, individual and legal interest and thus could not be entitled to appeal. He ended his argument by stating that DACoRD was a lobby organization, which could normally not be considered a party to a criminal case.

4.7 In spite of the arguments developed above, the Director of Public Prosecution decided to consider the appeal on the merits with reference to the Complaints Committee's opinion.<sup>e</sup> He insisted that this decision was made under Act No. 374 of 28 May 2003 on Ethnic Equal Treatment, which does not carry any criminal sanctions and therefore does not fall within the competence of the police and public prosecutors. The assessment of evidence in such cases is also subject to other principles than violations under Act No. 626 of 29 September 1987 on Prohibition of Differential Treatment owing to Race. He ended by noting that Thai Airways had changed its discount scheme following the decision by the Complaints Committee and as such the *actus reus*<sup>f</sup> requirement of section 1 of the Act on Prohibition of Differential Treatment owing to Race could not be satisfied. There was therefore no basis for continuing the investigation since no criminal offence subject to public prosecution had been committed.

4.8 The State party argues that the Act on the Prohibition of Differential Treatment owing to Race is governed by Danish Criminal law and the principle of objectivity that governs the function of public prosecutors implies that no person will be prosecuted unless the public prosecutor deems it likely that prosecution will lead to conviction.

4.9 The Act on Ethnic Equal Treatment on the other hand affords civil law protection against discrimination and in that way supplements the Act on the Prohibition of Differential Treatment owing to Race. The protection it affords goes further in certain aspects than the Act on the Prohibition of Differential Treatment owing to Race, as the rule on the shared burden of proof applies in order to ensure an effective application of the principle of equal treatment.<sup>g</sup> The Act also includes access to compensation for non-pecuniary damage.<sup>h</sup> As for the Complaints Committee, which has recently been replaced by the Board of Equal Treatment,<sup>i</sup> it can be an alternative to ordinary courts and thus review complaints of discrimination under the Act on Ethnic Equal Treatment, although it has no power to award compensation for pecuniary loss.

4.10 With regard to the complaint brought by the petitioners, the State party submits that the communication should be declared inadmissible *ratione personae* for lack of victim status. Referring to the jurisprudence of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination,<sup>j</sup> the State party states that, for a person to be considered a victim, he or she must show either that an act or omission of a State party has already adversely affected his or her enjoyment of a right, or that such effect is imminent, on the basis of existing law and/or judicial or administrative practice. In the present case, the State party denies the petitioners the status of victim as they were neither directly nor indirectly individually subjected to and/or affected by the alleged discriminatory price policy of Thai Airways or Thai Travel. The State party emphasizes that, in the case of Ms Vilstrup, she purchased a plane ticket with Thai Airways from Denmark to Australia when

the “ethnic discount” at stake concerned only flights to Thailand. For that reason alone, the State party considers that this petitioner cannot be considered a victim in this case. As for the two other petitioners, Mr. Hermansen and Ms. Edrich, they travelled to Thailand for an amount of Dkr 6,330 when the “ethnic discount” led to a ticket price of Dkr 7,960. Therefore, the two petitioners cannot be considered victims.

4.11 The State party further submits that the part of the claim on the petitioners’ right to appeal should be considered inadmissible *ratione materiae*. It refers to the Committee’s jurisprudence whereby it did not consider within its mandate to assess the decisions of domestic authorities regarding the appeals procedure in criminal matters, and therefore considered this part of the communication inadmissible *ratione materiae*.<sup>k</sup> In any event, in the present case, the Director of Public Prosecutions in fact did consider the appeal on its merits as outlined above (para. 4.7).

