United Nations

Report of the Committee on the Elimination of Racial Discrimination

Sixty-sixth session (21 February-11 March 2005)
Sixty-seventh session (2-19 August 2005)

General Assembly
Official Records
Sixtieth session
Supplement No. 18 (A/60/18)

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United Nations • New York, 2005

Note

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Letter of transmittal

19 August 2005

Sir,

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

The International Convention on the Elimination of All Forms of Racial Discrimination, which has now been ratified by 170 States, constitutes the normative basis upon which international efforts to eliminate racial discrimination should be built.

During the past year, the Committee continued with a significant workload in terms of the examination of States parties' reports (discussed in chapter III) in addition to other related activities. The Committee also examined the situation of several States parties under its early warning and urgent procedures (see chapter II) and under its follow-up procedure (see chapter IV). In order to continue its consideration of subjects of general interest, the Committee held a thematic discussion on the prevention of genocide at its sixty-sixth session, which was attended by your Special Adviser on the Prevention of Genocide, and adopted a declaration on this issue (see chapter VIII). At its sixty-seventh session, the Committee followed up on the declaration and adopted a decision identifying indicators of systematic and massive patterns of racial discrimination (see chapter II). The Committee also adopted during the same session its thirty-first general recommendation which concerns the prevention of racial discrimination in the administration and functioning of the criminal justice system. It also discussed the issue of multiculturalism in a general debate at both its sixty-sixth and sixty-seventh sessions.

As important as the Committee's contributions have been to date, there is obviously some room for improvement. At present, only 46 States parties (see annex I) have made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention and, as a consequence, the individual communications procedure is underutilized, as indeed is also the inter-State complaints procedure.

Furthermore, only 39 States parties have so far ratified the amendments to article 8 of the Convention adopted at the Fourteenth Meeting of States Parties (see annex I), despite repeated calls from the General Assembly to do so. These amendments provide, inter alia, for the financing of the Committee from the regular budget of the United Nations. The Committee appeals to States parties that have not yet done so to consider making the declaration under article 14 and ratifying the amendments to article 8 of the Convention.

The Committee remains committed to a continual process of reflection on and improvement of its working methods, with the aim of maximizing its effectiveness. In this connection, the Committee adopted terms of reference for the mandate of the coordinator on

His Excellency Mr. Kofi Annan
Secretary-General of the United Nations
New York

follow-up to its conclusions and recommendations (see chapter XIII). Furthermore, at its sixty-seventh session, it adopted a procedure for following up its Opinions adopted pursuant to article 14, paragraph 7, of the Convention (see chapter VI). During the same session, the Committee also discussed the reform of the treaty body system (see chapter XIV).

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.

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*): Mario Yutzis
Chairman
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 19 August 2005, the closing date of the sixty-seventh session of the Committee on the Elimination of Racial Discrimination, there were 170 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 sixty-seventh session, 46 of the 170 States 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 39 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 19 August 2005.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination held two regular sessions in 2005. The sixty-sixth (1672nd to 1701st meetings) and sixty-seventh (1702nd to 1732nd meetings) sessions were held at the United Nations Office at Geneva from 21 February to 11 March 2005 and from 2 to 19 August 2005 respectively.

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

C. Membership and attendance

5. The list of members of the Committee for 2005-2006 is as follows:

Name of member	Country of nationality	Term expires 19 January
Mr. Mahmoud ABOUL-NASR	Egypt	2006
Mr. Nourredine AMIR	Algeria	2006
Mr. Alexei S. AVTONOMOV	Russian Federation	2008
Mr. Ralph F. BOYD Jr.	United States of America	2008
Mr. José Francisco CALI TZAY	Guatemala	2008

Ms. Fatimata-Binta Victoire DAH	Burkina Faso	2008
Mr. Régis de GOUTTES	France	2006
Mr. Kurt HERNDL	Austria	2006
Ms. Patricia Nozipho JANUARY-BARDILL	South Africa	2008
Mr. Morten KJAERUM	Denmark	2006
Mr. José A. LINDGREN ALVES	Brazil	2006
Mr. Raghavan Vasudevan PILLAI	India	2008
Mr. Agha SHAHI	Pakistan	2006
Mr. Linos Alexander SICILIANOS	Greece	2006
Mr. TANG Chengyuan	China	2008
Mr. Patrick THORNBERRY	United Kingdom of Great Britain and Northern Ireland	2006
Mr. Luis VALENCIA RODRÍGUEZ	Ecuador	2008
Mr. Mario Jorge YUTZIS	Argentina	2008

6. All members of the Committee attended the sixty-sixth and sixty-seventh sessions.

D. Officers of the Committee

7. At its 1613th meeting (sixty-fourth session), on 23 February 2004, the Committee elected the Chairperson, Vice-Chairpersons and Rapporteur as listed below in accordance with article 10, paragraph 2, of the Convention, for the terms indicated in brackets.

Chairperson:	Mr. Mario Yutzis (2004-2006)
Vice-Chairpersons:	Ms. Patricia Nozipho January-Bardill (2004-2006) Mr. Raghavan Vasudevan Pillai (2004-2006) Mr. Alexander Linos Sicilianos (2004-2006)
Rapporteur:	Mr. Patrick Thornberry (2004-2006)

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 International Law Commission, the Special Rapporteur of the Commission on Human Rights on the right of everyone to the highest attainable standard of physical and mental health and the Sub-Commission on the Promotion and Protection of Human Rights

8. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),[1] both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent practice, the Office of the United Nations High Commissioner for Refugees (UNHCR) was also invited to attend.

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

10. UNHCR submits comments to the members of the Committee on all States parties whose reports are being examined when UNHCR is active in the country concerned. These comments make reference to the human rights of refugees, asylum-seekers, returnees (former refugees), stateless persons and other categories of persons of concern to UNHCR. UNHCR representatives attend the sessions of the Committee and report back on any issues of concern raised by Committee members. At the country level, although there is no systematic follow-up to the implementation of the Committee's concluding observations and recommendations in the 130 UNHCR field operations, these are regularly included in activities designed to mainstream human rights in their programmes.

11. Mr. Paul Hunt, Special Rapporteur of the Commission on Human Rights on the right of everyone to the highest attainable standard of physical and mental health, addressed the Committee at its 1698th meeting (sixty-sixth session), on 9 March 2005, and a fruitful discussion ensued on ways to enhance cooperation with the Committee.

12. In a letter dated 29 July 2005 addressed to the Committee, Ms. Antoanella-Iulia Motoc, Chairperson of the sessional working group on the administration of justice of the Sub-Commission on the Promotion and Protection of Human Rights, requested the views of the Committee regarding the usefulness of an in-depth study on the implementation in practice of the right to an effective remedy. The Chairperson conveyed the view that such a study would be very helpful to the work of the Committee, in particular if, among other issues, it addressed the question of remedies in relation to the rights of indigenous peoples, including their rights to land.

13. In the course of their brief dialogue with members of the Sub-Commission on 3 August 2005, Mr. de Gouttes and Mr. Sicilianos drew their attention, in particular, to the

forthcoming discussion by the Committee of draft general recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system (see chapter IX).

F. Other matters

14. The United Nations High Commissioner for Human Rights addressed the Committee at its 1678th meeting (sixty-sixth session), on 24 February 2005. Recalling that racial discrimination persisted in the functioning of the penal system and in the application of the law in some States, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement, the High Commissioner welcomed the draft general recommendation on the prevention of racial discrimination in the administration and functioning of the system of justice that was to be discussed by the Committee during its sixty-sixth session. The High Commissioner also welcomed the forthcoming thematic discussion on the prevention of genocide. She underlined that close cooperation between the Special Adviser to the Secretary-General on the Prevention of Genocide and the Committee, as well as with other treaty bodies and the special procedures of the Commission on Human Rights, was essential to help the Special Adviser better understand complex situations, and thus be in a position to suggest appropriate action. Furthermore, the High Commissioner stressed that every State party should be able to show and explain to the Committee the preventive strategies it had in place, and the institutions it had established to provide special protection to those at risk.

15. Ms. María-Francisca Ize-Charrin, Officer-in-Charge of the United Nations Office of the High Commissioner for Human Rights, addressed the Committee at its 1702nd meeting (sixty-seventh session), on 2 August 2005. She stressed that the Office followed with particular interest the activities of the Committee under article 14 of the Convention and hoped that the impact of its jurisprudence at the regional and national levels would increase. She welcomed the forthcoming discussion of the Committee on the establishment of a procedure for following up on Opinions adopted under article 14 of the Convention. Ms. Ize-Charrin informed the Committee that the Office had been actively engaged in strengthening the implementation of recommendations of treaty bodies through various training projects, including a subregional workshop in Cairo on follow-up to concluding observations of the Committee and of the Committee on the Elimination of Discrimination against Women due to take place from 5 to 8 December 2005. Ms. Ize-Charrin then referred to the Plan of Action adopted by the High Commissioner for Human Rights and emphasized in particular the proposals relating to a unified standing treaty body. She stressed that the High Commissioner would be very grateful to have the initial reactions of the Committee to these proposals (see chapter XIII for a report of the discussion of the Committee on this issue).

G. Adoption of the report

16. At its 1732nd meeting, held on 19 August 2005, the Committee adopted its annual report to the General Assembly.

Note

[1] *Official Records of the General Assembly, Twenty-seventh Session, Supplement No. 18* (A/8718), chap. IX, sect. B.

II. PREVENTION OF RACIAL DISCRIMINATION, INCLUDING EARLY WARNING AND URGENT PROCEDURES

17. The Committee, at its 979th meeting, on 17 March 1993, adopted a working paper to guide it in its future work concerning possible measures to prevent, as well as more effectively respond to, violations of the Convention.[1] The Committee noted in its working paper that efforts to prevent serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination would include early warning measures and urgent procedures.

18. The following decisions were adopted by the Committee under the early warning and urgent procedures at its sixty-sixth session:

Decision 1 (66) on the New Zealand Foreshore and Seabed Act 2004

1. The Committee has reviewed, under its early warning and urgent action procedure, the compatibility of the New Zealand Foreshore and Seabed Act 2004 with the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination, in the light of information received both from the Government of New Zealand and a number of Maori non-governmental organizations and taking into account its general recommendation XXIII (1997) on indigenous peoples.

2. The Committee appreciates having had the opportunity to engage in a constructive dialogue with the State party at its 1680th meeting, on 25 February 2005, and also appreciates the State party's written and oral responses to its requests for information related to the legislation, including those submitted on 17 February and 9 March 2005.

3. The Committee remains concerned about the political atmosphere that developed in New Zealand following the Court of Appeal's decision in the *Ngati Apa* case, which provided the backdrop to the drafting and enactment of the legislation. Recalling the State party's obligations under article 2, paragraph 1 (*d*), and article 4 of the Convention, it hopes that all actors in New Zealand will refrain from exploiting racial tensions for their own political advantage.

4. While noting the explanation offered by the State party, the Committee is concerned at the apparent haste with which the legislation was enacted and that insufficient consideration may have been given to alternative responses to the *Ngati Apa* decision, which might have accommodated Maori rights within a framework more acceptable to both the Maori and all other New Zealanders. In this regard, the Committee regrets that the processes of consultation did not appreciably narrow the differences between the various parties on this issue.

