



United Nations

Report of the Committee on the Elimination of Racial Discrimination

**Eighty-first session
(6–31 August 2012)**

**Eighty-second session
(11 February–1 March 2013)**

**General Assembly
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Supplement No. 18 (A/68/18)**

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Note

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Letter of transmittal

1 March 2013

Sir,

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

The report contains information from the eighty-first (6 to 31 August 2012) and eighty-second (11 February to 1 March 2013) sessions.

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 175 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the eighty-first and eighty-second sessions, 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 situations of several States parties under its early warning and urgent action procedures (see chap. II). Furthermore, the Committee examined information submitted by several States parties under its follow-up procedure (see chap. IV).

The Committee adopted a statement on the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies, as well as a decision on the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines) (see annex VIII).

The Committee held a thematic discussion on racist hate speech at its eighty-first session.

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) Alexei S. **Avtonomov**
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 1 March 2013, the closing date of the eighty-second session of the Committee on the Elimination of Racial Discrimination, there were 175 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 eightieth session, 54 of the 175 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 1 March 2013.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination holds two regular sessions yearly. The eighty-first (2166th–2203rd meetings) and eighty-second (2204th–2233rd meetings) sessions were held at the United Nations Office at Geneva from 6 to 31 August 2012 and 11 February to 1 March 2013, respectively.

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

C. Membership and attendance

5. The list of members of the Committee for 2013 is as follows:

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Nourredine Amir	Algeria	2014
Alexei S. Avtonomov	Russian Federation	2016
José Francisco Calí Tzay	Guatemala	2016
Anastasia Crickley	Ireland	2014
Fatimata-Binta Victoire Dah	Burkina Faso	2016
Régis de Gouttes	France	2014

<i>Name of member</i>	<i>Nationality</i>	<i>Term expires on 19 January</i>
Ion Diaconu	Romania	2016
Kokou Mawuena Ika Kana (Dieudonné) Ewomsan	Togo	2014
Huang Yong'an	China	2016
Patricia Nozipho January-Bardill	South Africa	2016
Anwar Kemal	Pakistan	2014
Gun Kut	Turkey	2014
Dilip Lahiri	India	2016
Jose A. Lindgren Alves	Brazil	2014
Pastor Elias Murillo Martínez	Colombia	2016
Waliakoye Saidou	Niger	2014
Patrick Thornberry	United Kingdom of Great Britain and Northern Ireland	2014
Carlos Manuel Vázquez	USA	2016

D. Officers of the Committee

6. The Bureau of the Committee comprised the following Committee members in 2012:

Chairperson: Alexei S. Avtonomov (2012–2014)

Vice-Chairpersons: Nourredine Amir (2012–2014)
José Francisco Calí Tzay (2012–2014)
Dilip Lahiri (2012–2014)

Rapporteur: Anastasia Crickley (2012–2014)

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, the special procedures of the Human Rights Council and the regional human rights mechanisms

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),¹ both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent

¹ *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18 (A/87/18), chap. IX, sect. B.*

practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

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

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

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

11. Morten Kjaerum, Director of the European Union Agency for Fundamental Human Rights, held a dialogue in a closed meeting with the Committee at its 2206th meeting (eighty-second session), on 12 February 2013.

12. Members of the Board of Trustees of the United Nations Voluntary Fund for Indigenous Populations met with the Committee at its 2205th meeting (eighty-second session), on 11 February 2013.

13. Members of the Working Group on business and human rights met with the Committee at its 2206th meeting (eighty-second session), on 12 February 2013.

14. The Committee met with Adama Dieng, Special Advisor to the Secretary-General on the Prevention of Genocide and Mass Atrocities, at its 2224th meeting (eighty-second session), on 25 February 2013.

F. Other matters

15. Ibrahim Salama, director of the Human Rights Treaties Division of the Office of the United Nations High Commissioner for Human Rights (OHCHR) addressed the Committee at its 2166th meeting (eighty-first session), on 6 August 2012.

16. Simon Walker, chief of the Civil, Political, Economic, Social and Cultural Rights Section at the Human Rights Treaties Division of OHCHR, addressed the Committee at its 2204th meeting (eighty-second session), on 11 February 2013.

17. Yury Boychenko, chief of the Anti-Discrimination Section at the Research and Right to Development Division addressed the Committee at its 2078th meeting (eighty-first session), on 14 August 2012, and at its 2206th meeting (eighty-second session), on 12 February 2013.

G. Adoption of the report

18. At its 2233rd meeting (eighty-second session), on 1 March 2013, the Committee adopted its annual report to the General Assembly.

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

19. 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 1993² to guide its work in this area was replaced by new guidelines adopted by the Committee at its seventy-first session, in August 2007.³

20. 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 Calí Tzay

Members: Anastasia Crickley
Ion Diaconu
Kokou Mawuena Ika Kana (Dieudonné) Ewomsan
Huang Yong'an

21. During the eighty-first and eighty-second session, the Committee considered a number of situations under its early warning and urgent action procedure, including the following.

22. On 31 August 2012, the Committee sent a letter to the Government of **Ethiopia** concerning the situation of the South Omo indigenous people in Southern Ethiopia in relation to the construction of the Gibe III Dam and the Kuraz Sugar project, as well as the situation of the Mazenger and other indigenous peoples of Gambella in relation to the authorization granted to a company, Verdanta Harvest, for cultivation in ancient forests of the Godere District. While thanking the State party for its reply to the Committee's previous letter dated 2 September 2011, the Committee requested that the State party provide updated and detailed information on the measures envisaged or implemented to address discrimination against the above-mentioned communities in its next periodic report due on 23 July 2013.

23. On 31 August 2012, the Committee sent a letter to the Government of **India** expressing its concern that the Jawara people in the Andaman Islands had allegedly become the subject of "human safaris" for tourists who drive through the Jawara Reserve on the Andaman Truck Road. The Committee also expressed concern at the lack of implementation of the 2002 order of the Indian Supreme Court to close the Andaman Truck Road. It urged the State party to implement the Supreme Court order, and to provide information on the concerns raised by 31 December 2012. The Committee also called upon the State party to submit its twentieth and twenty-first periodic reports, which were due on 4 January 2010, in a single report.

24. On 31 August 2012, the Committee sent a letter to the Government of **Japan** concerning the construction of United States military bases in Okinawa. The Committee noted with appreciation the reply provided by the State party to its previous letters, and requested the State party to provide updated and detailed information on the measures envisaged or implemented to obtain the support and consent of the local communities for

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

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

projects developed in the Okinawa area in its seventh, eighth and ninth periodic reports due on 14 January 2013. On 1 March 2013, the Committee sent a letter to the Government of Japan thanking it for the reply received on 14 January 2013 in response to the Committee's previous letter, and informing the State party that the information contained in the reply would be discussed in the context of the consideration of the State party's seventh, eighth and ninth periodic reports during the Committee's eighty-fifth session in August 2014.

25. On 31 August 2012, the Committee sent a letter to the Government of **Nepal** expressing its concern regarding allegations that indigenous leaders of the Pallo Kirant Limbuwan Rastriya Manch continued to face harassment and persecution for their attempts to raise awareness about treaties signed between the traditional inhabitants of Limbuwan and the Nepalese monarchy in relation to their independent status during the eighteenth century. The Committee requested the State party to provide information on the concerns raised by the Committee by 31 December 2012, as well as on the measures taken to improve the situation of Limbuwan indigenous peoples in its seventeenth, eighteenth and nineteenth periodic reports, which were due on 1 March 2008.

26. On 31 August 2012, the Committee sent a letter to the Government of the **Philippines** expressing its concern regarding ongoing mining activities at Mount Canatuan without the consultation of the Subanon people. The Committee reiterated its concerns in its previous concluding observations on the Philippines and its letter dated 27 August 2010, and requested further information to be provided in the State party's twenty-first and twenty-second periodic reports, which were due on 4 January 2012.

27. On 31 August 2012, the Committee sent a letter to the Government of **Slovakia** concerning the situation of Roma people in Plavecky Stvrtok. While noting the reply from the State party to the Committee's previous letter, the Committee requested updated and detailed information on the measures envisaged or implemented to address discrimination against Roma, to be provided during the State party's presentation of its ninth and tenth periodic reports, which were to take place during the eighty-second session of the Committee in February and March 2013.

28. On 1 March 2013, the Committee sent a letter to the Government of **Cameroon** expressing its concern at the draft Forest Law submitted by the Ministry of Forests and Wildlife to the Parliament for adoption in March 2013, which could undermine the rights of indigenous peoples. The Committee requested the State party to provide, by 31 July 2013, information on measures taken to hold meaningful consultations with the indigenous peoples concerned, as well as the draft text of the law to determine its conformity with international human rights standards. The Committee also called upon the State party to submit its nineteenth, twentieth and twenty-first periodic reports which had been overdue since 24 July 2012.

29. On 31 August 2012, the Committee sent a letter to the Government of **Costa Rica** concerning the situation of the Térraba indigenous peoples who have been affected by the construction of a hydroelectric dam, El Diquis. While taking note of the State party's reply to the Committee's previous letter dated 2 September 2011, the Committee called upon the State party to take further measures to obtain prior, informed and voluntary consent of the Térraba people in relation to the dam. The Committee also requested the State party to submit its nineteenth periodic report, which was due on 4 January 2010, and to include information on the measures taken to consult the Térraba people, as well as on the process of adopting the Autonomous Development of Indigenous Peoples Bill. On 1 March 2013, the Committee sent a letter to the Government of Costa Rica expressing concern at the alleged acts of violence committed against the Terribe and Bribri peoples. It requested the State party to provide, by 31 July 2013, information on measures taken against those responsible for such acts and to guarantee the right to land of Terribe and Bribri peoples.

30. On 1 March 2013, the Committee sent a letter to the Government of **Guyana** expressing its concern at the application of the Amerindian Act of 2006 to allow mining activities to take place on indigenous territories of the Kako and Isseneru communities without their free and prior informed consent. The Committee reiterated its recommendation in its concluding observations of 2006 to amend the Amerindian Act to remove any discriminatory distinctions in the legislation, and requested the State party to provide information on steps taken in this regard by 31 July 2013. The Committee also requested the State party to provide updated information on the appeal lodged by the Isseneru community against a court decision adopted in October 2008 allowing mining activities to take place on their titled land.

31. On 1 March 2013, the Committee sent a letter to the Government of **Peru** expressing its concern at the impact of the expansion of activities undertaken by Camisea Gas Operators on the indigenous peoples living in voluntary isolation in the Kugapokari-Nahua-Nanti Reserve in south-east Peru. Noting that the Ministry of Energy and Mines had approved the development of three wells and associated infrastructure and was considering the approval of 18–21 additional wells and infrastructure within the reserve, the Committee expressed concern at the survival of the indigenous community and their ability to enjoy their economic, social and cultural rights. The Committee requested that the mining activities in the reserve be suspended immediately and that information be provided on the status of the alleged expansion of the Camisea project by 31 July 2013. The Committee also urged the State party to submit its eighteenth and nineteenth periodic reports, which were due on 29 October 2012.

32. On 1 March 2013, the Committee sent a letter to the Government of **Suriname** expressing its regret at the lack of information provided by the State party on the situation of the Saramaka people and on measures taken by the State party to implement the Committee's decisions adopted under the early warning and urgent action procedure in 2003 (decision 3/62), 2005 (decision 1/67) and 2006 (decision 1/69). The Committee requested the State party to provide such information by 31 July 2013, as well as its thirteenth to fifteenth periodic reports due on 14 April 2013 as soon as possible.

33. On 1 March 2013, the Committee sent a letter to the Government of **United Republic of Tanzania** concerning alleged eviction of the pastoralist Maasai community of Soitsambu village in Ngorongoro District of the Arusha Region. The Committee expressed regret at the lack of reply received from the State party to its previous letter sent on 11 March 2011 on the same issue. The Committee called upon the State party to ensure access of the Maasai people to their traditional lands and to provide adequate compensation as appropriate for the alleged losses suffered. The Committee requested the State party to provide its response to the issues raised by 31 July 2013, and to submit its seventeenth to eighteenth periodic reports, which were due on 26 November 2007.

34. On 1 March 2013, the Committee sent a letter to the Government of the **United States of America** expressing its concern at the potentially discriminatory impact of the construction of the Texas-Mexico border wall on the Kikapoo Traditional Tribe of Texas, the Ysleta del Sur Pueblo (Tigua) and the Lipan Apache (Ndé) indigenous communities, including their access to tribal lands located north and south of the border and to resources required for traditional ceremonies. The Committee also expressed concern that the border wall had allegedly been constructed without the free, prior and informed consent of the affected communities, and that no effective judicial remedies or compensation had been provided to date, owing inter alia to the difficulties in challenging the State party's use of eminent domain powers in court. In addition, the Committee also considered the State party's reply of 29 August 2012 to two previous cases examined by the Committee under the early warning and urgent action procedure concerning the impact of the Ski Resort Project in San Francisco Peaks on indigenous communities, and the situation of the

Western Shoshone. While welcoming the replies provided by the State party, the Committee requested that further information be provided on a number of outstanding issues in its next periodic report, which has been overdue since November 2011.

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

35. Algeria

(1) The Committee considered the combined fifteenth to nineteenth periodic reports of Algeria (CERD/C/DZA/15-19) at its 2209th and 2210th meetings (CERD/C/SR.2209 and 2210), held on 13 and 14 February 2013. At its 2225th meeting (CERD/C/SR.2225), held on 25 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined fifteenth to nineteenth periodic reports of the State party. It notes that the report is in conformity with the Committee's reporting guidelines. However, the Committee regrets that it was submitted with a delay of nearly 10 years.

(3) The Committee welcomes the open and constructive dialogue held with the State party's delegation, which included representatives of several ministries and institutions. It thanks the delegation for the oral presentation and the detailed responses provided during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the constitutional review of 22 April 2002, which resulted in the establishment of the Amazigh language as a national language.

(5) The Committee notes with interest the 2001 review of the Criminal Code establishing provisions on aggravating circumstances for racially motivated offences.

(6) The Committee takes note of the activities of the High Commission on Amazighness, including the publication of books in Tamazight and the awarding of grants to cultural and scientific associations to promote Amazigh culture.

(7) The Committee notes with interest that article 10 of the Education Act of 23 January 2008 stipulates that the State guarantees the right to education for all, without discrimination based on sex or social or geographical origin. It commends the State party on achieving a primary education enrolment rate of 98 per cent.

(8) It welcomes the amendments made to the Nationality Code in February 2006 allowing for children born abroad of an Algerian mother and a foreign father to acquire Algerian nationality.

(9) The Committee notes with interest that, during the period under review, the State party ratified several international instruments, including:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2005;

(b) The Convention on the Rights of Persons with Disabilities, in 2009;

(c) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2006;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2009;

(e) The United Nations Convention against Transnational Organized Crime, in 2002; and its protocols to prevent, suppress and punish trafficking in persons, especially women and children, and against the smuggling of migrants by land, sea and air, in 2004.

C. Concerns and recommendations

Relevant data

(10) While noting the State party's position that it does not collect population data disaggregated by ethnic origin, the Committee notes the absence from the report of statistical data on the composition of the population. It also notes the lack of relevant socioeconomic indicators on the enjoyment of the rights guaranteed under the Convention by members of various groups, in particular the Amazigh and non-citizens, as such data are necessary to determine the progress made and difficulties encountered in implementing the provisions of the Convention (arts. 1 and 5).

In the light of its general recommendation No. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its revised guidelines for the preparation of periodic reports (CERD/C/2007/1), the Committee recalls the usefulness of disaggregated data on the ethnic composition of the population. Relevant information on the socioeconomic and cultural situation and living conditions of different groups within the population can be used by the State party as a valuable tool for taking the necessary measures to ensure the enjoyment by all of the rights enshrined in the Convention and to prevent discrimination based on ethnic origin and nationality.

Definition of racial discrimination

(11) The Committee regrets that the State party has not yet adopted a definition of racial discrimination in line with article 1 of the Convention (art. 1).

Recalling its general recommendation No. 14 (1993), concerning article 1, the Committee recommends that the State party incorporate into its domestic legislation a definition of racial discrimination that is consistent with article 1 of the Convention and that applies to all areas of public and private life.

Criminalization of racial discrimination

(12) The Committee reiterates its concern that the State party's legislation does not classify racial discrimination as an offence in line with the Convention. While noting the reference made to the offences of defaming and insulting persons belonging to ethnic groups, the Committee is concerned that relevant provisions do not reflect the entire content of article 4 of the Convention (arts. 2 and 4).

The Committee recommends that the State party expedite the legislative reform announced by the delegation and incorporate the prohibition of racial discrimination into the Criminal Code, in accordance with the Convention. In this regard, the Committee draws the attention of the State party to general recommendations No. 7 (1985) and No. 15 (1993) on the application of article 4 of the Convention, which underscore the urgent need to adopt legislation to eradicate racial discrimination. It recommends that the envisaged legislative amendments cover all aspects of article 4 of the Convention and that the State party ensure the effective implementation of the legislation.

Absence of complaints of racial discrimination

(13) The Committee takes note of the information provided by the State party that no complaints relating to acts of racial discrimination have been brought before the courts, not even in civil proceedings. It regrets that the Convention has never been applied by the courts, even though, under the Constitutional Council decision of 20 August 1989 and pursuant to article 132 of the Constitution, international treaties ratified and published by the State party take precedence over domestic law and thus any Algerian citizen can invoke them before the national courts. The Committee recalls that it does not accept the general

assertion that there is no racial discrimination in States parties to the Convention (arts. 2 and 6).

Recalling its general recommendation No. 31 (2005) on racial discrimination in the administration and functioning of the criminal justice system, the Committee emphasizes that the absence of complaints concerning acts of racial discrimination is not necessarily an indicator of the absence of racial discrimination in the State party. In this regard, it requests the State party to ensure that the population is aware of its rights, specifically of all legal remedies in connection with racial discrimination, including the right to invoke the Convention before the domestic courts. Furthermore, the Committee asks the State party to include comprehensive information on complaints lodged and the follow-up given to them in its next periodic report.

Promotion of the Amazigh language

(14) While noting the measures taken to promote the Amazigh language and culture, including teaching of the language in schools, the Committee is concerned by reports that there are not enough qualified teachers and teaching materials and that Amazigh-language teaching has been abolished in several *wilaya* communes. It also regrets that, despite its status as a national language, the Amazigh language is not yet recognized as an official language and is thus excluded from areas of public life such as the public administration and the justice system (art. 5).

The Committee notes the State party's statement on the additional efforts that will be made and strongly encourages it to ensure that the Amazigh language is taught at all levels of education and is established as an official language so as to further promote its use throughout the country.

Promotion of economic, social and cultural rights of Amazighs

(15) The Committee is concerned by reports about economic disparities, affecting in particular the regions inhabited by Amazighs, who allegedly do not benefit from adequate public investment. In addition, while it takes note of the activities of the High Commission on Amazighness, the Committee is concerned by the lack of information on consultation and involvement of Amazighs in those activities and on the real impact of the activities on the promotion of Amazighs' rights (art. 5).

The Committee recommends that the State party step up its development efforts in the most disadvantaged regions, especially those inhabited by Amazighs. The Committee also recommends that the role and activities of the High Commission on Amazighness be strengthened and that its activities be carried out both for and with the Amazighs in a manner that ensures respect for their rights and freedoms. The Committee invites the State party to include in its next periodic report information on the results of the High Commission's work and the impact of its activities.

Right to use Amazigh first names

(16) The Committee is concerned by the fact that civil registrars in certain *wilaya* communes refuse to register Amazigh first names on the ground that they do not appear on "the list of Algerian first names" (art. 5).

The Committee takes note of the information provided by the State party concerning the revision of the list of first names to include 500 Amazigh first names, and recommends that it take the necessary steps to ensure, de facto and de jure, that all Algerians can freely choose their children's first names and register them with a civil registrar without encountering discrimination of any kind.

Situation of women, especially Amazigh women

(17) While the Committee commends the State party on the measures adopted to increase the number of women in decision-making positions, it is concerned by the fact that Amazigh women risk being subjected to double discrimination on the basis of ethnicity and gender (art. 5).

The Committee draws the attention of the State party to general recommendation No. 25 (2000), concerning gender-related dimensions of racial discrimination, and recommends that it continue to promote women's rights, focusing in particular on Amazigh women.

Situation of non-citizens, including migrants and refugees

(18) The Committee is concerned by the failure to apply legislation establishing the right to asylum. While noting the adoption of Act No. 09-02, concerning legal assistance, which is available to any legal alien present in Algeria, the Committee is concerned by the absence of procedures to allow irregular migrants to lodge complaints (arts. 5 and 6).

The Committee recommends that the State party adopt the bill on the right to asylum expeditiously with a view to the implementation of the international treaties that Algeria has ratified on the right to asylum and the granting of refugee status without any form of discrimination. The Committee draws the State party's attention to the need to facilitate the integration of migrants and refugees living on its soil and to provide access to justice for undocumented migrants in the event of an infringement of their fundamental rights.

Education and awareness-raising about the Convention

(19) The Committee takes note of the human rights training and awareness-raising activities organized by the State party for, among others, trainee judges and law enforcement personnel. The Committee is nevertheless concerned by the persistence of racist stereotypes and by the hate speech that is sometimes directed against the Amazighs, asylum seekers, refugees and sub-Saharan Africans (art. 7).

The Committee recommends that the State party step up its efforts in the area of human rights training with a particular focus on action to combat racial discrimination, respect for diversity and cross-cultural relations. It urges the State party to pay particular attention to training for teachers, civil registrars and law enforcement personnel. It furthermore calls on the State party to organize public awareness campaigns on these themes.

National human rights institution

(20) The Committee notes with concern that the National Advisory Commission for the Promotion and Protection of Human Rights has had its accreditation status downgraded from "A" to "B" by the Sub-Committee on Accreditation of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights. It regrets the absence of information on follow-up by the Commission to racial discrimination cases filed by individuals or groups, notwithstanding the persistent allegations made concerning discrimination based on ethnicity or nationality (art. 2).

The Committee recommends that the State party take all necessary measures to expedite the adoption of the new law on the National Advisory Commission for the Promotion and Protection of Human Rights in order to bring it into full conformity with the Paris Principles (General Assembly resolution 48/134). In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate implementation of the Convention, the Committee recommends that the National Advisory Commission for the Promotion and Protection of Human Rights be

empowered to review Government policies on protection from racial discrimination and to verify that the legislation is in conformity with the Convention.

Human trafficking

(21) While taking note of the adoption of Act No. 9-01 of 25 February 2009, which provided for the inclusion of human trafficking as an offence under the Criminal Code, the Committee is concerned by the lack of support services for human trafficking victims, most of whom are non-citizens (arts. 5 and 6).

The Committee recommends that the State party take all necessary measures not just to punish the traffickers but also to provide legal and institutional assistance to the victims, in particular non-citizens who do not have a valid residence permit.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

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

Dialogue with civil society

(23) The Committee recommends that the State party continue to intensify its dialogue with civil society organizations working in the area of human rights protection, particularly those involved in combating racial discrimination, and that it consult them when it prepares the next periodic report.

Amendments to article 8 of the Convention

(24) The Committee recommends that the State party ratify the amendments to paragraph 6 of article 8 of the Convention that were adopted on 15 January 1992, at the Fourteenth Meeting of the States Parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and approved by the General Assembly in resolution 47/111. In this connection, the Committee refers to resolutions 61/148, 63/243 and 65/200, in which the General Assembly strongly urges States parties to the Convention 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.

Dissemination

(25) The Committee recommends that the State party make its periodic reports easily accessible to the public at the time of their submission and disseminate the Committee's concluding observations on those reports in the official language of the State and other commonly used languages.

Common core document

(26) The Committee encourages the State party to regularly update the core document (HRI/CORE/Add.127) submitted in 2003 in line with the harmonized guidelines on reporting under the international human rights treaties, including guidelines on a common core document, as adopted at the fifth annual meeting of the chairpersons of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up on concluding observations

(27) In conformity with paragraph 1 of article 9 of the Convention and rule 65 of the Committee's revised rules of procedure, the Committee requests the State party to inform it within one year of the adoption of the present concluding observations of the measures taken to follow up on the recommendations set forth in paragraphs 12, 16 and 20 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the State party's attention to the particular importance of the recommendations in paragraphs 15, 17 and 18 and requests that the State party include detailed information in its next periodic report on the specific steps taken to implement those recommendations.

Preparation of the next report

(29) The Committee recommends that the State party submit its twentieth and twenty-first periodic reports, in a single document, by 15 March 2015, taking due account of the guidelines on the Convention-specific document that were adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that it respond to all the points raised in the present concluding observations. The Committee furthermore urges the State party to adhere to the limit of 40 pages for treaty-specific reports and 60–80 pages for the core document (see HRI/GEN.2/Rev.6, chap. I, para. 19).

36. Austria

(1) The Committee considered the eighteenth to twentieth periodic reports of Austria (CERD/C/AUT/18-20), submitted in one document, at its 2189th and 2190th meetings (CERD/C/SR.2189 and 2190), held on 22 and 23 August 2012. At its 2200th meeting (CERD/C/SR.2200), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission by the State party of its eighteenth to twentieth periodic reports drafted in accordance with the Committee's guidelines for the preparation of reports. The Committee also welcomes the open dialogue with the delegation of the State party as well as its efforts to provide comprehensive responses and supplementary replies to issues raised by Committee members during the dialogue.

B. Positive aspects

(3) The Committee notes with appreciation the various legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including:

(a) The amendment to the Employment of Foreigners Act in 2011, repealing section 8 (2) that provided for foreign employees to be dismissed first in the event of redundancy;

(b) The amendments to the Equal Treatment Act and the Federal Act on the Equal Treatment Commission in 2008, raising the amount of damages that can be claimed for human rights violations, and extending the limitation period for cases of harassment from six months to one year;

(c) The adoption of a National Action Plan for Integration and the establishment of an Integration Advisory Committee in 2010;

(d) Various programmes, strategies and other initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism;

(e) The arrangement adopted on the issue of bilingual signage in German and Slovenian in Carinthia.

C. Concerns and recommendations

Statistical data on the composition of the population

(4) The Committee recalls its previous recommendation (CERD/C/AUT/CO/17, para. 9) and remains concerned at the absence of comprehensive statistical data on the ethnic composition of its population (art. 2) in the State party's report.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendations (CERD/C/AUT/CO/17, para. 9) that the State party collect disaggregated data, including on the basis of mother tongues used, languages commonly spoken or other indicators of ethnic diversity. The Committee furthermore recommends that such data collection activities and other information derived from targeted surveys be conducted on a voluntary basis, with due respect for the privacy and anonymity of the individuals concerned, and they should endeavour to obtain accurate information on all ethnic groups living in the territory of the State party.

Applicability of the Convention under domestic law

(5) While noting that the European Convention for the Protection of Human Rights and Fundamental Freedoms has the status of constitutional law in the State party and that it is directly applicable in domestic courts, as well as bearing in mind that the Federal Constitutional Law of 1973 on the implementation of the Convention has not incorporated the Convention in its entirety into the Austrian domestic legal order, the Committee is concerned at the lack of examples of cases of racial discrimination where the provisions of the Convention have been applied by domestic courts (arts. 2 and 6).

The State party should take all necessary measures to ensure that judges, prosecutors and lawyers have knowledge of the provisions of the Convention to enable them to apply the Convention in relevant cases. It urges the State party to include in its next periodic report specific examples of the application of the Convention by domestic courts and access by individuals to remedies provided for in legislation on violations of rights contained in the Convention.

(6) The Committee is concerned that different provisions on the prohibition of racial discrimination are dispersed in many laws, which do not seem to ensure the necessary coherence and consistency (art. 2).

The Committee recommends that the State party harmonize its legislation so as to cover all the provisions of the Convention, taking into account the relevant general recommendations.

(7) The Committee notes the constitutional requirement that the *Länder* must implement the State party's obligations under the Convention. However, it is concerned that the application of this rule is not uniform in the case of the Convention among the *Länder* (art. 2).

The Committee reiterates its recommendation that the State party ensure full compliance with the legal, administrative and policy requirements of the implementation of the Convention by its federal provinces.

National human rights institution and policy frameworks

(8) While welcoming the measures taken by the State party to broaden the mandate of the Austrian Ombudsman Board (AOB) to act as a national human rights institution and as a national preventive mechanism under Optional Protocol to the Convention against Torture,

the Committee is concerned to note that the manner in which members of the AOB are appointed continues to raise issues regarding their independence. The Committee notes that the AOB has not been accredited with “A” status by the International Coordinating Committee (art. 2).

The Committee recommends that the State party ensure that the appointment of members of the AOB fully complies with the Paris Principles as set forth in General Assembly resolution 48/134. The State party should adopt concrete measures to improve the status accorded to the AOB by the International Coordinating Committee under the Paris Principles and to allocate the necessary resources in order to provide the means for fulfilling its mandate.

National Action Plan

(9) Recalling its general recommendations No. 28 (2002) on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and its No. 33 (2009) on follow-up to the Durban Review Conference, the Committee is concerned at the State party’s position that it does not intend to adopt a National Action Plan against Racism as required by the Durban Declaration and Programme of Action which was adopted in September 2001 (art. 2).

The Committee reiterates its previous recommendation (CERD/C/AUT/CO/17 para. 28) and urges the State party to reconsider its decision and to adopt a National Action Plan against Racism in line with the Durban Declaration and Programme of Action. The State party should 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 further urges the State party to include in its next periodic report specific information on measures taken to implement the provisions on racism of the Durban Declaration and Programme of Action.

Incitement to racial hatred and violence

(10) While welcoming the intention of the State party to withdraw its reservation to article 4 and noting the State party’s efforts to improve legislation proscribing incitement to racist hatred and violence, following the Committee’s previous recommendation (CERD/C/AUT/CO/17, para. 15), such as the amendment to section 283 repealing the mandatory nature of the condition that a possible threat to public safety must exist in order to bring cases under this section, the Committee is concerned that the recent amendment to section 283 of the Criminal Code prohibiting some acts of racial hatred and discrimination, perceivable as such by a “broad public,” may have the effect of rendering such acts of racial hatred and discrimination permissible if the requisite number of individuals needed to perceive the act as constituting an offence under the new provision in the revised law is not met (arts. 2 and 4).

The Committee recommends that the State party revise the scope of section 283 of the Criminal Code to clarify that it effectively proscribes all forms of racial hatred and discrimination as prescribed by article 4 of the Convention.

Right-wing extremism and neo-Nazism

(11) While noting the State party’s efforts to improve public awareness of new forms of racism in the State party, the Committee is concerned at the resurgence of skinhead, far right wing and other groups that are inspired by extremist national socialist ideologies and neo-Nazism. The Committee is also concerned at reports of verbal abuse of football players

of African descent and the display of anti-Semitic slogans in football stadiums (arts. 2 and 4).

The Committee recommends that the State party take effective measures to prohibit incitement to racial hatred in its territory and redouble its efforts to promote tolerance towards persons of different ethnic origins. The Committee further recommends that the State party continue to work with sports associations to eradicate racism in all sporting disciplines.

Political racist speech

(12) The Committee regrets the use of inflammatory language by politicians during election campaigns that vilifies and promotes prejudices against persons of minority ethnic origins in the State party (arts. 4 and 5).

The Committee urges the State party to thoroughly investigate and prosecute, where appropriate, the use during election campaigns of statements by politicians that incite racial hatred against persons of minority ethnic origin. In this regard, the State party should take active steps to prevent candidates and organizations from promoting and inciting racial discrimination.

Administration of justice

(13) The Committee is concerned at the disproportionately high rates of incarceration of non-citizens which according to the State party are partly attributable to the failure by most of those held in pre-trial detention to satisfy the conditions for conditional release, such as lack of a permanent residence and the risk of flight before criminal proceedings are completed. The Committee is also concerned at reports of racial profiling and the use of stops and searches of persons of ethnicities other than the majority. The Committee is further concerned at the failure by the State party to adequately prosecute and punish law enforcement personnel who commit offences against people with migration backgrounds and fail to provide equal protection under the law, as well as the failure to prosecute many violations of the prohibition of racial discrimination, considering them “petty offences” (arts. 2, 4, 5 and 6).

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 to conduct a comprehensive study on the root causes of the over-representation of non-citizens in the criminal justice system and racial profiling. The Committee recommends that the State party:

(a) **Take necessary steps to cease arrests, stops, searches and investigations based on appearance, colour or membership of national and ethnic groups;**

(b) **Investigate and punish cases of racial profiling and ensure that offences committed by law enforcement personnel, including allegations of racial profiling, are thoroughly investigated and punished with appropriate sanctions;**

(c) **Increase efforts to prosecute and punish all violations of the prohibition of racial discrimination in accordance with articles 4, 5 and 6 of the Convention;**

(d) **Intensify the training and sensitization of prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention.**

Direct and indirect discrimination

(14) While welcoming reforms to increase the quantum of damages for acts of racial discrimination before the Equal Treatment Commission and other bodies, the Committee regrets the continued use of “foreign quotas” which managers of establishments use to

restrict the access of persons with migration backgrounds to public places. The Committee further regrets that notwithstanding the existence of section 87 of the Austrian Industrial Code that empowers authorities to revoke a business licence in instances of gross violation of the prohibition against racial discrimination, this provision has never been applied to any business entity despite a number of allegations in this regard (art. 5).

The Committee reiterates its previous recommendation (CERD/C/AUT/CO/17 para. 21) and urges that the State party redouble its efforts to investigate allegations of arbitrary denial of access to public places by persons of migration background based on their appearance, and to punish such discrimination with appropriate sanctions.

Racist advertisements

(15) The Committee regrets reports of racist advertisements in the media, particularly relating to housing and employment opportunities that require applicants to be “Austrians only”. The Committee is concerned that such advertisements foment existing racial prejudice and stereotypes against certain minority groups (arts. 2 and 5).

The State party should take measures to prevent such racist advertisements through investigation and imposition of appropriate sanctions. The State party should also intensify its awareness-raising campaigns with a view to modifying existing prejudices and stereotypes against minority ethnic groups.

Family reunification

(16) While noting the recent efforts to abolish the one year waiting period for family reunification purposes, the Committee is still concerned at reports on the use of quotas for each *Länder*, so that once the quota is met, individuals must wait several years to benefit from the policy on family reunification (arts. 2 and 5).

The State party should abolish the quota requirements per *Länder*, so that family reunification is not dependent on the number of acceptable applications in a particular period and *Länder*.

Education

(17) While noting the State party’s efforts to improve accessibility and the quality of education, the Committee is concerned at the high dropout rates in schools among Roma students and children with a migration background. The Committee is also concerned at the over-representation of Roma and ethnic children in special needs schools. The Committee also notes the absence of measures for the education of Roma children living outside the Burgenland area (art. 5).

The Committee recommends that the State party strengthen its special measures to increase the level of educational attainment of children of migrants, in particular by preventing their marginalization and reducing dropout rates. The Committee requests the State party provide it with information in its next periodic report on specific measures taken to implement Circular No. 19/2008 issued by the Federal Minister of Education on 5 August 2008 requiring that the lack of proficiency in the language of instruction should not be the criterion for assigning students to special needs schools. The Committee also requests information about the education of Roma children living outside the Burgenland area.

D. Other recommendations

Ratification of other treaties

(18) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities

that may be 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, and the UNESCO Convention against Discrimination in Education.

Amendment to article 8 of the Convention

(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 resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urges 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.

Dissemination

(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 and other commonly used languages, as appropriate.

Common core document

(21) Noting that the State Party submitted its core document in 1992, the Committee encourages the State Party to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(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 8, 15 and 16 above.

Paragraphs of particular importance

(23) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 4, 5 and 13, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(24) The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document, due on 8 June 2015, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing 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, chap. I, para. 19).

37. Belize

(1) The Committee considered the situation in Belize with respect to the implementation of the Convention, at its 2183rd meeting (CERD/C/SR.2183), held on 16 August 2012. In the absence of a report from the State party and based, *inter alia*, on information from other

United Nations bodies, it adopted, at its 2199th meeting (CERD/C/SR.2199), held on 29 August 2012, the following concluding observations under the review procedure.

A. Introduction

(2) The Committee wishes to draw the attention of the State party to the fact that reporting is an obligation under article 9 of the Convention and that non-compliance in this regard creates serious obstacles to the effective functioning of the mechanism set up to monitor the implementation of the Convention.

(3) The Committee regrets that the State party has not provided its initial report to the Committee. The Committee recalls that it has postponed many times the consideration of the situation in Belize. Despite a number of reminders, exchanges of letters between the State party and the Committee, as well as two training sessions conducted in the State party by and with the assistance of the Office of the United Nations High Commissioner for Human Rights following a request for technical assistance on reporting, the State party has not provided such a report. In the light of the non-receipt of the report, and noting that the State party did not respond to the invitation to participate in its 2183rd meeting, the Committee considered the situation in the State party under its review procedure established by its decision adopted at its thirty-ninth session in 1991 and developed by its further decisions and established practice, and decided to adopt the following concluding observations under its review procedure.

B. Positive aspects

(4) The Committee notes the adoption by the State party of a Constitution which includes some provisions on the protection of human rights and prohibits discrimination on the grounds of race, colour and place of origin.

(5) The Committee notes with interest that, since the ratification of the International Convention on the Elimination of All Forms of Racial Discrimination, the State party has acceded to or ratified the following international instruments:

(a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, on 14 November 2001;

(b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, on 9 December 2002;

(c) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 1 December 2003;

(d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 1 December 2003.

C. Concerns and recommendations

Demographic composition of the population

(6) The Committee is concerned at the fact it does not have at its disposal comprehensive statistical data on the ethnic composition of the population, including immigrants living in its territory, or on economic and social indicators disaggregated by ethnicity, to enable it to better evaluate the enjoyment of civil and political, economic, social and cultural rights in the State party.

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and, in its initial report, provide the Committee with reliable and comprehensive statistical data on the ethnic composition of its population, including immigrants, and its economic and social indicators disaggregated by ethnicity and gender, to enable the Committee

to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.

Direct and indirect discrimination

(7) The Committee takes note that the State prohibits discrimination and provides for equal treatment, on the grounds of race, place of origin and colour, in the preamble and articles 3 and 16 of its Constitution. However, the Committee is concerned at the lack of comprehensive anti-discrimination legislation which prohibits racial discrimination in various areas of life and which guarantees equal treatment to all persons in the State party, including immigrants. The Committee is also concerned at the lack of policy measures, in particular special measures for the most disadvantaged and marginalized ethnic groups, aimed at ensuring the enjoyment by all without discrimination of the rights set forth in the Convention (arts. 1, 2).

The Committee recommends that the State party adopt comprehensive anti-discrimination legislation prohibiting racial discrimination in the enjoyment of human rights and protecting all persons living in the territory of the State party. The Committee also recommends that the State party adopt policy measures, including special measures for the most disadvantaged and marginalized ethnic groups, in order to guarantee for all without discrimination, enjoyment of the rights in the Convention, in line with 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.

National human rights institutions

(8) The Committee is concerned that the State party has not appointed a new Ombudsman since December 2011. It is also concerned at reports on the lack of independence and the insufficiency of human and financial resources of the Office of the Ombudsman. The Committee is further concerned by the fact the State party has not yet established a national human rights institution in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), as recommended by the Working Group on the Universal Periodic Review and agreed to by the State party (art. 2).

The Committee recommends that the State party take appropriate measures to appoint an Ombudsman, to provide the Office of the Ombudsman with sufficient financial and human resources and guarantee its independence. It also recommends that the State party establish a national human rights institution, in full compliance with the Paris Principles.

Incidence of racist and xenophobic stereotypes

(9) The Committee is concerned at information received about incitement to racial discrimination and hatred against mestizo and Maya, perceived by other groups as monopolizing positions and lands in the State party. It is also concerned at the lack of a legislation in the State party which gives full effect to the provisions of article 4 of the Convention (arts. 2, 4).

The Committee draws the State party's attention to its general recommendations Nos. 1 (1972) on State parties' obligations, 7 (1985) on implementation of article 4 and 15 (1993) on article 4, according to which the provisions of article 4 are mandatory, and emphasizes the preventive nature of legislation expressly prohibiting incitement to racial discrimination and the dissemination of ideas based on racial superiority. The Committee recommends that the State party adopt legislation which gives full effect to the provisions of article 4 of the Convention. It also recommends that the State party take necessary steps to combat and punish incitement to racial discrimination and

hatred against some ethnic groups (mestizo and Maya) as well as the dissemination of ideas based on racial superiority.

Situation of indigenous communities

(10) The Committee is concerned at the fact that the State party has not yet recognized the land rights of Maya people, in particular those living in the Toledo district, and continues to grant leases and oil concessions over their traditional lands without their prior, free and informed consent despite the rulings of the Supreme Court of the State party and the recommendations of the Inter-American Commission on Human Rights (art. 5).

Recalling its general recommendation No. 23 (1993) on the rights of indigenous peoples, the Committee recommends that the State party recognize the rights of Maya indigenous people, in particular of the Toledo district, to their traditional lands, and stop granting leases and oil concessions without obtaining the prior, free and informed consent of Maya people, in full compliance with the ruling of the Supreme Court and the recommendations of the Inter-American Commission on Human Rights.

(11) The Committee is concerned at the discrimination, exclusion and poverty faced by the Maya population and by some people of African descent preventing them from fully enjoying their economic, social and cultural rights on equal footing with the rest of the population, in particular with regard to the labour market, housing, health care and education (arts. 2, 5).

Bearing in mind its general recommendations No. 23 (1993), No. 32 (2009) and No. 34 (2011), the Committee recommends that the State party take concrete steps, including special measures, to guarantee the enjoyment by Maya and some people of African descent of access to the labour market, housing and health care, and to combat the poverty they face. The State party should develop bilingual intercultural education to favour the integration of such ethnic groups.

Trafficking in persons

(12) The Committee is concerned that the State party remains a country of departure, transit and arrival of traffic in persons, despite the Anti-Trafficking Act of 2003 adopted by the State party and awareness-raising campaigns conducted and assistance measures to victims (art. 5).

The Committee recommends that the State party strengthen measures to combat trafficking in persons in its territory, including by effectively implementing its Trafficking Act of 2003, investigate, prosecute and punish those responsible, and offer appropriate protection to victims. It should also reinforce its cooperation with neighbouring countries.

Legal remedies for victims of racial discrimination

(13) The Committee is concerned that the State party has not adopted concrete and effective judicial and other remedies for cases of racial discrimination that give full effect to the provisions of article 6 of the Convention. The Committee regrets the lack of information on cases of racial discrimination brought before domestic courts or tribunals and reparation provided to the victims (art. 6).

Referring 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 complaints or judicial proceedings brought by victims of racial discrimination may reflect the non-existence of relevant legislation, lack of awareness of available remedies, fear of social disapproval or unwillingness on the part of the responsible authorities to institute legal proceedings. It recommends that the State party adopt effective legal remedies for victims of racial discrimination

and provide the Committee with information on cases of racial discrimination brought before domestic courts and tribunals, judgments and sentences handed down and reparation provided to victims. The Committee asks the State party to ensure that its domestic legislation contains appropriate provisions and inform the public of all the available legal remedies in the area of racial discrimination.

Human rights education

(14) The Committee is concerned about the absence of human rights education in school curricula as well as in training for law enforcement officials, including on the provisions of the Convention. The Committee is also concerned at the insufficiency of measures taken to promote understanding and tolerance among different ethnic groups (art. 7).

The Committee recommends that the State party take appropriate measures to ensure that human rights education is included in school curricula and that law enforcement officials at different levels, including police officers, magistrates, judges, lawyers and those working with the Office of the Ombudsman, receive human rights training, including on the provisions of the Convention. It also recommends that the State party increase its efforts to promote understanding and tolerance among different ethnic groups residing in its territory.

D. Other recommendations

Ratification of other treaties

(15) 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 relevance to communities that may be the subject of racial discrimination, such as the International Covenant on Economic, Social and Cultural Rights.

Declaration under article 14 of the Convention

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

Follow-up to Durban Declaration and Programme of Action

(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.