4.12 The State party further submits that the communication should be declared inadmissible for non-exhaustion of domestic remedies, as filing a complaint under the Act on Prohibition of Differential Treatment owing to Race was not the only effective remedy available to the petitioners. As mentioned above,<sup>l</sup> the Complaints Committee for Ethnic Equal Treatment had already established in its decision of 19 September 2006 that the discount scheme in question was contrary to the Act on Ethnic Equal Treatment. On the basis of that decision, the petitioners could have instituted civil proceedings before the Danish Courts to obtain compensation for non pecuniary damage under section 9 of the Act on Ethnic Equal Treatment and compensation for pecuniary damage under the general rules of the Danish law on damages. The petitioners were well aware of that avenue but decided not to use it. The State party adds that the petitioners also had the option to submit an individual complaint to the Complaints Committee for Ethnic Equal Treatment (or after 1 January 2009 to the Board of Equal Treatment), since that committee aims to provide free-of-charge and flexible alternatives to ordinary courts. The State party recognizes, however, that the decisions of that committee are non-binding. Going through the Complaints Committee would, on the other hand, have facilitated the petitioners’ access to courts with free legal aid. By neither instituting civil proceedings nor seizing the Complaints Committee, the petitioners allegedly failed to exhaust available domestic remedies.

4.13 On the merits, the State party argues that article 2, paragraph 1 (d), of the Convention does not impose any concrete obligations on States parties, who therefore have a margin of appreciation in this domain. It also submits that all States parties are given a margin of appreciation with regard to the implementation of the rights of the Convention, including those provided for in article 5 (f).

4.14 As for the petitioners’ allegations under article 2, paragraph 1 (d), and article 6, the State party argues that the Copenhagen Police carried out an expeditious, thorough and proper investigation of the case which included a review of the television broadcast, interviews with the owner of Thai Travel and the Sales Manager of Thai Airways and an interview with Mr. Hermansen, one of the petitioners. The State party insists on the fact that the Convention imposes on States parties the obligation to carry out a thorough investigation on alleged acts of racial discrimination, but does not impose a specific outcome to these investigations. The State party adds that the length of the proceedings is also due to the petitioners, since it took DACoRD one year and four months to submit the relevant powers of attorney.

4.15 The State party submits that, under article 6, the Convention does not imply a right for individuals to appeal the decisions of national administrative authorities to a higher administrative body. The general rule remains that only parties to a case are to be given the possibility to appeal a decision on criminal prosecution. The State party notes that the Complaints Committee for Ethnic Equal Treatment was an effective remedy for the

petitioners in this case as they had taken the matter on ex officio and made a decision on the discount scheme, which led to its cancellation.

### **Petitioners' comments on the State party's submission**

5.1 On 26 January 2010, the petitioners commented on the State party's submission and considered that they were customers during the period where this discriminatory practice still existed and therefore allegedly suffered personally from direct discrimination due to race and ethnic origin, in violation of article 5 (f) of the Convention.

5.2 The petitioners argue that the report to the police was filed without delay, but that it then took two years for the Regional Prosecutor to discontinue the investigation. On compliance with article 5 (f), the petitioners refer to a State party's periodic report submitted to the Committee, which revealed that only a small number of the total number of complaints filed with the police went to court and that most of them were closed or discontinued for lack of evidence. In the petitioners' view, the decision by the Complaints Committee dated 19 September 2006, which could be made with the evidence provided, is in complete contradiction with the decision by the police to close the investigation precisely for lack of evidence. On the expediency of the procedure, the petitioners insist that it took the police more than a year to request the powers of attorney needed.<sup>m</sup> They consider that the investigation carried out did not meet the requirement of expediency and could therefore not be considered in compliance with the Committee's general recommendation No. 31.

5.3 On the victim status, the petitioners recall the jurisprudence of the European Court of Human Rights, the Human Rights Committee and the Committee itself,<sup>n</sup> who have recognized the status of potential victims and the possibility for certain organizations to represent these victims. The petitioners recognize that, in principle, the State party has complied with article 4 of the Convention as well as with article 5 (f), since it has adopted criminal legislation to implement those provisions. In practice, however, victims of violations of these provisions are allowed to report to the police but are then barred from appealing the decision made by the police.

5.4 On the exhaustion of domestic remedies, the petitioners insist on the fact that, despite the decision by the Complaints Committee, the Public Prosecutor discontinued the investigation of the case, thus barring them from the possibility to go to Court and having the assessment of evidence made by a court of law. The petitioners reject the State party's argument that they could have instituted civil proceedings or could have submitted a complaint to the Complaints Committee in order to exhaust domestic remedies. On the first argument, they submit that the criminal proceedings gave them the possibility to obtain full remedy as it would give them access to the court free of charge and provide them with compensation. Civil proceedings are more expensive and would probably not lead to a positive outcome once the criminal procedure was discontinued for lack of evidence. As for the procedure before the Complaints Committee, it would not provide more remedies than the criminal procedure and the decisions of that committee are non-binding. The petitioners finally stress that, under Danish law, violations of article 5 (f) of the Convention are a criminal offence and, as such, complaints should be filed with the Danish police.