5. The Committee notes the scale of opposition to the legislation among the group most directly affected by its provisions, the Maori, and their very strong perception that the legislation discriminates against them.

6. Bearing in mind the complexity of the issues involved, the legislation appears to the Committee, on balance, to contain discriminatory aspects against the Maori, in particular in its extinguishment of the possibility of establishing Maori customary titles over the foreshore and seabed and its failure to provide a guaranteed right of redress, notwithstanding the State party's obligations under articles 5 and 6 of the Convention.

7. The Committee acknowledges with appreciation the State party's tradition of negotiation with the Maori on all matters concerning them, and urges the State party, in a spirit of goodwill and in accordance with the ideals of the Waitangi Treaty, to resume dialogue with the Maori community with regard to the legislation, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment, where necessary.

8. The Committee requests the State party to monitor closely the implementation of the Foreshore and Seabed Act, its impact on the Maori population and the developing state of race relations in New Zealand, and to take steps to minimize any negative effects, especially by way of a flexible application of the legislation and by broadening the scope of redress available to the Maori.

9. The Committee has noted with satisfaction the State party's intention to submit its fifteenth periodic report by the end of 2005, and requests the State party to include full information on the state of implementation of the Foreshore and Seabed Act in the report.

1700th meeting
11 March 2005

Decision 2 (66) on Darfur

The Committee on the Elimination of Racial Discrimination,

Taking into consideration its regular practices as well as its obligation to inform, under its early warning and urgent action procedure, of any warning signals that a situation may deteriorate still further,

Referring to its decision 1 (65) of 18 August 2004 on the same subject,

Recalling its declaration on the prevention of genocide of 11 March 2005,

Recommends to the Secretary-General, and through him, to the Security Council, the deployment, without further delay, of a sufficiently enlarged African Union force in Darfur with a Security Council mandate to protect the civilian population, including those in camps, displaced persons and refugees returning to their homes in Darfur, against war crimes, crimes against humanity and the risk of genocide.

1701st meeting
11 March 2005

19. The following decision was adopted by the Committee under the early warning and urgent procedures at its sixty-seventh session:

Decision 1 (67) on Suriname

1. The Committee recalls that in its decision 3 (66) of 9 March 2005, it expressed concern about the fact that a revised version of the draft Mining Act, which was approved by the Council of Ministers of Suriname at the end of 2004, may not be in conformity with the Committee's recommendations adopted in March 2004 following the consideration of the first to tenth periodic reports of Suriname.[2]

2. The Committee deeply regrets that it has not received any comment under the follow-up procedure from the State party on the above assessment of the draft law, as requested in decision 3 (66).

3. The Committee expresses deep concern about information alleging that Suriname is actively disregarding the Committee's recommendations by authorizing additional resource exploitation and associated infrastructure projects that pose substantial threats of irreparable harm to indigenous and tribal peoples, without any formal notification to the affected communities and without seeking their prior agreement or informed consent.

4. Drawing once again the attention of the State party to its general recommendation XXIII (1997) on the rights of indigenous peoples, the Committee urges the State party to ensure that the revised draft Mining Act complies with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with the Committee's 2004 recommendations. In particular, the Committee urges the State party to:

(a) Ensure legal acknowledgement of the rights of indigenous and tribal peoples to possess, develop, control and use their communal lands and to participate in the exploitation, management and conservation of the associated natural resources;

(b) Strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions;

(c) Ensure that indigenous and tribal peoples are granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage.

5. The Committee recommends once again that a framework law on the rights of indigenous and tribal peoples be elaborated and that the State party take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for that purpose.

6. The Committee recommends to the State party that it extend an invitation to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

7. The Committee urges the Secretary-General to draw the attention of the competent United Nations bodies to the particularly alarming situation in relation to the rights of indigenous peoples in Suriname and to request them to take all appropriate measures in this regard.

20. Following the adoption of a declaration on the prevention of genocide at its sixty-sixth session (see chapter VIII), the Committee adopted the following decision at its sixty-seventh session:

Decision on follow-up to the declaration on the prevention of genocide: indicators of patterns of systematic and massive racial discrimination

At its sixty-sixth session, the Committee on the Elimination of Racial Discrimination (CERD) adopted a declaration on the prevention of genocide for the consideration of the States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, the Secretary-General and his Special Adviser on the Prevention of Genocide, as well as the Security Council. In this declaration, the Committee committed itself to:

- Developing a special set of indicators related to genocide; and

- Strengthening and refining its early warning and urgent action as well as follow-up procedures in all situations where indicators suggest the increased possibility of violent conflict and genocide.

Taking into account that systematic discrimination, disregard or exclusion are often among the root causes of conflict, the present decision intends to strengthen the capacity of the Committee to detect and prevent at the earliest possible stage developments in racial discrimination that may lead to violent conflict and genocide.

I. Indicators

The following key indicators may serve as a tool for the Committee, when examining the situation in a State party under one of its procedures, to assess the existence of factors known to be important components of situations leading to conflict and genocide. If one or more of the following indicators are present, this should be clearly stated in the concluding observations or decision, and the Committee shall recommend that the State party report, within a fixed deadline, to the Committee under the follow-up procedure on what it intends to do to ameliorate the situation. In the following list of indicators, the word "group" shall cover racial, ethnic and religious groups:

1. Lack of a legislative framework and institutions to prevent racial discrimination and provide recourse to victims of discrimination.

2. Systematic official denial of the existence of particular distinct groups.

3. The systematic exclusion - in law or in fact - of groups from positions of power, employment in State institutions and key professions such as teaching, the judiciary and the police.

4. Compulsory identification against the will of members of particular groups, including the use of identity cards indicating ethnicity.

5. Grossly biased versions of historical events in school textbooks and other educational materials as well as celebration of historical events that exacerbate tensions between groups and peoples.

6. Policies of forced removal of children belonging to ethnic minorities with the purpose of complete assimilation.

7. Policies of segregation, direct and indirect, for example separate schools and housing areas.

8. Systematic and widespread use and acceptance of speech or propaganda promoting hatred and/or inciting violence against minority groups, particularly in the media.

9. Grave statements by political leaders/prominent people that express support for affirmation of superiority of a race or an ethnic group, dehumanize and demonize minorities, or condone or justify violence against a minority.

10. Violence or severe restrictions targeting minority groups perceived to have traditionally maintained a prominent position, for example as business elites or in political life and State institutions.

11. Serious patterns of individual attacks on members of minorities by private citizens which appear to be principally motivated by the victims' membership of that group.

12. Development and organization of militia groups and/or extreme political groups based on a racist platform.

13. Significant flows of refugees and internally displaced persons, especially when those concerned belong to specific ethnic or religious groups.

14. Significant disparities in socio-economic indicators evidencing a pattern of serious racial discrimination.

15. Policies aimed at the prevention of delivery of essential services or assistance, including obstruction of aid delivery or access to food, water, sanitation or essential medical supplies in certain regions or targeting specific groups.

As these indicators may be present in States not moving towards violence or genocide, the assessment of their significance for the purpose of predicting genocide or violence against identifiable racial, ethnic or religious groups should be supplemented by consideration of the following subset of general indicators:

1. Prior history of genocide or violence against a group.

2. Policy or practice of impunity.

3. Existence of proactive communities abroad fostering extremism and/or providing arms.

4. Presence of external mitigating factors such as the United Nations or other recognized invited third parties.

II. Follow-up and early warning and urgent action procedures

When receiving information between sessions of CERD about grave incidents of racial discrimination covered by one or more of the relevant indicators, the Chairperson of the working group on early warning/urgent action, in consultation with its members and with the follow-up coordinator and the Chairperson of the Committee, may take the following action:

1. Request further urgent information from the State party.

2. Forward the information to the Secretary-General and his Special Adviser on the Prevention of Genocide.

3. Prepare a decision to be submitted for adoption by the Committee at its next session.

4. Adopt a decision at the session in the light of the most recent developments and action taken by other international organizations.

Notes

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

[2] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18), paras. 180-210.

III. CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION

AUSTRALIA

21. The Committee considered the thirteenth and fourteenth periodic reports of Australia, due in 2000 and 2002 respectively, submitted as one document (CERD/C/428/Add.2), at its 1685th and 1686th meetings (CERD/C/SR.1685 and 1686), held on 1 and 2 March 2005. At its 1699th meeting (CERD/C/SR.1699), held on 10 March 2005, it adopted the following concluding observations.

A. Introduction

22. The Committee welcomes the report submitted by the State party, which mainly focuses on issues raised in the Committee's previous concluding observations, as well as the additional oral information provided by the delegation.

B. Positive aspects

23. The Committee notes with satisfaction that serious acts of racial hatred or incitement to racial hatred are criminal offences in most Australian States and Territories. It particularly welcomes, in this regard, legislative developments in Victoria and Queensland.

24. The Committee notes with satisfaction that significant progress has been achieved in the enjoyment of economic, social and cultural rights by the indigenous peoples. It welcomes the commitment of all Australian Governments to work together on this issue through the Council of Australian Governments, as well as the adoption of a national strategy on indigenous family violence.

25. The Committee notes with great interest the diversionary and preventative programmes aimed at reducing the number of indigenous juveniles entering the criminal justice system, as well as the development of culturally sensitive procedures and practices among the police and the judiciary.

26. The Committee welcomes the abrogation of mandatory sentencing provisions in the Northern Territory.

27. The Committee welcomes the adoption of a Charter of Public Service in a Culturally Diverse Society to ensure that government services are provided in a way that is sensitive to the language and cultural needs of all Australians.

28. The Committee welcomes the numerous human rights education programmes developed by the Human Rights and Equal Opportunity Commission (HREOC).

C. Concerns and recommendations

29. The Committee, while noting the explanations provided by the delegation, reiterates its concern about the absence of any entrenched guarantee against racial discrimination that would override the law of the Commonwealth (Convention, art. 2).

The Committee recommends to the State party that it work towards the inclusion of an entrenched guarantee against racial discrimination in its domestic law.

30. The Committee notes that the Australian Human Rights Commission Legislation Bill 2003 reforming the HREOC has lapsed in Parliament, but that the State party remains committed to pursuing the reform of the Commission. It notes the concerns expressed by the HREOC that some aspects of the reform could significantly undermine its integrity, independence and efficiency (art. 2).

The Committee notes the importance given by the State party to the HREOC in monitoring Australia's compliance with the provisions of the Convention and recommends that it take fully into account the comments expressed by the HREOC on the proposed reform, and that the integrity, independence and efficiency of the Commission be fully preserved and respected.

31. The Committee is concerned about the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC), the main policymaking body in Aboriginal affairs consisting of elected indigenous representatives. It is concerned that the establishment of a board of appointed experts to advise the Government on indigenous peoples' issues, as well as the transfer of most programmes previously provided by the ATSIC and the Aboriginal and Torres Strait Islander Service to government departments, will reduce the participation of indigenous peoples in decision-making and thus alter the State party's capacity to address the full range of issues relating to indigenous peoples (arts. 2 and 5).