Consultation with organizations of civil society

(18) The Committee recommends that the State party consult and expand 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 initial report.

Paragraphs of particular importance

(19) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 9, 10 and 11 above and requests the State

party to provide detailed information in its initial report on concrete measures taken to implement these recommendations.

Common core document

(20) Noting that the State party has not yet submitted its core document, the Committee encourages it to do so, 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.6, chap. I).

Preparation and dissemination of the initial report

(21) The Committee urges the State party to initiate the dialogue with the Committee and to provide urgently, and no later than 31 January 2013, information regarding concerns raised and recommendations made in the present concluding observations, and to submit its overdue initial report as soon as possible and no later than 31 January 2013, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), addressing all points raised in the present concluding observations adopted under the review procedure. 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 (HRI/GEN.2/Rev.6, chap. I, para. 19). The Committee recommends that the State party's future 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.

38. Dominican Republic

(1) The Committee considered the thirteenth and fourteenth periodic reports of the Dominican Republic, submitted in a single document (CERD/C/DOM/13-14), at its 2223rd and 2224th meetings (CERD/C/SR.2223 and 2224), held on 22 and 25 February 2013. At its 2231st and 2232nd meetings (CERD/C/SR.2231 and 2232), held on 28 February and 1 March 2013, the following concluding observations were adopted.

A. Introduction

- (2) The Committee welcomes the submission of the periodic reports, the dialogue and the replies provided by the high-level delegation of the Dominican Republic.
- (3) The Committee commends the active participation of the representatives of civil society in the consideration of the reports.

B. Positive aspects

- (4) The Committee commends the following legislative and institutional measures:
- (a) The reform of the Constitution in 2010, which grants constitutional status to human rights, to the Ombudsman's Office and to the remedy of amparo; it also establishes the Constitutional Court and incorporates non-discrimination (art. 39);
 - (b) The classification of discrimination as an offence in the Criminal Code (arts. 336 and 337), the Code of Criminal Procedure (art. 11) and the Civil Code (art. 13);
 - (c) The establishment of the Inter-Agency Commission on Human Rights within the Ministry of Foreign Affairs;
 - (d) The establishment of the Human Rights Office within the Attorney-General's Office;
 - (e) The inauguration of the Constitutional Court;

(f) The establishment of the Inter-Agency Commission to Combat Unlawful Trafficking and Smuggling of Persons;

(g) The cultural policy of the Ministry of Culture for 2008, vindicating the African contribution to the country, and its support for the campaign for tolerance and peaceful coexistence of the Office of the United Nations High Commissioner for Refugees (UNHCR), which presented the positive contributions of migrants to Dominican society;

(h) Measures for improvement of conditions on sugar plantations, adopted between 2009 and 2010, such as the construction of schools and health centres; and of infrastructure works and transport and social welfare facilities;

(i) Discontinuance of classifications such as dark-skinned Indian or light-skinned Indian in new identity documents;

(j) Initiative to amend the electoral law to enable Dominicans to identify themselves as “negro, mulatto”.

(5) The Committee recognizes the Dominican Republic’s timely solidarity with the neighbouring country, Haiti, and the economic support provided, especially in response to the natural disasters that have affected Haiti and its population, in particular the 2010 earthquake.

C. Factors limiting application of the Convention in the Dominican Republic and measures to overcome them

(6) The Committee takes note of the colonial heritage and of the structural and economic constraints affecting the Dominican Republic. Nevertheless, the rights and freedoms set forth in the Convention should be protected. At the same time, the response by States to economic crises should not increase poverty or lead to a surge in racial discrimination (general recommendations No. 20 on non-discriminatory implementation of rights and freedoms (1996) and No. 33 on follow-up to the Durban Review Conference (2009)).

Denial of discrimination

(7) The Committee is concerned about the State party’s firm denial — reiterated in its dialogue with the Committee — that racial discrimination exists, especially in respect of dark-skinned people of African descent, which is in itself an obstacle to the State party’s commitment to combating racism and racial discrimination. The Committee notes that the terms *indio-claro* (light-skinned Indian) and *indio-oscuro* (dark-skinned Indian), which continue to be used, fail to reflect the ethnic situation in the country and render invisible the dark-skinned population of African descent.

Structural discrimination

(8) Taking into account the State party’s explanations regarding the multiracial and multicultural make-up of the Dominican Republic, the Committee recalls that cross-breeding and the integration of dark-skinned persons of African origin into the informal labour market are not sufficient as indicators to assess levels of inclusion and equality. The Committee recalls the close link between poverty and racism and the fact that structural discrimination against dark-skinned persons of African origin is apparent in the fact that they are one of the poorest population groups among the poor (Durban Declaration and Programme of Action (2001) and the Committee’s general recommendation No. 34 on discrimination against people of African origin (2011)).

Implementation of the Committee’s previous recommendations

(9) The Committee regrets the absence of specific information on the implementation of its previous recommendations (CERD/C/DOM/CO/12) and appreciates the need to explore

with the State party new paths for dialogue to ensure that due attention is given to its recommendations and to those of other international mechanisms that have repeatedly expressed their concern about the racial discrimination, xenophobia and other related forms of intolerance that particularly affect dark-skinned persons of African descent from the Dominican Republic or Haiti as well as the Haitian irregular migrant population.

The Committee invites the Dominican Republic to adopt the following measures:

(a) **Set up a transitional commission to analyse, with the participation of all sectors of the State and civil society, the implications of the transatlantic traffic in persons and slavery so as to determine their historical significance in the building of national identity, the persistence of their consequences and the challenges that still remain, including the expressions of racism, racial discrimination, xenophobia and other related forms of intolerance, in particular towards the darker-skinned population of African descent from the Dominican Republic or Haiti, and identify the barriers that limit the equitable development of those populations;**

(b) **Institute a follow-up and monitoring mechanism to develop tools for the effective implementation of all the recommendations of the Committee and other international mechanisms relating to the human rights of dark-skinned persons of African descent and of irregular Haitian migrants;**

(c) **Conduct a national survey of perception and self-perception in terms of cultural identity, racism, racial discrimination, xenophobia and other related forms of intolerance;**

(d) **Implement the policy of the Ministry of Culture designed to vindicate the African contribution to the country and encourage intercultural education in schools (art. 7).**

D. Concerns and recommendations

Institutional measures

(10) The Committee regrets that more than a decade after the promulgation of Act No. 19-01 (2001), no Ombudsman has yet been appointed (art. 2).

The Committee reiterates its recommendation concerning the appointment of the Ombudsman; that institution should include a section specialized in issues of racism, racial discrimination, xenophobia and related forms of intolerance, and its conformity with the Paris Principles should be guaranteed (CERD/C/DOM/CO/12, para. 10).

Legislative measures

(11) The Committee is concerned that article 39 of the Constitution does not prohibit discrimination on grounds of race, and that articles 336 and 337 of the Criminal Code and the proposed amendment to the Criminal Code do not provide a definition of racial discrimination in conformity with the Convention (arts. 1, 2, 4 and 5).

The Committee reiterates its previous recommendations and urges the State party to promulgate a specific law on racial discrimination that is compatible with the Convention and ensure that legislative and political measures concerning migration do not discriminate on grounds of race, colour or national origin (CERD/C/DOM/CO/12, paras. 9 and 11).

Political measures

(12) The Committee commends the National Development Plan (2010–2030) and other plans and measures relating to health, education and gender equity. However, it notes that public planning tools do not provide for specific measures to combat racial discrimination

and the multiple forms of discrimination affecting dark-skinned women of African descent, and that there is no national plan for human rights (art. 2).

The Committee invites the State party to draw up a national human rights plan and a national plan of action against racism, racial discrimination, xenophobia and other related forms of intolerance, which addresses the specific manifestations of racial discrimination against women.

Statistics

(13) The Committee regrets that the most recent census carried out by the National Office of Statistics in 2010 did not gather information on the ethnicity or colour of the population, that there are still no statistical data disaggregated by ethnicity and that the official figures for the Haitian population within the territory of the Dominican Republic are notoriously inaccurate.

The Committee recommends that the State party gather statistical data, disaggregated by race and ethnicity, colour, national origin, gender and the socioeconomic situation of the population, for the purpose of defining effective policies against racial discrimination (general recommendations No. 30 on discrimination against non-citizens (2004) and No. 34 (2011)).

Sugar plantations

(14) The Committee commends the measures taken to improve conditions on the sugar plantations. However, the arduous living conditions of migrants of Haitian origin, particularly on the sugar plantations, are still a source of concern on account of the limited access to health services, housing, sanitation, drinking water and education (art. 5 (e) (iv) and (v)).

The Committee recommends that the State party step up its efforts to guarantee progressive access to health, sanitation, drinking water and education for the population, and in particular the dark-skinned population of African descent and to continue to improve living standards on the sugar plantations (CERD/C/DOM/CO/12, para. 18).

Social expressions of racism

(15) The Committee expresses its concern about the structural and widespread racism within Dominican society, and in particular discrimination based on colour or national origin, which is apparent, inter alia, in the discrimination affecting access to places intended for use by the general public (arts. 2, 4 and 5 (f)).

Taking into account its general recommendations No. 7 on implementation of article 4 of the Convention (legislation to eradicate racial discrimination) (1985) and No. 15 on article 4 of the Convention (organized violence based on ethnic origin) (1993), the Committee reiterates its recommendations concerning the introduction of provisions to prohibit discrimination in access to places intended for use by the general public and the discrimination practised by persons, groups or organizations; public information campaigns should be undertaken against racism, xenophobia and intolerance; the mass media should not promote racial prejudice and should adopt a code of conduct that respects the cultural identity of dark-skinned people of African descent (CERD/C/DOM/CO/12, paras. 8 and 12).

Racial discrimination in the workplace

(16) The Committee is concerned about the requirement for a “*buena presencia*” (good appearance) which is frequently applied for appointment to a skilled job: its ambiguous nature means that it may give rise to discriminatory practices. The Committee also

expresses its concern about the exploitation of irregular migrants, mainly those of Haitian origin who, due to lack of documentation, work under oral contracts or in the informal sector, have limited access to social security benefits and do not exercise their rights for fear of being fired or deported (art. 5 (d) (i)).

The Committee recommends that discrimination against dark-skinned people of African descent, including irregular migrants, in the workplace should be terminated (general recommendation No. 34 of the Committee (2011)), and that the ILO Discrimination (Employment and Occupation) Convention 1958 (111) should be applied.

Multiple discrimination

(17) The Committee is concerned about the difficulties faced by dark-skinned Dominican women of African descent in securing skilled employment, social safeguards and political representation and regrets the absence of any information on the measures taken in this respect (arts. 2, 5 (d) (i) and 5 (e) (iv)).

Taking into account its general recommendation No. 25 on gender-related dimensions of racial discrimination (2010), the Committee recommends that the State party include the gender perspective in plans and policies for development and employment and adopt special measures to facilitate access by women of African descent to skilled employment, in accordance with the Committee's general recommendation No. 32 on the meaning and scope of special measures in the Convention (2009) (CERD/C/DOM/CO/12, para. 19).

Racial discrimination with respect to identity documents and nationality (art. 5 (d) (iii))

(18) The Committee commends the introduction of the Late Declarations Unit, mobile units for late declarations of birth, centres issuing identity cards and several branches of the Civil Registry Office with a view to overcoming the lack of documentation. Nevertheless, the Committee is concerned about the serious problem of under-registration affecting the registration system, whose impact is greatest on the poorest members of the population.

The Committee urges the State party to continue its policy of issuing identity cards and to resolve the structural problem affecting registration.

(19) The Committee is concerned about: (a) the State party's refusal to issue duplicate birth certificates, identity cards and passports to Dominicans of Haitian origin; (b) the fact that young people who have turned 18 since 2007 are unable to obtain an identity card owing to the retroactive application of the Migration Act (No. 285-04); (c) the refusal to issue birth certificates for children of Dominicans of Haitian origin. These all lead to a situation of statelessness (art. 1 (3) and art. 5 (d) (iii)).

The Committee recommends that the State party: remove the administrative obstacles to issuing identity documents to Dominicans of Haitian origin and restore any such documents that have been confiscated, cancelled or destroyed by the authorities; ensure that Dominican citizens of Haitian origin are not deprived of their right to nationality; and adopt non-discriminatory policies with regard to identity documents, guaranteeing due process (CERD/C/DOM/CO/12, para. 16).

(20) The Committee regrets that the constitutional framework on migration, as reflected in article 18 of the Constitution, does not fully meet international standards with regard to nationality and that, despite the provisions of article 18, paragraph 2, of the Constitution and article 150 of the Migration Act (No. 285-04), legislation relating to nationality is being applied retroactively, to the detriment of Dominicans of Haitian origin and Haitian migrants (art. 1 (3) and art. 5 (d) (iii)).

The Committee recalls that the scope of national sovereignty with regard to nationality is limited in terms of respect for human rights, specifically the principle of non-discrimination, and invites the Dominican Republic: to implement the recommendations made by various human rights mechanisms; to respect the principle of non-discrimination in access to nationality, in conformity with the Committee's general recommendation No. 30 (2004); and to implement the national plan for regularizing illegal immigrants, as provided for in article 151 of the Migration Act (No. 285-04), giving priority to those who have resided in its territory for a long period (CERD/C/DOM/CO/12, para. 14).

Deportations

(21) The Committee is concerned about the recurring reports of mass, indiscriminate and arbitrary deportations of citizens of Haitian origin, which violate the protocol in force with Haiti and the guarantees of due process set out in the Migration Act (No. 285-04), and about the lack of official statistics on deportations (arts. 5 (a) and 6).

The Committee recalls its previous recommendation and its general recommendation No. 30 (2004) to ensure that deportation laws do not discriminate among non-citizens on the basis of "race", colour or ethnic or national origin, and requests that non-citizens should not be subjected to mass deportations and deprivation of due guarantees; that the Haitian-Dominican Joint Commission be reactivated again; and that official data be gathered on numbers of deportees, disaggregated by gender and national or ethnic origin (CERD/C/DOM/CO/12, para. 13).

Racial discrimination in the judicial system

(22) The Committee takes note of the "Improving access to criminal justice in the Dominican Republic" project, but is concerned about the absence of complaints of racial discrimination before the courts. The Committee recalls that a lack of complaints, rather than implying the non-existence of racial discrimination, may indicate the existence of flaws in the justice system (art. 6).

The Committee invites the State party to take note of general recommendation No. 31 (2005) of the Committee on the prevention of racial discrimination in the administration and functioning of the criminal justice system, and recommends that it: establish effective mechanisms and remedies for investigating discriminatory conduct on the part of public officials and individuals; adopt an effective system of penalties; guarantee appropriate reparation for victims; and make the general public aware of their rights and available legal remedies in cases of racial discrimination (CERD/C/DOM/CO/12, para. 20).

Judgement of the Inter-American Court of Human Rights

(23) The Committee is concerned that the judgement of the Inter-American Court of Human Rights in the case of the Yean and Bosico girls has not been fully complied with.

The Committee invites the State party to give full effect to the above-mentioned judgement.

Smuggling and trafficking of persons

(24) The Committee has been informed of the weak enforcement of Act No. 137-03 on smuggling of migrants and trafficking in persons, the lack of sufficient funds for implementing the national plan of action against trafficking in persons and migrant smuggling, the absence of investigations into cases of trafficking in persons, and the lack of measures for the rehabilitation and protection of victims (art. 5 (e) (i)).

The Committee suggests that the State party: gather official data on victims of trafficking in persons, disaggregated by gender, age, race, colour and national origin; step up the fight against trafficking in persons, through the effective implementation of Act No. 137-03; reinstate meetings of the Inter-institutional Committee Against Trafficking in Persons and Migrant Smuggling and the Inter-institutional Committee for the Protection of Migrant Women; investigate cases of trafficking in persons and prosecute offenders; and adopt measures to protect the victims (CERD/C/DOM/CO/12, para. 17).

Refugees

(25) The Committee takes note of the measures adopted to issue documents to Haitian refugees. However, some Haitian refugees have been refused renewal of their documents, exposing them to the risk of deportation and to difficulties in accessing basic services. In addition, some asylum applications remain unresolved, pending a decision by the National Commission for Refugees (CONARE).

The Committee urges CONARE to resolve all outstanding asylum applications, in conformity with the Presidential Order of October 2012, and to issue residence permits to refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR).

E. Other recommendations

Ratification of other treaties

(26) The Committee encourages the State party to ratify the international treaties to which it is not yet a party, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990), the Convention on the Reduction of Statelessness (1961) and the Convention relating to the Status of Stateless Persons (1954).

Amendment of article 8 of the Convention

(27) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the International Convention on the Elimination of All Forms of Racial Discrimination, adopted on 15 January 1992 at the Fourteenth Meeting of the 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, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment concerning the financing of the Committee and to notify the Secretary-General expeditiously, in writing, of their agreement to the amendment.

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

Durban Declaration and Programme of Action

(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, when implementing the Convention in its domestic legal order, in particular articles 2 and 7 of the Convention, 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. 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.

Consultations with civil society organizations

(30) The Committee recommends that the State party consult widely 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.

Dissemination of reports and concluding observations

(31) The Committee recommends that the State party should make its reports available to the general public as soon as they are submitted, and that it ensure that the Committee's concluding observations are also publicized and disseminated in the official languages and, if appropriate, in other languages commonly used in the State party.

Follow-up to concluding observations

(32) Pursuant to paragraph 1 of rule 65 of the rules of procedure, the Committee requests that the State party, within one year of the adoption of these concluding observations, provide information on its follow-up to the recommendations contained in paragraphs 11, 19 and 21.

Paragraphs of particular importance

(33) The Committee also wishes to draw the attention of the State party to the particular importance of the special recommendations contained in paragraphs 9, 15 and 16 above, and requests it to include in its next periodic report detailed information on concrete measures taken to implement these recommendations.

Core document

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

Preparation of the next periodic report

(35) The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports, in a single combined document, by 24 June 2016 at the latest, taking due account of the guidelines on the Convention-specific document that were adopted by the Committee at its seventy-first session (CERD/C/2007/1), and that in that document it respond to all the questions raised in the present concluding observations. The Committee also urges the State party to adhere to the limit of 40 pages for treaty-specific reports and 60–80 pages for the core document (see the harmonized guidelines on reporting contained in document HRI/GEN.2/Rev.6, para. 19).

39. Ecuador

(1) The Committee on the Elimination of Racial Discrimination considered the 20th to 22nd periodic reports of Ecuador, submitted in a single document (CERD/C/ECU/20-22), at its 2169th and 2170th meetings (CERD/C/SR.2169 and SR.2170), held on 7 and 8 August 2012. At its 2199th meeting (CERD/C/SR.2199), held on 29 August 2012, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission of the State party's report, common core document and update on that document. It is grateful for the oral replies given by the high-level delegation of the State party to the questions raised and appreciates the dialogue it had with the delegation.

B. Positive aspects

(3) The Committee welcomes the adoption of the 2008 Constitution and notes with interest, among other things:

- (a) The definition of the State party as an intercultural and plurinational State;
- (b) The recognition of the rights of nature and protection of the environment;
- (c) The protection of the individual and collective rights of indigenous communities, peoples and nationalities, the Afro-Ecuadorian people, the Montubio people and communes.

(4) The Committee welcomes the adoption of the 2011 Organic Act on Intercultural Education.

(5) The Committee applauds the work of civil society on the design and implementation of the self-identification campaign for the 2010 census.

(6) The Committee notes with interest the provisions of plans that support implementation of the Convention, such as the National Development Plan (National Plan for Good Living 2009–2013), which seeks to improve the situation of groups that have traditionally been excluded and to eliminate discrimination, and the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion.

(7) The Committee takes note with satisfaction of the decrease in infant and maternal mortality rates associated with improvements in the recognition and implementation of intercultural childbirth practices in public health institutions.

(8) The Committee welcomes the State party's reaffirmation of its firm commitment to complying with the ruling of the Inter-American Court of Human Rights in favour of the Kichwa indigenous people of Sarayaku.

(9) The Committee welcomes the contributions of the Ecuadorian Ombudsman's Office to its work.

(10) The Committee notes with interest the efforts made by the State party to integrate refugees — mostly of Colombian origin — into Ecuadorian society and welcomes the recognition of these efforts by the Office of the United Nations High Commissioner for Refugees in its awareness campaign *Gracias Ecuador* ("Thanks, Ecuador").

C. Concerns and recommendations

Policies on the elimination of racial discrimination

(11) The Committee takes note with interest of the Plurinational Plan for the Elimination of Racial Discrimination and Ethnic and Cultural Exclusion, but is concerned by the fact that few representatives of the peoples and nationalities of the State party were involved in the preparation of the plan. It is also concerned that the plan has not been properly disseminated and implemented in the most isolated parts of the State party, where racial discrimination persists.

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 8) and urges the State party to draw up and implement, with the effective participation of the peoples and nationalities that continue to face discrimination and exclusion, a comprehensive national policy to combat racism and racial discrimination.

Special measures

(12) While taking note with interest of Ministerial Decision No. 0142, which sets out the special measures to facilitate access to public office by Afro-Ecuadorians, indigenous

people and Montubios, the Committee regrets the lack of information on the practical implementation of these special measures to assist such persons (arts. 1 and 6).

The Committee recommends that the State party take into account its general recommendation No. 32 (2009) on the meaning and scope of special measures when taking steps to guarantee the exercise of the rights established in the Constitution and the Convention by the indigenous, Afro-Ecuadorian and Montubio population. The Committee also requests that the State party include information on this subject in its next periodic report.

The Ecuadorian population of Roma origin

(13) The Committee regrets that the State party considers the Ecuadorian population of Roma origin to be a foreign group and that it does not have up-to-date information on the enjoyment by the Ecuadorian people of Roma origin of their rights (art. 2).

The Committee, reiterating its previous recommendation (CERD/C/ECU/CO/19, para. 11), reminds the State party of its general recommendation No. 27 (2000) on discrimination against the Roma and encourages the State party to adopt and put into effect national strategies and programmes to improve the situation of the Roma and to protect them against racial discrimination.

Refugees

(14) The Committee regrets that, despite the State party's efforts to integrate people in need of international protection, who are mainly refugees of Colombian origin, such people continue to face discrimination and exclusion in the exercise of their rights, including in access to employment, housing and medical care. The Committee is also concerned about reports of discrimination against children in schools on the grounds of their nationality or refugee status (arts. 2 and 5).

The Committee urges the State party to take effective measures to promote the integration of people in need of international protection, who are mainly refugees of Colombian origin, by, among other things, guaranteeing their access without discrimination to education, employment and health services.

Migrant workers and their families

(15) The Committee is concerned that, in practice, migrant workers continue to face discrimination and problems in exercising their rights. It also points out with concern that certain media draw a link between migrants and crime (arts. 2 and 5).

The Committee encourages the State party to take into account its general recommendation No. 30 (2004) on discrimination against non-citizens, and recommends that the State party take effective educational and awareness-raising measures to combat any tendency to stereotype or stigmatize migrant workers, especially on the part of public servants, teachers, the media and society at large. In addition, the Committee urges the State party to continue eliminating the obstacles that, in practice, hinder the enjoyment by migrants in the State party of their rights under the Convention.

Combating discrimination in the media

(16) The Committee continues to be concerned about the negative representation of indigenous and Afro-Ecuadorian people in the media (arts. 4 (a) and 7).

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 22) that the State party should adopt measures that focus on the social role of the media, including through the education and training of reporters and others working in the media, as well as campaigns aimed at the general public to combat the racial

prejudice that can lead to racial discrimination against indigenous and Afro-Ecuadorian people and to foster tolerance and respect among the various racial groups in the State party.

Lack of participation, consultation and consent

(17) The Committee regrets that progress on the proposed law on consultation and participation has stalled in the National Assembly. The Committee reminds the State party that the absence of implementing regulations for the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169) is no bar to its implementation. The Committee notes with concern the absence of any effective, systematic or regulated consultations with indigenous peoples to obtain their prior, free and informed agreement on the extraction of natural resources or on other matters that affect them. The Committee is also concerned about the public statements that have been made to justify the lack of consultation with indigenous peoples, given the importance of extractive projects for the economic development of the State party. Although there have been no criminal convictions, the Committee is concerned about the tendency to resort to arbitrary detention and unfounded accusations against, for the most part, indigenous leaders who organize or take part in social protests relating primarily to laws and policies that regulate the use of natural resources and the right to effective consultation with a view to obtaining consent (art. 5 (b), (d) (v), (d) (ix) and (e)).

The Committee, in the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, calls on the State party to step up its efforts to establish constructive dialogue and participation mechanisms, and urges it to implement the necessary measures to establish effective consultation processes with the communities concerned, in accordance with international standards, for any project that might affect the territory of indigenous peoples or their livelihoods. The Committee is of the view that the protection of human rights and the elimination of racial discrimination are essential for sustainable economic development, and it recalls the role of both the public and the private sectors in this regard. The Committee also urges the State party to protect indigenous people from physical attacks and intimidation in connection with the resources on their territories. It further invites the State party to guarantee that the legitimate fight against crime does not restrict the legitimate exercise of the freedoms of expression, peaceful assembly and association of indigenous peoples, people of African descent, Montubio people and other ethnic groups in the State party.

Lack of judicial proceedings in cases of racial discrimination

(18) The Committee is concerned by the absence of racial discrimination cases in the country's courts and by reports that such cases are often dismissed, particularly when they are brought by indigenous persons, Afro-Ecuadorians or Montubios (arts. 5 (a) and 6).

The Committee reiterates its previous recommendation in this regard (CERD/C/ECU/CO/19, para. 21) and urges the State party to provide training to court officials who deal with cases involving racial discrimination against indigenous persons, Afro-Ecuadorians and Montubios. In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party redouble its efforts to provide equal access to justice for all and to ensure the wide distribution of information on the domestic remedies available in cases of racial discrimination, the existing legal avenues for obtaining reparation in the event of discrimination and the individual complaint procedure provided for in article 14 of the Convention.

Coordination between the indigenous and ordinary justice systems

(19) The Committee is concerned that progress in respect of the draft bill on coordination and cooperation between the indigenous and ordinary justice systems has stalled in the National Assembly. It is also concerned by the slow pace of progress in the development of legal instruments governing the areas of authority, jurisdiction and responsibilities of the indigenous justice system (arts. 2, 5 (a) and 6).

The Committee urges the State party to ensure respect for and recognition of the traditional systems of justice of indigenous peoples in accordance with international human rights law and reiterates its recommendation (CERD/C/ECU/CO/19, para. 12) that the State party expedite the passage of the draft bill aimed at harmonizing and regulating the functions, jurisdiction and responsibilities of the indigenous justice system and the national justice system.

Economic, social and cultural rights of indigenous, Afro-Ecuadorian and Montubio peoples and nationalities

(20) The Committee is concerned by the persistent poverty and marginalization of Afro-Ecuadorians and Montubios in the State party and by ongoing discrimination against them in their enjoyment of the rights enshrined in the Convention, including access to basic services, education, employment and public office. It also regrets the difficulties faced by Afro-Ecuadorians in Esmeraldas Province in exercising their right to own property, whether alone or in association with others, and the reported cases of physical violence against members of the Afro-Ecuadorian community (art. 5).

The Committee reiterates its previous recommendation to the State party (CERD/C/ECU/CO/19, para. 19) that it continue its efforts to implement socially inclusive policies and poverty-reduction policies in order to ensure that the rights recognized in the Convention can be exercised and urges the State party to allocate sufficient resources to the institutions responsible for combating discrimination against Afro-Ecuadorians and Montubios. In the light of its general recommendation No. 34 (2011) on racial discrimination against people of African descent, the Committee recommends that the State party compile disaggregated data on unemployment, access to property ownership, housing, health care and other basic services which can serve as a basis for the implementation of effective initiatives to safeguard Afro-Ecuadorians' and Montubios' ability to exercise their rights and to promote their increased participation in public affairs. The Committee urges the State party to investigate attacks against members of the Afro-Ecuadorian community and to duly punish the perpetrators.

(21) Although the Committee notes with interest that the State party takes linguistic and cultural factors into consideration when providing certain basic services, the Committee is concerned by the insufficient availability of suitable, accessible health-care services to the indigenous population, particularly in rural areas. It also regrets the lack of information on health indicators and on the steps taken to improve them (art. 5 (e)).

The Committee encourages the State party to continue to take the necessary steps to ensure access to appropriate basic services and institutional health care, particularly in rural areas, that are adapted to the different linguistic and cultural characteristics of indigenous peoples.

(22) Although it notes with interest that bilingual intercultural education is offered in the State party, the Committee wishes to express its concern about indigenous peoples' high illiteracy rates and difficulties in gaining access to schooling, including higher education, to which only 4.9 per cent of the indigenous population has access. It is also concerned by the

lack of information on the implementation of the bilingual intercultural education system (art. 5 (e) (v)).

The Committee reiterates its previous recommendation (CERD/C/ECU/CO/19, para. 20) and urges the State party to allocate the human and financial resources needed to implement the bilingual intercultural educational system. It encourages the State party to work in partnership with indigenous peoples to develop policies to raise indigenous peoples' educational levels and access to schooling of a type that conforms to the intercultural bilingual education model.

Multiple forms of discrimination

(23) The Committee is concerned by the fact that women belonging to indigenous, Afro-Ecuadorian, Montubio, migrant and refugee communities continue to be confronted with multiple forms of discrimination and gender-based violence in all areas of life. It is also concerned by reports that such women have difficulty in gaining access to justice (art. 5).

The Committee recommends that the State party bear in mind the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and that it incorporate a gender perspective into all policies and strategies for combating racial discrimination in order to address the multiple forms of discrimination to which women are subject. The Committee also calls upon the State party to continue to implement the measures that it has taken to support women victims of discrimination and provide them with greater access to justice. It also requests the State party to include information in its next report on the progress made in respect of specialized courts for hearing cases involving women's issues and domestic violence.

Free peoples living in voluntary isolation

(24) The Committee takes note of the information shared by the delegation concerning the mobile lifestyle of free peoples living in voluntary isolation and the demarcation of the Tagaeri-Taromenani Protected Zone. The Committee is concerned, however, about the vulnerability of these peoples, including the Tagaeri-Taromenani peoples, particularly in connection with the State party's policies on extractive industries and the actions of private-sector agents (arts. 2 and 5).

The Committee calls upon the State party to take action, as a matter of urgency, to implement the precautionary measures established by the Inter-American Commission on Human Rights (2006) on behalf of free peoples living in voluntary isolation and urges the State party to strengthen and adapt its strategies for protecting the lives and livelihoods of those peoples. It encourages the State party to take the nomadic lifestyle of these peoples into account and to consider expanding the protected zone based on feasibility studies that take cultural and environmental impacts into consideration. The Committee urges the State party to suspend extractive activities that threaten the lives or livelihoods of free peoples living in voluntary isolation.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

(25) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that, when incorporating the provisions of the Convention into its domestic legislation, the State party take into consideration the Durban Declaration and Programme of Action, adopted in September 2001 at 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 adopted to implement the provisions of the Durban Declaration and Plan of Action at the national level.

Dissemination of reports

(26) The Committee recommends that the State party make its reports and the Committee's concluding observations available to the general public and that it disseminate the concluding observations in the official language and, where appropriate, in other languages that are commonly used in the State party.

Follow-up to concluding observations

(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 these concluding observations, on its follow-up to the recommendations contained in paragraphs 18 and 19 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 21 and 24 above, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Preparation of the next report

(29) The Committee recommends that the State party submit its twenty-third and twenty-fourth periodic reports in a single document by 4 January 2016, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these 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 the harmonized reporting guidelines in HRI/GEN/2/Rev.6, chap. I, para. 19).

40. Fiji

(1) The Committee considered the eighteenth to twentieth periodic reports of Fiji (CERD/C/FJI/18-20), submitted in one document, at its 2181st and 2182nd meetings (CERD/C/SR.2181 and 2182), held on 15 and 16 August 2012. At its 2200th and 2201st meetings (CERD/C/SR.2200 and 2201), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the State party's report, which is in conformity with the Committee's guidelines on the content and form of reports. It appreciates the State party's timeliness in submitting the report and the opportunity to engage in a constructive and frank dialogue with the State party. The Committee appreciates the efforts made by the delegation in responding to the questions and comments raised by Committee members.

(3) The Committee notes with interest the involvement of civil society organizations in the reporting process.

B. Positive aspects

(4) The Committee welcomes the withdrawal of reservations and declarations to articles 2 to 6, 15 and 20 of the Convention on 10 August 2012.

(5) The Committee welcomes efforts made by the State party towards the elimination of institutionalized racism and the establishment of democratic institutions, including the

adoption of the Roadmap for Democracy and Sustainable Socio-Economic Development 2009–2014.

(6) The Committee welcomes the establishment of the Constitution Review Commission for the elaboration of a new constitution and notes the commitment made by the State party to ensure the participation of all Fijians in the constitutional consultation process.

(7) The Committee notes with interest a number of measures towards the elimination of racial discrimination in schools and promoting diversity, including the compulsory teaching of the iTaukei and Hindi languages.

C. Concerns and recommendations

Disaggregated data

(8) The Committee notes the comment made by the State party that the prohibition of collecting data based on ethnicity (CERD/C/FJI/18-20, para. 6) was established in pursuance of the Committee's previous recommendation (CERD/C/FJI/CO/17, para. 16), and was aimed at eliminating racial profiling, for example in immigration forms. However, the Committee regrets the lack of disaggregated data on the socioeconomic situation of members of ethnic groups as well as the lack of gender analysis of data provided (arts. 1 and 5).

Recalling its revised reporting guidelines (CERD/C/2007/1, para. 11), the Committee reaffirms that if progress in eliminating discrimination based on race, colour, descent, or national or ethnic origin is to be monitored, some indication of the number of persons who might be treated less favourably on the basis of these characteristics is needed. Also, the Committee recommends that in preparing data in accordance with the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the State party also take into account gender issues which may intersect with racial discrimination, and provide data disaggregated by gender.

In line with its general recommendation No. 8 (1990) on the interpretation and application of article 1 of the Convention, the Committee recommends that the State party ensure that data on the socioeconomic situation of the population by ethnicity is collected on a voluntary and self-identification basis. It requests that the State party include such disaggregated data in its next periodic report.

Absence of comprehensive legislation on racial discrimination

(9) Despite some provisions in domestic law that may address racial discrimination, including the revised Public Order Act which prohibits racial vilification, the Committee regrets the lack of a definition of racial discrimination in line with article 1 as well as the non-compliance of existing legislation with article 4 of the Convention. The Committee notes with concern that the State party has not adopted comprehensive legislation to prevent and combat racial discrimination (arts. 1, 2 and 4).

The Committee reiterates its previous recommendation (CERD/C/FJI/CO/17, para. 15) that the State party adopt comprehensive legislation on the elimination of racial discrimination that includes a definition of direct and indirect discrimination in line with article 1 of the Convention. The Committee also recommends that the State party ensure that its legislation is in full conformity with the provisions of article 4 of the Convention, including by establishing racial motives as an aggravating circumstance in the commission of crimes.

Absence of court cases on racial discrimination

(10) The Committee expresses its concern about the absence of complaints, prosecutions and convictions relating to ethnically or racially motivated crimes lodged with courts or with the Fiji Human Rights Commission despite reports of institutionalized or de facto racial discrimination in the country, including by law enforcement officials. The Committee is also concerned by the information regarding language barriers in court proceedings for minorities who do not speak English, iTaukei or Hindi (arts. 2, 4 and 6).

Recalling its general recommendation No.31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system and noting that an absence of complaints cannot be taken to mean that none exist, the Committee recommends that the State party assess the reasons for the absence of complaints relating to racial discrimination and address them.

The Committee requests that the State party provide in the next periodic report updated information on complaints about acts of racial discrimination and on relevant decisions in court proceedings and by the Fiji Human Rights Commission, including on remedies provided to victims. It also encourages the State party to raise the level of public awareness of national legal remedies in the field of racial discrimination, and to disseminate the Convention in different languages.

The Committee urges the State party to provide interpreters in court proceedings to minorities who are not speakers of the three common languages in order to guarantee the right of members of such minorities to a fair trial.

Mandate of the Fiji Human Rights Commission

(11) While taking note of the 2009 Human Rights Commission Decree establishing the Fiji Human Rights Commission, the Committee is concerned by the information according to which this institution has worked without a chairperson and commissioners since its inception and lacks appropriate resources to protect and promote rights under the Convention. It is also concerned that the selection and appointment process is based on the discretion of the President of Fiji (art. 2).

The Committee recommends that the State party provide the Fiji Human Rights Commission with adequate human and financial resources to carry out its mandate and appoint a chairperson and commissioners as soon as possible. The Committee encourages the State party to take all necessary measures to ensure the independence of the Commission by reinforcing its mandate in the new Constitution and revising the selection process in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles).

Participation in public and political life

(12) The Committee takes note of the data provided by the State party on the representation of various groups of the population in public administration, police and the army. It reiterates its concern about the very low level of representation of minorities in public and political life. While taking note of the argument that recruitment is merit based (CERD/C/FJI/18-20, para. 28), the Committee is of the view that the State party should pay particular attention to the underrepresentation of minorities in public services, assess the reasons for this phenomenon and address it effectively (arts. 1, 2 and 5).

Reiterating its previous recommendations (CERD/C/FJI/CO/17, para. 18) and recalling 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 take special

measures to improve the level of participation of persons belonging to minority groups in public administration and politics.

Economic, social and cultural rights of minorities

(13) The Committee regrets the paucity of information on economic, social and cultural rights of persons belonging to less numerous minority groups. The Committee notes with concern that further efforts have yet to be taken to promote languages other than English, iTaukei and Hindi (arts. 5 and 7).

The Committee notes the commitment by the State party to assess the situation of the most vulnerable groups in need of specific assistance in order to take measures in allocating resources and designing appropriate programmes for their benefit. The Committee recommends that the State party promote minority culture and languages and include information on the economic, social and cultural rights of minorities in the next periodic report.

Rights of indigenous peoples

(14) The Committee takes note of measures adopted by the State party in providing assistance on the basis of need rather than ethnicity, including various land use decrees to ensure equal access to land for all. It is however concerned by reports of insufficient consultation with and participation of indigenous people as regards issues affecting them, such as equitable rent for the use of its land. The Committee notes the information about the dissolution of the Great Council of Chiefs without prior consultation (arts. 2 and 5).

The Committee reaffirms the importance of securing the free, prior and informed consent of indigenous groups regarding their permanent rights as a group, including issues affecting them and their ways of living. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their identity, ways of living and resources, in line with the Convention, the United Nations Declaration on the Rights of Indigenous Peoples and International Labour Organization Convention No. 169 (1991) concerning Indigenous and Tribal Peoples in Independent Countries. The Committee requests the State party to clarify the issue relating to the dissolution of the Great Council of Chiefs.

Ethnicity and freedom of religion

(15) The Committee regrets the absence of information on measures taken to address discrimination based on ethnicity and religion in the light of reports of religious intolerance, often linked with ethnicity. It is concerned by the information that some newspapers publish advertisements seeking tenants or house maids of a particular ethnicity or religion (art. 5).

Taking into account the intersectionality between ethnicity and religion, the Committee recommends that the State party assess possible double discrimination that members of ethnic minorities belonging to specific religious groups may face. It also encourages the State party to prohibit discriminatory advertisements and ensure equal enjoyment of fundamental rights and freedoms to all.

Fighting racial discrimination in schools

(16) The Committee notes the absence of information on the concrete results of a number of policies on the elimination of racial discrimination in schools, including the change of school names that bore an ethnic connotation, and the school zoning policy (art. 5).

The Committee encourages the State party to evaluate its policies aimed at eliminating racial discrimination in access to education and include this information in its next periodic report. It encourages the State party to further promote training on ethnic,

cultural and religious diversity in the country and to integrate these into the school curriculum in order to promote interethnic friendship and solidarity.

D. Other recommendations

Ratification of other treaties

(17) 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 Covenant on Civil and Political Rights (1966), the International Covenant on Economic, Social and Cultural Rights (1966) and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990).

Follow-up to the Durban Declaration and Programme of Action

(18) 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.

Amendment to article 8 of the Convention

(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. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243 and 65/200, in which the 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.

Dissemination

(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 and other commonly used languages, as appropriate.

Follow-up to concluding observations

(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 concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 13 and 14 above.

Paragraphs of particular importance

(22) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 8, 10 and 14 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(23) The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document by 10 February 2016, in accordance with the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the 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 (see HRI/GEN.2/Rev.6, chap. I, para. 19).

41. Finland

(1) The Committee considered the twentieth to twenty-second periodic reports of Finland (CERD/C/FIN/20-22), submitted in one document, at its 2191st and 2192nd meetings (CERD/C/SR.2191 and 2192), held on 23 and 24 August 2012. At its 2202nd meeting (CERD/C/SR.2202), held on 31 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission by the State party of its twentieth to twenty-second periodic reports drafted in accordance with the Committee's revised guidelines for the preparation of reports. The Committee also welcomes the frank, open and constructive dialogue with the State party as well as its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue.

B. Positive aspects

(3) The Committee welcomes the various legislative and policy developments that have taken place in the State party to combat racial discrimination, including:

(a) The Promotion of Integration Act (1386/2010) adopted by the Parliament on 30 December 2010, whose scope of application was extended to cover all immigrants residing in Finland;

(b) Amendments to the Non-Discrimination Act, in 2009;

(c) A new act on the reception of persons seeking international protection (746/2011), adopted in 2011;

(d) Amendments to the Criminal Code (511/2011) which entered into force in June 2011;

(e) The adoption of the National Policy on Roma;

(f) Various programmes, strategies and other initiatives aimed at raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism.

(4) The Committee also welcomes the ratification by the State party, in May 2011, of the Additional Protocol to the Council of Europe Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.

(5) The Committee notes with appreciation the State party's commitment to ratify International Labour Organization (ILO) Convention No. 169 (1991) concerning Indigenous and Tribal Peoples in Independent Countries within the term of the current Government.

(6) The Committee also notes with appreciation the initiation of negotiations on the Nordic Sámi Convention, as well as the State party's naming of a negotiating delegation, half of which consists of members of the Sámi indigenous group.

C. Concerns and recommendations

Demographic composition of the population

(7) While noting the explanation provided by the State party with regard to its legislation that precludes the collection of statistical data based on race or ethnicity, the Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including data regarding the Sámi indigenous peoples, other minority groups and immigrants living in the territory of the State party (art. 1).

In accordance with paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), and recalling its general recommendation No. 4 (1973) on demographic composition of the population, the Committee reiterates its previous recommendation that the State party collect and provide the Committee with reliable and comprehensive statistical data on the ethnic composition of its population and economic and social indicators disaggregated by ethnicity and gender, including data on Sámi indigenous peoples, other minority groups and immigrants, in order to enable the Committee to evaluate the enjoyment of civil, political, economic, social and cultural rights by various groups of its population.

National human rights institution

(8) While welcoming the recent establishment of a national human rights institution, the Committee is concerned that the relevant legislation does not clearly articulate the relationship among its three components — the Human Rights Centre, the Parliamentary Ombudsman, and the Human Rights Delegation — and may not provide the guarantees of funding and independence required by the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

The Committee recommends that the State party establish its national human rights institution in a manner that is fully consistent with the Paris Principles.

Direct and indirect discrimination

(9) While noting explanations provided by the State party, the Committee remains concerned that section 2 of the Non-Discrimination Act, which, as amended by Act No. 84/2009, specifies that the Act applies to discrimination on the grounds of ethnic origin in connection with housing, other movable property or services on the general market for the public, with the exception of private transactions, may be interpreted as permitting discrimination on the grounds of ethnicity in private transactions, in contravention of the Convention (arts. 2 and 5).

The Committee recommends that the State party take advantage of the ongoing revision of the Non-Discrimination Act to clarify that section 2 thereof prohibits discrimination on the grounds of ethnicity also with regard to private transactions.