### **Issues and proceedings before the Committee**

#### *Consideration of admissibility*

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 The Committee notes the State party's allegation that the communication is inadmissible *ratione personae* for lack of victim status as the petitioners were neither directly nor indirectly individually subjected to and/or affected by the alleged discriminatory practice of Thai Airways and Thai Travel. It notes that according to the State party, Ms. Vilstrup, one of the petitioners, had purchased a plane ticket with Thai Airways from Denmark to Australia when the "ethnic discount" at stake only concerned flights to Thailand. The Committee further notes that, according to the State party, Mr. Hermansen and Ms. Edrich could also not be considered victims as they travelled for a price that was lower than the price granted through the "ethnic discount". This information has not been challenged by the petitioners. The Committee considers that since Ms. Vilstrup purchased a ticket which was never submitted to the discount scheme in question, she can not be considered a victim of the alleged racially discriminatory act. As for Mr. Hermansen and Ms. Edrich, the price they had to pay for their tickets was lower than the price granted through the "ethnic discount". The Committee further observes that the "ethnic discount" scheme no longer exists as it has been cancelled by Thai Airways following the decision by the Complaint Committee for Ethnic Equal Treatment on 19 September 2006. The Committee therefore considers that the petitioners can qualify neither as victims, since they have not actually been disadvantaged by the incriminated facts, nor as potential victims, since the incriminated facts can no longer produce any effects. The communication is therefore inadmissible *ratione personae* under article 14, paragraph 1 of the Convention.

6.3 Having come to this conclusion the Committee does not consider it necessary to address the other issues raised by the parties regarding the admissibility of the communication.

7. The Committee on the Elimination of Racial Discrimination therefore decides:

(a) That the communication is inadmissible *ratione personae* under article 14, paragraph 1, of the Convention;

(b) That this decision shall be communicated to the State party and to the petitioners.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

#### Notes

- <sup>a</sup> About fifty persons filed complaints however DACoRD only received powers of attorney for eight persons. These complaints as well as airplane tickets proving lack of discounts were transmitted to the police.
- <sup>b</sup> Act No. 626 adopted on 29 September 1987, provides in its section 1 (1) that anyone "who within a trade or business, or a non-profit undertaking, on the ground of a person's race, colour, national or ethnic origin, religion or sexual orientation refuses to serve the person in question on the same conditions as others" is liable to a fine and/or imprisonment for up to six months. The provision prohibits increased prices and other less favourable conditions for persons of a certain race or the like.
- <sup>c</sup> The Complaints Committee for Ethnic Equal Treatment was established pursuant to section 10 (2) of Act No. 374 of 28 May 2003. It is empowered to express its opinion as to whether the prohibition of discrimination on the grounds stated or the prohibition of victimisation has been violated. The Complaints Committee also has the competence to take up the case on its own initiative.
- <sup>d</sup> According to section 749 (2) of the Administration of Justice Act, the Commissioner of Police can recommend to the Regional Public Prosecutor the discontinuance of a case for lack of basis to continue the investigation.
- <sup>e</sup> See para. 4.4 above.