The Committee recommends that the State party take decisions directly relating to the rights and interests of indigenous peoples with their informed consent, as stated in its general recommendation XXIII. The Committee recommends that the State party reconsider the withdrawal of existing guarantees for the effective representative participation of indigenous peoples in the conduct of public affairs as well as in decision- and policymaking relating to their rights and interests.

32. The Committee notes that Australia has not withdrawn its reservation to article 4 (a) of the Convention. It notes with concern that the Commonwealth, the State of Tasmania and the Northern Territory have no legislation criminalizing serious acts of racial hatred or incitement to racial hatred.

The Committee reiterates its recommendation that the State party make efforts to adopt appropriate legislation with a view to giving full effect to the provisions of, and to withdrawing its reservation to, article 4 (a) of the Convention. The Committee wishes to receive information on complaints, prosecutions and sentences regarding serious acts of racial hatred or incitement to racial hatred in States and Territories the legislation of which specifies such offences.

33. The Committee notes with concern reports that prejudice against Arabs and Muslims in Australia has increased and that the enforcement of counter-terrorism legislation may have an indirect discriminatory effect against Arab and Muslim Australians (arts. 4 and 5).

The Committee welcomes the national consultations on eliminating prejudice against Arab and Muslim Australians and wishes to receive more detailed information on the results of such consultations. It recommends that the State party increase its efforts to eliminate such prejudice and ensure that enforcement of counter-terrorism legislation does not disproportionately impact on specific ethnic groups and people of other national origins.

34. The Committee is concerned at reports of biased treatment of asylum-seekers by the media (art. 4).

The Committee recommends that the State party take resolute action to counter any tendency to target, stigmatize, stereotype or profile non-citizens, including asylum-seekers, on the basis of race, colour, descent, or national or ethnic origin, especially by the media and the society at large. In this regard, it draws the attention of the State party to its general recommendation XXX on non-citizens.

35. The Committee notes with concern that it has proved difficult for complainants, under the Racial Discrimination Act, to establish racial discrimination in the absence of direct evidence, and that no cases of racial discrimination, as distinct from racial hatred, have been successfully litigated in the Federal courts since 2001 (arts. 4 and 6).

The Committee, having taken note of the explanations provided by the delegation, invites the State party to envisage regulating the burden of proof in civil proceedings involving racial discrimination so that once an alleged victim has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for differential treatment.

36. The Committee notes with concern the persistence of diverging perceptions between governmental authorities and indigenous peoples and others on the compatibility of the 1998 amendments to the Native Title Act with the Convention. The Committee reiterates its view that the *Mabo* case and the 1993 Native Title Act constituted a significant development in the recognition of indigenous peoples' rights, but that the 1998 amendments roll back some of the protections previously offered to indigenous peoples and provide legal certainty for Government and third parties at the expense of indigenous title. The Committee stresses in this regard that the use by the State party of a margin of appreciation in order to strike a balance between existing interests is limited by its obligations under the Convention (art. 5).

The Committee recommends that the State party refrain from adopting measures that withdraw existing guarantees of indigenous rights and that it make every effort to seek the informed consent of indigenous peoples before adopting decisions relating to their rights to land. It further recommends that the State party reopen discussions with indigenous peoples with a view to discussing possible amendments to the Native Title Act and finding solutions acceptable to all.

37. The Committee is concerned about information according to which proof of continuous observance and acknowledgement of the laws and customs of indigenous peoples since the British acquisition of sovereignty over Australia is required to establish elements in the statutory definition of native title under the Native Title Act. The high standard of proof required is reported to have the consequence that many indigenous peoples are unable to obtain recognition of their relationship with their traditional lands (art. 5).

The Committee wishes to receive more information on this issue, including on the number of claims that have been rejected because of the requirement of this high standard of proof. It recommends that the State party review the requirement of such a high standard of proof, bearing in mind the nature of the relationship of indigenous peoples to their land.

38. The Committee notes that 51 determinations of native title have been made since 1998 and that 37 of them have confirmed the existence of native title. It also acknowledges the provisions introduced by the 1998 amendments to the Native Title Act regarding indigenous land-use agreements, as well as the creation of the Indigenous Land Fund in 1995 to purchase land for indigenous Australians unable to benefit from recognition of native title (art. 5).

The Committee wishes to receive more detailed information, including statistical data, on the extent to which such arrangements respond to indigenous claims over land. Information on achievements at State and Territory levels may also be provided.

39. While noting the improvement in the enjoyment by the indigenous peoples of their economic, social and cultural rights, the Committee is concerned over the wide gap that still exists between the indigenous peoples and others, in particular in the areas of employment, housing, health, education and income (art. 5).

The Committee recommends that the State party intensify its efforts to achieve equality in the enjoyment of rights and allocate adequate resources to programmes aimed at the eradication of disparities. It recommends in particular that decisive steps be taken to ensure that a sufficient number of health professionals provide services to indigenous peoples, and that the State party set up benchmarks for monitoring progress in key areas of indigenous disadvantage.

40. The Committee, having taken note of the explanations provided by the State party, reiterates its concern about provisions for mandatory sentencing in the Criminal Code of Western Australia. The Committee is concerned at reports of the disparate impact of this law on indigenous groups, and reminds the State party that the Convention prohibits direct as well as indirect discrimination (art. 5).

The Committee recommends that the State party take appropriate measures to achieve abrogation of such legislation, following the example of the Northern Territory. The Committee further stresses the role and responsibility of the Federal Government in this regard under the Convention.

41. The Committee remains concerned about the striking overrepresentation of indigenous peoples in prisons as well as the percentage of indigenous deaths in custody. It has also been reported that indigenous women constitute the fastest-growing prison population (art. 5).

The Committee recommends that the State party increase its efforts to remedy this situation. It wishes to receive more information about the implementation of the recommendations of the Royal Commission on Aboriginal Deaths in Custody.

42. The Committee notes with concern reports of alleged discrimination in the grant of visas against persons from Asian countries and Muslims, and further notes the assurances given by the delegation that no such discrimination occurs (art. 5).

The Committee would like to receive more information on this issue, including statistical data. The Committee reiterates that States parties should ensure that immigration policies do not have the effect of discriminating against persons on the basis of race, colour, descent, or national or ethnic origin.

43. The Committee expresses concern about the mandatory detention of illegal migrants, including asylum-seekers, in particular when such detention affects women, children, unaccompanied minors, and those who are considered stateless. It is concerned that many persons have been in such administrative detention for over three years (art. 5).

The Committee recommends that the State party review the mandatory, automatic and indeterminate character of the detention of illegal migrants. It wishes to receive statistical data, disaggregated by nationality and length of detention, relating to persons held under such detention, including in offshore detention centres.

44. The Committee is concerned at reports according to which temporary protection visas granted to refugees who arrive without a valid visa do not make them eligible for many public services, do not imply any right to family reunion, and make their situation precarious. It is further reported that migrants are denied access to social security for a two-year period upon entry into Australia (art. 5).

The Committee wishes to receive statistical data, disaggregated by nationality, relating to temporary protection visas. It recommends that the State party review its policies, taking into consideration the fact that, under the Convention, differential treatment based on citizenship or immigration status would constitute discrimination if the criteria for such differentiation, judged in the light of the objectives and purposes of the Convention, are not applied pursuant to a legitimate aim, and are not proportional to the achievement of that aim.

45. The Committee, while acknowledging the efforts undertaken by the State party to achieve reconciliation and having taken note of the 1999 Motion of Reconciliation, is concerned about reports that the State party has rejected most of the recommendations adopted by the Council for Aboriginal Reconciliation in 2000 (art. 6).

The Committee encourages the State party to increase its efforts with a view to ensuring that a meaningful reconciliation is achieved and accepted by the indigenous peoples and the population at large. It reiterates its recommendation that the State party consider the need to address appropriately the harm inflicted by the forced removal of indigenous children.

46. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

47. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized. It suggests that consultations of non-governmental organizations and indigenous peoples be organized during the compilation of the next periodic report.

48. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 30, 31, 36 and 37 (paragraph 1 of rule 65 of the rules of procedure). The Committee recommends that the State party submit its fifteenth, sixteenth and seventeenth periodic reports in a single report, due on 30 October 2008.

AZERBAIJAN

49. The Committee considered the third and fourth periodic reports of Azerbaijan, submitted in one document (CERD/C/440/Add.1), at its 1691st and 1692nd meetings (CERD/C/SR.1691 and 1692), held on 4 and 7 March 2005. At its 1700th meeting (CERD/C/SR.1700), held on 11 March 2005, it adopted the following concluding observations.

A. Introduction

50. The Committee welcomes the report submitted by the State party and the additional oral information provided by the delegation. The Committee has been encouraged by the attendance of the high-ranking delegation and expresses its appreciation for the opportunity to continue its dialogue with the State party. However, it regrets that the report as a whole does not contain sufficient information on the practical implementation of the Convention.

B. Positive aspects

51. The Committee notes with satisfaction the enactment of new legislation containing anti-discrimination provisions, including the Criminal Code and the Code of Criminal Procedure.

52. The Committee welcomes the adoption, in June 2002, of the Constitutional Law on the Implementation of Human Rights and Freedoms in the Republic of Azerbaijan.

53. The Committee welcomes the establishment of the Office of the Human Rights Commissioner of the Republic of Azerbaijan, pursuant to the Constitutional Act on the Ombudsman, adopted in December 2001.

54. The Committee welcomes the State party's ratification of the Framework Convention for the Protection of National Minorities in 2000, the European Convention for the Protection of Human Rights and Fundamental Freedoms in 2002 and the European Social Charter in 2004.

55. The Committee notes with satisfaction that the State party has commenced the implementation of the refugee status determination procedure, in the framework of cooperation with UNHCR.

56. The Committee welcomes the adoption of the National Poverty Reduction Strategy for 2003-2005, which targets internally displaced persons as a vulnerable group.

57. The Committee notes with satisfaction that the State party has made the optional declaration recognizing the Committee's competence to receive communications under article 14 of the Convention in 2001.

C. Concerns and recommendations

58. The Committee notes the position of the State party that, despite the negative effects of the conflict in the Nagorny-Karabakh region, persons of Armenian origin do not experience discrimination in Azerbaijan. However, the Committee is concerned that, according to reports, incidents of racial discrimination against Armenians occur, and that a majority of the Armenians residing in Azerbaijan prefer to conceal their ethnic identity in order to avoid being discriminated against (Convention, art. 2).

The Committee encourages the State party to continue to monitor all tendencies that give rise to racist and xenophobic behaviour and to combat the negative consequences of such tendencies. In particular, the Committee recommends to the State party that it conduct studies with a view to effectively assessing and evaluating occurrences of racial discrimination, in particular against ethnic Armenians.

59. While welcoming the information provided by the delegation on counter-trafficking measures taken by the State party, including the adoption, in 2004, of the National Plan of Action to combat trafficking in human beings and the establishment within the police service of a department to assist victims of trafficking, the Committee is concerned that human trafficking, including of foreign women, men and children, remains a serious problem in the State party, which is a country of origin and a transit point (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on human trafficking and continue to undertake necessary legislative and policy measures to prevent and combat trafficking. The Committee urges the State party to provide support and assistance to victims, wherever possible in their own language. The Committee also recommends to the State party that it continue to make determined efforts to prosecute the perpetrators, and underlines the paramount importance of prompt and impartial investigations.