Incitement to racial hatred on the Internet

(10) The Committee takes note of measures taken by the State party to combat racist hate speech on the Internet, including the amendments to the Criminal Code adopted in 2011, the instructions of the National Police Board regarding the classification of hate offences, and the creation of a working group by the Ministry of Justice to define punishable hate speech and achieve a more uniform enforcement of the relevant provisions of the Criminal Code. However, the Committee is concerned at the persistence of this phenomenon in the State party (art. 4).

The Committee recommends that the State party reinforce its efforts to combat incitement to racial hatred and racial discrimination on the Internet, including through the more effective collection of data relating to the prevalence of racial hate speech on the Internet and through awareness-raising campaigns on this issue targeting youth, media and politicians.

Situation of the Sámi

(11) While noting that the State party has established, in August 2012, a working group tasked to revise the Sámi Parliament Act, the Committee is concerned that the Sámi Parliament still has very limited decision-making power on issues relating to the cultural autonomy of the Sámi people, including rights relating to land and resources used.

The Committee recommends that the State party, when revising the Sámi Parliament Act, enhance the decision-making powers of the Sámi Parliament with regard to the cultural autonomy of Sámi, including rights relating to the use of land and resources in areas traditionally inhabited by them.

(12) While noting that the Supreme Administrative Court relied on the Committee's prior concluding observations in its decision of 26 September 2011 defining who is a "Sámi" entitled to vote for Members of the Sámi Parliament, the Committee is concerned that the definition adopted by the Court gives insufficient weight to the Sámi people's rights, recognized in the United Nations Declaration on the Rights of Indigenous Peoples, to self-determination (art. 3), in particular their right to determine their own identity or membership in accordance with their customs and traditions (art. 33), as well as their right not to be subjected to forced assimilation or destruction of their culture (art. 8) (article 5 of the Convention).

The Committee recommends that, in defining who is eligible to vote for Members of the Sámi Parliament, the State party accord due weight to the rights of the Sámi people to self-determination concerning their status within Finland, to determine their own membership, and not to be subjected to forced assimilation.

(13) While noting information provided by the State party, in particular on the adoption of the Mining Act and the Water Act and the intention of the State party to clarify the legislation on the land rights of the Sámi people, the Committee is concerned that the land rights of the Sámi people have not been satisfactorily settled and that various projects and activities, such as mining and logging, continue to be carried out in the traditional lands of Sámi people without their prior, free and informed consent. The Committee is also concerned that Finnish law empowers reindeer cooperatives, the majority of whose members practice modern reindeer farming rather than traditional Sámi reindeer husbandry, to take decisions by majority vote that can severely undermine the ability of Sámi reindeer herders to carry out their traditional occupations. The Committee is particularly concerned by the decision of the Ivalo reindeer cooperative, recently upheld by the Supreme Administrative Court, to require four Sámi reindeer herders in the Nellim area to slaughter almost their entire herds (art. 5).

In line with its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party find an adequate negotiated solution to the dispute regarding the rights of Sámi people in their traditional lands, including by revising its legislation on this issue. The Committee recommends that, in doing so, the State party take into account ILO Convention No. 169, which the State party has committed to ratify. The Committee further recommends that the State party take appropriate measures to protect the Sámi traditional livelihood of reindeer husbandry.

(14) The Committee is concerned that, while about 70 per cent of Sámi-speaking children live outside of the Sámi Homeland, mainly in the Helsinki area, Rovaniemi and Oulu, the right of the Sámi to receive early childhood education in the Sámi language is recognized only in the Sámi Homeland. The Committee is also concerned at the fact that social and health services are not effectively guaranteed to Sámi people in their languages (arts. 5 and 7).

The Committee recommends that the State party take appropriate measures to ensure that all Sámi children throughout the territory of the State party effectively receive education in their own languages, including by training more teachers in Sámi languages. The Committee also recommends that the State party effectively ensure social and health services in Sámi languages to Sámi people in their Homeland. The Committee further recommends that the State party accelerate the adoption of the revitalization programme proposed by the Ministry of Education and Culture in order to promote and protect the Sámi languages, including in media, education, social and health services and culture.

Situation of Roma communities

(15) While noting the studies undertaken and policies announced by the State party to address the socioeconomic inequalities faced by Roma in various areas of life, in particular the National Policy on Roma of 2009, the Committee is concerned that the Roma people continue to face discrimination in the enjoyment of social and economic and cultural rights, in particular in access to employment and housing. While noting efforts made by the State party to integrate Roma children into education and to promote the Romani language, the Committee is concerned that around 50 per cent of Roma children are enrolled in special education classes (art. 5).

Recalling its general recommendations No. 32 (2009) on the meaning and scope of special measures in the International Convention of All Forms of Racial Discrimination and No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party take practical measures to implement effectively its National Policy on Roma, so as to reach concrete results regarding their integration into the labour market and housing. The Committee also encourages the State party to strengthen its measures with regard to the inclusion of Roma children in education and to promote the teaching of the Romani language, including by enhancing teachers' abilities in that language. The Committee requests that the State party provide it with information on specific measures taken as well as on their concrete results.

Situation of immigrants, including asylum seekers

(16) The Committee takes note of legislative, administrative and policy measures taken by the State party to combat discrimination against immigrants and to promote equality, such as the Promotion of Integration Act of 2010, the YES project, and the work of the Discrimination Monitoring Group. However, the Committee remains concerned that anti-immigrant sentiment has been increasing in the State party. It is also concerned at the continued marginalization of immigrants, especially with regard to employment, housing and social services. The Committee is further concerned that police activity during the week of intensive enforcement of laws regarding illegal entry may cross the line into racial or ethnic profiling (arts. 2 and 5).

The Committee recommends that the State party enhance its measures aimed at promoting understanding and tolerance among different ethnic groups residing in the territory of the State party. The Committee also recommends that the State party take concrete measures to implement the Promotion of Integration Act and to adopt the Government programme for integration for 2012–2015, in order to foster the

integration of immigrants with regard to employment, housing, education and social and health-care services. The State party should further avoid racial or ethnic profiling, including by strengthening internal police guidelines on the subject. The Committee requests that the State party provide it with information on specific measures taken as well as on their concrete results.

Education of Roma and immigrant children

(17) While noting the reduction of bullying in schools achieved through the KiVa programme and the State party's efforts to reduce negative stereotyping of Roma through rap-music television spots aimed at young people, the Committee remains concerned at the persistence of bullying of Roma children and immigrant children in schools (arts. 2 and 7).

Recalling its general recommendations No. 27 (2000) on discrimination against Roma and No. 30 (2009) on discrimination against non-citizens, the Committee recommends that the State party continue to strengthen its efforts to protect Roma children and immigrant children from bullying in schools.

Situation of asylum seekers

(18) While noting the State party's intent to curtail the detention of unaccompanied minor asylum seekers, the Committee is concerned about the detention of asylum seekers belonging to vulnerable groups, such as pregnant women and persons with disabilities and victims of torture. The Committee is also concerned that, because of overcrowding in the Metsälä Detention Centre, asylum seekers are sometimes detained in police facilities. The Committee is further concerned that, because of inadequate funding from the national Government, there is insufficient housing in the municipalities for successful asylum applicants. Moreover, the Committee is concerned that the use of expedited procedures for adjudicating asylum applications and the lack of automatic suspensive effect of an appeal may risk the refoulement of persons entitled to asylum, especially those with pending appeals.

The Committee recommends that the State party employ alternatives to the detention of asylum seekers whenever possible and that asylum seekers not be detained in police facilities. The Committee also recommends that the national Government provide adequate funding to the municipalities for the provision of housing to successful asylum applicants. The Committee further recommends that the State party carefully examine its use of accelerated procedures in asylum cases to avoid any risk of refoulement of persons entitled to asylum, and provide automatic suspensive effect to appeals of rejected asylum applications.

D. Other recommendations

Ratification of other treaties

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be 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, and expedite the ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Follow-up to the Durban Declaration and Programme of Action

(20) 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.

Consultation with organizations of civil society

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

Dissemination

(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.

Common core document

(23) Noting that the State party submitted its core document in 1997 (HRI/CORE/1/Add.59/Rev.2), the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(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 concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 13 and 16 above.

Paragraphs of particular importance

(25) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 10 and 15 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(26) The Committee recommends that the State party submit its twenty-third periodic report by 13 August 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

42. Kyrgyzstan

(1) The Committee considered the fifth to seventh periodic reports of Kyrgyzstan (CERD/C/KGZ/5-7), submitted in one document, at its 2215th and 2216th meetings (CERD/C/SR.2215 and 2216), held on 18 and 19 February 2013. At its 2227th meeting (CERD/C/SR.2227), held on 26 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission by the State party of its fifth to seventh periodic reports drafted in accordance with the Committee's revised guidelines for the preparation of reports. The Committee also welcomes the constructive dialogue with the State party as well as its efforts to provide comprehensive responses to issues raised by Committee members during the dialogue.

B. Positive aspects

(3) The Committee welcomes the various legislative and policy developments which have taken place in the State party to combat racial discrimination, including:

(a) The adoption of the Constitution on 27 June 2010 which contains provisions on the protection of human rights, including on racial discrimination;

(b) The adoption of the Criminal Code which criminalizes the incitement to ethnic hatred, promoting exclusivity, superiority or inferiority on the basis of ethnic grounds, as well as genocide;

(c) The provision of equal opportunities for everyone to realize their labour rights and freedoms under article 9 of the Labour Code;

(d) The implementation of the Action Plan on Ethnic Policy and Social Consolidation until 2015;

(e) The initiation of the reform of the judicial system.

(4) The Committee also welcomes the ratification by the State party, on 29 December 2008, of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment and the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, on 6 December 2010.

C. Concerns and recommendations

Root causes of the ethnic conflicts

(5) While noting the explanations provided by the State party, the Committee is deeply concerned at the repeated ethnic conflicts and clashes which occurred in the State party between the majority of the population and some ethnic groups, namely Uzbeks, Dungans, Kurds and Meskhetian Turks since 2007 and at their root causes of such conflicts. The Committee is particularly concerned at the June 2010 ethnic conflict which between Uzbeks and Kyrgyz populations in the Osh and Jalal-Abad regions and which resulted, inter alia, in a great number of killings, casualties and property destruction. The Committee is further concerned that the causes of such conflicts may continue to exist and may lead to other clashes. Moreover, the Committee is concerned that part of the weapons held by the population irrespective of their ethnic origins has not yet been collected.

The Committee recommends that the State party, as a matter of urgency, take effective measures to address the fundamental problems and the root causes that constitute an obstacle to the peaceful coexistence between different ethnic groups living in its territory. For that purpose, the Committee recommends that the State party:

(a) Pursue its initiatives and reforms aimed at building a democratic society in which all ethnic groups will be involved, respected and enjoy full rights;

(b) Address socio-economic disparities between ethnic groups and between rural and urban areas;

(c) **Take urgent measures to increase the participation of minorities in political and public affairs;**

(d) **Consider adopting a special law on the rights of persons belonging to minority groups and establishing an institution with a special mandate to address racial discrimination issues;**

(e) **Redouble its efforts to collect weapons still held by the population, in particular in the Osh and Jalal Abad regions, bearing in mind the need to build trust between the majority and other ethnic groups.**

Human rights violations during the June 2010 ethnic conflict

(6) The Committee notes with concern that, according to the State party's report (CERD/C/KGZ/5-7, para. 12) and other reports, Uzbeks were the main victims of the June 2010 events but were also the most prosecuted and condemned. While noting that the State party itself has recognized this situation and is considering ways to correct it, the Committee remains deeply concerned about reports of biased attitudes based on ethnicity in investigations, prosecutions, condemnations and sanctions imposed on those charged and convicted in relation to the June 2010 events, who were mostly of Uzbek origin. The Committee is also concerned about information provided in the State party's report relating to "evidence of coercion to confess to crimes that the persons did not commit, pressure on relatives by representatives of law enforcement agencies, denial of procedural rights (...), violations of court procedures, threats and insults to the accused and their counsel, attempts to attack the accused and his relatives" which according to the State party resulted in a violation of the right to a fair trial. While noting information provided by the State party, the Committee remains concerned at the case of Askharov, a human rights defender, who was condemned to life sentence following a trial during which he did not benefit from all necessary legal guarantees for a fair trial (art. 2, 5 and 6).

In line with 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 in the context of the reform of its judicial system:

(a) **Initiate or set up a mechanism to review all cases of persons condemned in connection with the June 2010 events, from the point of view of respecting all necessary guarantees for a fair trial;**

(b) **Investigate, prosecute and condemn, as appropriate, all persons responsible for human rights violations during the June 2010 events, irrespective of their ethnic origin and their status;**

(c) **Provide compensation to those who were victims of miscarriage of justice, regardless of their ethnic origin;**

(d) **Pursue the reform of the judicial system and the security and police forces, having in mind the necessity to ensure the reconciliation between different ethnic groups and to build trust of the population in the judicial system;**

(e) **Review the case of Askharov, respecting all requirements for a fair trial and avoid any threats against human rights defenders, irrespective of their ethnic origin.**

(7) While noting information provided by the State party, the Committee remains concerned at reports that a great number of persons, mostly from minority groups, in particular Uzbeks, have been detained and have been subjected to torture and other forms of ill-treatment on the basis of their ethnicity following the June 2010 events. The Committee is also concerned at information that women from minority groups were victims of acts of

violence, including rape, during, and in the aftermath of the June 2010 events. The Committee is particularly concerned that all such acts have not yet been investigated and those responsible have not been prosecuted and punished (arts. 5 and 6).

In line with its general recommendation No. 31 (2005), the Committee recommends that the State party, without any distinction based on the ethnic origin of the victims, take appropriate measures to:

- (a) **Register and document all cases of torture, ill-treatment and violence against women from minority groups, including rape;**
- (b) **Conduct prompt, thorough and impartial investigations;**
- (c) **Prosecute and punish those responsible, including police or security forces;**
- (d) **Provide reparation to victims;**
- (e) **Take all necessary measures to prevent the occurrence of such acts in the future.**

With regard to violence against women from minority groups, the Committee, recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, recommends that the State party adopt and implement without further delay, the National Action Plan to combat violence against women to which its delegation referred during its dialogue with the Committee.

Other consequences of June 2010 ethnic conflict

(8) The Committee is concerned at reports of cases of arbitrary dismissal of persons from minority ethnic groups, in particular Uzbeks, and forced abandon of their positions in the administration and local governments. The Committee is also concerned at reports that some Uzbeks closed their enterprises under threat following the June 2010 events. It is further concerned that persons belonging to minority ethnic groups have lost their business due to the conflict and have not all received assistance from the State party (arts. 2 and 5).

The Committee recommends that the State party take appropriate measures to:

- (a) **Investigate and review all cases of persons who were arbitrarily dismissed from their positions in the administration or local governments on ethnic grounds, and as appropriate, reinstate them;**
- (b) **Investigate and review cases of forced evictions of minority groups of their enterprises and provide them, as appropriate, with restitution or compensation;**
- (c) **Continue to provide assistance to those who have lost their income-related activities due to the June 2010 ethnic conflict, irrespective of their ethnic origin.**

Representation of minorities in political bodies and political life

(9) The Committee notes the efforts made by the State party to integrate minorities into political and public affairs, such as the security forces and the police, as well as efforts to implement the Decision 567/2011 of the Parliament asking for a balanced staffing policy. However, the Committee remains concerned at the very low representation of minority ethnic groups in political and public affairs including in local governments, as illustrated in the State party's report, and in particular in the Parliament, the executive bodies, the police and the judiciary, which has decreased since 2007 and following the June 2010 events (arts. 2 and 5).

Recalling 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 and in line with its previous recommendation (CERD/C/KGZ/CO/4, para. 11), the Committee encourages the State party to take concrete and comprehensive measures to ensure that persons belonging to minority ethnic groups are adequately represented in elected and executive bodies, in the police and in the judiciary, at all levels. The Committee recommends that the State party ensure that minority representation is as closely in line with their proportion in the population of the State party in accordance with article 5 of the Convention, bearing also in mind the necessity to build trust in the State for all parts of the population.

Socioeconomic disparities

(10) The Committee takes note of the information provided by the delegation of the State party during its dialogue with the Committee according to which the June 2010 events were rooted in socio-economic disparities that exist between the majority ethnic group and the minority and between rural and urban areas where some ethnic groups are concentrated, in particular the Kyrgyz. However, the Committee is concerned that if such socio-economic disparities continue to exist they may result in other inter-ethnic conflicts (arts. 2 and 5).

The Committee encourages the State party to take all measures aimed at addressing socio-economic disparities between different ethnic communities and between rural and urban areas, and at promoting equal enjoyment by all of economic, social and cultural rights in accordance with article 5(e) of the Convention. The Committee requests that the State party provide it with information on specific measures taken for this purpose in its next periodic report.

Situation of internally displaced persons following the June 2010 conflict

(11) While noting the efforts made by the State party to provide assistance to internally displaced persons, the Committee remains concerned that sustainable reintegration of internally displaced persons has not been yet achieved and that some of those who returned to Osh and Jalal Abad after the June 2010 events continue to face difficulties with regard to housing, properties and reintegration (arts. 2 and 5).

The Committee encourages the State party to pursue its efforts to provide full assistance to internally displaced persons who returned to their places of origin in Osh and Jalal Abad regions and to ensure their full reintegration, in particular with regard to access to housing and labour market.

Minority languages and culture in education

(12) The Committee notes that the Constitution of the State party (art. 10) and the State Languages Act guarantee the right of persons belonging to minorities to be taught in their languages. However, the Committee is concerned at the lack of qualified teachers, translators, textbooks and teaching material in minority as well as in the State languages. The Committee is particularly concerned at reports that since the June 2010 events, many schools in Osh and Jalal-Abad have changed the language of education from minority languages into Kyrgyz, and that some of them do no longer benefit from State funding enabling them to ensure classes in minority languages. The Committee is also concerned at information on a decision of the State party according to which the high school testing will be conducted in Kyrgyz, thus creating a discrimination with regard to minority children who were educated partially in minority languages and do not have proficiency to be tested in Kyrgyz; such a situation may prevent their admission to universities or access to the labour market on equal footing with members of the majority. Moreover, the Committee remains concerned at reports that textbooks and curricula for primary and secondary

schools do not adequately provide information on the history and culture of different ethnic groups living in the territory of the State party (arts. 2, 5 and 7).

The Committee encourages the State party to strengthen its efforts to promote education in minority languages for children belonging to minority ethnic groups in particular in the regions of Osh and Jalal-Abad. The Committee also recommends that the State party review its decision to introduce high school testing in Kyrgyz and take appropriate measures to ensure that children belonging to minorities be tested in languages in which they were mainly educated. The Committee reiterates its previous recommendation (CERD/C/KGZ/CO/4, para. 14) that the State party include in curricula and textbooks for primary and secondary schools information about the history and culture of different ethnic groups living in its territory. The Committee requests that the State party provide information on follow-up given to this recommendation in its next periodic report.

Minority languages in media following the June 2010 conflict

(13) The Committee notes explanations provided by the delegation of the State party according to which some media incited ethnic hatred and that some media owners have left the country for security reasons. However, the Committee is concerned that “in general, the Uzbek-language media are in somewhat lamentable situation as almost none of them have functioned since the June 2010 events” and that the use of minority languages in media has decreased in particular in the Osh region. The Committee is particularly concerned that Mezon TV has ceased to broadcast, Osh TV now broadcasts in Kyrgyz, that a number of newspapers which used to publish in Uzbek has stopped, a situation which impedes the right of persons belonging to the Uzbek minority to disseminate and receive information in their language (arts. 5 and 7).

The Committee encourages the State party to take appropriate measures to ensure that minority groups, in particular Uzbeks, can disseminate and have access to information in their own languages. In that vein, the Committee recommends that the State party take measures to establish favourable conditions aimed at encouraging private ownership of media by persons belonging to minority groups, including in the Osh region. The Committee also recommends that the State party provide training to journalists in human rights, including on the prohibition of incitement to racial discrimination.

Promotion of tolerance and understanding

(14) The Committee is concerned that since the June 2010 events, a climate of discriminatory attitudes, racial stereotypes, suspicion between the majority ethnic group and the minorities, widespread nationalistic discourse and exclusion continue to exist. The Committee is also concerned at the absence of effective measures to create a peaceful and inclusive society and to fully promote tolerance, reconciliation and understanding between the Kyrgyz majority and the minority ethnic groups (art. 7).

The Committee recommends that the State party strengthen its efforts, including through education, culture, awareness-raising campaigns, to combat racial stereotypes, discriminatory attitudes, nationalistic discourse including in media, with a view to promoting reconciliation, tolerance and understanding, and to build a peaceful and inclusive society. The Committee requests that the State party provide it with information on the concrete results of such measures in its next periodic report.

General provision on racial discrimination in the State party’s legislation

(15) Despite its previous recommendation (CERD/C/KGZ/CO/4, para. 6), the Committee is concerned that the State party has not yet included in its legislation a general provision prohibiting racial discrimination in line with article 1 of the Convention (arts. 1 and 2).

The Committee recommends that the State party include in its legislation a general provision on the prohibition of racial discrimination which is in line with article 1 of the Convention.

Non-compliance with all requirements of article 4

(16) The Committee is concerned that the criminal legislation of the State party, in particular the provisions of articles 229 and 229-1 of the Criminal Code, does not cover all the requirements of article 4 of the Convention (art. 4).

Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993), according to which the provisions of article 4 of the Convention are of a preventive and obligatory nature, the Committee recommends that the State party amend its legislation, so as to give full effect to article 4 of the Convention.

Situation of stateless persons and asylum seekers

(17) The Committee notes the efforts made by the State party to solve the situation of stateless persons in its territory by granting citizenship to stateless persons, in particular those who were in possession of the Soviet Union passports, such as the 2007 Citizenship Law, the Presidential Decree no. 437 and the National Action Plan to Prevent and Reduce Statelessness adopted in 2009 and updated in December 2012. However, the Committee remains concerned that a great number of persons (90,000), including stateless persons remain undocumented. The Committee is also concerned at reports that a discriminatory approach is applied regarding registration procedures and recognition of refugee status with respect to foreign Uighurs and Uzbeks, placing them in risk of harassment by the police and refoulement (arts. 2 and 5).

The Committee recommends that the State party continue its efforts to grant Kyrgyz citizenship to stateless persons including, through its National Action Plan to Prevent and Reduce Statelessness updated in December 2012. It also recommends that the State party take appropriate measures to grant access to its registration procedures and consider asylum requests regardless of the origin of applicants. The State party should also provide documents to all asylum seekers and take necessary measures to prevent them from risk of refoulement.

Hate speech

(18) While noting that article 229 of the Criminal Code punishes “actions aimed at inciting, racial, religious or interregional hatred, offending ethnic pride, or promoting exclusivity or inferiority of citizens on the basis of religion, or their ethnic or racial background”, the Committee is concerned at reports according to which hate speech by some politicians and media as well as discriminatory statements with regard to some minority groups are widespread, remain unprosecuted and unpunished (arts. 4, 6 and 7).

The Committee recommends that the State party strongly condemn the discriminatory statements and hate speech by politicians and media. The Committee particularly recommends that the State party take appropriate measures to investigate, prosecute and punish such acts and take appropriate measures to prevent them, including through education training of media.

Information on cases related to racial discrimination

(19) While noting information provided by the State party, the Committee is concerned at the lack of comprehensive and precise information on cases related to racial discrimination brought before domestic courts and tribunals, in particular their nature, the sanctions and the reparation provided to victims. The Committee is also concerned at the absence of explanations on the effective remedies available to victims of racial discrimination and their effectiveness (arts. 5 and 6).

Referring 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 complaints or legal proceedings brought by victims of racial discrimination can be indicative of legislation that is insufficiently specific, a lack of awareness of available remedies, fear of social censure or reprisals, or an unwillingness on the part of the authorities to initiate proceedings. The Committee recommends that the State party take all necessary steps to facilitate the access of the persons belonging to all ethnic groups to justice, to disseminate legislation relating to racial discrimination to inform the population of all the legal remedies available to them. It further recommends that the State party provide comprehensive information on this subject in its next periodic report.

Human rights education

(20) While noting information provided by the State party on human rights training provided to security forces, the Committee remains concerned at the lack of comprehensive and precise information on effective measures taken by the State party relating to human rights education and their concrete results, in particular with regard to law enforcement officials as well as in schools (art. 7).

The Committee recommends that the State party redouble its efforts to ensure that law enforcement officers receive training in human rights and in particular with regard to the provisions of the Convention. The State party should also include human rights education in school curricula and conduct awareness-raising campaigns on human rights, including on racial discrimination.

National human rights institution

(21) The Committee is concerned about the selection and appointment process as well as the lack of guarantee of tenure for the members of the governing body of the Ombudsman which may not guarantee its independence. The Committee notes that the institution of the Ombudsman was accredited “B” status in 2012, which demonstrates that it is not in full compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

The Committee recommends that the State party bring the institution of the Ombudsman into compliance with the Paris principles or establish a national human rights institution in a manner that is fully consistent with the Paris Principles.

D. Other recommendations

Ratification of other treaties

(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 the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the ratification of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Follow-Up to Durban Declaration and Programme of Action

(23) 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.

Consultation with organizations of civil society

(24) 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 and the follow-up to these concluding observations.

Competence of the Committee on individual complaints

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

Amendments to article 8

(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 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 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.

Dissemination

(27) 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.

Common core document

(28) Noting that the State party has submitted its core document in 2008 (HRI/CORE/KGZ/2008), the Committee, bearing in mind the adoption of a new Constitution in 2010 and the renewal of legislation following it, encourages the State party to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(29) 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 5, 6 and 9 above.

Paragraphs of particular importance

(30) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 7, 8, 12 and 13 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(31) The Committee recommends that the State party submit its combined eighth to tenth periodic reports by 4 October 2016, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and

addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

43. **Liechtenstein**

(1) The Committee considered the fourth to sixth periodic reports of Liechtenstein (CERD/C/LIE/4-6), submitted in one document, at its 2194th and 2195th meetings (CERD/C/SR.2194 and 2195), held on 27 August 2012. At its 2202nd meeting (CERD/C/SR.2202), held on 31 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined fourth to sixth periodic reports of the State party, in line with the Committee's reporting guidelines (CERD/C/2007/1). The Committee also welcomes the submission of the common core document by the State party (HRI/CORE/LIE/2012).

(3) The Committee commends the State party for its oral presentation and the open, constructive and focused dialogue with the multisectoral delegation.

B. Positive aspects

(4) The Committee notes the State party's ongoing efforts to revise its legislation in areas of relevance to the Convention, including:

(a) The entry into force on 1 January 2010 of the Act on the Free Movement of Persons and associated ordinance, applicable to citizens of countries in the European Economic Area and Switzerland;

(b) The entry into force on 1 January 2009 of the new Foreigners Act and associated ordinance, applicable to persons who are not citizens of the European Economic Area or Switzerland;

(c) The revision in 2008 of the Act on the Acquisition and Loss of Liechtenstein Citizenship (Citizenship Act) (LGBl. 2008 No. 306), granting citizenship upon application to stateless persons and foundlings.

(5) The Committee welcomes that since the consideration of the third periodic report, the State party has ratified or acceded to the following international instruments:

(a) The 1954 Convention relating to the Status of Stateless Persons (25 September 2009);

(b) The 1961 Convention on the Reduction of Statelessness (25 September 2009);

(c) The United Nations Convention against Transnational Organized Crime, 2000 (20 February 2008), the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol) (20 February 2008) and the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (20 February 2008).

(6) The Committee also welcomes a number of positive developments and activities, as well as administrative measures taken by the State party to fight racial discrimination and promote diversity, including:

(a) The establishment in 2009 of the Commission on Integration Issues and the adoption by the Government in December 2010 of a new comprehensive integration concept;

(b) The adoption in 2010 by the Government of the Catalogue of Measures against Right-Wing Extremism (MAX) and the launching in 2010 of the awareness-raising campaign entitled “Facing Right-Wing Extremism Together”.

(7) The Committee notes with satisfaction the appointment in October 2009 of the first Ombudsman for children, for a period of four years.

C. Concerns and recommendations

National legislation against racial discrimination

(8) While the Committee takes note of the State party’s monist system, whereby an international treaty becomes part of national law upon ratification and entry into force without the need for special implementing legislation, it is concerned at the absence of comprehensive legislation against racial discrimination (art. 1).

Recalling its general recommendation No. 14 (1993) on the definition of discrimination, the Committee recommends that the State party consider enacting specific legislation that explicitly prohibits racial discrimination.

Criminalization of racial discrimination

(9) While noting that article 283, paragraph 1 (7) of the Criminal Code provides for the criminalization of membership in organizations that promote or incite racial discrimination, the Committee remains concerned at the lack of legislation that specifically prohibits racist organizations (art. 4).

The Committee recalls its general recommendation No. 15 (1993) on article 4, and recommends that the State party adopt legislation that specifically prohibits organizations promoting racial discrimination, in accordance with the full scope of article 4 of the Convention.

National human rights institution

(10) The Committee takes note of the State party’s decision to discontinue the Office of Equal Opportunities and replace it with a fully independent body for human rights with a broad mandate for the promotion and protection of human rights, including receiving and processing complaints from individuals (art. 2).

In the light of its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party establish a single independent human rights institution with a broad mandate, in line with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris principles), that would also cover the specificity of the mandates of all existing institutions.

Access to citizenship

(11) While noting the entry into force in 2008 of the revision to the Act on the Acquisition and Loss of Liechtenstein Citizenship (Citizenship Act), the Committee is concerned that there have been no changes in the facilitated naturalization procedure requiring 30 years of residence and ordinary naturalization procedures subject to municipal popular votes (art. 2).

In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party consider amending the

Act on Facilitated Naturalization, with a view to reducing the required period of residence for the acquisition of citizenship, and consider introducing the right to appeal and legal review under the ordinary naturalization procedure subject to municipal popular votes.

Integration of foreigners

(12) While noting that persons from “third countries”, who are not citizens of Switzerland or countries from the European Economic Area, have to sign an integration agreement with the authorities which defines the specific goals of their integration, the Committee is concerned that such persons are not informed in advance about their status, rights and obligations or about the consequences of failure to sign such an agreement, and thus may not be sufficiently protected against racial discrimination (arts. 2 and 5).

Recalling its general recommendation No. 20 (1996) on non-discriminatory implementation of rights and freedoms, the Committee recommends that the State party ensure that foreigners from “third countries”, who are to sign the integration agreement, are informed about it in advance and are protected against racial discrimination during the fulfilment of its terms, especially regarding their residency status and freedom of movement and in the areas of employment, education, health care and housing.

Situation of women belonging to vulnerable groups

(13) The Committee is concerned about possible discrimination against certain categories of migrant women, including victims of trafficking or domestic violence, or divorced women from countries outside the European Economic Area and Switzerland, in terms of residence status and socioeconomic situation (art. 5).

In the light of its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party ensure that migrant women and other women in vulnerable situations, including those subjected to trafficking or domestic violence or who are divorced, are able to retain their residency status and socioeconomic situation and are not subject to double discrimination.

Situation of refugees and asylum seekers

(14) While noting the entry into force of the new Asylum Act in June 2012, the Committee is concerned that the new Act does not provide for facilitated naturalization of refugees and stateless persons (art. 5).

Recalling its general recommendation No. 22 (1996) on article 5 and refugees and displaced persons, the Committee recommends that the State party consider amending the Asylum Act to provide for facilitated naturalization of refugees and stateless persons.

D. Other recommendations

Ratification of other treaties

(15) 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.

Follow-up to the Durban Declaration and Programme of Action

(16) 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.

Dissemination

(17) 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.

Follow-up to concluding observations

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

Paragraphs of particular importance

(19) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 9, 11 and 13, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(20) The Committee recommends that the State party submit its seventh and eighth periodic reports in a single document by 10 February 2016, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

44. Mauritius

(1) The Committee considered the combined fifteenth to nineteenth periodic reports of Mauritius (CERD/C/MUS/15-19 and Corr.1) at its 2219th and 2220th meetings (CERD/C/SR.2219 and 2220), held on 20 and 21 February 2013. At its 2229th meeting (CERD/C/SR.2229), held on 27 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined fifteenth to nineteenth period reports submitted by the State party, which conforms to the Committee's guidelines for the preparation of treaty-specific reports, despite the delay in its submission. The Committee also welcomes the submission of the common core document (HRI/CORE/MUS/2008).

(3) The Committee appreciates the open and frank dialogue it had with the high level delegation and welcomes the supplementary information provided during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the strengthening of the human rights infrastructure in the State party, including:

(a) The broadening of the mandate of the Human Rights Commission and the enhancement of its operational capacity through the amendment to the Human Rights Act;

(b) The adoption of the 2012–2020 National Human Rights Action Plan and the establishment of a multi-stakeholders Committee to monitor its implementation.

(5) The Committee welcomes the adoption of laws which strengthen the legal protection against racial discrimination, including:

(a) The Equal Opportunities Act of 2008 and subsequent amendments which prohibit discrimination by individuals against others in all fields of public life; define indirect discrimination and discrimination by victimization; and shift the burden of proof to the alleged discriminator;

(b) The Information and Communication Technologies Act of 2001 which enables the prosecution of hate or racist speech on the Internet.

(6) The Committee welcomes the creation and the work of the Equal Opportunities Commission.

(7) The Committee welcomes the measures taken to promote cultural rights, such as:

(a) The inscription of Aapravasi Ghat and of *Le Morne* as heritage sites with a view to protect and promote the cultural heritages of slave and indentured labourer descents;

(b) The establishment of language unions, cultural trust funds and centres;

(c) The inclusion of Kreol Morisien and “Bhujpuri” as heritage language/mother tongue in the primary school curricula.

(8) The Committee welcomes the creation and the work of the Truth and Justice Commission; the documentation of historical accounts of slavery and indentured labour; the studies on the consequences of slavery and indentured labour for descendants of slaves and indentured labourers; and the recommendations made by the Commission.

C. Concerns and recommendations

Application of the Convention in the domestic legal order

(9) The Committee notes that the domestication of human rights treaties ratified by the State party is one of priority actions identified in the National Human Rights Action Plan adopted in 2012.

The Committee recommends that the State party incorporate the International Convention on the Elimination of all forms of Racial Discrimination into its national legislation and take into consideration the relevant recommendations in its concluding observations (CERD/C/MUS/CO/15-19) in the process of harmonizing its legislation with the Convention.

Grounds of discrimination

(10) The Committee notes the ongoing revision of the Equal Opportunities Act with a view to extending the State party’s capacity to address discrimination (arts. 1 and 5(d) (vii)).

The Committee encourages the State party in this revision, in accordance with the Convention, to add ‘language’ as a protected ground under the Equal Opportunities Act, as recommended by the Equal Opportunities Commission. In view of the inter-sectionality between religion and ethnicity in the State party and insofar as the population of the State party affirms identity through religious affiliation, the Committee encourages the State party to guarantee the right of everyone to freedom of religion without distinction as to race, colour, descent, or national or ethnic origin.

Incitement to hatred and violence

(11) The Committee notes the affirmation by the delegation that, in addition to article 282 of the Criminal Code which prohibits incitement to racial hatred, existing provisions of the Criminal Code enable the prosecution of other criminal acts enumerated in article 4 of the Convention (art. 4).

The Committee calls upon the State party to cover in its legislation all aspects of article 4 by ensuring that the dissemination of ideas based on racial superiority or hatred as well as organizations which promote and incite racial discrimination are prohibited. The Committee also recommends that the State party ensure that racial motivation is considered as an aggravating circumstance in the sentencing of crimes. In this regard, the Committee draws the attention of the State party to its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on article 4 of the Convention and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

Legal remedies for victims of racial discrimination

(12) While acknowledging the merit of reconciliation in dealing with cases of discrimination, as prescribed by the Equal Opportunities Act, the Committee is worried that the approach may not always be appropriate in view of the severity of some offences of racial discrimination (arts. 1, 4 and 6).

Recalling its general recommendation No. 26 (2000) on article 6 of the Convention, the Committee recommends that the State party ensure that acts of racial discrimination, as defined by article 4, are punishable in the State party’s legislation and that they be dealt with and made to carry sanctions proportional to their gravity.

Cases relating to racial discrimination

(13) The Committee regrets the paucity of information on complaints and court cases relating to racial discrimination in the report of the State party (art. 6).

The Committee requests the State party to provide in its next periodic report more detailed information as well as statistics on cases relating to racial discrimination dealt with by courts as well as by non-judicial mechanisms such as the Human Rights Commission, the Ombudsman and the Equal Opportunities Commission. In this regard, the Committee refers the State party to its general recommendation No. 31 (2005).

Special measures

(14) The Committee notes with concern that the State party’s legislation does not provide for special measures to remedy disadvantaged situations experienced by certain ethnic groups. The Committee also notes that, while the Equal Opportunities Act aims to achieve an equitable, fair and just society, its implementation is posited only on the principle of meritocracy (arts 1, 2 and 5).

The Committee calls upon the State party to consider the implementation of special measures with a view to accelerating the achievement of full and equal enjoyment of

human rights by disadvantaged groups. The Committee recommends that special measures be considered to address under-representation of any ethnic group in the field of private and public employment and education. The Committee also urges the State party to raise awareness among the population that special measures are necessary for achieving substantive equality and that their implementation is compatible with the principle of fairness. In this regard, the Committee draws the attention the State party to 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.

Identity and ethnic relations

(15) The Committee is concerned that the current political classification of the population combines in the same community of ‘General Population’ groups such as the Creoles and the Franco-Mauritians which do not share the same identity. The Committee is moreover concerned that the constitutional classification, established in 1968, may no longer reflect the identities of the various groups in the State party (arts. 1, para. (1) and 4).

The Committee calls on the State party to lead a consultative reflection on the classification of the various groups of the population. In this regard, the Committee recommends that the State party be guided by the principle of self-identification and refers the State party to its general recommendation No. 8 (1990) on identification with a particular ethnic group.

(16) The Committee is disturbed by the existence of hierarchy along skin colour, ancestry, caste and racial lines in the State party’s society, whereby groups are perceived as, or feel, superior or inferior to others. The Committee also regrets that only a few of the recommendations of the Truth and Justice Commission are being implemented (arts. 4 and 7).

The Committee urges the State party to condemn and take action to eliminate ideas of racial or ethnic superiority by taking measures such as campaign programmes to raise awareness of equality of all and to eliminate negative prejudices regarding certain groups. The Committee also urges the State party to prioritize the implementation of the recommendations of the Truth and Justice Commission, especially those relating to creating a “less racist and elitist society,” including through urgent allocation of resources for this purpose.

Collection of demographic data

(17) The Committee notes the view of the State party that the collection of data by ethnicity is divisive (arts. 2 and 5).

The Committee is of the opinion that the collection of such data is useful for the State party to define and apply adequate policies aimed at eliminating different forms of discrimination on grounds of race, colour, descent, ethnic or national origin. The Committee, noting the recommendation of the Truth and Justice Commission to gather data disaggregated by gender and ethnic community on social, political and administrative structures of the society, encourages the State party to reconsider this view in line with the Committee’s reporting guidelines (CERD/C/2007/1). The Committee encourages the State party to consult its constituency in the consideration of the most appropriate approaches to this collection of data.

Political representation

(18) The Committee regrets that it has not been given information about the representation of each community in the State party’s political bodies. Moreover, the Committee notes that the State party intends to engage in a process of review of its electoral

system with a view to achieving a 'more equitable system which promotes nation building and provides for better representation of women' (art. 5 (c)).

The Committee recommends that the State party ensure that the new electoral system addresses obstacles to the participation in political life by, and adequate representation of ethnic groups. The Committee requests the State party to include in its next periodic report information on the representation of each ethnic group in the various appointed and elected public bodies, including also details about the participation of women from such groups.

The Creoles

(19) The Committee notes with concern that the Creoles remain significantly disadvantaged in the enjoyment of economic, social and cultural rights, in spite of the implementation of a range of measures benefiting the most disadvantaged segment of the population (art. 5 (e)).

The Committee recommends that the State party continue to address the disadvantages experienced by the Creoles in the enjoyment of economic, social and cultural rights by implementing measures commensurate with the problem. The Committee requests the State party to include in its next periodic report information on progress achieved in this regard.

Languages

(20) Noting the information provided by the delegation that Creole is the common language spoken by all groups in the State party and welcoming the introduction of the teaching of Creole and Bhojpuri in primary education, the Committee regrets that it has not been given information on the status of the Creole language as well as the language of teaching in the State party (art. 5 (c)).

The Committee requests the State party to ensure that proper status is given to the languages spoken by the various groups of the population. The Committee also calls on the State party to eliminate language barriers to equality and to the enjoyment of civil and political rights as well as economic, social and cultural rights, in particular the right to education.

Situation of the Chagossians

(21) While welcoming the measures taken by the State party to alleviate the sufferings of the Chagossians displaced from the island of Diego Garcia and other islands of the Chagos archipelago, the Committee remains concerned that they have not been able to exercise their right to return to their land (arts. 5 (d), 11).

The Committee recommends that the State party continue to seek all possible ways for remedying the injustice done to the Chagossians displaced mainly from the island of Diego Garcia and other islands of the Chagos archipelago.

Migrant workers

(22) The Committee remains concerned at reports of poor working and living conditions of migrant workers, despite the measures taken such as the adoption of the Occupational Safety and Health (Employees' Lodging Accommodation) Regulation in 2011. (arts. 1 and 5).

The Committee calls on the State party to ensure effective investigation, prosecution and sanction of employers responsible for violations of the rights of migrant workers and to make sure that applicable laws enable an adequate protection of migrant workers. The Committee draws the attention of the State party to its general recommendations No. 30 (2004) on non-discrimination against non-citizens.

Gender-related dimension of racial discrimination

(23) The Committee expresses concern at the exception to the principle of non-discrimination provided for under Section 16 (4) of the Constitution regarding the application of personal law, which violates the provisions of the Convention insofar as it affects women of certain ethnic groups because of their religious affiliation (art. 5).

The Committee urges the State party to abrogate the exception to the principle of non-discrimination provided for under Section 16 (4) of the Constitution in the context of the constitutional reforms. The Committee refers the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

De facto segregation

(24) The Committee regrets that the report of the State party did not provide information on the measures taken to give effect to the provisions of article 3 of the Convention (art. 3).

The Committee requests that the State party include in its next periodic report information on the legislative, judicial, administrative or other measures taken to prevent, prohibit and eradicate de facto racial segregation. The Committee also advises the State party to ensure that its social housing programme does not result in a situation of residential de facto racial segregation. In this regard, the Committee refers the State party to its general recommendation No. 19 (1995) on racial segregation and apartheid.

D. Other recommendations

Ratification of other treaties

(25) 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 the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Follow-up to Durban Declaration and Programme of Action

(26) 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.

Amendment to article 8 of the Convention

(27) 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 resolutions 61/148, 63/243 and 65/200, in which the 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.

Declaration under article 14

(28) The Committee encourages the State party to make the declaration under article 14 recognizing the competence of the Committee to receive and consider individual complaints.

Consultation with organizations of civil society

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

Dissemination

(30) 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.

Follow-up to concluding observations

(31) 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 11 and 12 above.

Paragraphs of particular importance

(32) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 18, 20 and 21 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(33) The Committee recommends that the State party submit its twentieth to twenty-second periodic reports in a single document by 29 June 2015, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the 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 (S/HRI/GEN.2/Rev.6, chap. I, para. 19).

45. New Zealand

(1) The Committee considered the eighteenth to twentieth periodic reports of New Zealand (CERD/C/NZL/18-20), submitted in one document, at its 2221st and 2122nd meetings (CERD/C/SR.2221 and 2222), held on 21 and 22 February 2013. At its 2230th meeting (CERD/C/SR.2230), held on 28 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission by the State party of its combined eighteenth to twentieth periodic reports drafted in accordance with the Committee's guidelines for the preparation of reports including page limitations and takes into account the Committee's previous concluding observations. The Committee also welcomes the open dialogue with the high level delegation of the State party and its efforts to provide comprehensive responses and supplementary replies to issues raised by Committee members during the dialogue.