- <sup>f</sup> Actus reus is the voluntary and wrongful act or omission that constitutes the physical components of a crime. Because a person cannot be punished for bad thoughts alone, there can be no criminal liability without actus reus.
- <sup>g</sup> According to the rule of shared burden of proof, the alleged victim only needs to report the alleged facts and it will then be left to the other party to prove that no direct or indirect discrimination has occurred.
- <sup>h</sup> This provision ensures a wider possibility of obtaining compensation than the general rule under section 26 of the Danish Liability in Damages Act.
- <sup>i</sup> This Committee has been replaced by the Board on 1 January 2009.
- <sup>j</sup> Communication No. 40/2007, *Murat Er v. Denmark*, Opinion adopted on 8 August 2007, para. 6.3.
- <sup>k</sup> Communication No. 41/2008, *Ahmed Farah Jama v. Denmark*, Opinion adopted on 21 August 2009, para. 6.3.
- <sup>l</sup> See para. 4.4 above.
- <sup>m</sup> The complaint was filed in January 2006 and the Metropolitan police asked for the Powers of attorney on 8 May 2007.
- <sup>n</sup> European Court of Human Rights, communication Nos. 14234/88 and 14235/88, *Open Door and Dublin Well Women v. Ireland*, Judgement of 29 October 1992, Ser. A 246-A; Human Rights Committee, communication No. 488/1992, *Toonen v. Australia*, Views adopted on 31 March 1994, para. 5.1; Committee on the Elimination of Racial Discrimination communication No. 30/2003, *The Jewish Community of Oslo et al. v. Norway*, Opinion of 15 August 2005, para. 7.3.

## Annex IV

### **Follow-up information provided in relation to cases in which the Committee adopted recommendations**

This annex compiles information received on follow-up to individual communications since the last annual report,<sup>a</sup> as well as any decisions made by the Committee on the nature of those responses. Since the last annual report, no information has been provided by States parties on follow-up to individual communications.

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<sup>a</sup> *Official Records of the General Assembly, Sixty-fourth Session, Supplement No. 18 (A/64/18).*

## Annex V

### **Documents received by the Committee at its seventy-sixth and seventy-seventh 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.109/2010/2	British Virgin Islands
A/AC.109/2010/3	Tokelau
A/AC.109/2010/4	Pitcairn
A/AC.109/2010/5	Cayman Islands
A/AC.109/2010/6	Bermuda
A/AC.109/2010/7	Montserrat
A/AC.109/2010/8	Saint Helena
A/AC.109/2010/9	Anguilla
A/AC.109/2010/10	Turks and Caicos Islands
A/AC.109/2010/11	Western Sahara
A/AC.109/2010/12	American Samoa
A/AC.109/2010/13	United States Virgin Islands
A/AC.109/2010/14	Guam
A/AC.109/2010/15	Falkland Islands (Malvinas)
A/AC.109/2010/16	Gibraltar
A/AC.109/2010/17	New Caledonia



## Annex VI

### Country Rapporteurs for reports of States parties considered by the Committee at the seventy-sixth and seventy-seventh sessions

<i>Periodic reports considered by the Committee</i>	<i>Country Rapporteur</i>
Argentina Nineteenth and twentieth periodic reports (CERD/C/ARG/19-20)	Mr. de Gouttes
Australia Fifteenth to seventeenth periodic reports (CERD/C/AUS/15-17)	Mr. Cali Tzay
Bosnia and Herzegovina Seventh and eighth periodic reports (CERD/C/BIH/7-8)	Mr. Lindgren Alves
Cambodia Eighth to thirteenth periodic reports (CERD/C/KHM/8-13)	Mr. Prosper
Cameroon Fifteenth to eighteenth periodic reports (CERD/C/CMR/15-18)	Mr. Ewomsan
Denmark Eighteenth and nineteenth periodic reports (CERD/C/DNK/18-19)	Mr. Peter
El Salvador Fourteenth and fifteenth periodic reports (CERD/C/SLV/14-15)	Mr. Avtonomov
Estonia Eighth and ninth periodic reports (CERD/C/EST/8-9)	Mr. Thornberry
France Seventeenth to nineteenth periodic reports (CERD/C/FRA/17-19)	Mr. Prosper
Guatemala Twelfth and thirteenth periodic reports (CERD/C/GTM/12-13)	Mr. Murillo-Martínez
Iceland Nineteenth and twentieth periodic reports (CERD/C/ISL/20)	Mr. Kemal
Iran (Islamic Republic of) Eighteenth and nineteenth periodic reports (CERD/C/IRN/18-19)	Mr. Lahiri