60. The Committee expresses its concern that asylum-seekers, refugees, stateless persons, displaced persons and long-term residents residing in Azerbaijan experience discrimination in the areas of employment, education, housing and health (art. 5).

The Committee urges the State party to continue taking necessary measures in accordance with article 5 of the Convention to ensure equal opportunities for full enjoyment of their economic, social and cultural rights by asylum-seekers, refugees, stateless persons, displaced persons and long-term residents of Azerbaijan. The Committee requests the State party to include, in its next periodic report, information on measures taken in this regard, and draws the attention of the State party to its general recommendation XXX on discrimination against non-citizens.

61. The Committee observes that, while the State party generally endeavours to comply with the standards of the Convention relating to the Status of Refugees, some asylum-seekers are excluded by the refugee determination procedure of the State party. The Committee is concerned that persons who are not formally recognized as refugees may still require subsidiary forms of protection, given that they are unable to return to their countries for compelling reasons such as existing situations of armed conflict. The Committee also expresses concern about information on cases of refoulement of refugees (art. 5 (b)).

The Committee requests the State party to ensure that its asylum procedures do not discriminate in purpose or effect between asylum-seekers on the basis of race, colour or ethnic or national origin, in line with section VI of its general recommendation XXX. The Committee recommends that the State party consider adopting subsidiary forms of protection guaranteeing the right to remain for persons who are not formally recognized as refugees but who may still require protection, and to continue its cooperation with UNHCR. The Committee further recommends that the State party, when proceeding with the return of asylum-seekers to their countries, respect the principle of non-refoulement.

62. While welcoming the information provided on minority groups, the Committee regrets the insufficiency of information on the participation of these groups in the elaboration of cultural and educational policies. It is also concerned at the lack of programmes to support minority languages, and that those languages are not used in the educational system to an extent commensurate to the proportion of the different ethnic communities represented in the State party's population (art. 5).

The Committee invites the State party to facilitate the participation of ethnic minorities in the elaboration of cultural and educational policies. The Committee also recommends to the State party that it take the necessary measures to create favourable conditions that will enable persons belonging to minorities to develop their culture, language, religion, traditions and customs, and to learn or to have instruction in their mother tongue. The Committee invites the State party to include in its next periodic report detailed information on this issue.

63. The Committee notes with concern the State party's explanation that despite the legislative provisions providing for the right to effective protection and remedies, no cases invoking the relevant provisions of the Criminal Code concerning racial discrimination have been brought before the courts (art. 6).

The Committee requests the State party to include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences that relate to racial discrimination and where the relevant provisions of the existing domestic legislation have been applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be largely an indication of the absence of relevant specific legislation, a lack of awareness of the availability of legal remedies, or insufficient will by the authorities to prosecute. It is therefore essential to provide for the relevant provisions in national legislation and to inform the public of the availability of all legal remedies in the field of racial discrimination.

64. The Committee regrets the lack of information on measures taken by the State party to enhance better understanding, respect and tolerance among different ethnic groups living in Azerbaijan, in particular, on programmes adopted, if any, to ensure intercultural education (art. 7).

The Committee recommends that the State party adopt measures to promote intercultural understanding and education between ethnic groups, and provide more detailed information on this issue in its next periodic report.

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

The Committee encourages the State party to expand and strengthen existing efforts regarding human rights education. Furthermore, particular attention should be paid to general recommendation XIII, according to which law enforcement officials should receive specific training to ensure that, in the performance of their duties, they respect and protect the human rights of all persons without distinction as to race, colour, descent or national or ethnic origin.

66. The Committee notes the lack of sufficient information on efforts taken by the State party to involve non-governmental organizations in the preparation of the periodic report and is concerned about the ability of civil society organizations, including organizations working to combat racial discrimination, to operate freely.

The Committee underlines the importance of the role of civil society in the full implementation of the Convention and recommends to the State party that it promote the free functioning of civil society organizations that contribute to promoting human rights and combating racial discrimination. Furthermore, the Committee encourages the State party to consult with civil society groups working in the area of combating racial discrimination in the elaboration of its next periodic report.

67. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 57/194, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was reiterated by the General Assembly in resolution 58/160.

68. The Committee recommends that the State party continue to take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level, in particular the preparation and implementation of the national plan of action.

69. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

70. The State party should within one year provide information on its response to the Committee's recommendations contained in paragraphs 58 and 61 (paragraph 1 of rule 65 of the rules of procedure). The Committee recommends that the State party submit its fifth periodic report jointly with its sixth periodic report on 15 September 2007, and that it address in this report all points raised in the present concluding observations.

BAHRAIN

71. The Committee considered the sixth and seventh periodic reports of Bahrain, submitted in one document (CERD/C/443/Add.1), at its 1689th and 1690th meetings (CERD/C/SR.1689 and 1690), held on 3 and 4 March 2005. At its 1700th meeting (CERD/C/SR.1700), held on 11 March 2005, it adopted the following concluding observations.

A. Introduction

72. The Committee welcomes the reports submitted by the State party and expresses its appreciation for the constructive responses provided to the questions asked during the consideration of the report. The Committee is encouraged by the attendance of a large and high-ranking delegation.

73. The Committee appreciates the fact that the report, which generally complies with the Committee's guidelines, is the result of cooperation between various ministerial departments. It regrets, however, that it does not contain sufficient information on the practical application of the Convention.

B. Positive aspects

74. The Committee welcomes the meaningful political, legal and economic reforms on which the State party has embarked, and notes in particular the adoption of the National Action Charter in 2001, the promulgation of the amended Constitution and the creation of the Constitutional Court in 2002, as well as the establishment of a new bicameral parliament with an elected chamber of deputies.

75. The Committee appreciates the establishment of trade unions in 2002 for the first time in Bahrain as well as of cultural associations composed of foreigners.

76. The Committee welcomes the organization of several training programmes addressed to the judiciary and law enforcement officials on the promotion and protection of human rights in the field of racial discrimination.

77. The Committee also welcomes the accession to the Convention on the Elimination of All Forms of Discrimination against Women in 2002.

78. The Committee also notes with appreciation the increasing frequency of the State party's submission of reports to, and substantive communications with, the Committee and other treaty bodies regarding its implementation of the human rights conventions to which it has acceded.

C. Concerns and recommendations

79. The Committee expresses its concern over the representations made by the State party that there is no racial discrimination in Bahrain.

> **The Committee, considering that no country is free from racial discrimination, reminds the States party that it is required under the Convention to take legislative, judicial, administrative and other measures to give effect to its provisions, even in the apparent absence of racial discrimination.**

80. The Committee regrets that the State party has not provided specific data on the ethnic composition of the population, and recalls that such information is necessary to assess the practical implementation of the Convention.

> **The Committee draws the attention of the State party to its general recommendations IV and VIII as well as to paragraph 8 of its reporting guidelines, and reiterates its recommendation that population data, disaggregated by race, descent, ethnicity, language and religion, as well as the socio-economic status of each group, be provided by the State party in its next periodic report.**

81. The Committee notes that the Basic Law and royal decrees, regulations and codes adopted by the State party merely state the general principle of non-discrimination, which is not a sufficient response to the requirements of the Convention.

> **The Committee recommends that the State party incorporate in its domestic law a definition of racial discrimination that includes the elements set forth in article 1 of the Convention.**

82. The Committee takes note of the abolition of the Human Rights Committee which was designed to provide advice to the Head of State and to the executive authorities on a wide range of human rights issues, including those matters relating specifically to the Convention. Furthermore, the Committee regrets that there is no national human rights institution in Bahrain.

The Committee recommends to the State party that it consider the establishment of a national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

83. The Committee is concerned over the lack of integrationist multiracial organizations and movements in the State party and in particular over the banning of the Bahrain Centre for Human Rights.

In the light of article 2 (e) of the Convention, the Committee requests that the State party permit such organizations and movements and create an enabling environment for such organizations, and encourages it to maintain dialogue with all civil society organizations, including those critical of its policies.

84. The Committee remains concerned at the situation of migrant workers, in particular regarding their enjoyment of economic, social and cultural rights.

In light of article 5 (e) (i) and of general recommendation XXX on non-citizens, the Committee urges the State party to take all necessary measures to extend full protection from racial discrimination to all migrant workers and remove obstacles that prevent the enjoyment of economic, social and cultural rights by these workers, notably in the areas of education, housing, employment and health. In addition, the State party should provide information in its next periodic report on any bilateral agreements it has entered into with the countries of origin of a significant or substantial number of migrant workers in Bahrain.

85. The Committee is concerned about allegations of substantial prejudice against women migrant domestic workers, in particular those coming from Asia, especially as regards their working conditions, and about the fact that these women do not benefit from the protection of the Labour Code.

In light of its general recommendation XXX and of its general recommendation XXV on gender-related dimensions of racial discrimination, the Committee requests the State party to take effective measures to prevent and redress the serious problems commonly faced by female domestic workers, including debt bondage, passport retention, illegal confinement, rape and physical assault, and to report on measures taken for the protection of their rights.

86. The Committee notes with concern the reportedly disparate treatment of and discrimination faced by members of some groups, in particular the Shia, that may be distinguishable by virtue of their tribal or national origin, descent, culture or language; the Committee is especially concerned about apparently disparate opportunities that are afforded to such groups.

The Committee recommends that the State party ensure that everyone, without distinction as to race, colour, or national or ethnic origin, enjoys the rights to work and to health and social security, adequate housing and education in accordance with article 5 (e) (i), (iii), (iv) and (v) of the Convention.

87. The Committee, noting the information provided regarding the acquisition of nationality, is concerned that a Bahraini woman is unable to transmit her nationality to her child when she is married to a foreign national, and that a foreign man is unable to acquire Bahraini nationality in the same manner as a foreign woman.

The Committee requests the State party to consider the possibility of modifying these provisions in order to conform to article 5 (d) (iii) of the Convention. In this connection, it draws the attention of the State party to general recommendation XXV and to general recommendation XXX, which requests States parties to ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization.

88. The Committee regrets that no statistics were provided on cases where the relevant provisions of domestic legislation concerning racial discrimination were applied.

The Committee recommends that the State party consider whether the lack of formal complaints may be the result of the victims' lack of awareness of their rights, lack of confidence in the police and judicial authorities, or the authorities' lack of attention, sensitivity, or commitment to cases of racial discrimination. The Committee requests that the State party include in its next periodic report statistical information on complaints lodged, prosecutions initiated and the outcome of cases involving racial or ethnic discrimination, as well as specific examples of such cases.

89. The Committee strongly recommends that the State party ratify the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, recognizing the close connection to articles 2, 4, 5 and 6 of the Convention.

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

91. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

92. The Committee recommends that the State party continue consulting and consider expanding its dialogue with organizations of civil society working in the area of combating racial discrimination, in connection with the preparation of the next periodic report.

93. The Committee recommends that the State party's reports be made available to the public from the time they are submitted and that the observations and recommendation of the Committee on these reports be similarly publicized.