B. Positive aspects

(3) The Committee notes with appreciation the numerous legislative and policy developments which have taken place in the State party since its last report to combat racial discrimination, including:

(a) The Immigration Act of 2009 that entered into force on 29 November 2010, which removed barriers for foreign national children to access education and limited the situations in which asylum seekers may be detained;

(b) The implementation of the Health Housing Programme that seeks to alleviate overcrowding in housing among Pasifika peoples;

(c) The publication of a new Equality and Diversity Policy for the Public Service in 2008;

(d) The ratification of the following international human rights instruments:

(i) The Convention on the Rights of Persons with Disabilities, on 25 September 2008; and

(ii) Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, on 20 September 2011.

(e) The official endorsement of the United Nations Declaration of the Rights of Indigenous Peoples of 2007 (albeit with some qualifications), as well as the New Zealand Supreme Court's reliance on the Declaration in construing the scope of Māori rights to freshwater and geothermal resources in the case between the New Zealand Māori Council et al and the Attorney General et al SC 98/2012, [2013] NZSC 6, whose judgement was delivered on 27 February 2013.

(4) The Committee welcomes the numerous valuable programmes, strategies and other initiatives aimed at improving ethnic relations and raising the awareness of the population with regard to racial discrimination, integration, tolerance and multiculturalism, including the Youth Employment Package, the Alcohol and Other Drugs Courts, the New Zealand Police ethnic strategy and recommendations included in the study "A Fair Go For All?".

(5) The Committee welcomes the contributions of the Race Relations Commissioner to the Committee's work, as well as the active engagement of and contributions from organizations of civil society.

C. Concerns and recommendations

National human rights institution

(6) While noting that the proposed Human Rights Amendment Bill is designed in part to improve the effectiveness and efficiency of the Human Rights Commission and to broaden its mandate to cover matters such as disability, the Committee is concerned that this amendment may negatively affect the visibility, accessibility and independence of the Race Relations Commissioner (art. 2).

The Committee recommends that the State party consider retaining the designation of the Race Relations Commissioner in order to maintain its visibility and accessibility in the State party. The Committee also recommends that the State party ensure that any change effected by this amendment guarantees the independence of the Race Relations Commissioner to undertake its mandate effectively.

Treaty of Waitangi

(7) The Committee recalls its previous concluding observations (CERD/C/NZL/CO/17, para. 13) and notes with regret that the Treaty of Waitangi is not a formal part of domestic

law even though the State party considers it the founding document of the nation. The Committee also notes that the decisions rendered by the Waitangi Tribunal are not binding. The Committee notes that a constitutional review is underway and an independent Constitutional Advisory Panel has been appointed that will consider a wide range of issues including the role of the Treaty of Waitangi within the State party's constitutional arrangements (arts. 2 and 5).

The Committee recalls its previous recommendation (CERD/C/NZL/CO/17, para. 13), and urges the State party to ensure that public discussions and consultations are held on the status of the Treaty of Waitangi within the context of the ongoing constitutional review process. In particular, the Committee recommends that public discussions and consultations focus, inter alia, on whether the Treaty of Waitangi should be entrenched as a constitutional norm. The Committee further recommends that the State party consider adopting the recommendation by the Special Rapporteur on the rights of indigenous peoples that any departure from the decisions of the Waitangi Tribunal be accompanied by a written justification by the government.

National action plan on human rights

(8) The Committee notes the lack of a comprehensive national human rights action plan in the State party after the 2005 human rights action plan reached its completion point. However, the Committee notes the State party's intention to develop a new human rights action plan, under the aegis of the National Human rights Commission, in connection with the universal periodic review process (art. 2).

The Committee urges the State party to adopt a national action plan on human rights and ensure that it includes plans on how to combat racial discrimination in line with the Durban Declaration and Programme of Action. The Committee further recommends that the State party undertake adequate consultations with relevant stakeholders in developing the Action Plan.

Incitement to racial hatred and violence

(9) While commending the State party for its legislation to combat incitement to racial disharmony under the Human Rights Act, the Committee is concerned at the absence of a comprehensive strategy to address incitement to racial hatred committed in cyberspace. The Committee, however, notes the intention of the State party to develop legislation to address the problem of incitement to racial hatred on the Internet, including the problem of cyber-bullying (arts. 2 and 4).

The Committee recommends that the State party develop a comprehensive legislative framework for addressing the problem of incitement to racial hatred on the Internet in conformity with article 4 of the Convention.

Political racist speech

(10) The Committee regrets the recent inflammatory remarks by a Member of Parliament vilifying persons from Central Asia or the Middle East based on their skin colour and country of origin as well as their religion, but welcomes the strong criticism of such statements by the Minister of Justice and Ethnic Affairs and the Race Relations Commissioner, among others, as well as the unanimous resolution passed by the Parliament reaffirming the State party's commitment to preserving an inclusive multi-ethnic society (arts. 4, 5 and 7).

The Committee urges the State party to intensify its efforts to promote ethnic harmony through, inter alia, raising awareness in order to combat existing stereotypes and prejudices against certain ethnic and religious groups.

Administration of justice

(11) The Committee notes the efforts made by the State party to address the overrepresentation of members of Māori communities in the criminal justice system, such as the introduction of the “Better Public Services” programmes, the “Drivers of Crime” initiative and reforms to the jury selection system with regard to the pool of jurors. The Committee, however, remains concerned at the disproportionately high rates of incarceration and the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system (arts. 2, 4, 5 and 6).

Recalling its previous concluding observations (CERD/C/NZL/CO/17, para. 21) and 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 to intensify its efforts to address the overrepresentation of members of the Māori and Pasifika communities at every stage of the criminal justice system. In this regard, the Committee urges the State party to provide comprehensive data in its next periodic report on progress made to address this phenomenon.

(12) The Committee is concerned at the absence of data on cases of racial discrimination punished or otherwise sanctioned by the public authorities of New Zealand (arts. 2 and 6).

The Committee recommends that the State party include in its next periodic report data concerning such cases considered by the judiciary and other competent authorities in accordance with the provisions of the Convention.

Indigenous peoples

(13) While commending the State party for its repeal of the Foreshore and Seabed Act of 2004, the Committee remains concerned that the Marine and Coastal Areas (Takutai Moana) Act of 2011 contains provisions that, in their operation, may restrict the full enjoyment by Māori communities of their rights under the Treaty of Waitangi, such as the provision requiring proof of exclusive use and occupation of marine and coastal areas without interruption since 1840 (arts. 2 and 5).

The Committee urges the State party to continue to review the Marine and Coastal Area (Takutai Moana) Act of 2011 with a view to facilitating the full enjoyment of the rights by Māori communities regarding the land and resources they traditionally own or use, and in particular their access to places of cultural and traditional significance.

(14) The Committee welcomes the Waitangi Tribunal’s 2011 Wai 262 decision regarding Māori intellectual and cultural property rights, which makes recommendations for changes in law, policy and practice on matters relating to traditional knowledge, genetic and biological resources of indigenous species, and the relation of Māori communities with the environment in connection with conservation, language, cultural heritage, traditional healing and medicine, and proposes a partnership framework for Crown-iwi relations in this sphere. The Committee, is concerned, however, that the State party has not yet announced a timetable for implementing this decision (arts. 2, 5 and 6).

The Committee recommends that the State party promptly announce a timetable to implement the Waitangi Tribunal’s decision in a manner that fully protects the intellectual property rights of Māori communities over their traditional knowledge and genetic and biological resources.

Structural discrimination

(15) The Committee notes the efforts of the State party to improve the status of the Māori and Pasifika communities in New Zealand society, and welcomes the State party’s recognition that structural discrimination in the State party is partly responsible for the persistent poor outcomes that the members of the Māori and Pasifika communities

experience in the fields of employment, health and the administration of criminal justice. The Committee is also concerned at the high levels of school absenteeism and high dropout rates among Māori and Pasifika pupils (arts. 2 and 5).

The Committee recommends that the State party intensify its efforts to improve the outcomes of the Māori and Pasifika in the fields of employment, health and in the administration of criminal justice by, inter alia, addressing the existing structural discrimination in the State party. The Committee also recommends that the State party consider strengthening its special measures to increase the level of educational attainment of Māori and Pasifika children, in particular by focusing its measures at addressing the root causes of absenteeism and high dropout rates in schools.

Discrimination against migrants

(16) The Committee is concerned at reports of persistent discrimination against migrants, particularly of Asian origin, in the labour market, including reports of inadequate recognition of their educational qualifications, which leads to their concentration in low-paying jobs (arts. 2 and 5).

The Committee recommends that the State party ensure the full and effective enforcement of the measures taken to protect Asian migrants, including targeted measures to strengthen equal access to the labour market in order to alleviate the concentration of qualified individuals in low paying jobs. The Committee further urges the State party to support a system for the objective assessment of their educational qualifications.

Languages

(17) While noting that the teaching of Māori language (te reo Māori) is part of the general school curriculum and the existence of Māori Immersion Units, the Committee is concerned at the finding by the Waitangi Tribunal that the language is at risk of erosion. The Committee also notes that the State party has adopted a Pasifika Language Framework but regrets that the Māori language strategy is yet to be elaborated. It is also concerned at reports of inadequate funding to support the preservation of community languages (arts. 2 and 5).

The State party should take specific measures aimed at preserving the Māori and Pasifika languages, as well as community languages, by ensuring that adequate funding is allocated for specific programmes. The Committee also urges the State party to expedite the development of a new Māori language strategy.

Consultations with indigenous peoples

(18) The Committee is concerned by reports by representatives of Māori communities regarding the inadequacy of the consultations conducted by the State party before awarding deep-sea oil seismic, drilling and hydraulic fracturing contracts to commercial companies, under circumstances that may threaten these communities' enjoyment of their rights to land and resources traditionally owned or used, and before pursuing negotiation of Free Trade Agreements that could similarly affect indigenous peoples' rights. The Committee also notes the concerns expressed by representatives of Māori communities concerning the adequacy and genuineness of the consultation process surrounding the enactment of the Finance (Mixed Ownership Model) Amendment Act of 2012 and the State-Owned Enterprises Amendment Bill of 2012 (arts. 2 and 5).

The Committee recalls its general recommendation No. 23 (1997) and reiterates the importance of securing the free, prior and informed consent of indigenous groups regarding activities affecting their rights to land and resources owned or traditionally used, as recognized in the United Nations' Declaration on the Rights of Indigenous

Peoples. It urges the State party to enhance appropriate mechanisms for effective consultation with indigenous people around all policies affecting their ways of living and resources.

Māori freshwater and geothermal resources

(19) The Committee notes the recent decision of the New Zealand Supreme Court (27 February 2013) affirming that the Finance (Mixed Ownership Model) Amendment Act of 2012 does not materially impair the Crown's ability or obligation to ensure the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

The Committee urges the State party to ensure that any privatization of energy companies is pursued in a manner that fully respects the rights of Māori communities to freshwater and geothermal resources, as protected by the Treaty of Waitangi.

Detention of asylum seekers

(20) The Committee notes the intention by the State party to table the Immigration Amendment Bill of 2012, which provides for the mandatory detention of asylum seekers and persons falling within the ambit of the statutory definition of a "mass arrival", namely, those arriving in a group of more than 10. The Committee is concerned that this provision may have the effect of depriving persons who are in need of international protection of their liberty solely based on the manner of their arrival in the State party (arts. 2 and 5).

The Committee recalls its general recommendation No. 30 (2004) on discrimination against non-citizens and reiterates its position that State parties to the Convention should ensure the security of non-citizens, in particular with regard to arbitrary detention. The Committee urges the State party to ensure that the Immigration Amendment Bill of 2012 accords to international standards in the treatment of persons in need of international protection so that it does not unfairly and arbitrarily discriminate against asylum seekers.

(21) The Committee welcomes the State party's decision to admit 150 asylum seekers from Australian off-shore refugee detention centres located in Papua New Guinea and Nauru. However, the Committee is concerned at reports that the State party is considering sending future asylum seekers to the said facilities, which has been criticized by the Office of the United Nations High Commissioner for Refugees (UNHCR) because of the conditions under which asylum seekers are detained and because of other problems (arts. 2 and 5).

The Committee urges the State party to refrain from sending asylum seekers to the Australian off-shore detention facilities until the conditions meet international standards.

D. Other recommendations

Ratification of other treaties

(22) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be 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 and ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

(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 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.

Declaration to article 14 of the Convention

(24) The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention. It further notes the statement by the delegation that the State party intends to consider making such a declaration at a stage when this will coincide with the next review of the State party under the universal periodic review of the Human Rights Council. The Committee, however, invites the State party to make the declaration as soon as possible.

Consultations with organisations of civil society

(25) 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 and the follow-up to these concluding observations.

Dissemination

(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 other commonly used languages, as appropriate.

Follow-up to concluding observations

(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 8, 9, 14 and 17 above.

Paragraphs of particular importance

(28) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 10, 15, 18 and 19 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(29) The Committee recommends that the State party submit its twenty-first and twenty-second periodic reports in a single document by 21 December 2015, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

46. Republic of Korea

(1) The Committee considered the fifteenth and sixteenth periodic reports of the Republic of Korea (CERD/C/KOR/15-16), submitted in one document, at its 2187th and 2188th meetings (CERD/C/SR.2187 and 2188), held on 21 and 22 August 2012. At its

2201st meeting (CERD/C/ SR.2201), held on 30 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission of the combined fifteenth and sixteenth periodic report submitted by the State party in accordance to the Committee's reporting guidelines (CERD/C/2007/1).

(3) The Committee appreciates the presence of the delegation and the responses provided to the questions and comments raised by the Committee members during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes a number of positive developments and activities undertaken by the State party to fight racial discrimination and promote diversity, including:

(a) The enactment of the Refugee Act which will enter into force in July 2013;

(b) The ratification of the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions;

(c) The Enforcement Decree on the Primary and Secondary Education Act;

(d) The Establishment of the Nationality and Refugee division in the Ministry of Justice and in the Seoul Immigration Office.

(5) The Committee notes the adoption in December 2008 of the first Basic Plan for Policies on Foreigners, and in March 2012 of the second National Action Plan for the Promotion and Protection of Human Rights.

C. Concerns and recommendations

Definition of racial discrimination

(6) While noting that the State party affirms that article 11, paragraph 1, of its Constitution, as well as a series of individual laws, are sufficient to ensure equality among citizens and prohibit racial discrimination, the Committee reiterates its concern about the absence of a legal definition of racial discrimination in line with article 1 of the Convention.

The Committee reiterates its recommendation that the State party review its position that a definition of racial discrimination in line with the Convention is not necessary since sufficient protection against discrimination is guaranteed to citizens through article 11, paragraph 1, of its Constitution. It urges the State party to include in its legislation a definition of racial discrimination which encompasses all prohibited grounds of discrimination, in line with article 1 of the Convention, and which guarantees equal rights to citizens and non-citizens as recommended in the Committee's general recommendation No. 30 (2004) on discrimination against non-citizens.

Legislation on racial discrimination

(7) The Committee notes that the Ministry of Justice submitted the draft bill of the Discrimination Prohibition Act to the National Assembly in 2007, in compliance with previous recommendations of the Committee. It regrets that the bill was discarded when the 17th session of the National Assembly came to an end in May 2008. It notes the information received from the State party that a council of experts was established to continue the consideration of the Discrimination Prohibition Act.

The Committee urges the State party to take immediate action on the finalization and adoption of the Discrimination Prohibition Act or other comprehensive legislation to

prohibit racial discrimination, in line with article 4 of the Convention. The Committee recalls that the same recommendation was made in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3), and in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7) and by the Committee on the Rights of the Child (CRC/C/KOR/CO/3-4).

Criminalization of racial discrimination

(8) The Committee regrets that the draft bill of the Discrimination Prohibition Act did not provide for the criminal punishment of discriminatory acts. It further notes that the existing legislation is not in full compliance with article 4 of the Convention, including the absence of criminal sanctions for incitement to racial discrimination and acts of racially motivated violence.

Recalling its general recommendation No. 1 (1972) on States parties' obligations, the Committee reiterates the mandatory character of the provisions of articles 2 and of article 4 of the Convention and urges the State party to amend its Criminal Code to include racial discrimination as a crime and to adopt comprehensive legislation which criminalizes racial discrimination, provides for adequate punishments proportional to the gravity of the offence, considers racial discrimination as an aggravating circumstance and provides for reparations to the victims.

Lack of relevant data and virtual absence of court cases on racial discrimination

(9) The Committee notes the information provided by the State party that crimes based on racial discrimination have rarely occurred throughout the history of the country and that the State party does not record separate statistics on racially motivated crimes.

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 is of the view that the very low number of complaints of acts of racial discrimination is not necessarily positive and may be the consequence particularly of lack of legislation prohibiting racial discrimination, or lack of confidence or awareness of possibilities for redress by victims. The Committee requests the State party to undertake an in-depth analysis on the low number of complaints and to provide, in its next report, data and statistics on the number of cases of racial discrimination reported to the relevant authorities, the nationality of the complainants and their legal status, the percentage of investigations and prosecutions of those complaints and the outcomes.

Racist hate speech

(10) The Committee notes that racist hate speech directed against non-citizens is becoming more widespread and explicit in the media and on the Internet. The Committee notes that the fundamental right to freedom of expression of the individuals involved does not protect the dissemination of ideas of racial superiority or incitement to racial hatred.

In accordance with its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) on organized violence based on ethnic origin, and No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party monitor the media, Internet and social network to identify those individuals or groups who disseminate ideas based on racial superiority or incite to racial hatred against foreigners. The Committee recommends that the State party prosecute and adequately punish the authors of such acts.

Migrant workers

(11) The Committee notes the amendments in the Employment Permit System but remains concerned that migrant workers are subject to discrimination, exploitation and lower or unpaid wages. The Committee expresses further concern that migrant workers cannot de facto become eligible for permanent residency in the Republic of Korea, which requires five years of continuous presence in the country, as the maximum employment period amounts to 4 years and 10 months, renewable once after a break of three months outside the country. The Committee is greatly concerned about the information that migrant workers, especially those who become undocumented, cannot enjoy their right to organize and join a labour union and that some union executive members have been expelled from the country. The Committee fully shares the recommendations of the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3) in this regard.

The Committee recommends that the State party further amend the Employment Permit System in particular with regard to the complexity and variety of types of visa; discrimination based on country of origin; the limitation of the migrant workers' ability to change their place of work; the maximum employment period, and ensure that migrant workers can fully enjoy their rights and that they and their families, in particular children, enjoy an adequate livelihood, housing, health care and education. The Committee urges the State party to guarantee the right of all persons to form and join trade unions freely. The Committee requests the State party to report on these specific issues. The Committee recommends that the State party ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

Undocumented migrant workers

(12) The Committee understands that one of the consequences of the inflexible system of time-limited permits and visas is that many migrant workers, who entered the country legally, become undocumented and that they and their families cannot enjoy their rights or access to services. Moreover, the Committee received information that the labour inspections carried out in the workplaces are aimed at identifying undocumented migrants, rather than checking working conditions, and that crackdowns have been strengthened and have resulted in a higher number of deportations.

The Committee urges the State party to protect the rights of undocumented migrant workers and requests information on the number of undocumented workers identified during labour inspections, their condition and length of detention, as well as the number of migrant workers who have been expelled. The Committee requests the State party to take all measures to ensure that migrant workers who entered the country legally do not become undocumented as a result of the inflexibility of the work-permit system.

Situation of refugees, asylum seekers and stateless persons

(13) While noting the increased efforts made by the State party in this area through the establishment of the Nationality and Refugee division of the Ministry of Justice and the increase in the number of people who have been granted refugees status during the past years, the Committee notes with concern the very low acceptance rate as compared to the world average. The Committee received information that the number of public officials handling refugee applications remains low and that as of May 2012, there were more than 1,200 applications pending. Moreover, according to the information received, the procedure still fails to guarantee due process of law as interpreters are not adequately provided and the Refugee Recognition Committee handles appeal procedures without conducting hearings involving the applicants. The Committee remains concerned about challenges faced by refugees and asylum seekers in terms of livelihood, employment, access to public services,

education and citizenship. Of particular concern is the lack of proper birth registration of the children of refugees, asylum seekers and stateless persons.

The Committee recommends that the State party ensure unhindered and equal access to official procedures for lodging asylum applications at ports of entry, thereby upholding the principle of non-refoulement; take all necessary measures so that refugees and asylum seekers enjoy the right to work and that they and their families enjoy an adequate livelihood, housing, healthcare and education; and establish a system and procedures to properly register the birth of children of refugees, humanitarian status holders and asylum seekers born in the State party, as already recommended by the Committee on the Rights of the Child in 2011 (CRC/C/KOR/CO/3-4), and of children of undocumented migrants. The Committee requests that the State party, in its next report, provide the total number of applications for refugee status per year, broken down by those rejected and those accepted.

The Committee further recommends that the procedure for recognizing refugee status conform to international standards and be further implemented, including by appointing more officials to review the applications. Due process of law should be respected at all stages of the process, inter alia, by providing interpreters for the applicants and guaranteeing their right to be heard during the appeal procedures which concern them.

Protection of foreign women

(14) While noting the revision in 2010 of the Act on the Management of International Marriage Agencies with a view to strengthening the protection for the clients of such agencies, the launch of overseas programmes in five cities of three countries to provide information to marriage migrants before their entry into the Republic of Korea and the opening of Multi-Cultural Family Support Centres, the Committee remains concerned that its previous recommendation on the protection of the rights of foreign female spouses has not been implemented. In particular, the Committee remains concerned that in cases of divorce, while a foreign wife may retain her residence permit, the burden of proof that the divorce is attributable to the Korean spouse is alleviated if she submits a written confirmation of divorce from a certified women's group. The Committee is also concerned that the rights of foreign women who request a divorce are still not adequately protected and that their continued stay in the country is conditional on typically gendered roles such as the care of children and parents-in-law.

Recalling its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee reiterates its recommendation to the State party to increase its efforts to protect foreign women married to Korean citizens by granting them equal rights in case of separation or divorce, and with regard to subsequent residence permits and other provisions. In this regard, the Committee requests the State party to provide information on the number of foreign spouses who have been denied resident status in the State party after separation or divorce since 2007, when the Committee made its first recommendation in this regard.

(15) The Committee notes that migrant women who are subjected to domestic and/or sexual violence often do not report such crimes due to fear of losing their legal resident status, and as a consequence, they lack protection. The Committee is also concerned about reports of violence and discrimination against foreign wives of Korean men.

The Committee urges the State party to ensure that foreign women who are victims of domestic violence, sexual abuse, trafficking or other forms of violence can confidently access justice. Women victims of violence should be guaranteed a legal stay in the

State party until they recover and have the option to remain in the country if they so wish.

Human trafficking

(16) The Committee welcomes the State party's intention to ratify the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the establishment of the Support Centre for Female Victims of Forced Prostitution. However, the Committee is concerned by reports received, according to which, migrant women continue to be trafficked and subjected to forced prostitution through various routes, including through abuses of the E-6 visa granted to work in the entertainment industry. The Committee shares the concerns expressed and the recommendations made by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7).

The Committee urges the State party to ratify the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and to revise the Criminal Code and adopt national legislation which allows prosecution and adequately punishes the perpetrators of trafficking, provides reparations to victims and ensures that fear of expulsion does not deter reporting of such crimes. The Committee recommends that the State party review the current E-6 visa regime, and exercise the necessary control on all categories of actors, including private businesses, related to it.

Multicultural families

(17) The Committee notes the Multicultural Families Support Act, but is concerned with the definition of multicultural families which, at present, limits itself to the union between a Korean citizen and a foreigner, while excluding other forms of multicultural families such as those composed of two foreign partners. The Committee is concerned that the Multicultural Families Support Act excludes a large number of the people present in the country and hampers their integration in the State party's society, thereby creating de facto discriminatory situations which have particularly heavy consequences on the children and foreign spouses.

The Committee recommends that the State party broaden the definition of multicultural families to include unions between foreigners or inter-ethnic unions in order to fully integrate a large number of the people present in its territory who, at present, cannot benefit from the support provided for under the act. The Committee urges the State party to pay particular attention to the children of such families who bear the heaviest consequences of the lack of integration.

Mandate of the National Human Rights Commission

(18) While noting that the budget of the National Human Rights Commission of Korea (NHRCK) has increased by more than 4 per cent in the current year, the Committee is concerned that the increase does not compensate for the downsizing of 21 per cent which occurred a few years ago. In addition, the Committee has received reports of forceful deportation of foreign workers while the NHRCK's investigations were still taking place. The Committee notes that some experienced Commissioners resigned in the recent years and that the NHRCK did not provide an independent report on the implementation of the Convention to the Committee, but rather provided comments to the draft report of the State party.

The Committee recalls the recommendations made in 2009 by the Committee on Economic, Social and Cultural Rights (E/C.12/KOR/CO/3) and in 2011 by the Committee on the Elimination of Discrimination against Women (CEDAW/C/KOR/CO/7). The Committee reminds the State party of its responsibility

to ensure that the National Human Rights Commission of Korea remains compliant with the Paris Principles, in particular with respect to its independence. It urges the State party to respect the timing of the investigations by the NHRCK, to provide it with adequate financial resources and experienced human rights experts so as to enable it to carry out its mandate effectively, including promoting and monitoring the rights under the Convention.

D. Other recommendations

Ratification of other treaties

(19) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as the Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

Follow-up to the Durban Declaration and Programme of Action

(20) 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.

Dissemination

(21) 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.

Common core document

(22) The Committee encourages the State party to regularly update its core document (HRI/CORE/KOR/2010) submitted in 2010, 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.6, chap. I).

Follow-up to concluding observations

(23) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 12 and 13 above.

Paragraphs of particular importance

(24) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 14, 17 and 18, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next report

(25) The Committee recommends that the State party submit its seventeenth to nineteenth periodic reports in a single document, due on 4 January 2016, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1) and addressing 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, chap. I, para. 19).

47. Russian Federation

(1) The Committee considered the twentieth to twenty-second periodic reports of the Russian Federation (CERD/C/RUS/20-22), submitted in one document, at its 2211th and 2212th meetings (CERD/C/SR.2211 and 2212), held on 14 and 15 February 2013. At its 2227th and 2228th meetings, held on 26 and 27 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the timely submission of the combined twentieth to twenty-second periodic reports, which is in conformity with the reporting guidelines. The Committee also appreciates the inclusion of a section on the measures taken to implement each of the previous concluding observations of the Committee.

(3) The Committee further appreciates the open dialogue it had with the high-level delegation of the State party, the submission of information under the Committee's follow-up procedure (CERD/C/RUS/CO/19/Add.1), and the additional information provided orally by the delegation, notwithstanding the number of questions and issues raised by the Committee.

B. Positive aspects

(4) The Committee notes the efforts taken by the State party since the review of its last report in August 2008 to strengthen its legal framework, with the aim of enhancing the protection of human rights and giving effect to the provisions of the Convention, such as:

(a) The adoption of Federal Law No. 182-FZ on 12 November 2012 which introduced amendments to the 2002 Federal Law on Citizenship of the Russian Federation aimed at simplifying the process of acquiring citizenship for certain categories of persons, such as former Soviet citizens;

(b) The entry into force of the Federal Law No.3-FZ on Police on 1 March 2012 as part of ongoing efforts to reform the law enforcement system, which stipulates, *inter alia*, that the police shall “protect the rights, freedoms and legal interests of a person and a citizen regardless of gender, race, ethnicity, language and origin” (art. 7).

(5) The Committee also welcomes the ratification of, or accession to the following international and regional instruments during the period under review:

(a) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (September 2008);

(b) The European Social Charter (October 2009);

(c) Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights) (February 2010);

(d) The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children (August 2012);

(e) The Convention on the Rights of Persons with Disabilities (September 2012).

(6) The Committee also notes other initiatives taken by the State party to promote human rights and the implementation of the rights enshrined in the Convention, such as:

(a) The establishment of an Interdepartmental Working Group on inter-ethnic relations in 2011, chaired by the Deputy Prime Minister and consisting of representatives of 15 federal Government bodies, the Federation Council and the State Duma;

(b) Contribution of funds to the Anti-Discrimination Section of the Office of the High Commissioner for Human Rights and to support the work of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance.

C. Concerns and recommendations

Absence of comprehensive legislation on racial discrimination

(7) While noting that article 19 of the Constitution provides that the State shall guarantee the rights and freedoms of individuals regardless of sex, race, ethnic background, language, or origin, the Committee reiterates its previous concern that the State party has yet to adopt comprehensive anti-discrimination legislation containing a clear definition of racial discrimination (CERD/C/RUS/CO/19, paras. 9 and 11). Moreover, while noting the existence of equality guarantees in a number of federal and regional legislative acts, the Committee is concerned that such legislation covers only limited spheres of life, and may apply to citizens only (arts. 1, 2 and 6).

The Committee reiterates its previous recommendation (CERD/C/RUS/CO/19, paras. 9 and 11) that the State party adopt comprehensive anti-discrimination legislation containing a clear definition of direct and indirect forms of racial discrimination that covers all fields of law and public life, in accordance with article 1, paragraph 1 of the Convention.

Disaggregated data

(8) The Committee regrets the absence in the State party's periodic report of disaggregated data on the enjoyment of the rights protected under the Convention by ethnic minorities and non-citizens, despite the explicit request made in its previous concluding observations (CERD/C/RUS/CO/19, para. 10) (arts. 1 and 5).

The Committee reiterates its previous recommendation (CERD/C/RUS/CO/19, para. 10) to establish a mechanism for systematic data collection, based on the principle of self-identification, to assess the socio-economic status of different ethnic groups in the State party, including in areas such as education, employment and housing. Such a mechanism is indispensable in devising and implementing special measures to address any inequalities in the enjoyment of rights, as well as in evaluating the effectiveness of various anti-discrimination measures adopted by the State party, as outlined in the revised reporting guidelines (CERD/C/2007/1, para. 11). It also recommends that such data be disaggregated by gender, given that gender-issues may intersect with racial discrimination (general recommendation No. 25 (2000)).

Court cases on racial discrimination

(9) While noting the information provided by the State party that statistics on the number of civil and administrative court proceedings involving complaints of racial discrimination are not kept because such acts are uncommon in the Russian Federation (CERD/C/RUS/CO/19, para. 28), the Committee reiterates its concern regarding the

absence of information on such acts of racial discrimination, particularly in the light of reports that it has received to the contrary. The Committee also regrets the lack of information on cases illustrating direct and indirect application of the Convention by judicial and administrative bodies, as well as on legal redress provided to victims of racial discrimination (arts. 2 and 6).

The Committee requests that the State party provide in its next periodic report, also 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:

(a) **Measures taken to collect information on the number of complaints of racial discrimination and on the decisions taken in criminal, civil and administrative court proceedings, including on redress provided to victims of racial discrimination;**

(b) **Measures taken to ensure that victims of racial discrimination are aware of the available legal remedies and have access to legal aid, recalling its previous recommendation in this regard (CERD/C/RUS/CO/19, para. 28);**

(c) **Measures taken to provide for a shared burden of proof in criminal, civil and administrative court proceedings concerning acts of discrimination;**

(d) **Illustrative examples of the application of the Convention in criminal and civil courts and administrative procedures.**

Role of the Human Rights Ombudsman and the regional Ombudsmen in combating racial discrimination

(10) The Committee notes the existence of the Human Rights Ombudsman, regional Ombudsmen, including also regional Ombudsmen on the rights of indigenous small-numbered peoples. It also notes the information provided by the State party that complaints of discrimination in any area of public life may be referred to the Office of the Human Rights Ombudsman (CERD/C/RUS/20-22, para. 522). The Committee however regrets the absence of information on such cases, particularly on cases of racial discrimination. In this connection, the Committee also notes the recommendation made by the United Nations Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to establish an independent body dealing solely with the issue of racial discrimination following his visit to the Russian Federation in 2007 (A/HRC/4/19/Add.3, para. 83) (arts. 2 and 6).

The Committee requests that the State party provide in its next periodic report:

(a) **Complaints of racial discrimination received and examined by the Human Rights Ombudsman (Commissioner for Human Rights) and the regional Ombudsmen and their outcomes, as well as measures taken to ensure that there is awareness of their roles in this regard;**

(b) **Information on other specific action taken by the Human Rights Ombudsman and regional Ombudsmen to combat racial discrimination.**

Racially-motivated crimes

(11) While noting the efforts made by the State party to combat extremist organizations and the reported decline in manifestations of extremism in 2011, the Committee is nevertheless deeply concerned that:

(a) Instances of racially-motivated violence and murders have reportedly risen in 2012, particularly among young people, targeting persons originating from Central Asia, the Caucasus, Asia and Africa, as well as Roma and ethnic minorities of Muslim or Jewish faith;

(b) Racist and xenophobic acts, including instigation of street fights and beatings, by inter alia neo-Nazi groups and fans of football teams against members of ethnic minorities have become more frequent in 2011 and 2012, often leading to deaths or injuries of members of ethnic minorities;

(c) Such racist and xenophobic acts are not sufficiently condemned by the authorities;

(d) Courts often tend to give suspended sentences in cases of racially-motivated offences, despite the amendment of the Criminal Code in 2007 to ensure that the motive of ethnic, racial or religious hatred or enmity is considered as an aggravating circumstance;

(e) The federal list of banned extremist materials and of extremist organizations, despite recent updates, continues to contain inconsistent and outdated information (art. 4).

The Committee recommends that the State party:

(a) Systematically, firmly and unequivocally condemn all acts of intolerance, racism and xenophobia;

(b) Increase its efforts to give primary consideration to combating extremist organizations and their members involved in acts of racial discrimination when applying the Law on Combating Extremist Activities and article 282 of the Criminal Code;

(c) Ensure prompt action by the police, prosecutors and the judiciary in investigating and punishing racially-motivated crimes with appropriate penalties, and also develop further training and awareness-raising for these bodies;

(d) Collect and publish statistics concerning incidents of hate crimes in the State party, disaggregated by type, location and the number of victims. Such statistics should be based on court results, taking into account both acquittals and convictions.

Racist hate speech

(12) The Committee is seriously concerned that:

(a) Extremist groups that espouse exclusiveness and superiority on ethnic grounds, such as neo-Nazi groups, have reportedly become increasingly active and visible in public life while openly expressing racist and xenophobic views;

(b) Racist or xenophobic statements are not always condemned publicly by officials;

(c) Politicians are increasingly using xenophobic and racist rhetoric, particularly in the context of elections, frequently associating Roma with drug trafficking and crimes, as well as migrants and persons originating from the Caucasus with criminality;

(d) Media continue to disseminate negative stereotypes of, and prejudices against minority groups, including Roma and Chechens;

(e) Such ideas are increasingly disseminated via the Internet (art. 4).

The Committee recommends that the State party:

(a) Systematically, firmly and unequivocally condemn all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and incitement to acts of violence against any race or group or persons of another colour or ethnic origin;

(b) Ensure that adequate sanctions are taken against politicians fuelling intolerance or incitement to hatred, in accordance with article 4(c) of the Convention.

In this regard, the Committee welcomes the commitment made by State party during the dialogue with the Committee to follow-up on the dismissal of court cases against the mayor of Sochi, Pakhomov, who publicly stated in October 2009 that all Roma and homeless persons should be expelled from Sochi and sent to perform involuntary work at the construction sites located on the outskirts of the town;

(c) Encourage media professionals to promote tolerance and respect for ethnic and cultural diversity, including through more vigorous training and awareness-raising of their ethical duties, and through more effective implementation of existing self-regulation mechanisms of the media;

(d) Establish effective mechanisms to combat hate speech disseminated on the Internet, while ensuring that appropriate safeguards are in place to prevent any undue interference with the right to freedom of expression.

Laws on Combating Extremism and on “Foreign Agents”

(13) Notwithstanding the information provided by the State party that it is taking steps to introduce a more exact definition of extremism (CERD/C/RUS/20-22, paras. 107–113), the Committee reiterates its concern that the definition of “extremist activity” in the Federal Act No. 114 of July 2002 on Combating Extremism as well as in articles 280 and 282 of the Criminal Code remains overly broad and vague, allowing for arbitrariness in its application (CERD/C/RUS/CO/19, para. 17). Moreover, the Committee is concerned about the adoption of the Federal Law regarding the “Regulation of Activities of Non-Commercial Organizations Performing the Function of Foreign Agents”, which came into effect in November 2012, and the impact it may have on the ability of non-governmental organizations who work to promote and protect the rights of ethnic or religious minorities, indigenous peoples and other vulnerable groups to continue their legitimate activities (arts. 2 and 4).

The Committee recommends that the State party amend the definition of extremism in the Law on Combating Extremism and in articles 280 and 282 of the Criminal Code to ensure that it is clearly and precisely worded, covering only acts of violence, incitement to such acts, and participation in organizations that promote and incite racial discrimination, in accordance with article 4 of the Convention.

The Committee also recommends that the Federal Law on Non-commercial Organizations be reviewed to ensure that non-governmental organizations working with ethnic minorities, indigenous peoples, non-citizens and other vulnerable groups who are subjected to discrimination are able to carry out their work effectively to promote and protect the rights contained in the Convention without any undue interference or onerous obligations.

Discriminatory treatment of ethnic minorities by law enforcement officials and “Cossack patrols”

(14) The Committee reiterates its concern that ethnic minorities, on the basis of their appearance, such as Chechens and other persons originating from the Caucasus, Central Asia or Africa, as well as Roma continue to be subject to disproportionately frequent identity checks, arbitrary arrests and detention, and harassment by the police and other law enforcement officials (CERD/C/RUS/CO/19, para. 12). Additionally, it is concerned about reports of extortion of bribes, confiscation of identity documents, and the use of violence and racial insults during such checks, as well as by the lack of effective investigation, prosecution and sanctioning of law enforcement personnel for such misconduct, abuse of or discrimination against ethnic minorities. Furthermore, the Committee is concerned about the information that voluntary “Cossack patrols” began to appear in 2012 in various regions

to carry out law enforcement functions alongside the police, and that there have been incidents of use of violence by them against ethnic or religious minorities (arts. 2 and 5).

The Committee calls upon the State party to:

(a) Ensure that the Law on Police is effectively implemented and that appropriate legal measures are taken against law enforcement officials for unlawful conduct based on racially discriminatory grounds;

(b) Provide meaningful and mandatory human rights training to police and other law enforcement officials, including in initial training and throughout their careers to prevent racial profiling, and amend the performance targets for the police accordingly, in accordance with general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system;

(c) Ensure that the functions of maintaining law and order are undertaken by professionally trained law enforcement officials only, and that any interference of individuals' rights by Cossack organizations are appropriately sanctioned;

(d) Provide information in its next periodic report concerning measures taken to eliminate such practices as well as on their impact.

Rights of Roma

(15) While appreciating the information provided by the State party delegation during the dialogue with the Committee regarding the adoption of an action plan in January 2013 to improve the socio-economic situation of Roma communities, the Committee is concerned that specific objectives, strategies, timeframe, implementation and evaluation mechanisms have not yet been established, and that the plan is not available publicly (arts. 2 and 5).

The Committee urges the State party to ensure that:

(a) Open and participatory consultations are held in devising and implementing the National Action Plan to address the obstacles faced by Roma to enjoy their rights, including the participation of Roma community, civil society representatives and experts on this issue, and that such a plan is made available publicly;

(b) The plan includes special measures to facilitate their access to residence registration, citizenship, education, adequate housing with legal security of tenure, employment and other economic, social and cultural rights, in accordance with general recommendation No. 27 (2000) on discrimination against Roma, as previously recommended by the Committee (CERD/C/RUS/CO/19, para. 14), and that the plan contains a particular focus on the rights of Roma women, in accordance with general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination;

(c) The plan is sufficiently funded to guarantee its effectiveness.

(16) The Committee remains deeply concerned that forced evictions of Roma and destruction of Roma settlements continue to take place, as acknowledged by the State party (CERD/C/RUS/20-22, para. 500). It is also concerned about reports that such actions are frequently carried out with violence, and that Roma are rarely offered alternative housing or adequate compensation, leaving them in an even more precarious situation (arts. 2 and 5).

The Committee recommends that the State party halt the persistent practice of forced evictions and destruction of Roma settlements without offering alternative housing or adequate compensation. It also reiterates its previous recommendation that existing settlements be legalized to the extent possible (CERD/C/RUS/CO/19, para. 26).

(17) While noting the information provided by the State party that the practice of placing Roma children in special classes in a number of regions is not a forced segregation measure (CERD/C/RUS/20-22, para. 507), the Committee is nevertheless concerned about reports that Roma children placed in such classes are usually isolated from other pupils and are not permitted into the corridors or bathrooms designed for common use, and that conditions in schools designated for Roma children are often much worse than in mainstream schools (arts. 3 and 5).

The Committee recommends that the State party take effective measures to:

(a) End all practices of de facto segregation of Roma children and ensure that they have access to all facilities in schools;

(b) Carefully review the criteria by which Roma children are allocated to special remedial classes;

(c) Ensure that Roma children are fully integrated into the general education system and that they participate proportionately at all levels of the system.

Issues related to registration

(18) While noting the efforts made by the State party to simplify the procedure for obtaining temporary residence and work permits, the Committee remains concerned about reports that various administrative barriers are put in place by the police in some areas to delay, or sometimes even prevent the registration of individuals belonging to some minorities, including Chechens and other persons originating from the Caucasus, as well as migrants and Roma. Moreover, while noting that residence registration is not required to enjoy the rights set out in the Constitution pursuant to the Federal Act No. 5242-1 of 1993 on the right to freedom of movement and choice of residence, the Committee is concerned that in practice, the enjoyment of many rights and benefits, such as access to housing, social services, and health care, and in some instances, education, is dependent on registration (arts. 2 and 5).

The Committee recommends that the State party:

(a) Ensure that the residence registration system is implemented in a transparent manner without bias and in ways that guarantees the rights of those seeking registration, including through accessible translation of the information;

(b) Take necessary administrative measures to ensure the registration of members of all vulnerable communities, including internally displaced persons and Roma;

(c) Prosecute and sanction as appropriate discriminatory or arbitrary behaviour by officials involved in such activities;

(d) Ensure that applicants can appeal decisions deemed to be discriminatory;

(e) Guarantee that the de facto enjoyment of rights by all individuals in the Russian Federation is not dependent on residence registration.

Rights of migrant and ethnic minority workers

(19) While noting the information provided by the State party that the “Russian legislation contains all necessary provisions prohibiting discrimination at work and allowing for the restoration of violated rights” (CERD/C/RUS/20-22, para. 499), the Committee remains concerned about reports that migrants and ethnic minority workers, including women and girls, originating mainly from Central Asia and the Caucasus, continue to be subjected to exploitative work conditions and face discrimination during recruitment. The Committee also notes that legalization of migrants remains difficult due to

anti-immigrant sentiments, poor enforcement of existing regulations, a restrictive quota system which limits the number of work permits issued, and the existence of an informal economy that thrives on illegal workers. Moreover, the Committee is concerned that following the 2006 amendments to the Labour Code, persons considering themselves to be discriminated against in the sphere of labour can no longer petition the labour inspectorate (arts. 5 and 6).

The Committee recommends that the State party ensure that migrant workers, regardless of their legal status, are effectively protected against exploitative conditions at work and discrimination during recruitment, including by facilitating access to effective remedies. The Committee further recommends that particular measures be taken in this regard to protect women and girl migrants. The Committee also requests the State party to provide information on the number of cases brought before the courts concerning discrimination in employment and the outcome of such cases.