<i>Periodic reports considered by the Committee</i>	<i>Country Rapporteur</i>
Japan Third to sixth periodic reports (CERD/C/JPN/3-6)	Mr. Thornberry
Kazakhstan Fourth and fifth periodic reports (CERD/C/KAZ/4-5)	Mr. Diaconu
Monaco Initial to sixth periodic reports (CERD/C/MCO/6)	Mr. Amir
Morocco Seventeenth and eighteenth periodic reports (CERD/C/MAR/17-18)	Ms. Dah
Netherlands Seventeenth and eighteenth periodic reports (CERD/C/NLD/18)	Mr. Lahiri
Panama Fifteenth to twentieth periodic reports (CERD/C/PAN/15-20)	Mr. Cali Tzay
Romania Sixteenth to nineteenth periodic reports (CERD/C/ROU/16-19)	Mr. de Gouttes
Slovakia Sixth to eighth periodic reports (CERD/C/SVK/6-8)	Mr. Avtonomov
Slovenia Sixth and seventh periodic reports (CERD/C/SVN/7)	Mr. Amir
Uzbekistan Sixth and seventh periodic reports (CERD/C/UZB/6-7)	Ms. Crickley
<i>States parties which had been scheduled for review, but in respect of which the review was cancelled or postponed</i>	
Jordan (committed to submit a report soon after the seventy-fifth session)	
Malta (submitted report prior to seventy-seventh session)	
Niger (committed to submit a report soon after the seventy-sixth session)	
Uruguay (submitted report prior to seventy-sixth session)	

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## Annex VII

### Comments of States parties on the concluding observations adopted by the Committee

#### **Eighteenth and nineteenth periodic reports of the Islamic Republic of Iran**

The following comments were sent on 22 September 2010 by the Permanent Representative of the Islamic Republic of Iran to the United Nations concerning the concluding observations adopted by the Committee following the consideration of the eighteenth and nineteenth periodic reports submitted by the State party:<sup>a</sup>

“1. According to paragraph 2 of article 1 of the Convention “CERD shall not apply to distinctions, exclusions, restrictions or preferences made by a State party to this Convention between citizens and non-citizens.” Therefore, raising issues of non-citizens in paragraph 13 and 15 of the Concluding Observations is out of the realm of the Convention and recommendations made in this regard do not lie within the mandate of the Committee.

“2. With regard to paragraph 17 of the Concluding Observations, the Islamic Republic of Iran takes note of the Committee’s recommendation on ethnic groups, but having considered the definition of racial discrimination in article 1 of the Convention, maintains that including Baha’is in this paragraph is not relevant to the Convention.”

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<sup>a</sup> For the text of the concluding observations, see paragraph 42 above. The comments refer to the unedited version of the concluding observations.

## Annex VIII

### List of documents issued for the seventy-sixth and seventy-seventh sessions of the Committee<sup>a</sup>

CERD/C/76/1	Provisional agenda and annotations of the seventy-sixth session of the Committee
CERD/C/76/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-sixth session of the Committee
CERD/C/77/1 and Corr.1-2	Provisional agenda and annotations of the seventy-seventh session of the Committee
CERD/C/77/2	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the seventy-seventh session of the Committee
CERD/C/77/3	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.1972-2010 and 2010/Add.1	Summary records of the seventy-sixth session of the Committee
CERD/C/SR.2011-2049 and 2049/Add.1	Summary records of the seventy-seventh session of the Committee
CERD/C/ARG/CO/19-20	Concluding observations of the Committee on the Elimination of Racial Discrimination – Argentina
CERD/C/KHM/CO/8-13	Concluding observations of the Committee on the Elimination of Racial Discrimination – Cambodia
CERD/C/CMR/CO/15-18	Concluding observations of the Committee on the Elimination of Racial Discrimination – Cameroon
CERD/C/GTM/CO/12-13	Concluding observations of the Committee on the Elimination of Racial Discrimination – Guatemala
CERD/C/ISL/CO/19-20	Concluding observations of the Committee on the Elimination of Racial Discrimination – Iceland
CERD/C/JPN/CO/3-6	Concluding observations of the Committee on the Elimination of Racial Discrimination – Japan

<sup>a</sup> This list only concerns documents issued for general distribution.