94. The State party should within one year provide information on the way it has followed up on the Committee's recommendations contained in paragraphs 82, 83, 85 and 86 (paragraph 1 of rule 65 of the rules of procedure). The Committee recommends that the State party submit its eighth and ninth periodic reports in a single report, due on 26 April 2007.

FRANCE

95. The Committee considered the fifteenth and sixteenth periodic reports of France, due on 27 August 2000 and 2002 respectively, submitted as one document (CERD/C/430/Add.4), at its 1675th and 1676th meetings (CERD/C/SR.1675 and 1676), held on 22 and 23 February 2005. At its 1698th meeting (CERD/C/SR.1698), held on 10 March 2005, it adopted the following conclusions and recommendations.

A. Introduction

96. The Committee welcomes the report submitted by the State party in accordance with the guidelines for the presentation of reports, as well as the additional information provided by the high-level delegation orally and in writing.

B. Positive aspects

97. The Committee takes note with satisfaction of the many legislative measures designed to strengthen efforts to combat racial discrimination, in particular the Act of 16 November 2001 concerning measures to combat discrimination, the Social Modernization Act of 17 January 2002, the Act of 9 March 2004 on the adaptation of the system of justice to developments in the area of crime, and the Act of 30 December 2004 setting up the High Authority against Discrimination and for Equality.

98. The Committee welcomes the measures taken to prevent the spread of racist messages on the Internet, in particular the adoption of the Act of 21 June 2004.

99. The Committee welcomes the fact that, under the Act of 10 December 2003, persecution of asylum-seekers need no longer come from the State.

100. The Committee also welcomes the fact that, since the adoption of its ruling dated 1 June 2002, the Criminal Division of the Court of Cassation has allowed the practice of discrimination testing as a form of evidence in the area of racial discrimination, and encourages the State party to promote more frequent recourse to it.

101. The Committee welcomes the measures designed to rationalize the institutional framework for efforts to combat discrimination.

102. The Committee welcomes the role played by the National Consultative Commission on Human Rights in efforts to combat racial discrimination, and encourages the State party to take the Commission's views on the matter more into account.

103. The Committee also takes note of the expanded report of the Court of Audit on the reception of immigrants and the integration of population groups of immigrant origin (November 2004).

C. Concerns and recommendations

104. While it takes note of the establishment of an Observatory for Immigration and Integration Statistics in July 2004, the Committee shares the view expressed by the Court of Audit in the above-mentioned report that efforts to combat discrimination have suffered and still suffer from inadequate statistical coverage.

The Committee recalls its general recommendation XXIV concerning article 1 of the Convention, as well as its general recommendation XXX on discrimination against non-citizens, and invites the State party to harmonize and refine its statistical tools to enable it to draw up and implement a comprehensive and effective policy to combat racial discrimination.

105. While noting the reactivation of the inter-ministerial committee on integration since April 2003 and the recent establishment of the High Authority against Discrimination and for Equality, the Committee is concerned at the proliferation of machinery and the risk of watering down the State party's efforts to combat racial discrimination and xenophobia.

The Committee encourages the State party to ensure greater coordination of the activities of the competent authorities in this area; to specify the role and resources of the High Council on Integration; to clearly define the functions of the High Authority, in particular vis-à-vis the Ombudsman and the National Consultative Commission on Human Rights, and to provide this new body with all necessary resources to enable it to perform its task effectively.

106. While taking note of the Act of 1 August 2003 on general principles and planning for cities and urban renewal, the Committee remains concerned at the unfavourable situation faced by immigrants and population groups of immigrant origin in the field of housing.

The Committee calls on the State party to strengthen its policy for the integration of immigrants and population groups of immigrant origin, especially in the field of housing, and draws its attention to the Committee's general recommendation XIX on article 3 of the Convention and general recommendation XXX on discrimination against non-citizens. The Committee invites the State party to follow the recommendations in this area as set out in the report of the Court of Audit, referred to in paragraph 9 above.

107. The Committee is also concerned at the unfavourable situation faced by immigrants and population groups of immigrant origin in the field of employment and education, despite the State party's substantial efforts in this area.

The Committee encourages the State party to follow the recommendations set out in the Court of Audit's report on employment and education for immigrants and population groups of immigrant origin. The Committee draws the State party's attention to its general recommendation XXV on gender-related dimensions of

racial discrimination, and also invites it to bear more specifically in mind, in all measures which are adopted or planned, the situation of women, who sometimes fall victim to twofold discrimination.

108. Despite the State party's efforts, the Committee remains concerned at the situation of non-citizens and asylum-seekers in holding centres and areas and delays in processing applications from refugees for family reunification.

The Committee recommends to the State party that it should strengthen the supervision of police personnel responsible for the reception and day-to-day monitoring of holding centres for non-citizens and asylum-seekers; improve the conditions in which such persons are held; operationalize the national committee to monitor holding centres and premises and holding areas; and process applications from refugees for family reunification as speedily as possible.

109. The Committee remains concerned at the fact that only French may be used in applications for asylum.

In order to allow asylum-seekers to exercise their rights fully, the Committee invites the State party to lay down that asylum-seekers may be assisted by translators/interpreters whenever necessary, and/or to agree that applications for asylum may be written in the most common foreign languages.

110. While it appreciates the State party's oral and written responses to questions relating to the situation of travellers, the Committee remains concerned at delays in the effective application of the Act of 5 July 2000 on the reception and housing of travellers and the persistent difficulties travellers encounter in such fields as education, employment and access to the social security and health system.

The Committee reminds the State party of its general recommendation XXVII on discrimination against Roma and recommends that it should step up its efforts to provide travellers with more parking areas equipped with the necessary facilities and infrastructures and located in clean environments, intensify its efforts in the field of education and combat the phenomena of exclusion of travellers more effectively, including in the fields of employment and access to health services.

111. The Committee shares the concerns expressed by the delegation relating to the increase in racist, anti-Semitic and xenophobic acts.

The Committee encourages the State party to apply more effectively the existing provisions designed to combat such acts; to grant adequate compensation to victims; to create greater awareness on the part of law enforcement personnel; and to step up its efforts in the field of education and training of teachers in tolerance and cultural diversity.

112. The Committee takes note of the information supplied by the State party on the implementation of the Act of 15 March 2004 governing the wearing of symbols or clothing denoting religious affiliation in State primary and secondary schools, in pursuance of the principle of secularism.

The Committee recommends to the State party that it should continue to monitor the implementation of the Act of 15 March 2004 closely, to ensure that it has no discriminatory effects and that the procedures followed in its implementation always place emphasis on dialogue, to prevent it from denying any pupil the right to education and to ensure that everyone can always exercise that right.

113. While the Committee views as encouraging the efforts being made by the State party to create awareness among members of the security forces and other public officials of efforts to combat discrimination, it is concerned at allegations of persistent discriminatory behaviour towards the members of certain ethnic groups on the part of such personnel.

The Committee recommends to the State party that it should take the necessary preventive measures to halt racist incidents involving members of the security forces. It should also ensure that impartial investigations are carried out into all these complaints, and that any punishments imposed are proportionate to the gravity of the acts committed.

114. The Committee considers, as it has done in previous conclusions relating to the State party, that the prohibition of attempts to justify crimes against humanity, and of their denial, should not be limited to acts committed during the Second World War.

The Committee encourages the State party to criminalize attempts to deny war crimes and crimes against humanity as defined in the Statute of the International Criminal Court, and not only those committed during the Second World War.

115. While the Committee notes the State party's efforts to transpose into domestic law European Council directive 2000/43/CE of 29 June 2000, implementing the principle of equal treatment between persons irrespective of their racial or ethnic origin, it is concerned at the fact that the concept of indirect discrimination is applied only in matters of employment and housing.

The Committee recommends to the State party that it should take all necessary legislative steps to ensure the general application of the concept of indirect discrimination.

116. The Committee is concerned that for some local population groups in its overseas communities, the fact that they do not have a full command of French constitutes an obstacle to their enjoyment of their rights, particularly the right to access to justice.

In order to enable all those under the jurisdiction of the State party in its overseas communities to exercise their rights fully, the Committee recommends to the State party that it should take all appropriate steps to ensure that local population groups in overseas communities who do not have a command of French benefit from the services of translators/interpreters, especially in their contacts with the system of justice.

117. The Committee notes shortcomings in the teaching of the languages of certain ethnic groups - particularly Arabic, Amazigh or Kurdish - in the education system.

The Committee encourages the State party to promote the teaching of the languages of these groups in the education system, as proposed by the Stasi Commission in its report.

118. While the Committee takes note of the measures taken to settle the question of foreign veterans' pensions, it remains concerned at the continued differential treatment of such persons as compared with veterans who are French nationals.

The Committee encourages the State party to find a definitive solution to the question of foreign veterans' pensions by applying the principle of equal treatment.

119. The Committee recommends to the State party that it should widely distribute information on available domestic remedies against acts of racial discrimination, the legal means available for obtaining compensation in the event of discrimination, and the procedure governing individual complaints under article 14 of the Convention, which France has accepted.

120. The Committee encourages the State party to consult with civil society working in the area of combating racial discrimination in the elaboration of its next periodic report.

121. The Committee recommends to the State party that it should make its periodic reports readily available to the public from the time they are submitted, and similarly publish the Committee's present conclusions.

122. While recognizing the work already accomplished in this field, the Committee recommends to the State party that it should take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the provisions of the Convention in the domestic legal order, in particular in respect of articles 2 to 7, and include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

123. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 107, 108 and 110 above, within one year of the adoption of the present conclusions.

124. The Committee recommends that the seventeenth to nineteenth periodic reports of the State party, due on 27 August 2008, should be submitted as one report and constitute an updating of the issues raised during the consideration of the present reports and of all the points raised in the present concluding observations.

IRELAND

125. The Committee considered the initial and second periodic reports of Ireland, submitted in one document (CERD/C/460/Add.1), at its 1687th and 1688th meetings (CERD/C/SR.1687 and 1688), held on 2 and 3 March 2005. At its 1699th meeting (CERD/C/SR.1699), held on 10 March 2005, it adopted the following concluding observations.

A. Introduction

126. The Committee welcomes the report submitted by the State party, which is in conformity with the reporting guidelines and which was drafted following consultation with organizations of civil society, as well as the comprehensive additional oral and written information provided by the high-ranking delegation. The Committee was encouraged by the attendance of a large and well-qualified delegation and expresses its appreciation for the opportunity thus afforded to enter into a constructive dialogue with the State party.

B. Positive aspects

127. The Committee commends the State party for the recent adoption of the first National Action Plan against Racism, and the extensive consultations with civil society organizations during the drafting of this plan. The Committee also welcomes the information provided by the delegation concerning the forthcoming inclusion of representatives of civil society organizations in the High-Level Strategic Monitoring Group for the implementation of the National Action Plan. The Committee welcomes this initiative as a positive reflection of the State party's commitment to developing an ongoing and constructive relationship with civil society.

128. The Committee notes with appreciation the establishment of several independent institutions with competence in the field of human rights and racial discrimination, namely the Irish Human Rights Commission, the Equality Authority and the National Consultative Committee on Racism and Interculturalism, as well as judicial bodies with specific jurisdiction on equality and non-discrimination, such as the Equality Tribunal.