Rights of indigenous peoples

(20) While the Committee welcomes the adoption of a Concept Paper in 2009 on the sustainable development of indigenous peoples defining the federal policy from 2009 to 2025, it nevertheless remains concerned that:

(a) The implementation of the objectives outlined in the Concept Paper remains slow, and that recent changes to federal legislation regulating the use of land, forests and water bodies, such as the voiding of article 39(2) of the Federal Act on Fishing and the Preservation of Aquatic Biological Resources, revision of article 48 of the Law on the Animal Kingdom, and amendments to the Land and Forest Code, have reportedly diminished the rights of indigenous peoples to preferential, free and non-competitive access to land, wildlife and other natural resources by granting licences to access such resources to private businesses;

(b) Since the adoption of the 2001 Federal Law on Territories of Traditional Nature Use (TTNU) of Numerically Small Indigenous Peoples of the North, Siberia and Far East, which foresees the possibility of establishing federally protected territories to guarantee indigenous peoples' free access to land, no such territory has been established to date;

(c) A new draft federal law on TTNU referred to in the State party's report (CERD/C/RUS/20-22, para. 277) could diminish the status of protected territories, as the draft reportedly no longer contains the reference to the free-of-charge and exclusive use of the territories by indigenous peoples, and thus would allow the territory to be expropriated and used by third-parties, including extractive industries;

(d) The obligation to consult with indigenous peoples through their freely elected representative bodies prior to any agreement regarding industrial development of their land as stipulated in the 1999 Law on Territories is implemented to varying degrees in different regions and is often disregarded;

(e) Despite the information that the Ministry of Regional Development has approved a method for calculating the extent of damage caused by private companies to the traditional habitat of indigenous peoples, payment of compensation is on a voluntary basis (CERD/C/RUS/20-22, para. 286), and indigenous communities rarely receive compensation for the destruction of their habitat and resources by private companies, including by Norilsk Nickel, one of the largest industrial conglomerates in the State party;

(f) Indigenous communities allegedly face obstacles to engage in economic activities beyond their "traditional activities";

(g) Indigenous peoples continue to be underrepresented in the State Duma and other Government bodies at federal and regional levels (arts. 2 and 5).

The Committee recommends that the State party:

(a) **Include, in its next periodic report, concrete information on the results and impact achieved through the implementation of the 2009 Concept Paper on the sustainable development of indigenous peoples, as previously requested by the Committee (CERD/C/RUS/CO/19, para. 15);**

(b) **Ensure that any legislative changes enhance, rather than diminish, the rights of indigenous peoples, as enshrined in the United Nations Declaration on the Rights of Indigenous Peoples;**

(c) **Take all necessary steps to approve and establish Territories of Traditional Nature Use to ensure the protection of such territories from third-party activities;**

(d) **Ensure in practice that indigenous communities are effectively and meaningfully consulted through their freely elected representative bodies for any decisions that may impact them and that adequate compensation is provided to communities that have been adversely affected by the activities of private companies, in accordance with the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples;**

(e) **Ensure that indigenous peoples are duly represented at all levels of Government and administration, as previously recommended by the Committee (CERD/C/RUS/CO/19, para. 20);**

(f) **Implement other recommendations made by the Special Rapporteur on the rights of indigenous peoples following his mission to the Russian Federation in October 2009 (A/HRC/15/37/Add.5).**

Educational and cultural initiatives to combat prejudices

(21) While the Committee notes an impressive array of educational, cultural and awareness raising initiatives taken by the State party to promote tolerance and combat prejudices (CERD/C/RUS/20-22, paras. 311–401), it notes the absence of information on the concrete impact of such activities, the extent to which targeted communities are involved in the development and implementation of various plans and programmes, and procedures in place to evaluate the effectiveness of such activities (art. 7).

The Committee recommends that the State party:

(a) **Ensure that funding provided for the support of cultural activities of minority communities is allocated according to clear criteria and is accessible to all interested minority communities, with transparent procedures for the allocation of funds;**

(b) **Ensure that all activities and initiatives are implemented following a careful needs assessment and identification of specific objectives, and evaluate their impact and effectiveness.**

D. Other recommendations

Ratification of other treaties

(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 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 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

Follow-up to Durban Declaration and Programme of Action

(23) 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.

Consultation with organizations of civil society

(24) 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 and the follow-up to these concluding observations.

Amendment to article 8 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 resolutions 61/148, 63/243 and 65/200, in which the 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.

Dissemination

(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 other commonly used languages, as appropriate.

Common core document

(27) Noting that the State party has submitted its core document in 1995 (HRI/CORE/1/Add. 52/Rev.1), the Committee encourages the State party to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(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(b), 13, 15(b), and 20(b) and (c) above.

Paragraphs of particular importance

(29) 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 14 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(30) The Committee recommends that the State party submit its twenty-third and twenty-fourth periodic reports in a single document, by 6 March 2016, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

48. Senegal

(1) The Committee on the Elimination of Racial Discrimination considered the sixteenth, seventeenth and eighteenth periodic reports of Senegal, submitted in a single document (CERD/C/SEN/16-18), at its 2179th and 2180th meetings (CERD/C/SR.2179 and SR.2180), held on 14 and 15 August 2012. At its 2199th meeting (CERD/C/SR.2199), held on 29 August 2012, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission, in a single document, of the State party's sixteenth, seventeenth and eighteenth periodic reports and of an updated core document. However, it notes that the report does not contain sufficient information on the practical application of the Convention and regrets that it was submitted late.

(3) The Committee is satisfied with the frank and constructive dialogue it held with the delegation of the State party, which included representatives of a number of ministries, and notes with satisfaction the oral statement and detailed replies provided by the delegation during its consideration of the report.

B. Positive aspects

(4) The Committee applauds the State party's adoption in March 2010 of a law which classifies enslavement and slave trading as crimes against humanity, thereby becoming the first African nation to adopt legislation of this kind.

(5) The Committee notes with interest the steps taken by the State party to combat human trafficking, including the adoption of Act No. 2005-06 of 10 May 2005, on combating human trafficking and related practices, and the introduction of a national action plan (2008–2013) to combat human trafficking, especially trafficking in women and children.

(6) The Committee welcomes the State party's determination to modernize Koranic schools (*daaras*) and to integrate them into the educational system. It notes with satisfaction the measures taken by the State party in respect of the *talibé* child beggars, including the adoption of a strategic plan (2008–2013) to educate and protect child beggars and children who do not attend school, and the establishment in February 2007 of the Partnership for the Rescue and Rehabilitation of Street Children (PARRER), which brings together Senegalese Government officials, NGOs, private-sector entities, development partners, religious organizations, civil society and the media.

(7) The Committee welcomes the adoption of a national strategy for the development of statistics (2008–2013) in Senegal.

(8) The Committee welcomes the encouraging results of various measures taken by the State party to eradicate female genital mutilation.

(9) The Committee notes with interest that, since its consideration of the State party's eleventh to fifteenth periodic reports, the State party has ratified the following international instruments, among others:

(a) The Convention on the Rights of Persons with Disabilities (September 2010);

(b) The International Convention for the Protection of All Persons from Enforced Disappearance (December 2008);

(c) The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (October 2006);

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (March 2004);

(e) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (November 2003);

(f) The United Nations Convention against Transnational Organized Crime, its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and its Protocol against the Smuggling of Migrants by Land, Sea and Air (October 2003).

C. Concerns and recommendations

Demographic composition of the population

(10) The Committee regrets that the State party's periodic report does not contain comprehensive statistical data on the ethnic composition of the population living in its territory and that it does not include socioeconomic indicators disaggregated by ethnic or national origin as recommended by the Committee in its previous concluding observations (A/57/18, para. 441).

In accordance with paragraphs 10 to 12 of its revised treaty-specific reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and publish reliable and comprehensive statistical data on the ethnic composition of its population, including immigrants, as well as socioeconomic indicators disaggregated by ethnic origin. Such data and indicators should draw on national surveys or censuses that are based on self-identification and that take account of ethnic and racial dimensions so that the State party can devise policies and take appropriate measures. This will also enable the Committee to better evaluate how the rights enshrined in the Convention are exercised in Senegal. The Committee requests the State party to provide these disaggregated data in its next report.

Legal actions relating to acts of racial discrimination

(11) The Committee takes note of the various options open to people who wish to file a complaint regarding acts of racial discrimination and observes with interest the State party's emphasis on fostering tolerance and a culture of social harmony among the different sectors of society, as well as the cathartic role of the tradition of "friendly banter". The Committee regrets, however, that the State party considers the absence of complaints and court decisions on the matter as proof that there is no racial discrimination in Senegal (art. 6).

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 reminds the State party that the absence of complaints or legal actions

by victims of racial discrimination may reveal, in particular, a lack of relevant legislation, insufficient awareness of existing legal remedies or a reluctance on the part of the authorities to prosecute those who commit such acts. The Committee requests the State party to ensure that its legislation contains appropriate provisions and that people know their rights and are aware of all the legal remedies available to them in cases of racial discrimination.

Direct or indirect discrimination

(12) The Committee notes that the State party's position on the 30-year conflict in Casamance, where the Diola are the largest population group, is to stress the region's underdevelopment while denying that there is any ethnic dimension to the conflict. The Committee notes with interest the new Government's pledge to make the restoration of a lasting peace in Casamance a national priority, and it welcomes the measures that the State party plans to put in place in order to build up the infrastructure and open up the region. The Committee nevertheless expresses deep concern that tensions have resurfaced between the Mouvement des Forces Démocratiques de Casamance and the Senegalese Army since November 2011 and have been accompanied by acts of violence that mainly affect the civilian population (arts. 5 and 6).

The Committee recommends that the State party pursue the dialogue with the Mouvement des Forces Démocratiques de Casamance with a view to the restoration of a lasting peace in the region. It also recommends that the State party adopt a programme of reparations and, if possible, compensation for civilian victims of the conflict in Casamance so as to create a climate of trust that will make possible a peaceful and lasting solution to the conflict. The Committee also invites the State party to implement the planned measures for boosting economic development and opening up Casamance as soon as possible and to ensure the active participation of the people who will benefit from this by consulting them and involving them in decisions that affect their rights and interests.

Discrimination based on descent

(13) The Committee reiterates the concerns it expressed in 2002 (A/57/18, para. 445) regarding the persistence in Senegal of a caste system that involves the stigmatization and ostracism of certain groups and the violation of their rights (art. 5).

Recalling its general recommendation No. 29 (2002) on article 1, paragraph 1, of the Convention (Descent), the Committee recommends that the State party should:

- (a) Take specific steps to combat and eliminate all traces of the caste system by, inter alia, adopting special legislation to ban discrimination based on descent;**
- (b) Take steps to raise awareness and educate the public about the harmful effects of the caste system and the situation of victims;**
- (c) Provide the Committee with further detailed information on the phenomenon and its scale.**

Talibé child beggars

(14) The Committee notes with interest the importance attached to the problem of economic exploitation of *talibé* children and the numerous steps that the State party has taken to improve their education and increase the protection afforded to them. The Committee notes with concern, however, the persistence and scale of the problem surrounding the *talibés*, most of whom come from neighbouring countries. The Committee is concerned at the fact that many of these children are victims of trafficking, are exploited as beggars, are subjected to physical and psychological abuse, and live in appallingly unhealthy conditions involving serious deprivation. The Committee also regrets that the

inconsistency between article 3 of Act No. 2005-02, prohibiting begging, and article 245 of the Criminal Code, which permits begging “on the days, in the places and in the circumstances confirmed by religious traditions”, persists despite the recommendations of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/16/57/Add.3, para. 31) (art. 5).

The Committee recommends that the State party speed up the *daara* modernization programme and introduce without delay the standard curriculum for Koranic schools launched in 2011. The State party should also set up a complaints mechanism accessible to children, tighten up its inspections of religious schools and impose more severe punishments on marabouts engaging in economic exploitation of *talibés*. The Committee further recommends that the State party continue to strengthen the measures in place to combat child trafficking and that it speed up its implementation of measures for the rescue and rehabilitation of street children.

Refugees

(15) The Committee notes with satisfaction that draft amendments to the Act on the Status of Refugees were put before the National Assembly in early 2012 but is concerned that the State party’s legislation on asylum is not fully in line with international refugee law (arts. 5 and 6).

The Committee recommends that the State party should speedily adopt the draft amendments to the Act on the Status of Refugees, fully implement the provisions of the Act without delay and properly monitor that implementation.

(16) The Committee welcomes the implementation of the voluntary repatriation programme for Mauritanian refugees, under which some 24,500 have returned between 2007 and 2012. The Committee also notes with satisfaction the situation regarding the integration of some 20,000 Mauritanian refugees living in Senegal and the State party’s intention to issue identity papers to all refugees recognized as such. It further notes the State party’s ratification, in 2005, of the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness. The State party nevertheless regrets that numerous refugees are still awaiting their identity papers and therefore remain in a vulnerable situation, as they are excluded from some benefits and do not enjoy full freedom of movement or access to education for their children (art. 5).

The Committee draws the State party’s attention to its general comment No. 30 (2004) on discrimination against non-citizens and encourages it to facilitate the integration of all refugees living in Senegal and issue them with identity papers as soon as possible so that they can fully enjoy their rights.

Asylum seekers

(17) The Committee is disturbed at the slow rate at which the National Commission on Eligibility for Refugee Status deals with asylum applications (a year on average) and the negative effect of this on asylum seekers’ enjoyment of economic and social rights. The Committee also regrets that the 2012 bill on the status of refugees does not give asylum seekers the right to education, work or medical care (art. 5 (e)).

The Committee requests the State party to take all necessary steps to enable asylum seekers to fully enjoy their economic and social rights.

Migrants

(18) The Committee echoes the concerns of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families regarding the fact that migrant workers in an irregular situation are placed in detention with persons either accused or convicted of crimes (CMW/C/SEN/CO/1, para. 15). It also echoes the concerns of the

Working Group on Arbitrary Detention regarding the excessively long periods of administrative detention served by foreigners awaiting deportation due to administrative delays or logistical problems (A/HRC/13/30/Add.3, para. 68) (arts. 5 and 6).

The Committee recommends that the State party not hold migrants in premises intended for pretrial detention or for the deprivation of liberty and that it ensure that migrants deprived of their liberty are held for as short a time as possible.

Non-citizens

(19) While the Committee welcomes the information provided by the delegation on the draft amendments to the Nationality Code, it is disturbed to note that the law currently does not allow Senegalese women married to foreigners to pass their nationality on to their children or their husbands in the same way that Senegalese men may (arts. 2 and 5).

The Committee recalls its general comments No. 25 (2000) on gender-related dimensions of racial discrimination and No. 30 (2004) on discrimination against non-citizens, and it recommends that the State party speed up its revision of the Nationality Code so as to ensure that Senegalese women married to foreigners may pass their nationality on to their children or their husbands in the same way that Senegalese men may.

National human rights institution

(20) The Committee notes with concern that the Senegalese Human Rights Committee may be downgraded from “A” status to “B” status in November 2012 if it fails to provide written evidence that it is in full compliance with the Paris Principles (General Assembly resolution 48/134). The Committee notes, in particular, the concerns of the Subcommittee on Accreditation regarding the funding levels of the Senegalese Human Rights Committee, the procedures for nominating and appointing members, the appointment of members on a part-time basis and the Committee’s ability to choose its own members.

The Committee recommends that the State party take all necessary steps to bring the Senegalese Human Rights Committee into full compliance with the Paris Principles in order to safeguard its independence of action. It further invites the State party to make good on its intention to double the budget of the Senegalese Human Rights Committee, as announced during the interactive dialogue, to ensure that the Senegalese Human Rights Committee has adequate human and financial resources, and to inform the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC) of the measures taken in order to prevent the Senegalese Human Rights Committee from losing its “A” status.

D. Other recommendations

Follow-up to the Durban Declaration and Programme of Action

(21) The Committee notes with appreciation the State party’s leading role in the Durban processes. 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 system. 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.

Dialogue with civil society

(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 those combating racial discrimination, when preparing its next periodic report.

Amendments to article 8 of the Convention

(23) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention that were 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 resolutions 61/148, 63/243 and 65/200, in which the 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.

Dissemination

(24) The Committee recommends that the State party's reports be made readily available to the general public as soon as they are submitted and that the Committee's concluding observations with respect to these reports be similarly publicized in the official and other commonly used languages.

Follow-up to concluding observations

(25) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 14, 18 and 20 above.

Paragraphs of particular importance

(26) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 12, 13 and 17 and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

Next report

(27) The Committee recommends that the State party submit its nineteenth, twentieth, twenty-first and twenty-second periodic reports in a single document by 19 May 2015, taking into account the treaty-specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these 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 HRI/GEN.2/Rev.6, para. 19).

49. Slovakia

(1) The Committee considered the ninth to tenth periodic reports of Slovakia (CERD/C/SVK/9-10), submitted in one document, at its 2217th and 2218th meetings (CERD/C/SR.2217 and 2218), held on 19 and 20 February 2013. At its 2231st meeting (CERD/C/SR. 2231), held on 28 February 2013, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined ninth to tenth periodic reports of the State party which is in conformity with the Committee's reporting guidelines. The Committee also welcomes the State party's punctuality and regularity in submitting its periodic reports

and the opportunity thus provided to engage in a constructive and continuing dialogue with Slovakia. It thanks the large delegation of the State party for its oral presentation and responses to the Committee's questions and comments.

B. Positive aspects

(3) The Committee notes with appreciation a number of legislative and policy developments towards the elimination of racial discrimination, including:

(a) The amendment to the Anti-Discrimination Act which will go into effect as of 1 April 2013 regulating temporary special measures aimed at eliminating disadvantages based, inter alia, on race, ethnicity, gender, and promoting equal opportunities for work, in compliance with relevant European Union Directives;

(b) The establishment in 2012 of the Office of the Plenipotentiary of the Government for National Minorities operating as an advisory body;

(c) The revision in August 2011 of the National Action Plan for the Decade of Roma Inclusion 2005–2015 for the years 2011–2015 and the adoption in January 2012 of the Strategy for the Integration of Roma up to 2020, in line with the European Commission framework and in consultation with civil society organizations;

(d) The adoption in June 2011 of the Conception to Combat Extremism for the years 2011–2014;

(e) The adoption in May 2009 of the fifth Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia and Other Expression of Intolerance for the period 2009–2011 and the setting up in 2011 of the Committee for the Prevention and Elimination of Racism, Xenophobia, Anti-Semitism and Other Forms of Intolerance.

(4) The Committee welcomes the ratification of the following international instruments during the period under consideration:

(a) The Convention on the Rights of Persons with Disabilities and its Optional Protocol, on 26 May 2010;

(b) The Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, on 7 March 2012.

C. Concerns and recommendations

Relevant statistical data

(5) While welcoming the information that the 2011 Census contained for the first time questions about languages of national minorities, the Committee regrets the lack of data it previously requested on socio-economic status of persons belonging to minorities, despite the launch in 2010 of the project entitled "Statistical Monitoring of the Living Conditions of Selected Target Groups" in collaboration with UNDP. The Committee further notes that the proportion of unidentified persons increased from 1 per cent in 2001 to 7 per cent in 2011.

Recalling its revised reporting guidelines (CERD/C/2007/1), the Committee recalls that disaggregated data by ethnic or national origin on the socio-economic and cultural status of different groups are useful tools for the State party to enhance the equal enjoyment by all of the rights enshrined in the Convention. The Committee requests that the State party include in its next periodic report the results of the above-mentioned project, namely data on the living conditions of the Roma community as well as the socio-economic status of other minorities. The Committee also recommends that the State party address the high proportion of unidentified

individuals among its population, and diversify its data collection activities in order to obtain accurate information on all ethnic groups living in Slovakia.

Racially motivated violence and crimes

(6) The Committee takes note of the figures provided on extremism and racially motivated crimes. However, these criminal acts are presented in an amalgamated form and the information does not contain a detailed breakdown by age, gender and national or ethnic origin of victims as previously requested by the Committee. Also, while noting the State party's efforts to fight extremism, the Committee is concerned at the resurgence of activities by extremist organizations and the information contained in paragraph 70 of the State party's report that extremist groups make use of some loopholes in the Rights of Assembly Act which prevent the interdiction of extremist activities (arts. 2 and 4).

The Committee recommends that the State party take effective measures to prosecute hate crimes in an effective manner so as to discourage racist and extremist organizations. In line with its general recommendation No. 15 (1993) on organized violence based on ethnic origin, the Committee urges the State party to exercise due vigilance and readiness in proceeding against such organizations at the earliest moment and to penalize and prosecute the financing and participation in their activities. The Committee urges the State party to address any loophole in its legislation by amending it so as to forbid and prevent activities of extremist organizations, by disbanding and declaring them illegal as necessary. The Committee reiterates its request that the State party provide updated statistical data on the number and nature of hate crimes, convictions and sentences imposed on perpetrators, disaggregated by age, gender and national or ethnic origin of victims and compensation awarded, where applicable.

Enforcement of the Anti-Discrimination Act

(7) The Committee takes note of the amendment of 1 January 2012 regarding the Provision of Legal Aid to Persons in Material Need aiming at increasing the efficiency of access to justice for victims of racial discrimination. It also notes that the State party refers to "several natural persons, particularly of Roma ethnic origin" who invoked the Anti-Discrimination Act (CERD/C/SVK/9-10, para. 140). However, it regrets the information that the Anti-Discrimination Act is not fully operational, and that lengthy court proceedings pose an obstacle for victims of racial discrimination who wish to obtain remedies. It is also concerned at the low number of complaints despite the prevalence of racist speech and crimes in the country (arts. 2 and 6).

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party fully enforce the Anti-Discrimination Act and also disseminate information regarding it to the public, in particular to minorities, informing them of all legal remedies when facing racial discrimination. It invites the State party to address the problem of lengthy court proceedings for victims of racial discrimination by ensuring, inter alia, that the above-mentioned amendment on legal aid facilitates their access to justice and that the principle of reversing the burden of proof in civil proceedings is applied in courts in line with article 11 of the Anti-Discrimination Act. The Committee requests that the State party undertake a thorough analysis of the low number of complaints and take concrete measures to address the problem, including by organizing training on non-discrimination for law enforcement officials, and judges, focusing on the application of the Convention and the Anti-Discrimination Act in courts. It finally requests that the State party include such information in its next periodic report.

Racist discourse in the media

(8) The Committee remains concerned about the reported increase of hate speech in the media and on the Internet, including social networks as well as in sports, targeting in particular Roma, Hungarians and non-citizens. While taking note of legislative measures taken for the promotion of national minorities' languages on radio and TV programmes, the Committee believes that additional measures need to be taken to curb hate speech in the media (arts. 4 and 7).

In accordance with its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination, No. 15 (1993) and No. 30 (2004) on discrimination against non citizens, the Committee recommends that the State party identify individuals or groups who incite racial hatred against minorities and foreigners, investigate and apply appropriate sanctions for hate speech by politicians, governmental officials or media professionals. The Committee urges the State party to take necessary measures to promote tolerance, intercultural dialogue and respect for diversity, aimed in particular at journalists.

Lack of an independent monitoring body

(9) The Committee notes that the Control and Inspection Service Section is competent to investigate the criminal activity of Police Force Officers and that both are under the Ministry of Interior. It further notes the absence of an independent body to monitor and prosecute the alleged incidents of police brutality against persons belonging to minority groups, in particular Roma. It also expresses its concern at reported deficiencies during the investigation of ill-treatment of minorities by Police Officers, where racial motives are not always taken into account (art. 4).

The Committee reiterates its recommendation that the State party establish an independent monitoring mechanism to carry out investigations into crimes involving police officers. In light of its general recommendation No. 31 (2005), the Committee urges the State party to take prompt measures to effectively investigate reported hate crimes and ensure that all crimes with racial motives are prosecuted in line with national legislation and the Convention, taking into account the gravity of such acts. The Committee requests the State party to provide information on the number of complaints of ill-treatment filed against police officers by persons belonging to minority groups as well as information on the results of investigations into those complaints and any proceedings undertaken, at both the penal and disciplinary levels.

Stigmatization of and discrimination against minorities, in particular Roma

(10) The Committee reiterates its concern regarding the continued stigmatization of, and discrimination against Roma and their ongoing precarious socio-economic situation. The Committee is further concerned about the response provided by the State party (CERD/C/SVK/9-10, paras. 149–150) that it was not possible to increase the representation of Roma in the police other than by merit, using equal criteria for all. It also regrets the lack of information on the number of Roma not only in the Police Force but also in local elected bodies (art. 5).

The Committee urges the State party to enhance its efforts aimed at combating discrimination against Roma. In view of its General recommendation No <http://www2.ohchr.org/english/bodies/cerd/docs/GC32.doc32> (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination and its general recommendation No. 27 (2000) on discrimination against Roma, the Committee recommends that the State party use data to be published shortly on the living conditions of Roma, in order to ensure that urgent temporary special measures for promoting economic, social and cultural rights

of Roma are designed and implemented on the basis of need and in consultation with them. In this context, the Committee also recommends that the State party implement without delay the amendment of the Anti-Discrimination Act which will regulate as of 1 April 2013 special measures for the most discriminated and disadvantaged groups. The Committee further requests that the State party take necessary measures to provide in its next periodic report the number of Roma in the police and in local elected bodies.

Continued de facto segregation in the education system

(11) Despite some measures taken by the State party, including the 2008 Schools Act and the December 2011 ruling of the District Court in Prešov, which ordered the desegregation of Roma pupils in the Mainstream Elementary School in Sarišské Michal'any, the Committee is concerned about:

(a) The ongoing de facto segregation of Roma children in education, with the practice of Roma only schools or classes;

(b) The information that Roma children are dramatically overrepresented in special classes and "special" schools for children with intellectual disability; as well as the information that higher financial contributions to "special" schools for students with intellectual disability as compared to the ones on education of children from socially disadvantaged environment may explain this practice;

(c) The lack of enforcement of the 2008 Schools Act and the Anti-Discrimination Act regarding discrimination and segregation in education as well as the lack of clear enforcement measures;

(d) The information that the "*Roma reform*" re-introducing mandatory pre-school education for children from families affected by social exclusion might lead to discrimination and segregation (arts. 2, 3 and 5).

The Committee recommends that the State party strengthen the provisions of the Strategy for the Integration of Roma up to 2020 and the Revised National Action Plan for the Decade of Roma Inclusion and ensure they are effectively pursued. To this end, the State party is requested to:

(a) Take all necessary measures to eradicate the practice of segregating Roma children in the school system and ensure that they enjoy equal opportunities in access to quality education, in light of the Committee's general recommendation No. 27 (2000);

(b) Provide for ways and means to eliminate the overrepresentation of Roma students in specialized classes and in special schools by addressing the root causes of this practice and to integrate them into mainstream education; and increase human and financial resources for the education of Roma, in addition to organizing training on Roma rights for teachers and social personnel;

(c) Take enforcement measures to ensure the effective application of the Schools and the Anti-Discrimination Acts, including their dissemination in schools as well as other preventive measures in order to put an end to the de facto segregation in education;

(d) Ensure that mandatory pre-school education is conducted in a manner that would remove the disparity between children of marginalized groups and the majority population, with the aim of preventing future segregation in education.

Right to adequate housing for the Roma community

(12) In light of the State party's statement (CERD/C/SVK/9-10, para. 162) that the lack of access of Roma to adequate housing is the most serious problem which has largely remained the same since the last review, the Committee expresses its serious concern that:

(a) Limited measures have been undertaken towards promoting Roma's right to adequate housing and ending spatial segregation; and that some Roma settlements, in particular in Eastern Slovakia lack basic facilities such as sanitation, electricity, drinking water, sewage system and waste disposal;

(b) Walls and barriers have been erected in some areas including Prešov, Michalovce, Partizánske or Trebišov, to segregate Roma from the rest of the population;

(c) *Roma Reform's* proposed measure allowing them to buy the land in the current settlements with the aim of improving their living conditions may increase the segregation of this community;

(d) Forced evictions and demolitions of Roma settlements are taking place without alternatives for Roma. The Committee also regrets the lack of updated information on the situation of Roma from Plavecky Stvrtok (arts. 2, 3 and 5).

In light of its general recommendation No. 27 (2000), the Committee recommends that the State party:

(a) **Effectively implement the Revised National Action Plan and the Strategy for the Integration of Roma by ensuring the right to adequate housing for Roma without discrimination and segregation in view of the importance of this right for their enjoyment of other rights enshrined in the Convention, in particular the rights to health, education and employment;**

(b) **Ensure the involvement of Roma and associations representing them, together with the rest of the population, in housing project construction, rehabilitation and maintenance; promote intercultural dialogue aimed at addressing the deep rooted distrust that manifests itself in the construction of anti-Roma walls;**

(c) **Ensure that all efforts aiming at facilitating access to adequate housing and improving living conditions of Roma are made in conjunction with Roma and their organizations and that increased efforts are made to eradicate residential segregation bearing in mind the Committee's general recommendation No. 19 (1995) on racial segregation and apartheid;**

(d) **Put an end to forced evictions and demolitions of Roma settlements without prior notice and when such demolitions are necessary provide adequate and appropriate alternative housing solutions for them, and include in its next periodic report any measures taken to address the situation of Roma in Plavecky Stvrtok.**

The sterilization of Roma women without their full and informed consent

13. While noting three judgements of the European Court of Human Rights against Slovakia on forced sterilization of Roma women, the Committee draws the attention to the lack of effective investigation by the State party regarding this practice throughout the country and the lack of compensation to the victims (arts. 2, 5 and 6).

The Committee recommends that the State party implement fully recent decisions of the European Court of Human Rights and ensure full reparation and compensation for all victims of these practices. The Committee urges the State party to thoroughly investigate all incidents of forced sterilization of Roma women and prosecute those responsible. Bearing in mind its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee encourages the State party

to adopt appropriate measures, including the implementation of the 2012 Decree related to the cases of illegal sterilization of women and the organization of special training for all medical staff on how to obtain informed consent before carrying out sterilization, on sensitization of medical staff on respecting diversity of members of the Roma community.

Awareness-raising activities on human rights and the Convention

(14) The Committee notes a persistent negative perception of the majority population towards the minorities, particularly Roma (art. 7).

The Committee recommends that the State party further organize human rights training to foster an awareness of tolerance, interethnic dialogue and harmony, targeting in particular law enforcement officials, judges, teachers, medical staff and social workers.

Mandate of the Slovak National Centre for Human Rights

(15) The Committee is concerned that the Slovak National Centre for Human Rights (NCHR) which was granted B status in October 2007 by the International Coordinating Committee (ICC) of national human rights institutions has lost its accreditation in 2012 and that the State party has not undertaken necessary measures to ensure its compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) . It regrets the lack of adequate financial and human resources to empower the NCHR with necessary means in disseminating the Anti-Discrimination Act and assisting victims of racial discrimination (art. 2).

Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party strengthen the NCHR's independence and mandate and provide it with financial and human resources in order to efficiently fight against discrimination. It encourages the State party to ensure that the NCHR is able to function in compliance with the Paris Principles and be in a position to apply successfully for accreditation.

Responsibility of the State party to implement the Convention

(16) The Committee notes with concern that the State party describes the autonomy of local self-governing bodies as a major obstacle to achieving non-discrimination in access to social housing for the Roma community (CERD/C/SVK/9-10, para. 203), including implementing the Committee's recommendations regarding the situation in Dobšiná (Communication No. 31/2003, Mrs L.R. et al.). It expresses its concern at the apparent limited effectiveness of the State party's reaction to some of the decisions of local bodies in denying Roma access to housing and in other cases financing the construction of walls to separate Roma settlements from the rest of the population (arts. 2 and 5).

The Committee recommends that the State party take effective measures to implement the Convention and ensure that the principle of self-governance of local and regional bodies does not hamper its international human rights obligations to promote economic, social and cultural rights of disadvantaged or discriminated groups, as per the Convention.

It reiterates its recommendation that the State party implement its recommendations on communications under article 14 of the Convention, in particular the situation in Dobšiná and include updated information in its next periodic report.

D. Other recommendations**Ratification of other treaties**

(17) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying international human rights treaties which it has not yet ratified, in particular treaties with provisions that have a direct relevance to communities that may be 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.

Follow-up to Durban Declaration and Programme of Action

(18) 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.

Consultations with organizations of civil society

(19) 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 and the follow-up to these concluding observations.

Dissemination

(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 and other commonly used languages, as appropriate.

Common core document

(21) Noting that the State party submitted its core document in 2002 (HRI/CORE/1/Add.120), the Committee encourages the State party to submit an updated core document, in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

Follow-up to concluding observations

(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 concluding observations, on its follow-up to the recommendations contained in paragraphs 6, 8, 11 and 16 above.

Paragraphs of particular importance

(23) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations in paragraphs 5, 12, 13 and 15 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(24) The Committee recommends that the State party submit its eleventh and twelfth periodic reports in a single document by 28 May 2016, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

50. Tajikistan

(1) The Committee considered the sixth to eighth periodic report of Tajikistan (CERD/C/TJK/6-8), submitted in one document, at its 2171st and 2172nd meetings (CERD/C/SR.2171 and CERD/C/SR.2172), held on 8 and 9 August 2012. At its 2185th meeting (CERD/C/SR.2185), held on 17 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined sixth to eighth periodic report submitted by the State party albeit with a delay. It appreciates the presence of a high-level delegation, the frank and constructive responses provided to the questions and comments raised by Committee members.

(3) The Committee notes with satisfaction that the State party's report generally complies with the reporting guidelines.

B. Positive aspects

(4) The Committee welcomes a number of positive developments and activities undertaken by the State party in fighting racial discrimination, and promoting diversity, including:

(a) The amendment of the Criminal Code in May 2004 establishing aggravated circumstances for racial discrimination;

(b) The new Criminal Procedure Code of April 2010 enshrining the principle of non-discrimination into criminal proceedings;

(c) The new Code of Administrative Offences of 1 April 2009 insofar as it prohibits the dissemination of racist products;

(d) The Act on the State language of 5 October 2009 enshrining the right of ethnic groups and peoples to use their own language without restriction.

(5) The Committee notes the establishment on 20 March 2008 of the Office of the Ombudsman for Human Rights.

(6) The Committee also notes a number of measures taken during the period under review to combat human trafficking, including a comprehensive programme for the period 2006–2010, approved by Government Decree No. 213 on 6 May 2006.

(7) The Committee welcomes the Cultural Development Programme for the period 2008–2015, approved by Government Decision No. 85 of 3 March 2007.

C. Concerns and recommendations**Relevant data**

(8) The Committee notes that the State party has conducted a general census in 2010 and has included some statistical data in the periodic report. However, the Committee

regrets the absence of disaggregated data on the ethnic composition of the population and on relevant socioeconomic indicators on the enjoyment of the rights under the Convention by members of various groups, in particular minorities and non-citizens (employment, education, health care), which data are necessary to assess progress and difficulties in implementing the provisions of the Convention (arts. 1 and 5).

Recalling its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its view on the importance of compiling disaggregated data on the ethnic composition of the population, and recalls that accurate disaggregated data by ethnic or national origin, and incorporating a gender perspective, on the socioeconomic and cultural status and conditions of the various groups in the population are a useful tool for the State party to take necessary measures to secure the equal enjoyment of the rights under the Convention to all and to avoid discrimination on ethnic and national grounds.

Definition of racial discrimination

(9) While noting that article 7 of the Labour Code on equal opportunities provides a definition of racial discrimination which is close to the one provided in article 1 of the Convention, the Committee reiterates its concern about the absence in the State party's legislation of similar provisions covering other social areas. It also regrets that, although the provisions of the Convention may be directly invoked before national courts, there is no instance of application of the Convention by the courts (arts. 1 and 2).

The Committee recommends that State party review its position that a definition of racial discrimination in line with the Convention is not necessary on the assumption that judges may directly apply the provisions of the Convention. It urges the State party to include in its legislation a definition of racial discrimination in line with the Convention, covering all fields of public and private life and further raise the awareness of judges on international norms applicable at the national level.

Criminalization of racial discrimination

(10) The Committee notes the existence of a number of legal provisions prohibiting racial discrimination in the Penal, Labour and Administrative Codes. However, it regrets that the State party has yet to adopt comprehensive legislation on racial discrimination and notes that the existing provisions are not in full compliance with the article 4 of the Convention, including the absence of criminalization for incitement to racial discrimination and acts of racially motivated violence (art. 4).

The Committee reiterates its view that the enactment of comprehensive legislation on offences of racial discrimination would be a valuable tool for the State party to combat racial discrimination. Considering the mandatory character of the provisions of article 4 and in accordance with its general recommendation No. 15 (1993) on article 4 of the Convention, the Committee recommends that the State party review its legislation so as to cover all elements of article 4 of the Convention and ensure that it is effectively enforced.

Absence of court cases on racial discrimination

(11) The Committee notes the information provided by the State party regarding the absence of complaints regarding acts of racial discrimination lodged with courts or the Office of the Ombudsman (arts. 2 and 6).

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 is of the view that the absence of complaints of acts of racial discrimination is not necessarily positive. The Committee reiterates its previous

recommendation (CERD/C/65/CO/8, para. 20) that the State party undertake an in-depth analysis on the absence of complaints and assess whether it should take further measures to prevent and combat acts of racial discrimination, as well as to provide remedies to victims in accordance with the Convention, taking into account the above-mentioned general recommendation.

Participation in public and political life

(12) The Committee takes note of specific data provided by the State party on the representation of persons belonging to ethnic groups in public life, civil service, local assembly and the judiciary. However, the Committee remains concerned at the low level of representation of these persons within the Parliament (arts. 1, 2 and 5).

The Committee encourages the State party to continue its efforts in increasing the participation of persons belonging to ethnic minority groups, including women, into public and political life. It recommends that the State party improve representation of these persons within the Parliament and other public institutions, including through the adoption of special measures.

Situation of Roma community

(13) The Committee notes the assessment made by the State party on the precarious situation of Roma community and their stigmatization. It expresses regret on the absence of a concrete plan or strategy to protect Roma against discrimination and stigmatization and to promote their economic, social and cultural rights (art. 5).

The Committee, recalling its general recommendation No. 27 (2000) on discrimination against Roma, recommends that the State party adopt a strategy with a view to improving the situation of Roma, ensuring their protection against discrimination and stigmatization and promoting their rights to education, employment, housing and health care. The Committee encourages the State party to organize awareness-raising campaigns to promote tolerance, understanding and solidarity within its population towards Roma community.

Situation of refugees, asylum seekers and stateless persons, including access to citizenship

(14) The Committee is concerned about restrictions on refugees' freedom of movement and right to choose their place of residence. It remains concerned about challenges faced by refugees and asylum seekers in terms of employment, access to public services, education and citizenship and about the number of long-time stateless persons (art. 5).

The Committee recommends that the State party:

- (a) Lift the regulation forbidding refugees to live in specific areas, in particular in Dushanbe and Kjujand;**
- (b) Take all the necessary measures to ensure that refugees enjoy the rights to work, health care and education;**
- (c) Ensure the appropriate protection to refugee children;**
- (d) Resolve the problem of the stateless persons and consider ratifying the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness;**
- (e) Speedily conclude ongoing legislative efforts, with the assistance of the United Nations High Commissioner for Refugees, to adopt a new Law on Citizenship and revise the Refugee Law.**

Combating human trafficking

(15) The Committee notes that Tajikistan continues to be a source of trafficking in women and children, in particular those from vulnerable groups, including minorities, refugees and asylum seekers (art. 5).

The Committee encourages the State party to continue its efforts in combating this scourge by prosecuting perpetrators, providing reparation to victims of trafficking and cooperating with neighbouring States.

Discriminatory law against non-citizens

(16) The Committee expresses its concern regarding the amendment of the Family Code in 2011 which restricts the right of foreigners and stateless persons, including migrants, to marry Tajik women by requiring legal residence in the country for at least one year and a mandatory prenuptial agreement providing the Tajik spouse with a dwelling. The Committee regrets this provision which has a discriminatory effect, in violation of the Convention (arts. 2 and 5).

In the light of its general recommendation No. 30 (2005) on discrimination against non-citizens, the Committee recommends that the State party review its legislation to bring it into full compliance with its international obligations and the Convention, in particular the State party should ensure that non-citizens are afforded effective enjoyment of the rights mentioned in article 5 of the Convention without discrimination. The Committee recalls that State parties have the duty to ensure that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status, and that the implementation of legislation does not have a discriminatory effect on non-citizens. The Committee recommends that the State party take this into account in the new law on citizenship in order to find other ways and means to protect Tajik women while avoiding discrimination on ethnic or national ground.

Mandate of the Ombudsman

(17) The Committee is concerned by the fact that the Ombudsman has yet to efficiently contribute to the implementation of the Convention and does not seem to work independently from the Government (art. 2).

The Committee encourages the State party to guarantee the independence of the Office of the Ombudsman by providing it with adequate human and financial resources to carry out its mandate, including promoting and monitoring the rights under the Convention. The Committee further encourages the State party to take necessary measures to raise the level of the Ombudsman Office or to establish a national human rights institution in compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles), recommendations accepted during the universal periodic review by the Human Rights Council.

Promotion of minority languages

(18) The Committee reiterates its concern regarding the lack of textbooks for children belonging to minority groups and the lack of qualified teachers for minority languages. While noting efforts to promote languages spoken at the universal level, such as Russian and English, the Committee is of the view that this should not be done at the expense of languages of minority groups (art. 5).

The Committee encourages the State party to continue its efforts to ensure supplies of school textbooks in minority languages. Furthermore, the Committee recommends that the State party set up training programmes for teachers for minority students

including mother-tongue vocational training. The Committee also encourages the State party to strengthen its efforts to provide education, particularly at the secondary and higher levels in or of minority languages, according to the needs and wishes of persons belonging to such groups.

Participation of civil society organizations

(19) Despite the information provided by the State party on the involvement of non-governmental organizations in the finalization of the report, the Committee regrets the lack of an alternative report and the absence of any information from such organizations (art. 2).

The Committee recommends that the State party continue to seek the involvement of non-governmental organizations in the preparation of its next periodic report and facilitate their participation at the next reporting session.

D. Other recommendations

Follow-up to Durban Declaration and Programme of Action

(20) 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.

Amendment to article 8 of the Convention

(21) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the 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.

Dissemination

(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.

Common core document

(23) The Committee encourages the State party to regularly update its core document (HRI/CORE/1/Add.128) submitted in 2004 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.6, chap. I).

Follow-up to concluding observations

(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 concluding observations, on its follow-up to the recommendations contained in paragraphs 13 and 14 above.

Paragraphs of particular importance

(25) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations in paragraphs 9, 16 and 17 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next report

(26) The Committee recommends that the State party submit its ninth to eleventh periodic reports in a single document by 10 February 2016, taking into account the specific reporting guidelines adopted by the Committee during its seventy-first session (CERD/C/2007/1), and addressing all the 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 (HRI/GEN.2/Rev.6, chap. I, para. 19).

51. Thailand

(1) The Committee considered the first to third periodic reports of Thailand (CERD/C/THA/1-3), submitted in one document, at its 2173rd and 2174th meetings (CERD/C/SR.2173 and 2174), held on 9 and 10 August 2012. At its 2193rd meeting (CERD/C/SR.2193), held on 24 August 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined periodic report submitted by the State party, which conforms to the Committee's guidelines for the preparation of treaty-specific reports, despite the delay in submitting. The Committee also welcomes the submission of the common core document (HRI/CORE/THA/2012).

(3) The Committee appreciates the open and frank dialogue it had with the large interministerial and high-level delegation and welcomes the supplementary information provided during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the following legislative and other measures taken by the State party:

(a) The adoption of the 2012 Comprehensive Strategy on Resolving the Problems of Irregular Migrants;

(b) The adoption of the 2008 Civil Registration Act (No. 2), which allows for the registration of all persons born in the State party, irrespective of the origin or status of the parents;

(c) The allocation of moneys from a public budget to compensate the victims of the violence in the southern border provinces and to implement the Development Plan for the Special Area in the Southern Border Provinces for 2009–2012;

(d) The adoption of the 2008 Prevention and Suppression of Human Trafficking Act.

(5) The Committee notes with satisfaction the ratification by the State party of two Optional Protocols to the Convention on the Rights of the Child, namely on the sale of children, child prostitution and child pornography, and on the involvement of children in

armed conflict, in 2006; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, in 2007; and the Convention on the Rights of Persons with Disabilities, in 2008.

(6) The Committee appreciates the consultative approach adopted by the State party in the preparation of the State report.

C. Concerns and recommendations

Domestic application of the Convention

(7) Noting the State party's dualist system of reception of international treaties, the Committee expresses concern that the State party has not taken sufficient measures to incorporate the provisions of the Convention in its domestic law.