CERD/C/KAZ/CO/4-5	Concluding observations of the Committee on the Elimination of Racial Discrimination – Kazakhstan
CERD/C/MCO/CO/6	Concluding observations of the Committee on the Elimination of Racial Discrimination – Monaco
CERD/C/NLD/CO/17-18	Concluding observations of the Committee on the Elimination of Racial Discrimination – Netherlands
CERD/C/PAN/CO/15-20	Concluding observations of the Committee on the Elimination of Racial Discrimination – Panama
CERD/C/SVK/CO/6-8	Concluding observations of the Committee on the Elimination of Racial Discrimination – Slovakia
CERD/C/AUS/CO/15-17	Concluding observations of the Committee on the Elimination of Racial Discrimination – Australia
CERD/C/BIH/CO/7-8	Concluding observations of the Committee on the Elimination of Racial Discrimination – Bosnia and Herzegovina
CERD/C/DNK/CO/18-19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Denmark
CERD/C/SLV/CO/14-15	Concluding observations of the Committee on the Elimination of Racial Discrimination – El Salvador
CERD/C/EST/CO/8-9	Concluding observations of the Committee on the Elimination of Racial Discrimination – Estonia
CERD/C/FRA/CO/17-19	Concluding observations of the Committee on the Elimination of Racial Discrimination – France
CERD/C/IRN/CO/18-19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Islamic Republic of Iran
CERD/C/MAR/CO/17-18	Concluding observations of the Committee on the Elimination of Racial Discrimination – Morocco
CERD/C/SVN/CO/6-7	Concluding observations of the Committee on the Elimination of Racial Discrimination – Slovenia
CERD/C/ROU/CO/16-19	Concluding observations of the Committee on the Elimination of Racial Discrimination – Romania
CERD/C/UZB/CO/6-7	Concluding observations of the Committee on the Elimination of Racial Discrimination – Uzbekistan
CERD/C/ARG/19-20	Nineteenth and twentieth periodic reports of Argentina
CERD/C/KHM/8-13	Eighth to thirteenth periodic reports of Cambodia
CERD/C/CMR/15-18	Fifteenth to eighteenth periodic reports of Cameroon
CERD/C/GTM/12-13	Twelfth and thirteenth periodic reports of Guatemala
CERD/C/ISL/20	Nineteenth and twentieth periodic reports of Iceland

CERD/C/JPN/3-6	Third to sixth periodic reports of Japan
CERD/C/KAZ/4-5	Fourth to fifth periodic reports of Kazakhstan
CERD/C/MCO/6	Initial to sixth periodic reports of Monaco
CERD/C/NLD/18	Seventeenth and eighteenth periodic reports of Netherlands
CERD/C/PAN/15-20	Fifteenth to twentieth periodic reports of Panama
CERD/C/SVK/6-8	Sixth to eighth periodic report of Slovakia
CERD/C/AUS/15-17	Fifteenth to seventeenth periodic reports of Australia
CERD/C/BIH/7-8	Seventh and eighth periodic reports of Bosnia and Herzegovina
CERD/C/DNK/18-19 and Corr.1	Eighteenth and nineteenth periodic reports of Denmark
CERD/C/SLV/14-15	Fourteenth and fifteenth periodic reports of El Salvador
CERD/C/EST/8-9	Eighth and ninth periodic reports of Estonia
CERD/C/FRA/17-19	Seventeenth to nineteenth periodic reports of France
CERD/C/IRN/18-19	Eighteenth and nineteenth periodic reports of the Islamic Republic of Iran
CERD/C/MAR/17-18	Seventeenth and eighteenth periodic reports of Morocco
CERD/C/SVN/7	Sixth and seventh periodic reports of Slovenia
CERD/C/ROU/16-19	Sixteenth to nineteenth periodic reports of Romania
CERD/C/UZB/6-7	Sixth and seventh periodic report of Uzbekistan
CERD/C/AUT/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 – Austria
CERD/C/CAN/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 – Canada
CERD/C/CHL/CO/15-18/Add.1	Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Chile
CERD/C/DEU/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 – Germany

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| CERD/C/MNE/CO/1/Add.1  | Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Montenegro          |
| CERD/C/MDA/CO/7/Add.1  | Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Republic of Moldova |
| CERD/C/RUS/CO/19/Add.1 | Information received from the Government on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Russian Federation  |
| CERD/C/SWE/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 – Sweden              |
| CERD/C/TGO/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 – Togo                |
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