129. The Committee welcomes the enactment of a comprehensive legislative framework on anti-discrimination, which includes the Employment Equality Act 1998, the Equal Status Act 2000 and the Equality Act 2004, and notes with satisfaction that legislation to implement Council Directive 2000/43/EC of 29 June 2000, which prohibits discrimination on the grounds of racial or ethnic origin in employment, education, social protection and access to goods and services, is currently before Parliament.

130. The Committee, recalling the importance of gathering accurate and up-to-date data on the ethnic composition of the population, welcomes the decision by the State party to include a question on ethnicity in the next census in 2006, and encourages the State party to include in the next periodic report detailed information on the population, including non-citizens.

131. The Committee notes with appreciation that the State party has ratified the amendment to article 8 of the Convention, and has made the declaration under article 14 recognizing the competence of the Committee to receive and consider individual communications. As regards the latter, the Committee hopes that adequate measures will be taken within the State party to give it adequate publicity among the general public.

132. The Committee also notes with satisfaction the specific initiatives taken so far with regard to the Traveller community, including the National Strategy for Traveller Accommodation and the Traveller Health Strategy.

C. Concerns and recommendations

133. The Committee regrets that the State party has not yet incorporated the Convention into the domestic legal order, particularly in light of the fact that the State party has incorporated other international instruments into domestic law (Convention, art. 2).

The Committee invites the State party to envisage incorporating the Convention into its domestic legal order.

134. The Committee notes that the State party made a declaration on article 4 of the Convention. The Committee believes that no compelling reasons exist impeding the withdrawal of this declaration (art. 2).

Recalling its general recommendation XV, the Committee recommends to the State party that it reconsider its position and encourages it to withdraw the declaration made on article 4 of the Convention.

135. While noting the continuous efforts undertaken by the State party to combat racial discrimination and related intolerance, the Committee remains concerned that racist and xenophobic incidents and discriminatory attitudes towards ethnic minorities are still encountered in the country (art. 2).

The Committee encourages the State party to continue to combat prejudice and xenophobic stereotyping, especially in the media, and fight prejudice and discriminatory attitudes. In this context, the Committee recommends that the State party introduce in its criminal law a provision that makes committing an offence with a racist motivation or aim an aggravating circumstance allowing for a more severe punishment.

136. While noting the existence, in the area of the application of the Convention, of a diversified NGO community in Ireland and welcoming in particular the establishment by the State party of several independent institutions and judicial bodies in the field of human rights and non-discrimination, as referred to in paragraph 4 above, the Committee wishes to underscore the importance of providing adequate resources to these institutions, in order to enable them to efficiently and effectively exercise their duties and functions (art. 2).

The Committee recommends that the State party provide the newly established institutions in the field of human rights and non-discrimination with adequate funding and resources to enable them to exercise the full range of their statutory functions, and also support the NGO community.

137. The Committee is concerned at the possible implications of the policy of dispersal of and direct provision for asylum-seekers (art. 3).

The Committee encourages the State party to take all necessary steps with a view to avoiding negative consequences for individual asylum-seekers and to adopt measures promoting their full participation in society.

138. The Committee is concerned about reported instances of exploitation of foreign workers by some employers and of violations of labour regulations prohibiting discrimination (art. 5).

The Committee, recalling its general recommendation XXX on discrimination against non-citizens, encourages the State party to ensure full practical implementation of legislation prohibiting discrimination in employment and in the labour market. In this context, the State party could also consider reviewing the legislation governing work permits and envisage issuing work permits directly to employees.

139. The Committee regrets the absence of special detention facilities for asylum-seekers whose request for asylum has been rejected and for undocumented migrants awaiting deportation (art. 5).

The Committee recommends that the State party provide additional information in its next report on the conditions of detention of asylum-seekers and undocumented migrants awaiting deportation.

140. The Committee notes the reported occurrence of discriminatory treatment against foreign nationals entering Ireland during security checks at airports (art. 5).

The Committee encourages the State party to review its security procedures and practices at entry points with a view to ensuring that they are carried out in a non-discriminatory manner.

141. While welcoming the efforts of the State party with regard to the human rights training of the national police force, the establishment of a Garda Racial and Intercultural Office and the appointment of Garda Ethnic Liaison Officers, the Committee expresses concern about allegations of discriminatory behaviour by the police towards members of minority groups and regrets that data on complaints of racial discrimination against the police have not been provided in the report (arts. 5 (b) and 6).

The Committee invites the State party to include in its next periodic report data on the number of complaints against members of the police concerning discriminatory treatment as well as on the decisions adopted. It further recommends that the State party intensify its sensitization efforts among law enforcement officials, including the setting up of an effective monitoring mechanism to carry out investigations into allegations of racially motivated police misconduct.

142. The Committee, noting that almost all primary schools are run by Catholic groups and that non-denominational or multidenominational schools represent less than 1 per cent of the total number of primary education facilities, is concerned that existing laws and practice would favour Catholic pupils in the admission to Catholic schools in case of shortage of places, particularly in the light of the limited alternatives available (art. 5 (d) (vii) and 5 (e) (v)).

The Committee, recognizing the "intersectionality" of racial and religious discrimination, encourages the State party to promote the establishment of non-denominational or multidenominational schools and to amend the existing legislative framework so that no discrimination may take place as far as the admission of pupils (of all religions) to schools is concerned.

143. The Committee is concerned that the non-discrimination requirement stipulated in the 2000 Equal Status Act only covers government functions falling within the definition of a "service" as defined by the Act itself (art. 5 (f)).

In order to ensure comprehensive protection against discrimination by public authorities, the Committee urges the State party to consider expanding the scope of the Equal Status Act so as to cover the whole range of government functions and activities, including controlling duties.

144. Recalling its general recommendation VIII on the principle of self-identification, the Committee expresses concern at the State party's position with regard to the recognition of Travellers as an ethnic group. The Committee is of the view that the recognition of Travellers as an ethnic group has important implications under the Convention (arts. 1 and 5).

Welcoming the open position of the State party in this respect, the Committee encourages the State party to work more concretely towards recognizing the Traveller community as an ethnic group.

145. While noting the efforts made so far by the State party with regard to the situation of members of the Traveller community in the field of health, housing, employment and education, the Committee remains concerned about the effectiveness of policies and measures in these areas (art. 5 (e)).

The Committee recommends to the State party that it intensify its efforts to fully implement the recommendations of the Task Force on the Traveller community, and that all necessary measures be taken urgently to improve access by Travellers to all levels of education, their employment rates as well as their access to health services and to accommodation suitable to their lifestyle.

146. The Committee notes that members of the Traveller community are not adequately represented in the State party's political institutions and do not effectively participate in the conduct of public affairs (art. 5 (c)).

The Committee invites the State party to consider adopting affirmative action programmes to improve the political representation of Travellers, particularly at the level of Dáil Eireann (Lower House of Parliament) and/or Seanad Eireann (Upper House of Parliament (Senate)).

147. The Committee is particularly concerned about the situation faced by women belonging to vulnerable groups and at the instances of multiple discrimination they may be subject to (art. 5).

The Committee, recalling its general recommendation XXV, encourages the State party to take measures with regard to the special needs of women belonging to minority and other vulnerable groups, in particular female Travellers, migrants, refugees and asylum-seekers.

148. The Committee remains concerned that a fairly short time limit has been introduced in respect of the judicial review of administrative decisions on immigration issues (art. 6).

The Committee hopes that all issues pertaining to the appeal procedure will be adequately resolved within the framework of the proposed Immigration and Residence Bill.

149. The Committee wishes to encourage the State party to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families and the ILO Migration for Employment Convention (Revised), 1949 (No. 97) to ensure better protection for migrants and migrant workers.

150. The Committee recommends to the State party that it continue consulting with organizations of civil society working in the area of combating racial discrimination during the preparation of the next periodic report.

151. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

152. The Committee recommends that the State party submit its third and fourth periodic reports, due on 28 January 2008, jointly and that it address therein all points raised in the present concluding observations.

LAO PEOPLE'S DEMOCRATIC REPUBLIC

153. The Committee considered the sixth to fifteenth periodic reports of the Lao People's Democratic Republic, due for submission from 1985 to 2003 and submitted as one document (CERD/C/451/Add.1), at its 1673rd and 1674th meetings (CERD/C/SR.1673 and 1674), held on 21 and 22 February 2005. At its 1696th meeting, held on 9 March 2005, the Committee adopted the following concluding observations.

A. Introduction

154. The Committee welcomes the report submitted by the Lao People's Democratic Republic. It commends the efforts made by the State party to comply with the Committee's reporting guidelines, while noting that the report does not contain enough information on the practical implementation of the Convention.

155. The Committee welcomes the fact that the State party was represented by a high-ranking delegation and commends the efforts it made to respond to the questions asked. It likewise welcomes the resumption of a constructive dialogue with the State party and the fact that the State party has expressed its desire to pursue a dialogue with the Committee on a regular basis.

B. Positive aspects

156. The Committee commends the efforts of the State party to reduce poverty, particularly in rural areas and among ethnic groups.

157. The Committee notes with satisfaction that the State party adopted penal measures in 2004 to combat trafficking in persons.

158. The Committee is pleased to learn that the Convention has been translated into Lao.

159. The Committee welcomes the programme of cooperation undertaken by the State party and the United Nations Development Programme relating to the ratification and implementation of international human rights instruments. It invites the State party to use this framework to ensure follow-up to the present concluding observations and recommendations and to seek additional technical assistance from the Office of the United Nations High Commissioner for Human Rights.

160. The Committee welcomes the signing by the State party in 2000 of the two International Covenants on Human Rights and encourages it to ratify both instruments as soon as possible.

C. Subjects of concern and recommendations

161. The Committee, noting that it received the report after a delay of 19 years, invites the State party to respect the timetable for the submission of its future reports.

162. The Committee notes with concern that no clear definition of racial discrimination exists in domestic legislation.

The Committee recommends to the State party that it adopt a definition of racial discrimination that includes the elements contained in article 1 of the Convention.

163. The Committee notes with concern that the Convention is not incorporated in domestic legislation and that the question of its rank in the internal legal order has not been settled (art. 2).

The Committee invites the State party to take the necessary steps to ensure the effective application of the Convention in domestic law.

164. The Committee regrets that there is no national human rights institution in the Lao People's Democratic Republic (art. 2).

The Committee invites the State party to consider the establishment of such an institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134).

165. The Committee is concerned at the situation with respect to independent non-governmental organizations (NGOs) working in the area of human rights and the prevention of discrimination (art. 2).

The Committee invites the State party to pave the way for the emergence of independent national NGOs.

166. The Committee notes the absence of legislative provisions criminalizing acts of violence and incitement to violence on racial grounds.

The Committee invites the State party to adopt legislation to fully implement the provisions of article 4 of the Convention.

167. The Committee takes note of the statement by the Sate party that racial discrimination does not exist in its territory and understands the State party to mean by that statement that it does not engage in systematic discrimination.

The Committee recalls its customary reservations regarding a general declaration of this nature, since, in its opinion, no State party is free from racial discrimination in its territory.