The Committee urges the State party to take stock of existing legislation governing the elimination of racial discrimination, with a view to taking the most appropriate approach to give effect to all provisions of the Convention. The Committee also recommends that, in this regard, the State party take account of the relevant recommendations in the present concluding observations.

The interpretative declaration

(8) The Committee is concerned that the interpretative declaration on the Convention made by the State party, according to which it does not recognize any obligation beyond the confines of its Constitution and law, is incompatible with the obligation of the State party under article 2 of the Convention to use all means, including legislation, to prohibit and bring racial discrimination to an end (art. 2).

The Committee urges the State party to build on the momentum gained through the universal periodic review commitment to lift reservations to international human rights treaties, and withdraw its interpretative declaration on the Convention.

Definition and criminalization of racial discrimination

(9) The Committee notes with concern the absence of legal provisions defining and prohibiting racial discrimination in the State party, which are critical to enabling the prosecution of acts of racial discrimination and the seeking of redress for violations (arts. 1, 2 and 5).

The Committee urges the State party to introduce a definition of racial discrimination into its legislation, in accordance with article 1, paragraph 1, of the Convention, and to make it an offence punishable by law. To this end, it also recommends that direct and indirect discrimination, in all fields of public life, including those outlined in article 5 of the Convention, be defined in the State party's administrative and civil laws.

Systematic review of national and local policies

(10) Referring to paragraph 47 of the State report, according to which none of the State party's laws is discriminatory, the Committee expresses concern that it has not been ascertained that systematic analysis of the possible discriminatory effects of laws and policies is undertaken by the State party (art. 2 (c)).

The Committee recommends that the State party ensure that procedures are in place for the review of governmental, national and local policies and laws, with a view to guaranteeing that they do not have any discriminatory impact on any particular ethnic group.

Reservation to article 4

(11) Noting that the State party is considering the withdrawal of the reservation to article 4, the Committee is nevertheless concerned that the reservation, which interprets article 4 to require legislation “where it is considered that the need arises”, is vague and possibly inconsistent with the obligation of States parties to enact laws prohibiting the dissemination of all ideas based upon racial superiority and hatred. The Committee also notes with concern that existing legal provisions, including those of sections 83-88, 206, 207 and 393 of the Criminal Code, fall short of the requirements of article 4 (arts. 2 and 4).

Recalling its general recommendation No. 15 (1993) on article 4, which stipulates that the provisions of article 4 are mandatory and preventive, the Committee urges the State party to withdraw its reservation to article 4 of the Convention and to incorporate into its Criminal Code the offences proscribed by article 4.

Court cases on racial discrimination

(12) The Committee notes with concern the lack of information on court decisions relating to racial discrimination. It also expresses concern about the obstacles to access to justice experienced by members of ethnic groups, including their limited knowledge of their rights, as well as language, geographical and financial barriers (arts. 5 (a) and 6).

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 collect data on court decisions relating to racial discrimination, with a view to assessing the effectiveness of laws and policies aimed at eliminating racial discrimination. The Committee requests that the State party include such information in its next periodic report. Moreover, drawing attention to its general recommendation No. 26 (2000) on article 6 of the Convention, the Committee recommends that the State party raise the public’s awareness of the Convention as well as of laws adopted pursuant to the Committee’s recommendation in paragraph 7 above, and ensure that members of ethnic groups can avail themselves of legal remedies.

Equality in the enjoyment of civil and political rights

(13) The Committee is concerned at the restrictions to the right of naturalized Thais to participate in, and stand for, elections (art. 5 (c)).

The Committee urges the State party to accord equal civil and political rights to all citizens irrespective of the mode of acquisition of the citizenship.

Access to citizenship

(14) While welcoming the setting of the target of granting of legal status to about 300,000 persons within a time frame of three years and measures such as the adoption of the 2008 Civil Registration Act (No. 2), the Committee is nevertheless concerned at the large number of persons in the State party eligible for citizenship but who are currently stateless. The Committee is further concerned at the subsequent denial of their civil and political rights as well as economic and social rights. Moreover, while noting that the State party’s legislation allows for the registration of all persons born in the State party, the Committee remains concerned that a large number of births, particularly among ethnic groups and migrants, are not registered. The Committee reminds the State party that lack of birth registration is a contributing factor to statelessness (art. 5 (d)).

The Committee urges the State party to take effective measures to address the obstacles encountered in the acquisition of citizenship by those who qualify for it, including with regard to obtaining the required documentation from local authorities. Bearing in mind its general recommendation No. 30 (2004) on discrimination against

non-citizens, the Committee also recommends that the State party strengthen its efforts to facilitate the registration of births, including by allowing late registration as well as registration through the health-care system. The Committee further encourages the State party to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Self-identification

(15) The Committee expresses concern at the categorization used by the State party for identifying specific groups, such as rootless persons, aliens, unsurveyed persons, persons with status problems, referred to in paragraphs 11 to 40 of the State report (arts. 1 and 2).

The Committee recommends that the State party review the policy of categorization of the various groups in its territory guided by the principle of self-identification contained, inter alia, in general recommendation No. 8 (1990) and revise its terminologies in order to avoid discrimination against these groups.

Moreover, referring to the State party's support for the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee encourages the State party to affirm in its legislation the rights of indigenous peoples, in line with the Declaration, and also to consider acceding to International Labour Organization Convention No. 169 (1991) on Indigenous and Tribal Peoples in Independent Countries.

Ethnic groups living in forests

(16) The Committee is concerned that the various forestry and environment protection laws may have a discriminatory effect on ethnic groups living in forests. The Committee is also concerned that it has not been assured how the free and prior informed consent of those groups is guaranteed in decision-making processes affecting them (arts. 1, 2 and 5).

Notwithstanding Constitutional Court decision No. 33/2554 of November 2011, the Committee urges the State party to review the relevant forestry laws in order to ensure respect for ethnic groups' way of living, livelihood and culture, and their right to free and prior informed consent in decisions affecting them, while protecting the environment.

Vulnerable ethnic groups

(17) The Committee is concerned about the inadequate access to social welfare and public services by certain ethnic groups because of language barriers and the limited availability of such services where these groups live. The Committee also regrets the lack of data to monitor the progress achieved in improving their situation (arts. 5 (e) and 2, para. 2).

The Committee calls on the State party to continue efforts aimed at improving the enjoyment of economic and social rights by all ethnic groups, including by implementing special measures so as to speed up the achievement of equality in the enjoyment of human rights. In this regard, the Committee refers the State party to 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 Discrimination.

Moreover, noting the State party's intention to collect and produce disaggregated data on the implementation of its National Human Rights Plan of Action, the Committee recommends that the State party also collect data on the enjoyment of economic, social and cultural rights by ethnic groups.

Risk of disappearance of certain ethnic languages

(18) The Committee notes with concern that some ethnic languages in the State party are at risk of disappearance. Moreover, while taking note of pilot projects announced by the State party for the teaching of ethnic languages in schools, the Committee remains concerned that many ethnic children have limited opportunities to learn their language (art. 5 (e)).

The Committee calls on the State party to strengthen efforts to protect and conserve ethnic languages and to allocate the necessary resources for the promotion of the teaching of ethnic languages in schools.

Negative stereotypes and prejudices

(19) The Committee expresses concern at negative stereotypes and prejudices about ethnic groups that are conveyed by the media (art. 7).

The Committee recommends that the State party take measures to eliminate negative stereotypes about ethnic groups and to raise awareness among media professionals of their responsibility not to disseminate stereotypes and prejudices and to avoid giving accounts of incidents involving ethnic groups in ways that stigmatize the group as a whole.

Situation of Malayu women

(20) The Committee is concerned by reports that Malayu women are facing double discrimination in many fields of political and social life (arts. 2, 5 (d)).

Bearing in mind the intersectionality of ethnicity and religion in certain circumstances and taking into account the Committee's general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee urges the State party to take the necessary measures, including legislative ones, to ensure, in accordance with the Convention, the equal treatment and non-discrimination of Malayu women.

Special laws application in the southern border provinces

(21) Notwithstanding the measures taken by the State party, such as the dissemination of "human rights cards" and the lifting of the emergency decree in some districts, the Committee remains seriously concerned at the discriminatory impact of the application of the special laws in force in the southern border provinces, including reports of identity checks and arrests carried out on the basis of racial profiling, as well as reports of torture and enforced disappearance of Malayu Thais. The Committee is further concerned at the risk of serious human rights violations in the enforcement of these laws as well as at the absence of a mechanism of oversight of their application (arts. 2 and 5 (a, b, d)).

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 urges the State party to take concrete measures to eradicate the practice of identity checks and arrests based on racial profiling in the application of the special laws in the southern border provinces. The Committee also recommends that, in addition to providing compensation to persons affected by incidents in the southern border provinces, the State party:

(a) Continuously assess the need for the special laws and establish an independent mechanism to monitor their enforcement;

(b) Review the special laws with a view to meeting international human rights standards, particularly those in regard to the prevention of torture;

(c) **Thoroughly investigate all allegations of human rights violations and prosecute those found responsible.**

The Committee requests that the State party provide in its next periodic report information on the impact of the strategies implemented by the Internal Security Operations Center as well as of the Development Plan for the Special Area in the Southern Border Provinces for 2009–2012, including on finding durable solutions to the conflict in the area.

Exploitation of migrants

(22) While noting the measures taken by the State party aimed at curbing exploitation and abuse of migrant workers and the applicability of the Labour Protection Act to all workers irrespective of their immigration status, the Committee is nonetheless concerned at reports of abuse and exploitation of migrant workers, in particular of those with irregular status (art. 5 (e)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party explore the need for specific protections for migrant workers in addition to those provided for by the Labour Protection Act and revise the system for granting and terminating work permits so as to reduce migrant workers' vulnerability to exploitation and abuse by their employers. The Committee also recommends that the State party assess the effectiveness of mechanisms in place to receive complaints of violation of labour rights and their accessibility by migrant workers.

Discrimination against migrant women

(23) While noting the explanation provided by the State party according to which the draft regulation requiring the return of pregnant migrant women to their country of origin to give birth was still under discussion, the Committee remains concerned that such measures would constitute a discrimination against migrant women (art. 5 (e)).

The Committee recommends that the State party abandon the proposal to return pregnant migrant women to their country of origin to give birth and ensure that regulations and legislation on migrants respect their human rights. The Committee also requests that the State party provide in its next periodic report information on access to health care by documented and undocumented migrant women.

Human trafficking

(24) The Committee notes the information provided by the delegation on measures adopted by the State party to combat trafficking in human beings, but regrets the lack of information on the impact of these measures (art. 5 (e)).

The Committee requests the State party to provide in its next periodic report information on the impact of measures taken on the incidence of human trafficking, on how such measures address the root causes of trafficking, and on the prosecution of cases of trafficking.

Asylum seekers and refugees

(25) While welcoming the State party's generosity in hosting a large number of refugees from neighbouring countries, the Committee is concerned that the State party's enactments, including the Provincial Admission Board screening procedures as well as those under the national Immigration Act, fall short of international standards for the protection and treatment of refugees and asylum seekers. Moreover, noting the information provided during the dialogue according to which humanitarian assistance is provided to Rohingya

coming into the State party, the Committee expresses concern at reports of members of the group being turned back to sea (arts. 1 and 2).

The Committee recommends that the State party adopt appropriate legislation and procedures for the protection of refugees and asylum seekers, in line with international human rights standards. The Committee also urges the State party to take measures to prevent any further expulsion of Rohingyas seeking asylum, and to give them access to the United Nations High Commissioner for Refugees and registration through the Provincial Admission Board mechanism. Furthermore, the Committee encourages the State party to pursue the universal periodic review commitment to review its position on the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto.

D. Other recommendations

Ratification of other treaties

(26) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, namely, the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

Follow-up to the Durban Declaration and Programme of Action

(27) 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.

Declaration under article 14

(28) The Committee encourages the State party to make the declaration under article 14 recognizing the competence of the Committee to receive and consider individual complaints.

Amendment to article 8

(29) The Committee recommends that the State party ratify the amendment to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee recalls General Assembly resolutions 61/148, 63/243 and 65/200, in which the 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.

Dissemination

(30) 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.

Dialogue with civil society

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

Follow-up to concluding observations

(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 concluding observations, on its follow-up to the recommendations contained in paragraphs 20, 21 and 25 above.

Paragraphs of particular importance

(33) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 16, 23 and 24 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

Preparation of the next periodic report

(34) The Committee recommends that the State party submit its fourth to seventh periodic reports in a single document by 28 January 2016, in accordance with the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also reminds the State party to observe the page limit of 40 pages for treaty-specific reports (HRI/GEN.2/Rev.6, chap. I, para. 19).

IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

52. In 2012 and in 2013, Mr. Thornberry served as coordinator and Ms. January-Bardill as alternate coordinator for follow-up to the consideration of reports submitted by States parties.

53. Terms of reference for the work of the coordinator on follow-up⁴ and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee⁵ were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

54. At the 2202nd meeting (eighty-first session), held on 31 August 2012, the coordinator on follow-up presented a report on his activities to the Committee.

55. Since the closing of the eightieth session, follow-up reports on the implementation of those recommendations regarding which the Committee had requested information were received from the following States parties: Armenia (CERD/C/ARM/CO/5-6/Add.1), Ireland (CERD/C/IRL/CO/3-4/Add.1), Lithuania (CERD/C/LTU/CO/4-5/Add.1), Morocco (CERD/C/MAR/CO/17-18/Add.1), Norway (CERD/C/NOR/CO/19-20/Add.1), Poland (CERD/C/POL/CO/19/Add.1), Slovenia (CERD/C/SVN/CO/6-7/Add.1), Spain (CERD/C/ESP/CO/18-20/Add.1) and United Kingdom of Great Britain and Northern Ireland (CERD/C/GBR/18-20/Add.1).

56. At its eighty-first session, the Committee considered the follow-up reports of Armenia, Ireland, Lithuania, Morocco, Norway and Poland and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

⁴ 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.

⁵ 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

57. 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
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
Lesotho	Fifteenth periodic report due since 2000
Tonga	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
Belize	Initial report due since 2002
Benin	Initial report due since 2002

B. Reports overdue by at least five years

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

Sri Lanka	Tenth periodic report due since 2003
San Marino	Initial periodic report due since 2003
Equatorial Guinea	Initial report due since 2003
Hungary	Eighteenth periodic report due since 2004
Egypt	Seventeenth periodic report due since 2004
Timor-Leste	Initial report due since 2004
Trinidad and Tobago	Fifteenth periodic report due since 2004
Mali	Fifteenth periodic report due since 2005
Comoros	Initial report due since 2005
Uganda	Eleventh periodic report due since 2005
Ghana	Eighteenth periodic report due since 2006
Libya	Eighteenth periodic report due since 2006
Côte d'Ivoire	Fifteenth periodic report due since 2006
Bahamas	Fifteenth periodic report due since 2006
Saudi Arabia	Fourth periodic report due since 2006
Cape Verde	Thirteenth periodic report due since 2006
Saint Vincent and the Grenadines	Eleventh periodic report due since 2006
Lebanon	Eighteenth periodic report due since 2006
Bahrain	Eighth periodic report due since 2007
Latvia	Sixth periodic report due since 2007
Andorra	Initial report due since 2007
Saint Kitts and Nevis	Initial report due since 2007
United Republic of Tanzania	Seventh periodic report due since 2007
Barbados	Seventh periodic report due since 2007
Brazil	Eighteenth periodic report due since 2008

Nigeria	Nineteenth periodic report due since 2008
Mauritania	Eighth periodic report due since 2008
Nepal	Seventeenth periodic report due since 2008

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

59. 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.

60. At its 2183rd meeting (eighty-first session), the Committee reviewed the implementation of the Convention in Belize under its review procedure, in the absence of a report from the State party, and issued concluding observations which were made public at its eighty-second session.

61. At its eighty-second session, the Committee decided to postpone the scheduled review of the implementation of the Convention in Burkina Faso as the State party had submitted its report prior to that session. The Committee also decided to postpone the review scheduled in respect to Holy See in the light of a commitment received from the State party to finalize its report in the near future.

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. At the time of adoption of the present report the Committee had registered, since 1984, 52 complaints concerning 54 States parties. Of those, 1 complaint was discontinued and 17 were declared inadmissible. The Committee adopted final decisions on the merits on 29 complaints and found violations of the Convention in 13 of them. Five complaints were pending consideration.

65. During its eighty-second session, on 26 February 2013, the Committee considered communication No. 48/2010 (*TBB-Turkish Union in Berlin/Brandenburg v. Germany*). The communication was submitted by the Turkish Union in Berlin/Brandenburg alleging that the statements made in an interview by Thilo Sarrazin, the former Finance Senator of the Berlin Senate (from 2002 to April 2009, Social Democratic Party) and member of the Board of Directors of the German Central Bank (from May 2009), published in the German cultural journal *Lettre Internationale*, amounted to a violation of article 2, paragraph 1 (d), article 4, paragraph (a), and article 6 of the Convention.

66. The Committee declared the communication admissible and reiterated its jurisprudence, according to which article 14, paragraph 1, refers directly to the Committee's competence to receive communications from "groups of individuals" and that it considered that the nature of the petitioner's activities and its aims and the group of individuals it represents satisfied the victim requirement within the meaning of article 14, paragraph 1, of the Convention (one member dissenting). On the merits, the Committee qualified Mr. Sarrazin's statements as impugned speech under article 4 of the Convention and observed that, while acknowledging the importance of freedom of expression, it considered that the statements amounted to dissemination of ideas based on racial superiority or hatred and contained elements of incitement to racial discrimination. The Committee concluded that the State party had failed its duty to carry out an effective investigation whether or not Mr. Sarrazin's statements amounted to dissemination of ideas based upon racial superiority or hatred and therefore concluded that the absence of an effective investigation into the statements by Mr. Sarrazin by the State party amounted to a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention. The Committee recommended that the State party review its policy and procedures concerning the prosecution in cases of alleged racial discrimination consisting of dissemination of ideas of superiority over other ethnic groups based on article 4 (a) of the Convention and of incitement to discrimination on such grounds, in the light of its obligations under article 4 of the Convention. One Committee member submitted a dissenting individual opinion on the merits.

VII. Follow-up to individual communications

67. At its sixty-seventh session,⁶ 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.

68. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.⁷ On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded in 2008 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.

69. 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 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.

70. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 29 complaints and found violations of the Convention in 13 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

⁶ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

⁷ *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 (6)	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 (A/63/18)			
	43/2008, Saada Mohamad Adan	X (A/66/18) 6 December 2010 28 June 2011	X partly satisfactory	X partly unsatisfactory		X
	46/2009, Mahali Dawas and Yousef Shava					X
Germany (1)	48/20, TBB-Turkish Union Berlin/Brandenburg	Not yet due				
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 (4)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi		X			
Norway (1)	41/2008, Ahmed Farah Jama					X
	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	

VIII. Consideration of copies of petitions, copies of reports and other information relating to trust and non-self-governing territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention

71. 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.

72. 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 2012⁸ (A/67/23 and Corr.1) 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/81/3, and presented his report at the eighty-first session, on 29 August 2012. 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.

73. 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.

⁸ *Official Records of the General Assembly, Sixty-seventh Session, Supplement No. 23 (A/67/23).*

IX. Action taken by the General Assembly at its sixty-seventh session

74. The Committee considered this agenda item at its eighty-second session. For its consideration of this item, the Committee had before it General Assembly resolution 67/156 of 20 December 2012 in which the General Assembly had, inter alia: (a) expressed its concern at the fact that a great number of reports, in particular initial reports, are overdue and continue to be overdue, which constitutes an obstacle to the full implementation of the Convention; (b) reiterated that States parties, in line with article 8 of the Convention, should take into account, in their nomination of members to the Committee, that the Committee shall be composed of persons of high moral standing and acknowledged impartiality, who shall serve in their personal capacity, and that consideration shall be given to equitable geographical distribution and to the representation of the different forms of civilization as well as of the principal legal systems, and encourages States parties to give due regard to the nomination of persons having legal experience, as well as recognized competence in the field of human rights, and to the equal representation of women and men; (c) recalled that the General Assembly decided to authorize the Committee to meet for an additional week per session, as a temporary measure, from August 2009 to 2012 (d) welcomed the efforts made by the Committee to erase the backlog of reports pending consideration, and notes the role that improvements in efficient working methods and temporary additional meeting time have played in that regard; (e) invited the Chair of the Committee to present an oral report on the work of the Committee and to engage in an interactive dialogue with the General Assembly at its sixty-ninth session under the item entitled “Elimination of racism, racial discrimination, xenophobia and related intolerance”; and (f) decided to consider, at its sixty-ninth session, under the item entitled “Elimination of racism, racial discrimination, xenophobia and related intolerance”, the reports of the Committee on its eighty-first and eighty-second and its eighty-third and eighty-fourth sessions, the report of the Secretary-General on the financial situation of the Committee and the report of the Secretary-General on the status of the Convention.

X. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference

75. 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 eighty-first and eighty-second sessions.

76. Mr. Murillo Martínez participated in the eleventh session of the Working Group of Experts on People of African Descent, which took place in Geneva from 30 April to 4 May 2012.

77. Mr. Avtonomov and Mr. Thornberry participated in the fourth session of the Ad Hoc Committee on Complementary Standards.

XI. Thematic discussions and general recommendations

78. Following the General Assembly resolution 64/169 of 18 December 2009, proclaiming the year beginning on 1 January 2011 the International Year for People of African Descent, the Committee at its seventy-eighth session held a thematic discussion on the subject of racial discrimination against people of African descent. Participants of the thematic discussion included representatives from States parties to the Convention; international organizations including UNESCO, UNHCR and the Economic Commission for Latin America and the Caribbean; and non-governmental organizations. Summary records of the thematic discussion can be found in documents CERD/C/SR.2080 and 2081.⁹

79. At the same session, the Committee decided to embark upon the task of drafting a new general recommendation on racial discrimination against people of African descent, in the light of the difficulties in the realization of the rights of people of African descent observed during the examination of reports and as part of the activities of the Committee to contribute to the International Year of People of African Descent. At its seventy-ninth session, the Committee adopted general recommendation No. 34 (2011) on racial discrimination against people of African descent.

80. At its eighty-first session, the Committee held a thematic discussion on racist hate speech.

81. The thematic discussion aimed to enhance understanding of the causes and consequences of racist hate speech and how the resources in the Convention may be mobilized to combat it, through an exchange of information and experience and an examination of progress made, challenges that remain and lessons learned.

82. The Committee appointed Mr. Diaconu and Mr. Thornberry as Rapporteurs of the thematic discussion.

83. The Committee, at subsequent sessions, will systematize and study the information obtained, proceed to debate and decide on further action to be taken, including continuing to highlight and issue recommendations on racist hate speech when examining the reports of States parties. The Committee will also reflect on the possibility of initiating the preparation of a general recommendation on the subject of racist hate speech based on its understanding of article 4 and related articles in the Convention.

⁹ An informal summary prepared by the Secretariat can be found on the OHCHR webpage at www2.ohchr.org/english/bodies/cerd/AfricanDescent.htm.

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,¹⁰ and the Committee's established practice, as recorded in its relevant working papers and guidelines.¹¹

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 would 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, 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 hold informal meetings with non-governmental organizations at the beginning of each week of its sessions when States parties' reports are being discussed.

87. At its seventy-seventh session, the Committee 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 (175) 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 allowed 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, 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. The General Assembly granted the Committee an additional week of meeting time for the year 2012.

88. At its seventy-ninth session, on 25 August 2011, the Committee held its third informal meeting with States parties which was attended by 78 States parties, including those delegations of States parties based in New York without offices in Geneva via a video link. The meeting sought to update States parties on the Committee's methods of work, improve dialogue between the Committee and States parties and promote the engagement of States parties with the Committee throughout the reporting cycle.

89. The Committee appreciates the additional meeting time granted by the General Assembly, which facilitated consideration of the backlog of reports awaiting response.

¹⁰ Compilation of rules of procedure adopted by human rights treaty bodies (HRI/GEN/3/Rev.3).

¹¹ 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 recommendations (*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).

90. At its eighty-first session the Committee initiated the practice of highlighting the focus of the recommendations in particular by using headings in its concluding observations. At its eighty-second session, the Committee further discussed its working methods and, more specifically, issues related to the modalities of the constructive dialogue with the States parties when considering their reports. The Committee decided to allow 30 minutes for the opening statement of the respective heads of delegation.

XIII. Discussions on the treaty body strengthening process

91. At its eighty-first session, the Committee considered the item related to the treaty body strengthening process.

92. The Committee welcomed the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860), published in June 2012, and expressed appreciation for the efforts of the High Commissioner in this regard. The Committee indicated that the report identifies a comprehensive range of recommendations aimed at strengthening the treaty body system, based on a thorough three-year-long consultation process. The Committee believes that efforts to strengthen the treaty body system, including through adequate resourcing, are necessary for the ongoing support of the system, to build on its past achievements and to ensure that the rights enshrined in the treaties are enjoyed globally. In this regard, the Committee adopted a statement (see annex VIII).

93. At its eighty-first session, the Committee discussed the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines) and adopted a decision in this regard (see annex VIII).

Annexes

Annex I

Status of the Convention

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (175) as at 1 March 2013^a

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, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (54) as at 1 March 2013

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,

^a The following States have signed but not ratified the Convention: Bhutan, Grenada, Nauru and Sao Tome and Principe.

Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela (Bolivarian Republic of).

C. States parties that have accepted the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties^a (43) as at 1 March 2013

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 eighty-first and eighty-second sessions

A. Agenda of the eighty-first session (6–31 August 2012)

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 to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.

B. Agenda of the eighty-second session (11 February–1 March 2013)

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. Report of the Committee to the General Assembly at its sixty-eighth session.

Annex III

Opinion of the Committee under article 14 of the Convention adopted at the eighty-second session

Communication No. 48/2010

<i>Submitted by:</i>	TBB-Turkish Union in Berlin/Brandenburg (represented by counsel, Jutta Hermanns)
<i>Alleged victim:</i>	The petitioner
<i>State party:</i>	Germany
<i>Date of communication:</i>	12 July 2010 (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 26 February 2013,

Having concluded its consideration of communication No. 48/2010, submitted to the Committee on the Elimination of Racial Discrimination by the TBB-Turkish Union in Berlin/Brandenburg under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioner of the communication, its counsel and the State party,

Adopts the following:

Opinion

1. The petitioner for the communication, dated 11 May and 13 July 2010, is an association, the TBB-Turkish Union in Berlin/Brandenburg, represented, in accordance with paragraph 9 of its by-laws by the spokesperson of the Board of Directors and an additional member of the Executive Board of Directors.¹ According to paragraph 3 of its by-laws, the aim of the association is threefold: (1) to contribute to the peaceful coexistence and solidarity of all persons in Berlin and Brandenburg and to understanding among the peoples; (2) the furtherance of equal and non-discriminatory cohabitation and cooperation between Germans and Non-Germans, in particular persons of Turkish heritage in Berlin and Brandenburg; (3) education and counselling on issues of consumer protection in connection with protection against discrimination. The petitioner pursues its aims with the following measures: conduct of events, conferences, forums, working groups on different topics, counselling of institutions and authorities on the topic of integration policy, dissemination about issues of concern to persons of Turkish heritage, support for persons in Berlin and Brandenburg on legal and social questions through counselling, courses and seminars, as well as the holding of cultural events, discussions, etc., and counselling in and out of court

¹ The power of attorney is signed by the spokeswoman of the Board of Directors and by the spokesperson of the Executive Board of Directors.

against discrimination. The petitioner claims that its members and the association itself are victims of a violation by Germany² of article 2, paragraph 1 (d), article 4, paragraph (a), and article 6 of the Convention on the Elimination of All Forms of Racial Discrimination. It is represented by counsel, Jutta Hermanns.

The facts as submitted by the petitioner

2.1 The German cultural journal *Lettre Internationale* (2009 fall edition, No. 86)³ published an interview with Thilo Sarrazin, the former Finance Senator of the Berlin Senate (from 2002 to April 2009, Social Democratic Party) and member of the Board of Directors of the German Central Bank (from May 2009), entitled “Class instead of Mass: from the Capital City of Social Services to the Metropolis of the Elite”. In this interview, Mr. Sarrazin expressed himself in a derogatory and discriminatory way about social “lower classes”, which are “not productive” and would have to “disappear over time” in order to create a city of the “elite”. In this context, he stated, inter alia:

“... The city has a productive circulation of people, who work and who are needed, be they part of the administration or of the ministries. Beside them, there are a number of people, about 20% of the population, who are not economically needed. They live off social welfare (Hartz IV) and transfer income; on a federal level this segment is only 8–10%. This part of the population needs to disappear over time. A large number of Arabs and Turks in this city, whose numbers have grown through erroneous policies, have no productive function, except for the fruit and vegetable trade, and other perspectives will probably not develop either ...

... One must stop talking about “the” migrant. We must look at the different migrant groups. ...

With the core group of people from Yugoslavia, however, one sees a more “Turkish” problem, the Turkish group and the Arabs ‘slope’ dramatically [in terms of success]. Even in the third generation, a lot of them lack any reasonable knowledge of German. Many of them don’t even finish school and an even smaller number make it to the college entrance exam ...

... There is another problem: the lower the class, the higher the birth rate. The birth rates of the Arabs and Turks are two to three times higher than what corresponds to their overall proportion in the population. Large segments are neither willing nor able to integrate. The solution to this problem can only be to stop letting people in, and whoever wants to get married should do it abroad. Brides are constantly being supplied: the Turkish girl here is married to someone from Anatolia; the young Turkish man gets a bride from an Anatolian village. It’s even worse with the Arabs. My idea would be to generally prohibit influx, except for highly qualified individuals and not provide social welfare for immigrants any more.

... It is a scandal when Turkish boys don’t listen to female teachers because of their culture. Integration is an accomplishment of those who integrate. I don’t have to accept anyone who doesn’t do anything. I don’t have to accept anyone who lives off the State and rejects this very State, who doesn’t make an effort to reasonably educate their children and constantly produces new little headscarf girls. That is true for 70% of the Turkish and for 90% of the Arab population in Berlin. Many of them

² The Convention was ratified by Germany on 16 May 1969, and the declaration under article 14 was made on 30 August 2001.

³ A German cultural magazine, with 23,000 issues printed. For the issue in question 33,000 issues were printed.

don't want any integration, they want to live according to their own rules. Furthermore, they encourage a collective mentality that is aggressive and ancestral ...

... The Turks are conquering Germany just like the Kosovars conquered Kosovo: through a higher birth rate. I wouldn't mind if they were East European Jews with about a 15% higher IQ than the one of Germans.

... If the Turks would integrate themselves so that they would have comparable success in the school system like other groups, the topic would become moot. [...] However, it does not happen like that. Berliners always say that they have a particularly high number of foreigners. This is wrong. The percentage of foreigners in Munich, Stuttgart, Cologne or Hamburg is much higher, but the foreigners there have a smaller percentage of Turks and Arabs and they are of more diverse origin.

... We have to completely restructure family policies: do away with payments, above all to the lower class. I remember a report in the newspaper "Die Zeit" that stated that every Monday morning, the city cleaning services clean 20 tons of leftover lamb from Turkish grill parties in the Tiergarten – this is not a satire. The Neukölln Mayor Buschkowsky spoke about an Arab woman who was having her sixth child to be able to get a bigger apartment through the social welfare law (Hartz IV). We have to say farewell to these structures. One has to assume that human ability is to some extent socially contingent and to some extent hereditary. The road we are following leads to a continuous decrease in the number of intelligent high performers due to demographic reasons. One can't build a sustainable society that way ...

... If 1.3 million Chinese are just as intelligent as Germans, but more industrious and in the foreseeable future better educated while we Germans take on ever more of a Turkish mentality, we'll have a bigger problem ..."

2.2 On 23 October 2009, the petitioner, "as the interest group of the Turkish citizens and citizens with Turkish heritage of Berlin and Brandenburg" filed a complaint of criminal offence against Mr. Sarrazin to the Office of Public Prosecution. It claimed, inter alia, that Mr. Sarrazin's statements constituted incitement of the people (Volksverhetzung), pursuant to article 130 of the Criminal Code,⁴ in particular because "Turks and Arabs were presented as inferior and denied a right to existence in our society".

2.3 Mr. Sarrazin's statements were reviewed with respect to article 130 (incitement to hatred) and article 185 (insult)⁵ of the German Criminal Code. On 16 November 2009, the Office of Public Prosecution established that there was no criminal liability for Mr. Sarrazin's statements and terminated the proceedings on the basis of article 170 (2) of the German Code of Criminal Procedure.⁶ The Office of Public Prosecution based its decision

⁴ Paragraph 130 of the Criminal Code: (1) Whoever, in a manner that is capable of disturbing the public peace: 1. incites hatred against segments of the population or calls for violent or arbitrary measures against them; or 2. assaults the human dignity of others by insulting, maliciously maligning, or defaming segments of the population, shall be punished with imprisonment from three months to five years.

⁵ Paragraph 185: Insult shall be punished with imprisonment for not more than one year or a fine and, if the insult is committed by means of violence, with imprisonment for not more than two years or a fine.

⁶ Article 170 of the German Criminal Procedure Code: (1) If the investigations offer sufficient reason for preferring public charges, the public prosecution office shall prefer them by submitting a bill of indictment to the competent court. (2) In all other cases the public prosecution office shall terminate the proceedings. The public prosecutor shall notify the accused thereof if he was examined as such or

on article 5 of the Basic Law (freedom of expression)⁷ and concluded that incitement to hatred against a segment of the population versus an individual, was not recognized and that Mr. Sarrazin's statements are considered as a "contribution to the intellectual debate in a question that [was] very significant for the public".

2.4 On 21 December 2009, the petitioner submitted a written complaint, challenging the decision of the Office of Public Prosecution. On 24 February 2010, the Prosecutor General informed the petitioner that it was not entitled to file a formal complaint against the decision of the Office of Public Prosecution, because it was not the "injured party" within the meaning of article 172 (1), sentence 1, of the Code of Criminal Procedure.⁸ The Prosecutor General, however, reviewed the facts of the case in his supervisory role and decided that the Office of Public Prosecution in Berlin had correctly terminated the proceedings. He established that Mr. Sarrazin's comments were made in the context of a critical discussion about, inter alia, structural problems of an economic and social nature in Berlin.

2.5 In addition to the petitioner, two individual members of the petitioner, Ms. C.B. and Mr. S.Y. filed a complaint against Mr. Sarrazin to the Office of Public Prosecution. These proceedings were also terminated. The complaints against the termination of investigative proceedings against Mr. Sarrazin were rejected in an identical way by the Prosecutor General. Owing to personal reasons, these individuals have not taken any further legal action.

2.6 Domestic remedies have been exhausted with the termination of the investigative proceedings on the basis of article 170 (2) of the Code of Criminal Procedure. Further legal action is not available and the six-month deadline for the submission of an individual communication to the Committee should be counted from 16 November 2009, despite the review of the complaint by the Prosecutor General in his supervisory role.

2.7 According to article 172 of the Code of Criminal Procedure, proceedings aimed at forcing the public prosecution service to initiate criminal charges are not available to the petitioner as a union or association. For the same reason, it cannot file a constitutional complaint to the Federal Constitutional Court. According to the decision of the Federal Constitutional Court of 22 June 2006 (the umbrella organization in the Sinti und Roma case), only individual members of a group, not the association itself, can be affected in their human dignity within the meaning of article 130 of the Criminal Code. An institution cannot initiate legal proceedings to obtain criminal prosecution, since only natural persons can invoke human dignity.⁹

a warrant of arrest was issued against him; the same shall apply if he requested such notice or if there is a particular interest in the notification.

⁷ Article 5 of the Basic Law: (1) Every person shall have the right freely to express and disseminate his opinions in speech, writing and pictures, and to inform himself without hindrance from generally accessible sources. Freedom of the press and freedom of reporting by means of broadcasts and films shall be guaranteed. There shall be no censorship. (2) These rights shall find their limits in the provisions of general laws, in provisions for the protection of young persons, and in the right to personal honour. (3) Arts and sciences, research and teaching shall be free. The freedom of teaching shall not release any person from allegiance to the constitution.

⁸ Article 172(1), of the German Criminal Procedure Code: Where the applicant is also the aggrieved person, he shall be entitled to lodge a complaint against the notification made pursuant to Section 171 to the official superior of the public prosecution office within two weeks after receipt of such notification. On the filing of the complaint with the public prosecution office the time limit shall be deemed to have been observed. Time shall not start to run if no instruction was given pursuant to Section 171, second sentence.

⁹ See Federal Constitutional Court, B.v. 22 June 2006 – 2 BvR 1421/05.

2.8 With regard to the victim status pursuant to article 14, paragraph 1, of the Convention, the petitioner argues that the association's aim is the conduct of events, conferences, forums, working groups on various topics, counselling of institutions and authorities on the topic of integration policy, dissemination about issues of concern to persons of Turkish heritage, support for persons in Berlin and Brandenburg on legal and social questions through counselling, courses, seminars, as well as the holding of cultural events, discussions etc. and counselling in and out of court against discrimination (see 1.1 above). The association represents persons of Turkish heritage and works towards equality and non-discrimination in society, in particular for persons of Turkish heritage. In line with the Committee's jurisprudence in communications No. 28/2003, *Documentation and Advisory Centre on Racial Discrimination v. Denmark*,¹⁰ No. 30/2003, *Jewish community of Oslo v. Norway*¹¹ and No. 38/2006, *Central Council of German Sinti und Roma et al. v. Germany*,¹² TBB, as a legal entity representing the interests of the Turkish citizens and citizens of Turkish heritage of Berlin and Brandenburg, is a victim within the meaning of article 14, paragraph 1, of the Convention. Through the negative value judgments, its integrity as a union of migrants with Turkish background, and its work are affected. There is a danger that the petitioner itself and its members could become victims of criminal acts due to the climate of negative value judgements and blanket statements expressed by Mr. Sarrazin. In this context, the organization received two e-mails on 9 and 10 October 2009, expressing support for Mr. Sarrazin's statements and for the fact that statements about immigrants and foreigners should be protected by freedom of expression. The larger right-wing extremist parties, such as the German National Democratic Party (National Demokratische Partei Deutschlands, NPD), German People's Union (Deutsche Volksunion, DVU) and the Republicans, have all sided with Mr. Sarrazin. The petitioner notes that even though Mr. Sarrazin cannot be directly held responsible for the fact that the right-wing extremist parties sided with him, his statements are on a level that abetted the goals of these parties. The rights of its members, as well as of the association representing these individuals and groups of individuals, have been violated by the decision of the Office of Public Prosecution in Berlin, confirmed by the Prosecutor General, to terminate the proceedings against Mr. Sarrazin due to the fact that his statements were not liable to criminal prosecution.

The complaint

3.1 The petitioner claims to be a victim of a violation by Germany of article 2, paragraph 1 (d), article 4, paragraph (a), and article 6 of the Convention on the Elimination of All Forms of Racial Discrimination, as the State party failed to provide protection under its Criminal Code against Mr. Sarrazin's racially discriminatory and insulting statements directed against the petitioner as a group of individuals of Turkish heritage and as the representative of this group.

3.2 The petitioner recalls the Committee's concluding observations, in which it recommended that the State party consider adopting a clear and comprehensive definition of racial discrimination in its national legislation. The Committee also recommended that the State party broaden its approach to combating racial discrimination with a view to countering such discrimination in all its forms, including expressions of racist prejudices

¹⁰ See communication No. 28/2003, *Documentation and Advisory Centre on Racial Discrimination v. Denmark*, Opinion of 22 August 2003, para. 6.4.

¹¹ See communication No. 30/2003, *Jewish community of Oslo et al. v. Norway*, Opinion of 15 August 2005, para. 7.4.

¹² See communication No. 38/2006, *Central Council of German Sinti and Roma et al. v. Germany*, Opinion of 22 February 2008, para. 7.2.

and attitudes. It submits that the degrading and discriminatory statements made by Mr. Sarrazin are connected to distinct features of the Turkish population. The Turkish population was presented as a group of individuals who live at the expense of the State and due to their ascribed negative characteristics and ways of behaviour, do not have the right to be in Germany.

3.3 The petitioner argues that since Mr. Sarrazin is the former Finance Senator of the Berlin Senate and member of the Board of Directors of the German Central Bank, his authority leads to the perception that his statements are based on proven facts and, therefore, “the truth”. It adds that the effects of Mr. Sarrazin’s statements are to enhance prejudices of the majority towards the Turkish population and individuals of Turkish heritage, including their children. The petitioner submits that such racially discriminatory statements are not covered by the right to freedom of expression because the group concerned has a right to live without prejudices and general intolerance, and the freedom to exercise their rights should be respected. The statements made by Mr. Sarrazin should be assessed in the framework of the special social context of Germany, adding to the general pattern of incitement to racial hatred against the Turkish population, which in the circumstances can be even more dangerous than openly flaunted racism, which is easier to combat. With the termination of the investigation against Mr. Sarrazin, the petitioner claims that it was arbitrarily denied protection against racially discriminatory statements directed against it as a group of individuals of Turkish heritage and as the representative of this group and the propagation thereof represents a violation of articles 2, paragraph 1 (d), 4, paragraph (a), and 6.

3.4 With regard to article 4, paragraph (a), of the Convention, the petitioner notes that an effective criminal prosecution had not taken place when the Public Prosecution refused to introduce criminal proceedings against Mr. Sarrazin and the State party implicitly tolerates a repetition of similar statements. Therefore, in violation of article 6 of the Convention, effective protection has been denied.

State party’s observations on admissibility and merits

4.1 On 23 December 2010, the State party submits its observations on admissibility and merits. The State party recalls the facts and adds that, at the time of the interview, Mr. Sarrazin was working on his book “Germany is self-destructing”, which was published in August 2010. In his book, Mr. Sarrazin gave an opinion on the situation of Germany. He predicted future developments concerning poverty and inequality, the job market, motivation to work, equality in education, the demographic development, immigration and integration. In all these areas, he made direct and controversial statements.

4.2 The State party notes that it does not in any way share or condone Mr. Sarrazin’s views as expressed in his interview with the *Lettre internationale*, however it submits that this does not mean that it was under an obligation to prosecute Mr. Sarrazin for uttering them. The State party submits that the Committee should find the communication inadmissible, as the petitioner lacks standing to submit a communication, pursuant to article 14, paragraph 1, of the Convention in conjunction with article 91 (b) of the Committee’s Rules of Procedure. Being a legal entity, the petitioner is not in a position to claim that it is the victim of a violation of any of the rights set forth in the Convention. The Turkish Union in Berlin-Brandenburg is not directly affected in its own rights by the statements of Mr. Sarrazin. The integrity of the complainant as a legal entity is not a right that can be violated. The petitioner does not mention any concrete influence of the statements in its work. It notes that in this respect, the case differs from the facts in communication No. 30/2003

(*Jewish Community of Oslo et al v. Norway*).¹³ In that case, on a march in commemoration of the Nazi leader Rudolf Hess, a racially discriminating speech was made. As a result of this, there was increased “Nazi” activity, and a marked increase in violence against blacks and political opponents. This understandably instilled fear and had a serious influence on the Jewish community and its work. In the present communication, no effects of the interview can be noted that would make the petitioner a “victim” and the e-mails the petitioner received after the interview do not amount to such serious adverse effect.