168. The Committee notes that, as the State party has acknowledged, poverty strikes the ethnic groups in the remotest areas hardest (arts. 2 and 5).

The Committee recalls that the Convention prohibits not only intentional and systematic acts of racial discrimination but also discrimination that is not the direct result of a deliberate effort by the Government to prevent part of its population from enjoying its rights. In the Committee's view, the low level of economic, social and cultural development of certain ethnic groups as compared with the rest of the population might be an indication of de facto discrimination. It therefore recommends to the State party that it conduct studies with a view to assessing and evaluating in concrete terms the extent to which racial discrimination exists in the country and to ascertain its principal causes. Statistics broken down by ethnic group on political participation and the standard of living of the population might be included in the next periodic report.

169. The Committee takes note of the delegation's explanations regarding the reluctance of the authorities to classify ethnic groups in the Lao People's Democratic Republic as minorities or indigenous peoples (arts. 1, 2 and 5).

The Committee recommends to the State party that it recognize the rights of persons belonging to minorities and indigenous peoples as set out in international law, regardless of the name given to such groups in domestic law. It invites the State party to take into consideration the way in which the groups concerned perceive and define themselves. The Committee recalls that the principle of non-discrimination requires that the specific characteristics of ethnic, cultural and religious groups be taken into consideration.

170. The Committee notes that the State party has adopted a policy of resettling members of ethnic groups from the mountains and highland plateaux to the plains (art. 5).

The Committee recommends that the State party describe in its next periodic report the scope of the resettlement policies being implemented, the ethnic groups concerned, and the impact of these policies on the lifestyles of these groups and on their enjoyment of their economic, social and cultural rights. It recommends to the State party that it study all possible alternatives with a view to avoiding displacement; that it ensure that the persons concerned are made fully aware of the reasons for and modalities of their displacement and of the measures taken for compensation and resettlement; that it endeavour to obtain the free and informed consent of the persons and groups concerned; and that it make remedies available to them. The State party should pay particular attention to the close cultural ties that bind certain indigenous or tribal peoples to their land and take into consideration the Committee's general recommendation XXIII of 1997 in this regard. The preparation of a legislative framework setting out the rights of the persons and groups concerned, together with information and consultation procedures, would be particularly useful.

171. The Committee notes with concern that, according to certain reports, a major obstacle to the education and vocational training of persons belonging to ethnic groups is the fact that education is provided only in Lao. Language barriers are also apparently responsible for the many problems encountered in obtaining access to social services (art. 5).

The Committee recommends to the State party that it take all possible measures to ensure that persons belonging to ethnic groups receive education and vocational training in their mother tongue and that it increase its efforts to ensure that they learn Lao.

172. The Committee is disturbed by reports of the infringement of the freedom of religion of members of religious minorities, in particular Christians, who are also often members of ethnic minorities.

The Committee recommends to the State party that it ensure that all persons enjoy their right to freedom of thought, conscience and religion, without discrimination, in accordance with article 5, subparagraph (d), of the Convention.

173. The Committee remains concerned at persistent allegations of conflict between the Government and members of the Hmong minority who have taken refuge in the jungle or mountainous areas of the Lao People's Democratic Republic since 1975. According to various corroborating reports, this group is living in difficult humanitarian conditions (art. 5).

The Committee calls on the State party to take all measures, if necessary with the support of the Office of the United Nations High Commissioner for Human Rights, the United Nations and the international community, to find a political and humanitarian solution to this crisis as quickly as possible and to create the necessary conditions for the initiation of a dialogue with this group. The Committee strongly encourages the State party to authorize United Nations agencies to provide emergency humanitarian assistance to this group.

174. The Committee is concerned at reports that serious acts of violence have been perpetrated against members of the Hmong minority, in particular allegations that soldiers brutalized and killed a group of five Hmong children on 19 May 2004 (art. 5).

The Committee recommends to the State party that it provide more precise information about the bodies responsible for investigating these allegations. It also strongly recommends that the State party allow United Nations bodies for the protection and promotion of human rights to visit the areas in which members of the Hmong minority have taken refuge.

175. The Committee notes the statement by the State party that there have been no complaints or judicial decisions relating to racial discrimination (art. 6).

The Committee calls upon the State party to investigate this situation in order to determine whether it is due to the absence of legal remedies for combating racial discrimination, an incomplete understanding by victims of their rights, the fear of reprisals, a lack of confidence in the police and justice officials, or a lack of attention or awareness on the part of these authorities in matters involving racial discrimination.

176. The Committee notes with concern that the State party claims that it is unable to introduce human rights education programmes in schools. It is also concerned at reports that law enforcement officials continue to have minimal awareness of human rights issues as set out in the law, the Constitution and international instruments (art. 7).

The Committee recommends to the State party that it introduce, if necessary with the assistance of the international community, education programmes in schools on human rights and combating racial discrimination, and that it increase its efforts to provide training to law enforcement officials.

177. The Committee recommends to the State party, when applying the provisions of the Convention in its legal order, and particularly the provisions of articles 2 to 7, that it take into account the relevant passages of the Durban Declaration and Programme of Action, and that it include in its next periodic report information about plans of action and other measures taken to implement the Durban Declaration and Plan of Action at the national level.

178. The Committee strongly 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 General Assembly resolution 57/194 of 18 December 2002, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment. A similar appeal was made by the Assembly in its resolution 58/160 of 22 December 2003.

179. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider the possibility of doing so.

180. The Committee recommends to the State party that it make its periodic reports available to the public and that the conclusions of the Committee be publicized in the same way.

181. In conformity with rule 65 of the Committee's rules of procedure, the State party should provide information within one year on follow-up to the Committee's recommendations in paragraphs 162, 173 and 174. The Committee recommends to the State party that it submit its sixteenth and seventeenth periodic reports in a single report due on 24 March 2007.

LUXEMBOURG

182. The Committee considered the tenth, eleventh, twelfth and thirteenth periodic reports of Luxembourg, due between 1997 and 2003 and submitted in a single document (CERD/C/446/Add.1), at its 1678th and 1679th meetings (CERD/C/SR.1678 and 1679) on 23 and 24 February 2005. It adopted the concluding observations below at its 1697th meeting, held on 9 March 2005.

A. Introduction

183. The Committee welcomes the periodic report of Luxembourg, which is in conformity with the reporting guidelines of the Committee. It applauds the efforts made by the delegation to provide thorough and highly constructive answers to the questions raised. It appreciates the opportunity thus provided to resume a dialogue with the State party.

184. Noting that the report was more than seven years overdue when submitted, the Committee invites the State party to respect the intervals it has suggested for the submission of its future reports.

B. Positive aspects

185. The Committee notes with appreciation the information provided by the delegation on the execution of a national plan of action on the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

186. The Committee welcomes the Act of 19 July 1997, which supplements the Criminal Code by making racism a more serious offence and criminalizing revisionism and other acts based on discrimination.

187. The Committee notes with satisfaction the current incorporation into Luxembourg law of Council Directive 2000/43/CE of 19 June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and establishing a general framework for equal treatment in employment and occupation.

188. The Committee commends the entry into force of the Act of 24 July 2001 amending the Luxembourg Nationality Act of 22 February 1968 by easing the conditions for obtaining Luxembourg nationality.

189. The Committee welcomes the entry into force of the Act of 8 June 2004 on freedom of expression in the media, which calls for a code of ethics to govern the pursuit of journalistic activities.

190. The Committee notes with satisfaction the signing of Protocol No. 12 on non-discrimination to the European Convention on Human Rights.

191. The Committee commends the establishment of an Advisory Commission on Human Rights, a Complaints Office within the Permanent Special Commission against Racial Discrimination, advisory commissions for foreigners in the communes, and the appointment of an ombudsman.

192. The Committee also notes with satisfaction school curricula that promote interculturalism, a certain number of mother-tongue classes for immigrant children and the introduction of intercultural mediators in schools.

C. Concerns and recommendations

193. The Committee notes that the statistical data provided by the State party are incomplete. It draws attention to the fact that it needs these data for an assessment of the implementation of the Convention and for monitoring measures taken for the benefit of minorities and vulnerable groups.

Recalling its general recommendations XXIV and XXX, the Committee requests the State party to include in its next periodic report updated statistical information, in particular on the Roma communities, and on vulnerable groups such as non-nationals, refugees, asylum-seekers and clandestine workers.

194. While noting the State party's efforts to tighten up its laws and strengthen its institutions combating racial discrimination, the Committee notes that racist and xenophobic incidents, in particular against Arabs and Muslims, and discriminatory attitudes towards ethnic minorities are still encountered.

The Committee encourages the State party to continue to combat prejudice and xenophobic stereotypes, in the media especially, and fight prejudice and discriminatory attitudes. It recommends that the authorities adopt a strategy for making the public at large better aware of the existence and purpose of the institutions established to combat racial discrimination.

195. The Committee is concerned at the fact that racist and xenophobic propaganda is to be found on Internet sites.

The Committee encourages the State party to combat this contemporary form of racial discrimination, which is covered by the principles of the Convention. It would like to be informed of action taken by the State party to this end in its next periodic report. It also suggests that the State party ratify the Council of Europe Convention on Cybercrime and its Additional Protocol concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

196. The Committee notes with satisfaction the efforts made by the State party to combat offences motivated by racial hatred. It also welcomes the bill reversing the burden of proof in civil cases in favour of victims of racial discrimination. However, it notes that prosecutions in this area have been few in number.

The Committee encourages the State party to ensure that prosecutors and magistrates do prosecute racist offences under the relevant criminal laws, and apply the requisite criminal penalties. It also suggests that racist motives should be defined as a general aggravating circumstance for offences, and that derogations to the ban on discrimination such as those currently allowed under article 457-5 of the Criminal Code should be limited. It requests the State party to provide, in its next periodic report, updated statistics on acts of racial discrimination and judicial action taken in response.

197. While noting the action taken in response to the requirements of article 4 of the Convention, the Committee observes that the State party still upholds its interpretation of that article, viz. that criminal acts committed by members or supporters of a racist organization may be prohibited or punished by law, but not the existence of, or participation in, racist organizations.

The Committee draws the State party's attention to its general recommendation XV, according to which all provisions of article 4 of the Convention are of a mandatory character, including declaring illegal and prohibiting any organization promoting or inciting discrimination, as well as recognizing participation in such an organization as an offence punishable by law. Accordingly, the Committee recommends that the State party reconsider its position.

198. While recognizing the steps taken by the State party to combat racial discrimination, the Committee notes that certain vulnerable groups, such as non-nationals, refugees and asylum-seekers, are not afforded sufficient protection.

In the light of its general recommendation XXX, the Committee proposes action specifically to guarantee the equal enjoyment of the right to adequate housing for citizens and non-citizens, especially by avoiding segregation in housing and ensuring that housing agencies refrain from engaging in discriminatory practices.

199. The Committee is concerned that a number of non-nationals are illegally employed in Luxembourg, and are thus exposed to abuse by their employers.

In the light of its general recommendation XXX, the Committee encourages the State party to take practical steps to prevent and redress the serious problems faced by non-citizen workers, ensuring that any employers who recruit illegal workers are punished.

200. The Committee is concerned at allegations of discriminatory or vexatious conduct towards non-nationals on the part of officials working in various national or local authorities.