4.3 The State party acknowledges the possibility that an association can act on behalf of a member or a group of its members, provided it is authorized to do so.¹⁴ However, the State party submits that even if all or some members of the petitioner might be victims, the petitioner itself is not authorized to submit an individual communication and the bylaws of the petitioner do not provide any basis for such authorization. Furthermore, the petitioner does not provide any justification as to why it is acting on behalf of its members without due authorization. Although the Turkish Union supports equitable co-existence in society without discrimination, it only gives legal support against discrimination and the members do not join the organization to be legally represented.¹⁵

4.4 With regard to the merits, the State party submits that the goal of German policy is to create a climate where racist statements and crimes are proscribed and thus deterred. Racially motivated crimes are prosecuted and punished with determination. On the other hand, freedom of speech is even applicable to information or ideas that offend, shock or disturb the State or any sector of the population. With regard to the petitioner’s claim of a violation of article 4, paragraph (a), of the Convention, the State party notes that the focus of this provision is on legislative action and that the provisions of the German Criminal Code (GCC) are sufficient to provide effective legal sanctions to combat incitement to racial discrimination. The four categories of misconduct mentioned in article 4(a) of the Convention are penalized: (1) dissemination of ideas based upon racial superiority or hatred; (2) incitement to racial hatred; (3) acts of violence against any race or group of persons of another colour or ethnic origin; and (4) incitement to such acts. It explains that in order to find someone guilty of a crime under § 130 GCC, the existence of each required element of the crime must be established beyond reasonable doubt. By finding that, in this case, the prerequisites of § 130 GCC were not fulfilled, the State party did not violate the Convention. It notes that the order of termination of 16 November 2009 by the Office of Public Prosecution held that the statements did not reach the threshold of intensity which would amount to incitement. The interview — although polemical — did not call for particular actions such as violence or arbitrary measures. The Office of Public Prosecution clearly stated that the language used in the interview was inappropriate; however, it did not brand segments of population as “inferior” and the right to exist as equally worthy persons was not contested. Moreover, the statements did not qualify as an insult (§ 185 GCC), considering the context and the freedom of speech. The Prosecutor General shared this point of view in his decision of 22 February 2010. He added that the statements were made in the context of a critical discussion of economic and social problems in Berlin. There were no indications that Mr. Sarrazin intended to foment hostility against the groups described.

¹³ See communication No. 30/2003, *The Jewish community of Oslo et al v. Norway*, Opinion of 15 August 2005.

¹⁴ Communication No. 28/2003, *Documentation and Advisory Centre on Racial Discrimination v. Denmark*, Opinion of 19 August 2003, para. 6.4.

¹⁵ Communication No. 30/2003, *Jewish Community of Oslo et al. v. Norway*, Opinion of 15 August 2005, para. 7.4; communication No. 38/2006, *Central Council of German Sinti and Roma et al. v. Germany*, Opinion of 22 February 2008, para. 7.2.

4.5 The State party further maintains that the decisions by the criminal prosecution authorities were in conformity with article 4, paragraph (a), of the Convention. They were neither manifestly arbitrary nor did they amount to a denial of justice. As a consequence of the interview, there were several complaints from organizations and individuals of different nationalities; however the authorities concluded that considering the context, purpose and content of the statements, an offence of incitement to racial or ethnic hatred could not be established. It further notes that the context of the interview shows that Mr. Sarrazin expressed his personal views rather than giving any official or semi-official view. There was no indication that Mr. Sarrazin intended to incite hatred against certain segments of the population. His statement was neither objectively suitable nor subjectively determined to engender and strengthen an emotionally increased hostile attitude against people of Turkish and Arab origin, nor did it include any indication that violent or arbitrary measures should be used against those groups. Hatred based on intolerance was not incited, promoted or justified. There were a lot of critical reactions to Mr. Sarrazin's statements and many people living in Germany stated in public that they did not share his point of view. In August 2010, Mr. Sarrazin published his book "Germany is self-destructing", which included similar statements. Many important personalities took public positions against the views put forward in the book. Chancellor Angela Merkel called Mr. Sarrazin's statements "stupid" and the Social Democratic Party, to which Mr. Sarrazin belongs, initiated a procedure for exclusion from the Party. This discussion showed that a majority of the German population did not share the opinion of Mr. Sarrazin and it is not true that a main part of the society was encouraged and confirmed in their latent racism because of the interview and the decisions to terminate the criminal investigations. The State party submits that there was no increased risk for the petitioner or its members of becoming victims of future criminal acts. Rather, as a consequence of the interview, the discussion on how to improve the situation of immigrants and how to promote their integration has gained welcome prominence.

4.6 With regard to the alleged violation of article 6 of the Convention, the State party notes that effective criminal prosecution of racist acts is generally ensured by the principle of mandatory prosecution. Although the petitioner was not allowed to lodge a complaint and was not entitled to appeal because it was not a directly aggrieved party, the Prosecutor General in his supervisory role scrutinized the decision of the Office of Public Prosecution.

4.7 With regard to the alleged violation of article 2, paragraph 1 (d), of the Convention, the State party notes that any dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination as well as all acts of violence or incitement to such acts against any race or group of persons of another ethnic origin constitute an offence punishable by law. In the instant case, the prosecution could not establish that Mr. Sarrazin intended to cause any disadvantages for the segments of the population mentioned in the interview. This being so, the importance of freedom of speech precluded the authorities from bringing criminal charges against him.

Petitioner's comments on the State party's observations on admissibility and merits

5.1 On 7 March 2011, the petitioner submitted its comments on the State party's observations and notes that in German, the terms such as "supply a bride" or "produce headscarf girls" have deeply degrading and contemptuous connotations. The petitioner notes, as the State party demonstrated, that the statements were subsequently repeated in Mr. Sarrazin's book published in August 2010, and are an expansion of the statements found in the present complaint. In the debates following the book's publication, contrary to the State party's observation, it emerged that a majority of the German population agreed

with Mr. Sarrazin's racist statements, and as a consequence verbal and physical attacks against immigrants increased.¹⁶ According to studies, Islamophobic attitudes during the Sarrazin debate were assessed to be held by 55 per cent of the population and social scientists who publicly criticized Mr. Sarrazin received death threats and hundreds of hate e-mails. The petitioner disagrees with the State party and notes that Mr. Sarrazin's statements in the interview led to public vilification and debasement of "Turks", "Arabs" and Muslims and it became socially acceptable to have these types of opinions.

5.2 With regard to the admissibility, the petitioner recalls the Committee's jurisprudence¹⁷ and notes that it represents the Turkish community and as a consequence of Mr. Sarrazin's statements, all "Turks" have been vilified through insulting and racist statements. The petitioner therefore notes that all members of the ethnic group "Turks" are victims or potential victims in the sense of article 14 of the Convention. It notes that the increase in racial hatred in society has a direct consequence on the mandate of the petitioner whose work is to promote a climate of mutual respect and of freedom from discrimination. Furthermore, it is not necessary to have been subjected to a physical attack to become a victim under the Convention. Referring to the Committee's jurisprudence,¹⁸ the petitioner submits that, in accordance with its by-laws it supports its members against discrimination in and outside court and that the by-laws of the association can be interpreted to the effect that the petitioner should take any necessary action on behalf of its members to fight against discrimination and support them when they are victims of discrimination. Its two members, who are listed by name, decided not to continue proceedings out of fear of verbal attacks, abuses or threats in public, as even well-known persons and academics were victims of such abuses.

5.3. With regard to the merits, the petitioner recalls that Mr. Sarrazin, as a former finance senator of Berlin and thereafter Board member of the German Central Bank, should be considered as a State party official. Even if he did not make the statements in his official capacity, the State party should be obliged to prohibit such statements. As a consequence of the publication of his book, Mr. Sarrazin voluntarily resigned from the Board of the German Central Bank, however only after receiving an increase in his pension. The petitioner reiterates that it considers articles 2, 4 and 6 to have been violated, as the authorities narrowly interpreted the domestic legislation, contrary to other cases concerning similar statements made by right-wing extremists against Jews. This amounts to unequal treatment.¹⁹ It also notes the statement of the right-wing extremist National Democratic Party (NPD), which stated that after the dismissal of the investigative process against Mr. Sarrazin, it will be difficult to sentence members of the NPD on grounds of incitement to ethnic hatred.²⁰ Lastly, no other domestic remedies were available to the petitioner.

¹⁶ See statement of 400 well-known persons and organizations expressing their concern about the public order and racist statements, *Tageszeitung*, a daily newspaper, 1 October 2010, and German Institute for Human Rights of 2 September 2010.

¹⁷ See communication No. 28/2003, *Documentation and Advisory Centre on Racial Discrimination v. Denmark*, Opinion of 19 August 2003, para. 6.4; communication No. 30/2003, *Jewish Community of Oslo et al. v. Norway*, Opinion of 15 August 2005, para. 7.4; communication No. 38/2006, *Central Council of German Sinti and Roma et al. v. Germany*, Opinion of 22 February 2008, para. 7.2.

¹⁸ See communications Nos. 28/2003, para. 6.4; No. 38/2006, para. 7.2; No. 30/2003, para. 7.4.

¹⁹ See the report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai (A/HRC/14/43/Add.2), para. 67.

²⁰ See Südwestrundfunk, SWR, TV station, 30 August 2010.

Further observations by the State party on admissibility and merits

6.1 On 1 June 2011, the State party submitted further observations on admissibility and merits and compares the present communication with communication No. 38/2006. The State party reiterates that the petitioner does not become a victim pursuant to article 14, paragraph 1, because of its nature or activities.²¹ It notes that there are important differences between the petitioner and the petitioner in communication No. 38/2006, as the Central Council of German Sinti and Roma is the biggest and most important organization representing Sinti and Roma in Germany and there are regional groups all over the country. It exerts permanent influence in all political questions regarding Sinti and Roma and therefore has the authority to speak for the group it represents. In contrast, the petitioner criticized Mr. Sarrazin's statements about "Turks" and "Arabs" without authorization to speak for these groups in general. The petitioner's activity is restricted to the region of Berlin-Brandenburg and it represents only 26 Turkish organizations and many other Turkish and Arab organizations in the communities of Berlin and Brandenburg have no connection with the petitioner. Moreover, pursuant to rule 91 (b), of the Committee's rules of procedure, the submission on behalf of the alleged victim(s) without authorization is only allowed in exceptional cases and the only reason why Ms. C.B. and Mr. S.Y. did not submit their communication to the Committee is because they had failed to exhaust domestic remedies. It submits that their fear of hostilities and attacks appears to be exaggerated, as their criminal complaint did not have such consequences and there was no reason to assume that the continuation of the proceedings would change that.

6.2 On the merits, the State party reiterates that it has noted Mr. Sarrazin's statements with great concern and that it disapproves of his opinion and welcomes the protests lodged against the statements from all sectors of society.²² Nevertheless, the State party reiterates that Mr. Sarrazin's statements are protected by the freedom of speech and expression, which is guaranteed under German Basic Law. As his statements cannot be classified as hate speech, they are not punishable under criminal law. It notes that Mr. Sarrazin talked about his personal views and did not advocate for particular action such as violence or arbitrary measures against certain segments of the population, such as "Turks" and "Arabs", and although he made negative statements about them, he did not express racial hatred.²³ Referring to the jurisprudence of the European Court of Human Rights, the State party submits that the domestic authorities have the advantage of evaluating the facts and assessing Mr. Sarrazin's statements, and therefore their decisions should be scrutinized only insofar as they may have infringed rights and freedoms of the European Convention on Human Rights. During the procedure for exclusion from the Social Democratic Party, to which Mr. Sarrazin belongs, he issued a declaration on 21 April 2011 clarifying that he did not want to discriminate against any groups but wanted to underline the necessity of integration of immigrants.

6.3 The State party further submits that punishment for the expression of a personal opinion is one of the greatest encroachments on the freedom of expression and criminal law and should be used only as a last resort. Mr. Sarrazin did not express any form of hatred against Turks and Arabs, nor did he say that he regards them as inferior. His statement is not hostile and does not advocate for hostility or violence. With regard to the consequences of Mr. Sarrazin's statement, the State party notes that the petitioner's description is

²¹ See communication No. 38/2006, *Central Council of German Sinti and Roma et al. v. Germany*, Opinion of 22 February 2008, para. 7.2.

²² See for example the statement by 400 well-known persons in the *Tageszeitung*, daily newspaper, 1 October 2010.

²³ See article 20, paragraph 2, of the International Covenant on Civil and Political Rights; European Court of Human Rights, *Gündüz v. Turkey*, No. 35071/97, judgement of 4 December 2003, para. 40.

exaggerated and partial. It notes that, even if true, it is not a consequence of Mr. Sarrazin's statement or book. The State party argues that there is no indication that the number of attacks against immigrants increased after Mr. Sarrazin's statement. The State party observes that the various figures the petitioner puts forward are not comparable; there may have been an increase in negative attitudes against Muslims but not all of these are tantamount to racial discrimination and there is no indication that they increased after Mr. Sarrazin's statements. With regard to the attacks against immigrants, death threats and hate mails against social scientists, the State party assures the Committee that every offence is criminally prosecuted and that there is no need to punish Mr. Sarrazin, as he did not cause or advocate for these offences.

Petitioner's further comments

7.1 On 8 January 2012, the petitioner submits that it is not a quantifiable number of victims that determines the victim status of the petitioner but the way the acts were committed. The petitioner is an umbrella organization for persons of Turkish descent and represents a number of individuals and 27 member organizations. With regard to issues of migration and integration, the petitioner is the most visible and attentively heard voice in public and supports an independent project against all forms of discrimination. On these grounds it is entitled to represent the demographic group that has become a victim of a violation of the Convention. With regard to the fear of Ms. C.B and Mr. S.Y., the petitioner notes that it is not hypothetical, as a Social Democratic City Council member, Mr. D., has received a number of death threats since 17 May 2011 further to his demand that statements such as Mr. Sarrazin's be categorized as incitement to ethnic hatred. It further observes that the police notified the petitioner on 21 November 2011 that it is on the list of the National Socialist Underground (NSU), as supposed enemies of Germany. The NSU is responsible for at least eight murders of individuals originally from Turkey. The public therefore considers that the petitioner represents persons from Turkey living in Germany.

7.2 On the merits, the petitioner reiterates its previous submissions and reiterates that in light of the domestic jurisprudence, Mr. Sarrazin's statements would have been treated differently if he had denigrated the population group of "Jews". Mr. Sarrazin's explanatory statement in the exclusion proceedings of the Social Democratic Party was demanded of him in order to prevent his exclusion and in order that criminal liability of racist incitement should not depend on a claim made two years after the initial statement. In domestic criminal proceedings, the motivation to incitement of ethnic hatred is an inner attitude, measured objectively by actions and not by statements of the perpetrator.

8.1 On 20 January 2012, the petitioner submitted an *amicus curiae* brief by the German Institute for Human Rights (GIHR). GIHR notes that the term "racism" is often used in the context of organized right-wing extremism only. This perception has been criticized by the Committee²⁴ and other international bodies.²⁵ It notes that some prominent public figures supported Mr. Sarrazin and that he and the Social Democratic Party received a great number of approving letters and emails. Right-wing extremists espoused Mr. Sarrazin's positions. In the internal sanction procedure by the Social Democratic Party, of which Mr. Sarrazin is a member, a scientific opinion was produced which described his statements in

²⁴ See CERD/C/DEU/CO/18, para. 15.

²⁵ See European Commission against Racism and Intolerance (ECRI) Report on Germany, 26 May 2009, p. 8; Report of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, Githu Muigai, Mission to Germany (A/HRC/14/43/Add. 2), para. 77 (a).

the interview as racist.²⁶ The fact that the party procedure did not lead to his exclusion was met equally with criticism and approval. After the publication of Mr. Sarrazin's book, he was presented as a political realist who breaks taboos on integration and immigration policy. In a number of magazines, newspapers and television shows, the alleged intellectual, social and character deficits of the Muslim population were discussed in a generalized fashion. The labels "Turks" or "Arabs" are applied as synonyms for Muslims. Occasionally, even public office-holders took up Mr. Sarrazin's positions and thereby contributed to the stigmatization and stereotyping of Muslims in Germany. The debates considerably affected the climate in Germany, this included that persons who publicly criticized Mr. Sarrazin received hate mails and death threats and were ridiculed on internet blogs. GIHR also refers to an open letter to the President of prominent German Muslims, in which they expressed their concern at the current atmosphere and note that in their daily lives, they are confronted with hostility.²⁷

8.2 GIHR observes that freedom of expression is a pivotal human right and that high thresholds must be put on restrictions of freedom of expression. It observes that one of the main functions of freedom of expression stems from the need to protect the criticism of power. However, this does not require that it be interpreted in a way which would protect racist statements against minorities. It notes that article 4, paragraph (a), of the Convention stipulates that the dissemination of racist ideas be made a punishable offence, which is implemented in article 130 (1) (2) of the German Criminal Code (GCC). GIHR notes the domestic case law, according to which the Federal Constitutional Court stressed repeatedly that when determining the application of article 130 of the GCC, the right to freedom of expression must be weighed on a case-by-case basis against the legally protected interest that is affected by the expression of the respective opinion of the other.²⁸ However, the Court has also established that in the case of an assault on human dignity, freedom of expression must yield to human dignity.²⁹ The notion of human dignity prohibits making a person the mere object of the State or subjecting the person to treatment which fundamentally calls into question his/her quality as a human being. Assaults on human dignity include, for instance, degradation, stigmatization or social exclusion³⁰ and other forms of conduct that deny the affected person's right to respect as a human being.³¹

8.3 GIHR notes that Mr. Sarrazin's statements in the relevant parts of the interview meet all the criteria of racist ideas and an assault on human dignity. Racist ideas are characterized by their calling into question the individuality of human beings and thus also their human dignity. It notes that on the basis of their content, linguistic style and terminology, Mr. Sarrazin's statements display parallels to the racial biology literature of the 19th and early 20th century. Mr. Sarrazin separates the population into "us" and "them", in which he includes "Turks" and "Arabs", to whom he attributes negative characteristics and conduct. He misuses the term "Turkish" and applies it as a synonym for an established expression with a negative meaning ("with respect to the core group of Yugoslavs, you can see "Turkish" problems"). Mr. Sarrazin's statements ridicule and degrade people ("no productive function except for the vegetable trade") and simultaneously, in a belligerent

²⁶ Gideon Botsch, Gutachten im Auftrag des SPD-Kreisverbandes Spandau und der SPD-Abteilung Alt-Pankow zur Frage "Sind die Äusserungen von Dr. Thilo Sarrazin im Interview in der Zeitschrift *Lettre International* (deutsche Ausgabe, Heft 86) als rassistisch zu bewerten?", 22 December 2009.

²⁷ See Open letter of German Muslims to the President Christian Wulff, *Offener Brief deutscher Musliminnen und Muslime an den Bundespräsident Christian Wulff*, 13 September 2009.

²⁸ Federal Constitutional Court, decision of 12 November 2002, 1 BvR 232/97, paras. 17 and 21.

²⁹ Federal Constitutional Court, decision of 4 February 2010, 1 BvR 369/04, 1 BvR 370/04, 1 BvR 371/04, para. 26.

³⁰ *Ibid.*, para. 28.

³¹ *Ibid.*, para. 28.

tone, they fan fear (“the Turks are conquering Germany in the same way as the Kosovars conquered the Kosovo: by way of higher birth rates”). He refers to them as if they were mass-produced goods (“permanently brides are supplied, “Arabs” and “Turks” constantly produce little headscarf girls”). GIHR notes that this rhetoric denies the affected persons, including children, the right to respect as human beings.

8.4 GIHR notes that the identity of the person who made the statements and the type of magazine in which it is published are irrelevant for considerations under article 130 of the GCC. Furthermore, according to the Committee’s jurisprudence, the context of a political debate is irrelevant to the racist nature of specific statements.³² GIHR observes that the Public Prosecutor’s Office’s considerations situating Mr. Sarrazin’s statements in the context of the development of Berlin 20 years after the fall of the Berlin wall and basing them on his political work in Berlin, have the consequence that public figures enjoy special and arbitrary protection when expressing racist views. Moreover, the judiciary legitimizes such statements and not only promotes the establishment and acceptance of racism in society but also contributes to the development of racism. The facts complained of therefore reveal a violation of the Convention.

9. On 10 February 2012, the petitioner refers to the jurisprudence of the German Constitutional Court cited by the position paper of GIHR (see para. 8.3), which states that if statements depict foreigners as inferior, for example, through the generalized attribution of socially unacceptable behaviour or characteristics, freedom of expression cannot prevail over human dignity.³³ Mr. Sarrazin’s statements contain exactly this kind of generalized attribution in relation to supposedly unacceptable behaviour and characteristics, inter alia referring to “Turks” and “Arabs” who have characteristics attributed to them solely on the basis of their origin.

Further observations by the State party

10.1 On 9 February 2012, the State party, in response to the *amicus curiae* brief submitted by the German Institute of Human Rights (GIHR), notes that the point at issue is not whether the State party’s judiciary shares or supports Mr. Sarrazin’s statements. The State party reiterates that it rejects these opinions and regards them as wrong and deplorable and dissociates itself, including its judiciary, from them. The GIHR brief conveys a fundamental misconception of the relationship between freedom of expression and the Convention. According to article 4, paragraph (a), of the Convention, the need to respect freedom of expression cannot be disregarded when States parties combat racism. It reiterates that German law conforms to article 4, paragraph (a), of the Convention and section 130 of the GCC provides for severe punishments in all cases of incitement to hatred, if the relevant act is capable of disturbing the public peace. The question of whether the relevant act is capable of disturbing the public peace has to be carefully assessed, in particular when freedom of expression is to be balanced against the necessity of combating racism.

10.2 A statement which the petitioner perceives as racist does not automatically constitute an assault on human dignity within the meaning of section 130 of the GCC. GIHR appears to imply that the criterion of “capable of disturbing the public peace” is not relevant in this case, although it is a requirement in the GCC. It was legally necessary for

³² See communication No. 34/2004, *Mohammed Hassan Gelle v. Denmark*, Opinion of 6 March 2006, para. 7.5; communication No. 43/2008, *Saada Mohamad Adan v. Denmark*, Opinion of 13 August 2010, para. 7.6.

³³ See Federal Constitutional Court, Decision of 4 February 2010, 1 BvR 369/04, 1 BvR 370/04, 1 BvR 371/04.

the Prosecutor General to consider the position of the author of the incriminated statements, the weight of his opinion, his known political opinions and the role and distribution of the journal which published the interview when deciding whether the statements were likely to disturb the public peace. The debate generated by Mr. Sarrazin's statements does not constitute a disturbance of the public peace. The State party firmly rejects the assertion by GIHR that the judiciary or any other State authority promotes the establishment and acceptance of racism in society.

Issues and proceedings before the Committee

Consideration of admissibility

11.1 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.

11.2 The Committee notes that the petitioner is a legal entity. It is an umbrella association with individual members and 27 legal entities as members. The Committee takes note of the State party's argument that the communication should be declared inadmissible, on grounds of "lack of victim standing" in accordance with article 14, paragraph 1, as the petitioner is not directly affected by the statements of Mr. Sarrazin. It also notes the State party's claim that the present communication cannot be compared to communication No. 38/2008,³⁴ because in the present case, the petitioner does not have the authority to speak for the group it represents and has not provided any arguments as to why it is acting on behalf of its members without due authorization. It also takes note of the petitioner's argument that it represents the interests of citizens of Turkish heritage in Berlin and that its work of promoting equality and a climate of non-discrimination was directly affected by the statements of Mr. Sarrazin.

11.3 The Committee reiterates that article 14, paragraph 1, directly refers to the Committee's competence to receive communications from "groups of individuals". It considers that, on the one hand, the nature of the petitioner's activities and its aims, which are, according to paragraph 3 of its by-laws, the promotion of peaceful coexistence and solidarity in Berlin and Brandenburg and the furtherance of equality and non-discrimination implemented, inter alia, by counselling and support both in and out of court against discrimination, and, on the other hand, the group of individuals it represents, namely persons of Turkish heritage in Berlin and Brandenburg, satisfies the victim requirement within the meaning of article 14, paragraph 1, of the Convention.³⁵ It further considers that for purposes of admissibility, the petitioner has sufficiently substantiated that it was directly affected by Mr. Sarrazin's statements, as it had received several e-mails in which individuals expressed their agreement with Mr. Sarrazin, stating that citizens of Turkish heritage and Muslim do not integrate and that the petitioner should accept the supremacy of freedom of expression. It also received a notification from the police that it was on the list of the National Socialist Underground as an enemy of Germany.

11.4 The Committee³⁶ therefore considers that the fact that the petitioner is a legal entity is not an obstacle to admissibility. Accordingly, the Committee declares the communication

³⁴ See communication No. 38/2006, *Central Council of German Sinti and Roma et al. v. Germany*, Opinion of 22 February 2008.

³⁵ *Ibid.*, para. 7.2; communication No. 30/2003, *Jewish Community of Oslo et al. v. Norway*, Opinion of 15 August 2005, para. 7.4.

³⁶ Mr. Carlos Manuel Vázquez noted that he did not agree that the communication be declared admissible.

admissible and proceeds with its examination on the merits with regard to the claims under articles 2, paragraph 1 (d), 4, paragraph (a), and 6 of the Convention.

Consideration of the merits

12.1 In accordance with article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the present communication in light of all the information submitted by the petitioner and the State party.

12.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported statements of racial discrimination, having regard to the extent to which it investigated the petitioner's complaint under paragraphs 130 and 185 of the Criminal Code. Paragraph 130 of the Criminal Code criminalizes any manner of expression that is capable of disturbing the public peace by incitement to hatred against segments of the population or calling for violent or arbitrary measures against them; or by assaulting the human dignity of others by insulting, maliciously maligning, or defaming segments of the population. It also criminalizes incitement of hatred against segments of the population or a national, racial or religious group, or one characterized by its folk customs, calls for violent or arbitrary measures against them, or assaults the human dignity of others by insulting, maliciously maligning or defaming segments of the population or a previously indicated group. Paragraph 185 of the Criminal Code criminalizes insult.

12.3 The Committee recalls its earlier jurisprudence³⁷ according to which it does not suffice, for the purposes of article 4 of the Convention, merely to declare acts of racial discrimination punishable on paper. Rather, criminal laws and other legal provisions prohibiting racial discrimination must also be effectively implemented by the competent national tribunals and other State institutions. This obligation is implicit in article 4 of the Convention, under which States parties undertake to adopt immediate and positive measures to eradicate all incitement to, or acts of, racial discrimination. It is also reflected in other provisions of the Convention, such as article 2, paragraph 1 (d), which requires States to prohibit and bring to an end, by all appropriate means, racial discrimination, and article 6, which guarantees to everyone effective protection and remedies against any acts of racial discrimination.

12.4 The Committee notes the petitioner's claim that Mr. Sarrazin's statements in the magazine *Lettre internationale* No. 86 (2009) discriminated against it and its members, who are all of Turkish heritage, as the Turkish population was presented as a segment of the population who live at the expense of the State and who should not have the right to live on the territory of the State party and that the State party failed to provide protection against such discrimination. It also notes the petitioner's argument that Mr. Sarrazin's statements had led to public vilification and debasement of Turks and Muslims in general. It further notes the petitioner's claims that the absence of criminal prosecution of Mr. Sarrazin amounts to a violation by the State party of articles 2, paragraph 1 (d), 4, paragraph (a), and 6 of the Convention, as the domestic legislation was narrowly interpreted. The Committee notes that the State party disapproves of Mr. Sarrazin's opinion, but argues that the provisions of its Criminal Code sufficiently translate its obligations to provide effective legal sanctions to combat incitement to racial discrimination and that the State party's authorities correctly assessed that Mr. Sarrazin's statements are protected by the right to freedom of expression and do not amount to incitement, nor do they refer to segments of

³⁷ See communication No. 34/2004, *Gelle v. Denmark*, Opinion adopted on 6 March 2006, paras. 7.2–7.3.

the population as inferior. The Committee further notes the State party's argument that the decisions by its criminal prosecution authorities were neither manifestly arbitrary nor did they amount to a denial of justice and that there was no indication of an increased risk for the petitioner or its members of becoming victims of future criminal acts.

12.5 The Committee recalls that it is not its role to review the interpretation of facts and national law made by domestic authorities, unless the decisions were manifestly arbitrary or otherwise amounted to a denial of justice.³⁸ Nevertheless, the Committee has to examine whether the statements made by Mr. Sarrazin fall within any of the categories of impugned speech set out in article 4, of the Convention, and if so, whether those statements are protected by the "due regard" provision as it relates to freedom of speech, as well as to whether the decision not to prosecute Mr. Sarrazin was manifestly arbitrary or amounted to a denial of justice.

12.6 The Committee has taken note of the content of Mr. Sarrazin's statements regarding the Turkish population of Berlin and in particular notes that he states that a large proportion of the Turkish population does not have any productive function except for the fruit and vegetable trade, that they are neither able nor willing to integrate into German society and encourage a collective mentality that is aggressive and ancestral. Mr. Sarrazin uses attributes such as productivity, intelligence and integration to characterize the Turkish population and other immigrant groups. While he uses these attributes in a positive manner for some immigrant groups, for example the East European Jews, he uses them in a negative sense for the Turkish population. He states that the Turks are conquering Germany just as the Kosovars conquered Kosovo: through a higher birth rate, and that he would not mind if they were East European Jews with an IQ about 15 per cent higher than that of the Germans. Mr. Sarrazin states that he does not have to accept anybody who lives off the State and rejects that very State, who makes no effort to reasonably educate their children and constantly produces new little headscarf girls, and claims that this is true for 70 per cent of the Turkish population in Berlin. Mr. Sarrazin also creates an adjective to express his ideas concerning the inferiority of the Turkish population and states that in other segments of the population, including Germans "one can see a 'Turkish' problem". He also states that he would generally prohibit influx of migrants, except for highly qualified individuals and stop providing social welfare for immigrants. The Committee considers that the above statements contain ideas of racial superiority, denying respect as human beings and depicting generalized negative characteristics of the Turkish population, as well as incitement to racial discrimination in order to deny them access to social welfare and speaking about a general prohibition of immigration influx except for highly qualified individuals, within the meaning of article 4 of the Convention.

12.7 Having described Mr. Sarrazin's statements as impugned speech under article 4 of the Convention, the Committee needs to examine whether the State party properly assessed these statements as being protected by the "due regard" provision relating to freedom of speech. The Committee recalls its jurisprudence and 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.³⁹ It also observes that article 4 of the Convention codifies the State party's responsibility to protect the population against incitement to racial hatred but also acts of racial discrimination by dissemination of ideas based upon racial superiority or hatred.⁴⁰

³⁸ See communication No. 40/2007, *Er v. Denmark*, Opinion adopted on 8 August 2007, para. 7.2.

³⁹ See general recommendation 15 (1993) on organized violence based on ethnic origin (article 4), para. 4; communication No. 43/2008, *Adan v. Denmark*, Opinion adopted on 13 August 2010, para. 7.6.

⁴⁰ See the Committee's general recommendation No. 15, para. 3.

12.8 While acknowledging the importance of freedom of expression, the Committee considers that Mr. Sarrazin's statements amounted to dissemination of ideas based upon racial superiority or hatred and contained elements of incitement to racial discrimination in accordance with article 4, paragraph (a), of the Convention. By concentrating on the fact that Mr. Sarrazin's statements did not amount to incitement of racial hatred and were not capable of disturbing the public peace, the State party failed in its duty to carry out an effective investigation into whether or not Mr. Sarrazin's statements amounted to dissemination of ideas based upon racial superiority or hatred. The Committee further considers that the criterion of disturbance of the public peace, which is taken into consideration in the evaluation if statements reach the threshold of dissemination of ideas based upon racial superiority or hatred, does not adequately translate into domestic legislation the State party's obligation under article 2, paragraph 1 (d), in particular as neither article 2, paragraph 1 (d), nor article 4 contain such a criterion.

12.9 The Committee therefore concludes that the absence of an effective investigation into the statements by Mr. Sarrazin by the State party amounted to a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention.

13. In the circumstances, and with reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system⁴¹ and its general recommendation No. 15 (1993) on organized violence based on ethnic origin,⁴² the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted disclose a violation of articles 2, paragraph 1 (d), 4 and 6 of the Convention by the State party.

14. The Committee recommends that the State party review its policy and procedures concerning prosecution in cases of alleged racial discrimination consisting of dissemination of ideas of superiority over other ethnic groups based on article 4, paragraph (a), of the Convention and of incitement to discrimination on such grounds, in the light of its obligations under article 4 of the Convention.⁴³ The State party is also requested to give wide publicity to the Committee's Opinion, including among prosecutors and judicial bodies.

15. The Committee wishes to receive, within 90 days, information from the State party 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 version. Subsequently to be issued also in Arabic and Chinese as part of the present report to the General Assembly.]

⁴¹ *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, chap. IX.

⁴² See the Committee's general recommendation No. 15.

⁴³ See communication No. 4/1991, *L.K. v. the Netherlands*, Opinion adopted on 16 March 1993, para. 6.8.

Appendix

Individual opinion of Committee member Mr. Carlos Manuel Vázquez (dissenting)

1. This Communication concerns the relation between a State party's obligation under the Convention to combat hate speech and its obligation to protect the freedom of opinion and expression. On the one hand, "freedom of opinion and freedom of expression are indispensable conditions for the full development of the person" and "constitute the foundation stone for every free and democratic society."¹ On the other hand, article 4 of the Convention provides that States parties are to "declare an offence punishable by law all dissemination of ideas based on racial superiority or hatred [and] incitement to racial discrimination." Under this provision, "States parties have not only to enact appropriate legislation but also to ensure that it is effectively enforced."² The question before the Committee is whether the State party violated article 4 by failing to prosecute Mr. Sarrazin for certain statements he made in an interview published in the cultural journal *Lettre Internationale*.

2. The interview with Mr. Sarrazin contains statements that are bigoted and offensive. The Convention, however, does not require the criminal prosecution of all bigoted and offensive statements. In *Zentralrat Deutscher Sinti und Roma v. Germany*, for example, the Committee found no violation of the Convention even though the State party had declined to prosecute statements that the Committee found to be "discriminatory, insulting and defamatory." The German Government has disavowed and criticized Mr. Sarrazin's statements. Chancellor Merkel has denounced them as "simple blanket judgments" and "stupid." The Berlin Office of Public Prosecution investigated his statements but decided to terminate the investigation upon concluding that the statements did not amount to incitement to racial hatred or qualify as an insult under German criminal law. The General Procurator reviewed the decision of the Berlin Office of Public Prosecution and determined that the investigation had been correctly terminated, noting, inter alia, that Mr. Sarrazin did not characterize members of the Turkish minority as "inferior beings" or "bereave [sic] them of their right to life as an equally worthy person." Both decisions were extensively explained in writing. The Committee, on the other hand, has concluded that the State party violated its obligation under the Convention when it decided not to pursue further the criminal prosecution of Mr. Sarrazin.

Standard of review

3. As the Committee recognizes, to find a violation the Committee must conclude that the State party acted arbitrarily or denied justice. In the context of speech prohibitions, this deferential standard is particularly appropriate. The pertinent officials of the State party have a far greater mastery of the language involved than do the Members of this Committee, and they are in a far better position to gauge the likely impact of the statements in the social context prevailing in the State party. The State party's decision not to prosecute was neither arbitrary nor a denial of justice.³

¹ Human Rights Committee, general comment No. 34 (2011).

² General recommendation No. 15.

³ The Committee has found the communication to be admissible insofar as it alleges that the statements in question denigrated members of the Turkish population of Berlin and Brandenburg. Thus, only

Incitement to racial discrimination

4. In concluding that Mr. Sarrazin's statements "contained elements of incitement to racial discrimination," the Committee is apparently referring to the statements suggesting that immigration be limited to "highly qualified people" and that immigrants be denied social welfare. These statements do not, however, advocate discrimination on the basis of "race, colour, descent, or national or ethnic origin." Moreover, the statements do not constitute "incitement" to discrimination. To constitute "incitement," there must at least be a reasonable possibility that the statement could give rise to the prohibited discrimination.⁴ In the statements that the Committee finds to be "incitement to discrimination," Mr. Sarrazin puts forward some ideas for possible legislation. The possibility that an individual's advocacy of legislation will contribute more than trivially to the enactment of legislation is minuscule. Indeed, the concept of incitement to legislation is, to my knowledge, a novel one. Mr. Sarrazin's statements do not constitute incitement to discrimination.

Dissemination of ideas based on racial superiority

5. The Committee has also concluded that the interview with Mr. Sarrazin "contained ideas of racial superiority." The Convention, which refers in article 4 to the prohibition of the "dissemination of ideas based on racial superiority or hatred," is unusual among human rights instruments in referring to the penalization of speech without an express link to the possibility that such speech will incite hatred or violence or discrimination. Because of the absence of such a link, the dissemination clause poses particular risks of conflict with the right to freedom of thought and expression affirmed in the Universal Declaration of Human Rights. This potential conflict did not go unnoticed in the treaty negotiations.⁵ Several States objected to the clause precisely because of its possible conflict with free speech rights. The concerns of these States were addressed through the inclusion of the "due regard" clause in article 4. This clause specifies that the State parties' obligations under article 4 are to be exercised "with due regard to the principles embodied in the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of this Convention." In view of this negotiating history, any construction of the term "racial superiority" should be heedful of the need to safeguard the free exchange of opinions and ideas on matters of public concern.

6. It is open to question whether the term "racial superiority" in article 4(a) encompasses statements of superiority on the basis of nationality or ethnicity. Expressions of national or ethnic pride abound in popular discourse, and such expressions are often hard to distinguish from boasts of national or ethnic superiority. Criminalizing such statements risks chilling speech far removed from the central concerns of the Convention. To avoid such a serious incursion on free expression, the term "racial superiority" is best understood to cover statements of superiority based on innate or immutable characteristics.

7. In any event, Mr. Sarrazin's statements did not express the view that Turks as a nationality or ethnic group were inferior to other nationalities or ethnic groups. Some of the

statements referring to persons of Turkish nationality or ethnicity are relevant to the Communication. Other statements, such as those referring generally to the "lower classes" or comparing the IQ of Eastern European Jews to that of Germans, cannot be the basis for finding a violation, however offensive they might be.

⁴ See European Court of Human Rights, *Erbakan v. Turkey*, No. 59405/00; Rabat Plan of Action, para. 22.

⁵ See Natan Lerner, *The Convention on the Elimination of Racial Discrimination* at 43-53; K J Partsch, "Racial Speech and Human Rights: Article 4 of the Convention on the Elimination of All Forms of Racial Discrimination," at 23-26, in *Striking a Balance* (1992).

statements, considered in isolation, might be understood to assert that some aspects of Turkish culture inhibit Turks in Berlin from succeeding economically. But it is often claimed, including by commentators of unimpeachable integrity and sensitivity to the problem of racial discrimination, that the culture that prevails among particular national or ethnic groups inhibits their economic success. For example, Amartya Sen, has written that “cultural influences can make a major difference to work ethics, responsible conduct, spirited motivation, dynamic management, entrepreneurial initiatives, willingness to take risks, and a variety of other aspects of human behavior which can be critical to economic success.”⁶ The dissemination clause should not be construed to prohibit the expression of such views. “The right to freedom of expression implies that it should be possible to scrutinize, openly debate and criticize belief systems, opinions and institutions, including religious ones.”⁷ The claim that the culture or belief system that prevails among a national or ethnic group inhibits their chances of achieving a particular goal is not outside the scope of reasoned discourse, and it is not prohibited by the Convention.

8. Moreover, other portions of the interview indicate that Mr. Sarrazin was not asserting that Turkish culture leads inevitably to lack of economic success. Mr. Sarrazin’s main point appears to have been that the provision of social welfare leads to habits and ways of life that inhibit economic success and integration. Thus, he notes that the same immigrant groups that in Germany and Sweden are economically unsuccessful are successful in other countries, such as the United States. The reason for this disparity, he (mistakenly) asserts, is the fact that immigrants in Germany and Sweden receive social welfare, which gives them a disincentive to integrate, whereas the United States does not provide immigrants with social welfare and, as a result, immigrants from these groups do integrate and succeed economically. Elsewhere in the interview, Mr. Sarrazin asserts that, “if the Turks would like to integrate, they would have parallel success with other groups, and it would not be an issue any more.” Thus, Mr. Sarrazin does not appear to have been asserting the inferiority of Turkish culture or Turks as a nationality or ethnic group. Instead, he appears to have been making an argument about the impact of certain economic policies on the incentives of Turkish immigrants to integrate and thus to succeed economically. In any event, the State party was not acting arbitrarily in construing his statements this way.

9. It is true that, in expressing these ideas, Mr. Sarrazin at times employed denigrating and offensive language. But such language does not change the fact that it was not arbitrary for the State party to conclude that the statements were not ideas of racial superiority. The right to freedom of expression extends even to statements framed in sharp and caustic terms.

State party discretion not to prosecute

10. Even if I agreed that Mr. Sarrazin’s statements incited to racial discrimination or contained ideas of racial superiority, I would not agree that the State party violated the Convention by failing to prosecute him. The Convention does not require the criminal prosecution of every expression of ideas of racial superiority or every statement inciting to racial discrimination. Rather, the Convention leaves States parties with discretion to determine when criminal prosecution would best serve the goals of the Convention while safeguarding the principles of the Universal Declaration of Human Rights and the rights expressly set forth in article 5 of the Convention. In past decisions, the Committee has recognized the “principle of expediency,” which it has defined as “the freedom to prosecute

⁶ Quoted in Lan Cao, *Culture Change*, 47:2 Va. J. Int’l L., 350, 389(2007). For additional examples, see *id.* at 378-91.

⁷ See Rabat Plan of Action, para. 11.

or not prosecute.”⁸ The Committee has explained that this principle “is governed by considerations of public policy” and that “the Convention cannot be interpreted as challenging the *raison d’être* of [this] principle.”⁹ In the light of these decisions, commentators have correctly noted that “the obligation to criminalize should not be understood as an absolute duty to punish.” Rather, “the Committee ... acknowledge[s] a margin of appreciation for prosecuting authorities.”¹⁰

11. In its general recommendation No. 15, the Committee has asserted that “the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression.” This is far from saying, however, that the right to freedom of expression is irrelevant to the construction or implementation of article 4. As explained above, in the light of the “due regard” clause, concerns about freedom of opinion and expression are directly relevant to the interpretation of the term “ideas based on racial superiority.” Furthermore, even if the “dissemination of ideas based on racial superiority or hatred” is not protected by the right to freedom of opinion and expression, it does not follow that the *criminal prosecution* of such dissemination poses no risks to the freedom of opinion and expression. Criminal punishment is the most severe form of punishment the State can impose. A threat of criminal prosecution has the distinct tendency to cause persons to forgo conduct that the law does not prohibit, particularly if the statutory language is unclear. In the context of laws prohibiting speech, this phenomenon is known as the “chilling” effect of such laws. Thus, even if the types of speech described in article 4 are not protected by freedom of expression, an aggressive approach to enforcement can deter people from exercising their right to engage in speech that *is* protected. For this reason, application of the principle of expediency to the “dissemination of ideas based on racial superiority or hatred” does not contradict general recommendation No. 15.

12. A State party might permissibly decline to prosecute on the ground that criminal prosecution in a particular case would impede rather than advance the goals of the Convention. For example, criminally prosecuting statements that are not clearly prohibited could have the perverse effect of making a “freedom of expression” martyr of the speaker, who could claim governmental heavy-handedness and imposition of “political correctness.” If the initial statement was not widely disseminated, criminal prosecution could make matters worse by giving undue prominence to a statement that might otherwise have been quickly forgotten. Criminal prosecution might, indeed, magnify the psychic pain experienced by the targeted groups by giving wider publicity to the denigrating statements. Depending on the circumstances, a State party might reasonably conclude that criminal prosecution would unduly dignify a statement that would otherwise be perceived as too ludicrous to be taken seriously. In sum, States parties act properly in determining that a criminal prosecution in a particular instance would cause greater harm to the goals of the Convention than would some other form of response to the offending statement.

13. The Convention does not preclude States parties from adopting a policy of prosecuting only the most serious cases. Indeed, such a policy would appear to be required by the principle that any restriction on the right of free expression must conform to the strict tests of necessity and proportionality.¹¹ The necessity inquiry asks whether the aim of

⁸ *L.K. v. The Netherlands*, para. 3.3; *Yilmaz-Dogan v. the Netherlands*, communication No. 1/1984, Opinion adopted on 10 August 1988, para. 8.2.

⁹ *Id.*, para. 9.4.

¹⁰ Anja Siebert-Fohr, *Prosecuting Serious Human Rights Violations* (2009) p. 173.

¹¹ European Court of Human Rights, *Soulas and Others v. France*, No. 15948/03, paras. 32-37 (2008); Human Rights Committee, general comment No. 34, para. 22. See also Rabat Plan of Action (criminal prosecution should be a last resort).

the restriction “could be achieved in other ways that do not restrict freedom of expression,” and the proportionality inquiry asks whether the State party employed “the least intrusive instrument amongst those which might achieve” its legitimate aims.¹² Criminal prosecution of racist statements will often not be the least intrusive instrument for achieving the legitimate aim of eliminating racial discrimination; indeed, criminal prosecution will sometimes be counterproductive. The Committee implicitly recognized this point in *Zentralrat Deutscher Sinti und Roma et al. v. Germany* when it declined to find a violation, even though the State party did not criminally prosecute statements that the Committee found to be “discriminatory, insulting and defamatory,” noting that the offending statements had already carried consequences for its author. Unfortunately, the Committee has overlooked the point in this case.

14. In determining whether criminal prosecution is necessary and proportional, States parties properly take a number of factors into account. As relevant to this communication, these factors include the form in which the statement was disseminated. A speech before a crowd or on television might properly be deemed of greater concern than an interview published in a cultural journal. States parties should also consider the number of persons reached by the publication. A statement in a newspaper of wide circulation may be deemed of greater concern than a statement in a journal of comparatively low circulation. States parties may also consider whether the offensive statements were addressed directly to the offended group or otherwise disseminated in a way that made it difficult for persons from the offended group to avoid them. Thus, racist statements displayed on a billboard or on the subway, where the targeted groups cannot avoid them, may be deemed of greater concern than offensive statements buried in the middle of a dense, lengthy interview mainly focusing on economic matters. Finally, and most importantly, States parties should take account of the context and the genre of the discussion in which the statements were made – for example, whether the statements were part of a vitriolic ad hominem attack or instead were presented as a contribution, however intemperate, to reasoned debate on a matter of public concern, as the State party found Mr. Sarrazin’s statements to be.¹³

15. The Committee faults the State party for “concentrating on the fact that Mr. Sarrazin’s statements were not capable of disturbing public peace,” noting that article 4 does not contain such a criterion. However, “it is not the Committee’s task to decide in abstract whether or not national legislation is compatible with the Convention.” The Committee’s task, rather, is “to consider whether there has been a violation in the particular case.”¹⁴ Moreover, the Public Prosecutor only mentioned this criterion as one among many reasons not to initiate a criminal prosecution, and the General Procurator did not mention the criterion at all. Furthermore, while GCC 130(1) applies only to statements “capable of disturbing the public peace,” this limitation does not appear in GCC 130(2), which criminalizes, inter alia, the “dissemination” in writing or through the media of materials “which assault the human dignity of other by insulting, maliciously maligning or defaming [a national, racial or religious group].” Nor is the limitation found in GCC 185, which criminalizes insult. Finally, the Convention need not be read to imply that considerations of public order are irrelevant to the application of the dissemination clause. To the contrary, in

¹² Id., paras. 33, 34.

¹³ Although the State party follows a policy of mandatory prosecution of felonies, the explanations provided by the Berlin Public Prosecutor and the General Procurator for declining to initiate a prosecution against Mr. Sarrazin show that the State party takes account of case-specific considerations such as those discussed above in determining whether its hate speech laws properly apply to particular cases in the light of the State party’s constitutional provisions protecting freedom of expression.

¹⁴ See, e.g., *Zentralrat Deutscher Sinti und Roma et al. v. Germany*, communication No. 38/2006, Opinion adopted on 22 February 2008 7.7; *Er v. Denmark*, communication No. 40/2007, para. 7.2.

balancing the obligation to combat hate speech with the safeguarding of freedom of expression, as they must under the “due regard” clause, States parties, in my view, may permissibly determine that prosecution is warranted only if the speech threatens to disturb the public peace.

16. For the foregoing reasons, I am unable to agree that the State party violated the Convention.

[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.]

Annex IV

Follow-up information provided in relation to cases in which the Committee adopted recommendations

This annex compiles information received on follow-up to individual communications since the last annual report,^a as well as any decisions made by the Committee on the nature of those responses.^b

State party	Denmark
Case	<i>Saada Mohamed Adan, 43/2008</i>
Opinion adopted on	13 August 2010
Issues and violations found	Lack of effective inquiry to determine whether the petitioner has suffered discrimination on the base of race: violation of article 2, paragraph 1 (d), and article 4 of the Convention. The failure to effectively investigate the petitioner's complaint under article 266 (b) of the Criminal Code constitutes a separate violation under article 6 of the Convention.
Remedy recommended	The Committee recommended the State party to grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The Committee recalled 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

^a *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 18 (A/66/18).*

^b It should be mentioned that in its last concluding observations to the State party in August 2010 (CERD/C/DNK/CO/18-19), the Committee noted the following:

"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 266b of the Criminal Code, it is concerned with the broad powers of the Director of Public Prosecutions to stop investigations, withdrawal of charges or discontinue cases. The Committee is also concerned with the large number of cases that have been discontinued by the Director of Public Prosecution which would discourage reporting by victims. The Committee is also concerned with the current proposals by various politicians to repeal section 266b but welcomes the assurances by the State party that the provision will not be repealed. The Committee is also concerned with the large number of complaints it receives under its Communications procedure that is provided for under article 14 of the Convention, that mainly focus on hate crimes (art. 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 266b to ensure that discontinuance of cases does not discourage victims from lodging complaints or promote impunity by perpetrators of hate crimes. In line with general recommendation 31 (2005), the Committee urges the State party to resist calls to repeal section 266b which will compromise the efforts and gains that the State party has achieved in combating racial discrimination and hate crimes."

national or ethnic origin, members of 'non-citizen' population groups, especially by politicians ..." 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 recommended 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 was also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.

Date of examination of report/s since adoption	The State party's eighteenth and nineteenth periodic reports were examined in August 2010; the twentieth and twenty-first reports are due in 2013.
Due date for State party response	25 February 2011
Date of reply	13 December 2010, 27 June 2011
State party's observations	<p>The State party informs the Committee that its Government has found it reasonable to pay compensation for any equitable costs a petitioner may have had to pay for legal assistance during the complaints procedure. Act No. 940 on Legal Aid for the Submission and Conducting of Complaints before International Treaty Bodies under Human Rights Conventions (December 1999) guarantees legal aid to cover equitable costs in all cases where the international complaints body requests the State party to provide observations on a complaint. The petitioner in the present case has received Dkr 45,000, i.e. approximately 8,300 US dollars.</p> <p>The State party explains that its Government is ready to pay compensation for any pecuniary damage the petitioner may have suffered, in accordance with the general principle on such compensation under Danish law. In this case, however, the petitioner did not suffer any such damage. As to compensation for non-pecuniary damage, including for moral damages, the State party explains that, after careful consideration, its Government has found that the alleged discrimination acts against the petitioner are not of such nature to require payment of compensation. In reaching this conclusion, the Government has attached great importance to the fact that, unlike in previous cases (<i>L.K. v. the Netherlands</i> or <i>Habassi v. Denmark</i>), in the present case the statements made by Mr. Espersen in a radio broadcast did not target the petitioner personally. The State party contends that in the present case the findings of the Committee constitute a sufficient and just satisfaction for the petitioner.</p> <p>The State party further refers to the follow-up procedure in connection to the case of <i>Mohamed Hassan Gelle v. Denmark</i> (No. 34/2004) and recalls that there also it decided not to pay</p>

compensation for non-pecuniary damage, inter alia because the discrimination actions were not aimed at the petitioner personally. In the case of Mr. Gelle, the Committee has found the State party's reply to be satisfactory and concluded the scrutiny under the follow-up procedure.

On the effective application of existing legislation, the State party points out that, according to section 99 of the Administration of Justice Act, the Director of Public Prosecutions is superior to the rest of the prosecutors and supervises them. Thus, he is entitled to issue rules regarding the prosecutors' work, and can also intervene in particular cases and give orders whether to have the matter prosecuted or not. The Director of the Public Prosecutions has issued Instruction No. 9/2006 on the handling of cases concerning violations of, inter alia, section 266b of the Danish Criminal Code. The Instruction stipulates that all complaints under section 266b of the Criminal Code rejected by the police, on the ground that there is no basis for initiating an investigation or continuing with investigations already opened, must be submitted to the Regional Prosecutor. Decisions of the Regional Prosecutor to uphold the police conclusions may be appealed before the Director of the Public Prosecutors. According to the Instruction, all cases in which a preliminary charge has been laid are submitted to the Director of the Public Prosecutors for determination of the final charges. The State party explains that the Director of the Public Prosecutions is currently evaluating whether there is a need to modify Instruction No. 9/2006. The Public Prosecutions Director was provided with the Committee's opinion in the present case, with a request to take it into consideration when revising the said instruction.

Finally, the State party reports that, in addition to the Director of Public Prosecutions, the Committee's opinion has also been forwarded to the Regional Public Prosecutor of Copenhagen and the Chief of the Police in Copenhagen, i.e. the three authorities of the Public Prosecution Service involved in the case.

The Committee's opinion was also sent to the Danish National Police and the Danish Court of Administration, and thus the prosecution and the judicial bodies have been informed of the Committee's findings. The State party has also informed the petitioner's representative of the measures taken to give effect to the Committee's recommendations.

Petitioner's comments

The petitioner's representative provided his comments to the State party's observations on 28 February 2011. He notes, firstly, that the State party's refusal to grant compensation in the present case is not a precedent, and that in the cases of Mr. Gelle, communication No. 34/2004, and Mr. Murat Er, communication No. 40/2007, the situation was similar, and no non-pecuniary damages were compensated.

Counsel considers the State party's argumentation on the payment of legal aid in the present case to be irrelevant to the Committee's recommendation for a compensation for damages, and points out that no redress can be obtained through legal aid. Secondly, the State party's refusal to grant compensation for non-pecuniary damages, on the basis that the nature of the alleged discrimination in the present case does not permit a payment of compensation, shows, according to the counsel, that the State party confuses two issues. According to the counsel, it is irrelevant to verify whether the radio speech of Mr. Espersen targeted the petitioner personally. The moral damages suffered by the petitioner were not due to the speech itself, but to the State party's failure to react effectively. Mr. Espersen's speech, in substance, was never examined by a court. And, as established by the Committee in its opinion, the State party has failed to fulfil its positive obligations to take effective action in the matter. Therefore, according to counsel, the moral damages suffered by the petitioner are imputable to the State party.

Counsel adds that the State party has failed to give any consideration to the Committee's conclusions on the merits of the case, in particular the Committee's conclusion that the petitioner is also a victim of a violation of his rights by the State party, under article 6 of the Convention. As to the previous cases quoted by the State party as examples of satisfactory follow-up replies, the counsel notes that the term "satisfactory" here should be understood as implying that no further correspondence is needed, without necessarily meaning that the Committee was satisfied with the measures taken.

On the issue of the effective application of existing legislation and no occurrence of similar violations in future, counsel notes that the Director of the Public Prosecution has informed him that Instruction No. 9/2006 is currently being revised and that the Committee's opinion would form part of the considerations in this respect. The counsel explains however, that he is unaware of the envisaged changes, but notes that the Committee's opinions in *Mohammed Hassan Gelle v. Denmark* or *Saada Adan v. Denmark* also could, but have not, served as a basis to avoid similar subsequent violations to occur.

On the publicity of the Committee's opinion, counsel notes that the State party has circulated the opinion to the Police, prosecutors and the Central Court of Administration. According to him, however, this does not correspond to the Committee's request, i.e. to have the opinion widely disseminated, including, but not limited to, judicial bodies.

Counsel requests the Committee to intervene and explain to the State party that its reply is unsatisfactory and that the

	measures taken are insufficient to comply with its recommendations.
Additional reply by the State party	On 27 June 2011, the State party reiterates the information contained in its previous reply of December 2010 on the measures taken to give effect to the Committee's opinion. On the issue of compensating the petitioner, the State party recalls that legal aid for an amount of 45,000 Dkr (8,300 US dollars) was paid in the present case.
Additional comments from the petitioner	On 20 July 2011, petitioner's counsel notes that the State party has only repeated its previous observations of December 2010. Counsel considers that the State party has failed to provide any valid legal argument for not paying compensation. He considers that the State party's position is due to political considerations and asks the Committee to continue the follow-up dialogue with the State party.
Further action and/or Committee's decision	The Committee discussed the case at its seventy-ninth session (August 2011). It welcomed the measures taken so far by the State party, but considered that legal aid cannot be considered as a payment of compensation. It invited the State party to explore ways to provide the complainant with compensation, and a note verbale was sent to the State party on 15 September 2011 in this connection.
State party's further submission	By note verbale of 2 April 2012, the State party explained that its position remains unchanged.
Proposed further action and/or Committee's decision	On 26 February 2012, the Rapporteur on communications of the Committee met with a representative of the Permanent Mission of Denmark to the United Nations Office in Geneva, to discuss on the measures taken by the State party to give effect to the Committee's recommendations and expose the Committee's proposal to close the dialogue with a note of partly satisfactory implementation of the Committee's first recommendation to widely disseminate the Committee's opinion to judicial authorities; and partly unsatisfactory implementation of the Committee's recommendation to compensate for the damage caused to the petitioner. The State party representative assured the Rapporteur that she would convey the Committee's position to the competent authorities in Denmark.
	The dialogue is ongoing.
State party	Denmark
Case	<i>Dawas, Shawva, 46/2009</i>
Opinion adopted on	6 March 2012
Issues and violations found	Failure to effectively protect the petitioners from an alleged act of racial discrimination, and to carry out an effective investigation, which consequently deprived the petitioners

from their right to effective protection and remedies against the reported act of racial discrimination: violation of article 2, paragraph 1 (d), and article 6 of the Convention by the State party.

Remedy recommended	The State party was recommended to grant the petitioners an adequate compensation for the material and moral injury suffered.
Date of examination of report/s since adoption	The State party's eighteenth and nineteenth periodic reports were examined in August 2010; the twentieth and twenty-first reports are due in 2013.
Due date for State party response	12 September 2012
Date of reply	18 June 2012
State party's reply	The State party regrets that the Committee's opinion is based on a number of misunderstandings regarding the facts of the case and the relevant provisions of the Danish law. According to the State party, these misunderstandings were decisive for the Committee's conclusion of a violation in the present case.

Concretely, and regarding paragraph 7.2 of the opinion, where the Committee concluded that, given that it was rejected during the investigation, the racial discrimination nature of the crime could not be assessed in court, the State party disagrees with the conclusion that the revision of the charge from violation of section 246(1) to violation of section 244 of the Criminal Code (*straffeloven*) was of significance to the examination of the possibly racist nature of the incident. According to the Danish law, an objective assessment of the gravity of the offence committed is crucial for determining whether an offender should be prosecuted under the general provision of the offence laid down in section 244 or under the provision of aggravated offence laid down in section 245(1). In order to apply section 245(1), the prosecution must be able to prove that the assault was particularly heinous, brutal or dangerous or that the defendant was guilty of cruelty. In that connection, any particular motives for committing the offence, including whether it was racially motivated or otherwise had a racist undertone, are of no significance. Further, it is quite common in Denmark that the police first charge a person with committing the aggravated offence pursuant to section 245(1) of the Criminal Code if there is a suspicion that particularly dangerous offence has been committed, for example, because weapons have been used. Then, if it later turns out that it is not possible to prove on the basis of the evidence available in the case that the offence was of a "particularly dangerous nature", the prosecution will revise the charge to the offence under section 244 of the Criminal Code. Therefore, in the present case, the revised charges did not contribute to setting aside the possibly racist

nature of the assault during the criminal investigation as stated by the Committee.

As to the issue of the severity of the sentence imposed, the Committee seems to find that the sentence of 50 days of imprisonment (suspended) was a relatively lenient sentence. This finding is erroneous. The penalties usually imposed on in the Danish penal system are typically below the maximum penalty. The normal penalty imposed on an offender with no previous convictions and who is convicted under section 244 of the Criminal Code for committing an offence, for example, by blows or kicks, will typically be around 30 to 40 days of imprisonment, notwithstanding that the maximum penalty provided by section 244 is three years of imprisonment. Similarly, the normal penalty for a person with no previous convictions, convicted under section 245(1) of the Criminal Code of committing an aggravated offence, will typically be between 60 days to five months of imprisonment, even though the maximum penalty is up to six years of imprisonment. Consequently, the sentence of 50 days of imprisonment imposed on the offenders in the present case cannot be viewed as a lenient one according to the Danish case-law. Moreover, the fact that the offenders' prison sentences were suspended does not demonstrate that the national courts had a mild view of the incident.

The Committee incorrectly found that, because of the summary proceedings and revised charges, the possibly racist nature of the offence was already set aside at the level of criminal investigation, and was not adjudicated at the trial. The crucial reason for why no claim for more severe punishment under section 81(1)(vi) of the Criminal Code was made, and why the issue of whether the assault was racially motivated was not included in the final charge, was that the prosecution assessed, on the basis of all the witness statements and the video recording concerning the incident, that it would not be possible during the trial to prove that the assault was indeed racially motivated.

The State party rejects the Committee's observation under paragraph 7.3 that it is undisputed that the petitioners were attacked by 35 offenders and that they were exposed to offensive language of racist nature both within and outside the context of the assault. This number was disputed by most witnesses, who stated that the number of persons during the incident was considerably lower. It seems clear that only the four later convicted actually took part in the assault, whereas the rest were just spectators.

Similarly, none of the petitioners referred to any racial motivation for the assault in their original statements. In this connection, it should be noted that the entire incident was recorded on a video tape, which was subsequently examined by the police, and on the basis of which, any use of offensive

language could have been easily established. However, as stated by the petitioner Yousef Shava and later reproduced in the judgement of the High Court of Eastern Denmark, no racist expressions were recorded on that video tape. As to the issue, whether racist expressions were made outside the context of the assault, the only piece of information in that regard is that a sign “no blacks allowed” was hung on the offenders’ doors. However, as it appears from the police investigation and the judgment of 3 October 2008 by the High Court of Eastern Denmark, it had not been possible to establish the exact circumstances surrounding this sign, including who had hung it up and whether it was addressed to the petitioners.

Furthermore, as to the alleged failure on part of the State party to submit further information regarding the outcome of the notification which was forwarded to the Security and Intelligence Service, the State party strongly insists that it had not failed to submit such information. The fact is that such notification is merely an element of a notification procedure, and the purpose of it was not at all to set in motion a new investigation by the Service. The purpose of the notification procedure is exclusively to gather intelligence on criminal incidents with potentially extremist motives. The threshold for notification of incidents to the Service is substantially lower than the requirements applicable to the prosecution and conviction. Accordingly, such notification only serves an intelligence gathering purpose and is therefore not meant to generate a specific response by the Service, i.e., the initiation separate investigation.

Finally, as to the Committee’s conclusions in paragraph 7.5 that the investigation into the incident was incomplete, the State party wonders what further investigative steps the police could have taken to shed additional light on the incident at issue. All identified witnesses were duly interviewed, some of them even several times and the video recording of the incident was examined by the police.

Petitioners’ comments

The petitioner’s representative provided his comments to the State party’s observations on 23 July 2012.

He informs the Committee about an article, which appeared in the Danish newspaper *Jyllandsposten* on 21 June 2012, where the Committee’s decision is being criticized because of the errors contained in it.

Regarding the number of persons who had participated in the assault the police never established who was present during the assault and why. Furthermore, the representative questions whether the State party could really name the persons who had been present during the assault as mere spectators, given that they had been deliberately invited to come and be part of the assault directed against the family,

who were in their own house.

As to the State party's argument challenging the fact that the assault at issue had not had any racial intention, the representative emphasizes that one of the defendants shouted out during the assault that the respective family should go home to their country of origin. Moreover, the representative challenges the video recording made during the assault, as it shows only pictures and the quality of sound was very bad. Thus, it cannot be considered as evidence. Furthermore, one of the accused had already confessed that he had used offensive language. In addition, the incident was recorded only after the cars of the "supporters" had already arrived. Thus, it is not excluded that the offensive language, directed at the family, was used before the recording took place.

The representative also contests the State party's argument regarding the alleged racist expressions made outside the context of the assault. In particular, he points out, that the offensive signs were only removed after the petitioners complained to the municipality.

As to the lack of proper investigation, the representative observes that 20 to 30 "spectators" were never interviewed. Accordingly, the State party's authorities lacked the necessary evidence and, thus, the investigation was not up to the highest standards.

Moreover, the four convicted offenders were never asked to present the names and addresses of the other "spectators" who had been called to join the incident.

As to the notification forwarded to the Police Intelligence Service, the representative notes that, even if such notifications are automatic, this does not alter the Committee's conclusions, that the reporting itself demonstrates that the State party's authorities were aware and thus under the duty to investigate the respective incident as a possible hate crime.

Finally, as to the requalification of the crime to a lenient one, the representative highlights that the defendants used a wooden bat, which could be easily qualified as "weapon" within the meaning of section 245 of the Criminal Code. In addition, an aggravating factor pursuant to section 81 of the Criminal Code is the fact that the offence was committed by a group of persons and was racially motivated. It was the failure of the Danish investigative authorities to investigate fully whether the attack in question was racially motivated.

State party's reply

On 29 August 2012, the State party replied that it did not wish to make any comments regarding the petitioners' submission and relied on its reply dated 18 June 2012, which was not a rejection of the Committee's recommendations but merely an invitation to the Committee to reconsider its opinion. It added

that as Denmark has a free and independent press, the State party has not influence on what is published by the Danish newspapers, including *Jyllands-Posten*.

Petitioners' further comments

On 24 January 2013, the petitioners' representative stated that the Committee has no mandate to reconsider its opinions. Moreover, contrary to the State party's assertion, it has an influence over what is published in Denmark in the sense that it has the obligation to give wide publicity to the Committee's opinion (see para. 10 of the Committee's opinion). The State party has not done so, neither in the form of a press release or a mention on an official homepage nor in any public forums. In the petitioner's view however, the information contained in the Danish newspaper *Jyllands-Posten* is information that the State party must have provided and that they were not given the possibility to challenge.

Proposed further action and/or Committee's decision

On 26 February 2012, the Rapporteur on communications of the Committee met with a representative of the Permanent Mission of Denmark to the United Nations Office in Geneva, to discuss on the measures taken by the State party to give effect to the Committee's recommendations and present the Committee's position that its opinion dated 6 March 2012 is not subject to reconsideration in the absence of any such provision in the Committee's rules of procedure; that the State party is under an obligation to widely disseminate the Committee's opinion; and that the victims should receive adequate compensation for the material and moral injury suffered. The State party's representative assured the Rapporteur that she would convey the Committee's position to the competent authorities in Denmark.

The dialogue is ongoing.

Annex V

Country Rapporteurs for reports of States parties considered by the Committee and for States parties considered under the review procedure at the eighty-first and eighty-second sessions

<i>Periodic reports considered by the Committee</i>	<i>Country Rapporteur</i>
Austria Eighteenth to twentieth periodic reports (CERD/C/AUT/18-20)	Mr. Lahiri
Belize review procedure	Ms. Dah
Ecuador Twentieth to twenty-second periodic reports (CERD/C/ECU/20-22)	Mr. Calí Tzay
Fiji Eighteenth to twentieth periodic reports (CERD/C/FJI/18-20)	Mr. Saidou
Finland Twentieth to twenty-second periodic reports (CERD/C/FIN/20-22)	Mr. Vazquez
Liechtenstein Fourth to sixth periodic reports (CERD/C/LIE/4-6)	Mr. Amir
Republic of Korea Fifteenth and sixteenth periodic reports (CERD/C/KOR/15-16)	Ms. Crickley
Senegal Sixteenth to eighteenth periodic reports (CERD/C/SEN/16-18)	Ms. Ewomsan
Tajikistan Sixth to eighth periodic reports (CERD/C/TJK/6-8)	Mr. Diaconu
Thailand Initial to third periodic reports (CERD/C/THA/1-3)	Mr. Huang
Algeria Fifteenth to nineteenth periodic reports (CERD/C/DZA/15-19)	Mr. Saidou

<i>Periodic reports considered by the Committee</i>	<i>Country Rapporteur</i>
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Dominican Republic Thirteenth and fourteenth periodic reports (CERD/C/DOM/13-14)	Mr. Murillo
Kyrgyzstan Fifth to seventh periodic reports (CERD/C/KGZ/5-7)	Mr. Diaconu
Mauritius Fifteenth to nineteenth periodic reports (CERD/C/MUS/15-19 and Corr.1)	Ms. January-Bardill
New Zealand Eighteenth to twentieth periodic reports (CERD/C/NZL/18-20)	Mr. Vazquez
Russian Federation Twentieth to twenty-second periodic reports (CERD/C/RUS/20-22)	Ms. Crickley
Slovakia Ninth and tenth periodic reports (CERD/C/SVK/9-10)	Mr. Kemal

Annex VI

List of documents issued for the eighty-first and eighty-second sessions of the Committee^a

CERD/C/81/1	Provisional agenda and annotations of the eighty-first session of the Committee
CERD/C/81/2	Status of submission of reports by States parties under article 9, paragraph 1, of the Convention for the eighty-first session of the Committee
CERD/C/81/3	Consideration of copies of petitions, copies of reports and other information relating to the trust and non-self-governing territories and to all other territories to which the General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/82/1	Provisional agenda and annotations of the eighty-second session of the Committee
CERD/C/82/2	Status of submission of reports by States parties under article 9, paragraph 1, of the Convention for the eighty-second session of the Committee
CERD/C/82/3	Consideration of copies of petitions, copies of reports and other information relating to the trust and non-self-governing territories and to all other territories to which the General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.2166, 2168–2203 and respective addenda	Summary records of the eighty-first session of the Committee
CERD/C/SR.2204, 2207–2233 and respective addenda	Summary records of the eighty-second session of the Committee

^a This list only concerns documents issued for general distribution.

Annex VII

Comments of States parties on the concluding observations adopted by the Committee

A. Fourteenth to sixteenth periodic reports to Israel

1. On the behalf of the Government of Israel, I would like to take this opportunity to thank the Committee for its concluding observations, published on 9 March 2012, and the fruitful dialogue held during the consideration of Israel's fourteenth to sixteenth periodic report, at the Committee's 2131st and 2132nd sessions held on the 15–16 February 2012.

2. Israel notes with appreciation the Committee's concluding observations and its comments regarding the positive aspects regarding elimination of racial discrimination and promotion of equality made by Israel.

3. The Committee's concluding observations were translated into Hebrew and distributed to the relevant Government authorities. The concluding observations were also made available to the public and the civil society in three languages (English, Hebrew and Arabic), shortly after publication, on the website of the Ministry of Justice.

4. In addition, the concluding observations are scheduled to be discussed by Israel's standing Joint Inter-Ministerial Human Rights Monitoring Committee (hereinafter: "the Monitoring Committee"), which coordinates government action in the field of human rights and specifically the implementation of concluding observations of the various Human Rights Committees. The Monitoring Committee, chaired by the Deputy Attorney General (Counselling), regularly examines, promotes and makes recommendations regarding core human rights issues and promotes relevant legislative amendments and administrative measures.

5. I would like to share a number of positive updates that occurred after the publication of the Committee's concluding observations:

(a) On 13 May 2012, the Government approved Resolution 4624, "Improvement in the Absorption of Persons from Ethiopia". According to this Resolution, an increased budget will be allocated to assist Israel's Ethiopian community in housing, employment, adequate representation in the Civil Service, and appointment of additional religious personnel for the Ethiopian community;

(b) On 1 April 2012, the Magistrates Court in Nazareth convicted Nazam Abu Salim, the director of the local *Shihab A-Din* mosque for incitement to violence and terrorism and for supporting a terrorist organization. The Court found that the director abused his position by disseminating messages of violence and incitement. According to the indictment, the defendant established a movement "*Allah Supporters group – Jerusalem in Nazareth*", used a symbol which is recognized with the Taliban terrorist organization and distributed thousands of leaflets supporting points of view identical to those of the *Islamic Jihad* and *Al-Qaida*. The indictment further alleged that the defendant established an internet site to spread his hateful ideas among his congregation and beyond. The Court convicted Abu-Salim and ruled that he used his sermons and articles for publication of incitement with the understanding that his words would be accepted by his followers which would raise the chance that some of them will be persuaded to carry out violent acts.

6. After carefully studying the concluding observations and recommendations of the Committee of 9 March 2012, Israel remains concerned about a number of issues. A number of inaccuracies and somewhat problematic comments appear therein. I would respectfully share some remarks on those matters.

7. The concluding observations ignored many positive developments noted in Israel's written and oral replies that were presented to the Committee, including:

(a) Significant developments in domestic legislation to protect rights of persons of all the different populations in Israel, in every aspect of life, including education, health, employment, welfare and more;

(b) Progress in closing gaps between different communities in Israel, including a sharp increase in Government budgets allocated for minority communities (including the Arab, Druze, Bedouin and Circassian populations) in every aspect of life;

(c) A consistent, gradual improvement in the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination in Israel, despite real regional and domestic challenges.

8. The Committee seemed to ignore Israel's position regarding the implementation of the Convention in the West Bank and the transfer of responsibilities through the Interim Agreement from Israel to the Palestinian Authority. This transfer included a clear change in responsibilities in regard to the Convention in many areas, including health, employment, education and social welfare.

9. Regretfully, it appears that the Committee relied, almost exclusively, on claims in various NGO reports, without taking into account official information presented by Israel's delegation. Several examples include:

(a) The Committee seemed to disregard detailed explanations provided in regard to Israeli legislation prohibiting incitement to racism, racist organizations and participation in and support for such organizations and Israel's concerns in regard to freedom of speech (Section 14 to the concluding observations);

(b) The Committee repeated unfounded information presented by several NGOs despite detailed figures and explanations regarding mixed schools and successful integration of Arab and Jewish pupils in areas of mixed population. In these schools pupils are taught both in Hebrew and in Arabic and both Jewish and Arab pupils have equal access to education and empowerment, contrary to the Committee's conclusion. In Israel, all pupils, from all backgrounds, have equal access to education (article 19 to the Committee's concluding observations);

(c) No reference was made to details and figures describing a sharp decrease in the number of roadblocks and movement restriction in the West Bank as described by the Israeli delegation.

10. It is difficult to understand how the Committee completely overlooked the detailed and lengthy replies and figures provided by the Israeli delegation concerning the extensive work carried out in this regard regarding Israel's Bedouin community. Israel's delegation described various governmental efforts – the Advisory Committee on the Policy Regarding Bedouin Towns (the Goldberg Committee), the Governmental team for the implementation of the Goldberg Committee recommendations (Prawer Committee) and the National Plan for the Regularization of Bedouin Housing and for the Economic Development of the Bedouin Population in the Negev. It also made no reference of efforts for dialogue and cooperation with the Bedouin communities on a local level on all key issues.

The Committee concluded that “the State party should withdraw the 2012 discriminatory proposed Law for the Regulation of the Bedouin Settlement in the Negev,

which would legalize the ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities". Israel believes this draft law would not discriminate against the Bedouin population. In fact, the facts are quite different as the intent is clearly to improve the community's economic and housing situation in planned towns which are specifically developed to match the community's needs and their way of life. The fact that this legislation follows protracted cooperation and discussion with the local population and attends to the Bedouin needs and requests would have been appropriate to note.

The Committee made no mention of significant budgetary allocations aimed at improving conditions for the Bedouin communities in all aspects of life, including housing, health, water, sanitation, education and employment.

The Committee also ignored replies in regard to home demolitions, including explanations that were given in regard to specific instances and concerns. All such actions were taken in accordance with law, subject to intense judicial review and followed prolonged legal proceedings.

One specific example was a significant decision on 18 March 2012 of the Be'er-Sheva District Court regarding land ownership in the El-Arkib area. The Court ruled that there was no permanent village of any kind on the lands in question or in its close surroundings. The Court noted that these lands were never allocated to the petitioners and were never held by them according to the law, and they were not able to prove any land ownership claims.

The Committee also made no reference to Israel's position that Israel's Bedouin community is not an indigenous population.

11. Similarly, no mention was made of Israel's replies regarding the current situation regarding the Gaza Strip. Israel emphasized the legality of the blockade, given the constant armed attacks by the Hamas regime on Israel's civilian population. This blockade has been recognized as legal by the United Nations Panel of Inquiry on the Flotilla Incident of 31 May 2010, established by the Secretary-General of the United Nations, which affirmed that the naval blockade was imposed as a legitimate security measure; given the real threat Israel faces to its security from militant groups in Gaza.

12. The Committee also gave no recognition to additional information and comments made by the Israeli delegation, including:

(a) Israel's opening statements and reply which strongly challenged any spurious claim regarding apartheid or racial segregation in Israel. Use of these terms or descriptions is tenacious and inappropriate;

(b) Israel's detailed position on implementation of the Durban Declaration.

13. Israel regrets that the commission included in its report, recommendations on the issue of the Prevention of Infiltration Law (2012 amendment) (article 22 to the Committee's concluding observations), without any interaction during the oral interactions whatsoever on this issue.

14. Unfortunately, the spirit and content of the Committee's concluding observations draw a picture that is very far from the reality in Israel. Israel's replies were in many cases overlooked and not offered appropriate deference by the Committee. Israel participates in its interactions with great interest and respect and would have expected a more balanced interaction.

15. Please circulate this letter to all of the Committee members and to all the organizations and factors which received the Committee's concluding observations.

B. Fifteenth and sixteenth periodic reports of the Republic of Korea

1. The Government of the Republic of Korea would like to extend its appreciation to the Committee on the Elimination of Racial Discrimination for the constructive dialogue during the consideration of Korea's fifteenth to sixteenth periodic report at its eighty-first session held on 21 and 22 August 2012.

2. The Government is, however, concerned that some of the information that was presented by the delegation of the Republic of Korea during the consideration is not or is only incompletely reflected in the concluding observations, and that in consequence there are a number of inaccuracies contained in the observations' concerns and recommendations. The Government considers it important to note some of the errors and misleading information in order to ensure constructive and progressive dialogue with the Committee during the consideration of its next periodic report.

3. In **paragraph 10**, the Committee recommends the Government to monitor the media, Internet and social network to identify those individuals or groups who disseminate ideas based upon racial superiority and incite to racial hatred against foreigners.

The Government already has rules and regulations that strictly ban racist hate speeches. The Korean Deliberation Rules on Broadcasting (Articles 29 and 31), Deliberation Rules on Broadcast Advertising (Article 13), and Deliberation Rules on Information and Communication (Article 8) prohibit racial discrimination and incitement to racial prejudice in the media and on the Internet, especially by means of insult and mockery of other races and cultures. Moreover, the Korea Communications Standards Commission, a standing deliberative body that monitors the broadcast media, can apply disciplinary measures to cases of racist hate speech or incitement to racial discrimination, such as recommendation on correction of the discriminatory content or sanctions against those responsible.

4. In **paragraph 11**, the Committee expresses great concern about the information that some of the executive members of the migrant workers' labour union have been expelled from the Republic of Korea.

The Government, however, has not deported any foreigner on the basis of his or her involvement in political activities or of his or her membership of a certain labour union. For example, the recent deportation order issued against the former chairman of the Migrants' Trade Union was due to his violation of the Korean Immigration Law, as he falsely reported his employment status to maintain his E-9 (non-professional employment) visa status. The Courts of Korea, including the Constitutional Court, ruled that the deportation orders of the Union's executive members were constitutional and in accordance with the due process of law.

5. Also, in **paragraph 11**, the Committee recommends the Government to amend the Employment Permit System, relating to the complexity and variety of types of visas and discrimination based on country of origin.

It should, however, be noted that only one comprehensive type of visa is issued to foreign workers staying in Korea under the Employment Permit System. The Government accepts foreign workers in accordance with the MOUs signed with each foreign country. There can be a difference in the terms and conditions of these MOUs within a reasonable range, but they do not constitute any discrimination based on nationality.

6. In **paragraph 12**, the Committee refers to information that the labour inspections carried out in the workplace aim at identifying undocumented migrants, rather than at checking working conditions, and that crackdowns have been strengthened and resulted in a higher number of deportations.

The Government conducts regular labour inspections in 4,000 to 5,000 workplaces every year to address possible violations of labour laws by the employers of foreign workers. It is misleading to state that these inspections aim to identify undocumented migrants. Rather, they aim to protect the foreign workers' labour-related rights.

7. In **paragraph 14**, the Committee expresses its concern that the rights of foreign women who ask for divorce are still not adequately protected and that their continued stay in the country can be conditional on typically gendered roles such as caring for children and parents-in-law. In **paragraph 15**, the Committee urges the Government to ensure that foreign women victims of domestic violence, sexual abuse, trafficking or other forms of violence can confidently access justice, while emphasizing that women victims of violence should be guaranteed legal stay in the Republic of Korea until they recover and have the option to remain in the country if they so wish.

Contrary to the concerns of the Committee, the continued stay of marriage immigrants is not conditional on typically gendered roles. When they are not responsible for their divorce, their continued stay in the Republic of Korea is guaranteed regardless of their gender-specific roles in their family. Moreover, favourable consideration is given to marriage immigrants in judging the responsibility for the divorce by recognizing not only domestic violence but also economic and cultural matters as legal grounds for divorce, so that the rights of foreign women asking for divorce can be fully protected.

The Government also ensures that foreign women victims of violence can confidently access justice without any fear of losing their legal resident status. The Korea Legal Aid Corporation, financed with Government funds, provides legal aid free of charge for marriage immigrants and foreign women victims of domestic or sexual violence. The legal aid includes free legal counselling and legal representation for civil, criminal and family cases.

In order to guarantee the legal stay of the victims during these legal proceedings, the Korean Immigration Law (Article 25-2) explicitly stipulates that the period of stay of a foreign victim of domestic violence can be extended until the finalization of legal remedies, including court trial, investigation by relevant authorities, and other remedy procedures under applicable laws and regulations. It also stipulates that, when the period of stay extended on the aforementioned grounds expires, further extension can be granted if it is deemed necessary for the recovery of damages. As the term "domestic violence" is defined as "activities involving physical or psychological harm or damages to property among family members," it covers all forms of violence against foreign wives of Korean men, including sexual abuse.

8. In **paragraph 16**, the Committee expresses its concern about the reports that migrant women continue to be trafficked and subjected to forced prostitution through abuses of the E-6 visa granted to work in the entertainment industry. The Committee also recommends the Government to review the current E-6 visa regime.

In order to prevent E-6 visa holders from being victimized by human trafficking, the Government has already taken measures to strengthen the E-6 visa issuance process. First, applicants for E-6 visa are interviewed prior to their entry in order to verify their genuine intention to work in the entertainment industry in the Republic of Korea. Second, prior to the issuance of E-6 visa, officials evaluate the working conditions of the applicants by visiting private business entities trying to invite the applicants to Korea, and by visiting the applicants' future workplaces. Third, in order to prevent the entry of unqualified persons through abuses of the E-6 visa, the Government requires E-6 visa applicants to submit officially recognized certificates of qualifications or career certificates relating to the entertainment industry. Lastly, the Government no longer issues visas for foreign female dancers who work for adult entertainment establishments, and business entities which have

been found to be involved in human trafficking are prohibited from inviting foreign entertainers with E-6 visa for three years.

9. In **paragraph 17**, the Committee notes the definition of “multicultural families” in the Multicultural Families Support Act, which limits itself to the union between a Korean citizen and a foreigner, while excluding other forms of multicultural families such as those composed of two foreign partners. The Committee also urges the Government to pay particular attention to the children of such families who bear the heaviest consequences of the lack of integration.

In December 2012, the Government launched its Second Basic Plan for Policies for Multicultural Families for the years 2013–2017, which aims to empower multicultural families and to eradicate discrimination against them so as to realize their full social integration. Under this Basic Plan, the Government plans to provide families composed of two foreign partners with support programmes similar to those provided to multicultural families composed of a foreigner and a Korean spouse. The Government will also strengthen its policies to help children from these families better adapt to their school life through measures such as expanding preliminary courses before regular schooling.

10. The Government of the Republic of Korea hopes that the Committee will take into consideration the aforementioned points. Reiterating its strong commitment to the promotion and protection of human rights, the Government will give careful consideration to the Committee’s comments and recommendations, and will continue to cooperate with the Committee in its future endeavours to eliminate racial discrimination in all its forms and promote understanding among all races.

Annex VIII

Text of statements and decisions adopted by the Committee in the reporting period

A. Statement on the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies

The Committee on the Elimination of Racial Discrimination welcomes the report of the United Nations High Commissioner for Human Rights on the strengthening of the human rights treaty bodies (A/66/860), published in June 2012, and expresses appreciation for the efforts of the High Commissioner in this regard. The report identifies a comprehensive range of recommendations aimed at strengthening the treaty body system, based on a thorough three-year-long consultation process. The Committee believes that efforts to strengthen the treaty body system, including through adequate resourcing, are necessary for the ongoing support of the system, to build on its past achievements and to ensure that the rights enshrined in the treaties are enjoyed globally.

Having reviewed and discussed the High Commissioner's report, the Committee provides the following initial response to the recommendations contained therein.

1. The Committee supports the proposal to establish a Comprehensive Reporting Calendar, while underlining the need to ensure adequate financial and human resources as a prerequisite to the introduction of such a calendar. The Committee looks forward to discussing the proposal further, including in relation to the transition period preceding its introduction, and the impact of the calendar on the workload and the working methods of the Committee.
2. The Committee notes with interest the proposal for the Simplified Reporting Procedure, and observes that it has already adopted measures to simplify the reporting procedure through the use of treaty-specific guidelines and the lists of themes. The Committee indicates its willingness to evaluate the quality of reports submitted in accordance with harmonized guidelines, including the common core documents and treaty-specific documents.
3. The Committee considers that strict adherence to page limitations is important and in line with its current practice.
4. The Committee notes with interest the proposal for an aligned methodology for constructive dialogue between States parties and treaty bodies, and highlights that it is already implementing many aspects of this proposal. The Committee will consider further the proposal to establish country task forces and to introduce strict limitations on the number and length of interventions by members. The Committee has reservations about limiting the length of States parties' opening statements beyond its current practice.
5. The Committee will consider further the recommendation to reduce translation of summary records, stressing at the same time the importance of linguistic and cultural diversity as enshrined in the International Convention on the Elimination of All Forms of Racial Discrimination.
6. The Committee welcomes the recommendation to adopt short, focused and concrete concluding observations, highlighting the efforts it has already taken in this regard and endeavouring to continue this work.

7. The Committee welcomes the recommendation to further institutionalize its engagement with United Nations entities and civil society organizations. With regard to national human rights institutions, the Committee highlights that it has already institutionalized its engagement through the amendment of its rules of procedure in 2007. The Committee underlines the need to maintain flexibility with regard to meetings with civil society organizations. In particular, it will continue its practice of holding meetings with civil society organizations in public to promote transparency, but also in closed meetings when necessary or appropriate.

8. The Committee highlights the importance of its follow-up procedure to concluding observations and notes the improvements to its procedure currently being undertaken.

9. The Committee highlights the advances it has made in improving procedural matters relating to the handling and the follow-up of individual communications and expresses its willingness to work further in this direction.

10. The Committee welcomes the proposal of making itself available to parties to a case under its individual complaints procedure with a view to reaching a friendly settlement of the matter.

11. The Committee strongly supports the independence and impartiality of its members in all of its activities and practices in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and its general recommendation No.9 on the independence of experts adopted at its thirty-eighth session in 1990.

B. Decision of the Committee on the Elimination of Racial Discrimination on the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines)

1. The Committee on the Elimination of Racial Discrimination takes note of the guidelines on the independence and impartiality of members of the human rights treaty bodies (Addis Ababa Guidelines), and in this regard recalls its general recommendation No. 9 on the independence of experts adopted at its thirty-eighth session in 1990.

2. The Committee strongly supports the independence and impartiality of its members in all of its activities and practices in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination.

3. Furthermore, the Committee believes that the Addis Ababa Guidelines can provide a basis for further discussions, as appropriate.