While aware of the information provided by the State party about human rights training for State employees, the Committee encourages the State party to include within the training a specific focus on the problems of racism and discrimination, and to ensure that all officials who come into contact with minority groups receive training of this type.

201. The Committee invites the State party to consider the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the 1961 Convention on the Reduction of Statelessness.

202. The Committee recommends that the State party's reports be made readily available to the public and that the observations of the Committee on these reports be similarly publicized.

203. The Committee recommends that the State party submit its fourteenth and fifteenth periodic reports in a single document due on 31 May 2007.

BARBADOS

204. The Committee considered the eighth to sixteenth periodic reports of Barbados, submitted in one document (CERD/C/452/Add.5), at its 1709th and 1710th meetings (CERD/C/SR.1709 and CERD/C/SR.1710), held on 5 and 8 August 2005. At its 1727th meeting (CERD/C/SR.1727), held on 18 August 2005, it adopted the following concluding observations.

A. Introduction

205. The Committee welcomes the report submitted by the State party which fully complies with the reporting guidelines and expresses its satisfaction that dialogue has been re-established with the State party. It also welcomes the supplementary information provided by the State party in writing as well as in its oral presentation. The report and the presentation enabled the Committee to engage in a rich discussion with the State party of the social and historical context of racial issues in Barbados.

206. Noting that the report was more than 12 years overdue when submitted, the Committee invites the State party to respect the timetable it has suggested for the submission of its future reports.

B. Positive aspects

207. The Committee notes with satisfaction the establishment of the Committee for National Reconciliation tasked with developing, coordinating and implementing a programme for the process of national reconciliation.

208. The Committee appreciates the relevant statistical information on the composition of the population provided by the State party.

209. The Committee welcomes the draft National Plan on Justice, Peace and Security as an important step in providing victims of violent crime with the right to claim compensation.

210. The Committee welcomes the organization of several training programmes conducted at the Regional Police Training Department on the promotion and protection of human rights in the field of racial discrimination.

211. The Committee also notes with satisfaction the pilot education programme which has included African Heritage Studies, Citizenry, Family life and conversational foreign languages in several primary and secondary schools.

212. The Committee notes with satisfaction the country's high ranking in the United Nations Development Programme *Human Development Report*.

C. Concerns and recommendations

213. While welcoming the recommendation of the Constitutional Review Commission that gender be included in the Constitution as a ground for non-discrimination and the establishment of a Constitution Committee which has begun redrafting the Constitution with the intention of, inter alia, including a definition of racial discrimination which would protect individuals against discriminatory actions by private persons and entities, the Committee is concerned about the lack of a legal definition of racial discrimination in line with article 1 of the Convention in its domestic legislation.

The Committee recommends to the State party that it adopt a definition of racial discrimination that includes the elements contained in article 1 of the Convention.

214. While taking note of the establishment of the office of Ombudsman, the Committee regrets the absence of a national human rights institution set up in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex).

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

215. The Committee is concerned over the lack of social movements that promote integrationist multiracial values in the State party and in particular that the report was not made more widely available to civil society before it was submitted.

In the light of article 2 (e) of the Convention, the Committee requests that the State party create an enabling environment for integrationist multiracial organizations, and encourages the State party to maintain dialogue with civil society organizations.

216. The Committee expresses concern at the "invisible crypto-racism" mentioned in the report which arises as a result of the separation of black and white communities and which is rooted in social relations at the interpersonal level.

The Committee reminds the State party of its general recommendation XIX according to which de facto racial segregation can arise without any initiative or direct involvement by the public authorities. The Committee thus encourages the State party to monitor all trends which can give rise to such segregation, to work for the eradication of any negative consequences that ensue and to describe any such action in its next periodic report.

217. The Committee notes with concern that, due to its general character, paragraph 1 of the reservation by the State party affects the application of a number of provisions of the Convention, in particular articles 2, 4, 5 and 6. Furthermore, paragraph 2 of the reservation restricts the interpretation of a key provision for the effective application of the Convention, namely article 4.

The Committee recommends that the State party consider withdrawing its reservation and enact legislation to give full effect to article 4 of the Convention, as well as to provide for effective remedies according to article 6.

218. The Committee is concerned at the absence of any complaints of racial discrimination before the High Court since 1994 and at the fact that no complaint was ever submitted before the Police Complaints Authority.

The Committee recommends that the State party consider whether the lack of formal complaints may be the result of the victims' lack of awareness of their rights, lack of confidence in the police and judicial authorities, or the authorities' lack of attention, sensitivity, or commitment to cases of racial discrimination. The Committee requests that the State party include in its next periodic report statistical information on complaints lodged, prosecutions initiated and the outcome of cases involving racial or ethnic discrimination, as well as specific examples of such cases.

219. While taking note of the State party's observation that education in Barbados is "socially guaranteed", the Committee expresses concern that the right to education as well as other economic and social rights are not adequately protected in domestic law.

The Committee recommends to the State party that it ensure equal enjoyment of economic and social rights including the right to education contained in article 5 (e) of the Convention.

220. The Committee expresses concern at the closure of the Centre for Multiethnic Studies at the Barbados campus of the University of the West Indies which was tasked to research race and ethnicity in the Caribbean.

The Committee encourages the State party to consider reopening the Centre.

221. The Committee requests the State party to further clarify the situation regarding Amerindians in Barbados.

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

223. The Committee recommends that the State party continue taking into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on further action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

224. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

225. The Committee strongly recommends that the State party ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the Convention relating to the Status of Refugees.

226. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized. It further suggests introducing effective measures, including public awareness-raising campaigns about the Convention.

227. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 213 and 217 above, within one year of the adoption of the present conclusions.

228. The Committee recommends that the State party submit its seventeenth periodic report jointly with its eighteenth periodic report on 8 December 2007, and that it address all points raised in the present concluding observations.

GEORGIA

229. The Committee considered the second to third periodic reports of Georgia, which were due on 2 July 2002 and 2004 respectively, submitted as one document (CERD/C/461/Add.1), at its 1705th and 1706th meetings (CERD/C/SR.1705 and 1706), held on 3 and 4 August 2005. At its 1721st meeting, held on 15 August 2005, it adopted the following concluding observations.

A. Introduction

230. The Committee welcomes the report submitted by the State party and the additional information provided by the delegation. The Committee also appreciates the presence of a high-ranking delegation and the constructive and frank dialogue with the State party.

231. The Committee expresses its satisfaction with the quality of the report, its conformity with the reporting guidelines of the Committee and notes as very positive the fact that the State party submitted the report in a timely manner.

B. Factors and difficulties impeding the implementation of the Convention

232. The Committee acknowledges that Georgia has been confronted with ethnic and political conflicts in Abkhazia and South Ossetia since independence. Due to the lack of governmental authority, the State party has difficulty in exercising its jurisdiction with regard to the protection of human rights and the implementation of the Convention in those regions.

233. In addition, the conflicts in South Ossetia and Abkhazia have resulted in discrimination against people of different ethnic origins, including a large number of internally displaced persons and refugees. Several recommendations have been issued by the Security Council to facilitate the free movement of refugees and internally displaced persons.

C. Positive aspects

234. The Committee acknowledges that the State party is a multi-ethnic country, with numerous and varied communities, and appreciates the efforts made by the State party to provide information relating to the ethnic composition of the population as well as other statistical data related to minorities.

235. The Committee notes with satisfaction that the State party is continuing to make important progress in the area of legislative reform and that some of its previous recommendations were taken into consideration during this process.

236. The Committee also notes with satisfaction that the State party has made the declaration under article 14 of the Convention recognizing the competence of the Committee to receive and consider communications and expects that the public at large will be appropriately informed of this fact.

237. The Committee also expresses its satisfaction at recent measures taken by the State party to strengthen the participation of ethnic minorities in its political institutions.

D. Concerns and recommendations

238. While noting the adoption of a detailed "plan of action to strengthen protection of the rights and freedoms of various population groups of Georgia for the period 2003-2005", the Committee regrets that the draft legislation to protect minorities has not yet been adopted (art. 2).

> **The Committee recommends that the State party provide detailed information on the implementation and results of the "plan of action to strengthen protection of the rights and freedoms of various population groups of Georgia for the period 2003-2005" and encourages the State party to adopt specific legislation to protect minorities.**

239. While taking note of the introduction of section 1 of article 142 of the Criminal Code regarding acts of racial discrimination, the Committee is concerned over the insufficiency of specific penal provisions implementing article 4 (a) and (b) of the Convention in the domestic legislation of the State party (art. 4).

The Committee recommends that the State party adopt legislation, in the light of its general recommendation XV, to ensure a full and adequate implementation of article 4 (a) and (b) of the Convention in its domestic legislation, in particular declaring an offence punishable by law the dissemination of ideas based on racial superiority or hatred and any assistance to racist activities, including financing, as well as declaring illegal organizations and propaganda activities which promote and incite racial discrimination and recognizing, as an offence punishable by law, participation in such organizations or activities.

240. While welcoming the information provided on the situation on several minorities of the State party, the Committee regrets the lack of detailed information on the situation of some vulnerable minority groups, in particular the Roma, and their enjoyment of all human rights (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on the situation of all minority groups, including the most vulnerable ones and in particular the Roma, and in this connection, draws the attention of the State party to its general recommendation XXVII on discrimination against Roma.

241. The Committee notes the absence of legislation regarding the status of languages, the lack of sufficient knowledge of the Georgian language by minority groups and of effective measures to remedy this situation as well as to increase the use of ethnic minority languages in the public administration (art. 5).

The Committee recommends that the State party adopt legislation on the status of languages as well as effective measures to improve the knowledge of the Georgian language amongst minority groups and to increase the use of ethnic minority languages in the public administration.

242. The Committee notes that the representation of the different ethnic communities of the population of the State party in State institutions and in the public administration is disproportionately low, which leads to their reduced participation in public life (art. 5).

The Committee recommends that the State party include further information in its next periodic report regarding the ethnic composition of State institutions and of the public administration and adopt practical measures to ensure that ethnic minorities are represented in the public administration and in those institutions, and to enhance their participation in public life, including the elaboration of cultural and educational policies relating to them.

243. While acknowledging the commitment of the State party to repatriate and integrate Meskhetians who were expelled from Georgia in 1944 as well as the recent establishment of a State Commission on the Repatriation of Meskhetians, the Committee notes with concern that no specific measures have yet been taken to address this issue (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on the situation of Meskhetians and take the appropriate measures to facilitate their return and their acquisition of Georgian citizenship, including the adoption of the necessary framework legislation to this effect, which has been under drafting since 1999.

244. The Committee regrets the lack of information in the State party report on the fundamental rights of non-citizens temporarily or permanently residing in Georgia, regarding the effective enjoyment, without discrimination, of the rights mentioned in article 5 of the Convention (art. 5).

Drawing the attention of the State party to its general recommendation XXX on discrimination against non-citizens, the Committee recommends that the State party ensure the effective enjoyment, without discrimination, of the rights mentioned in article 5 of the Convention, in particular their access to justice and right to health.

245. While noting the new legal measures adopted regarding refugees, the Committee remains concerned that some refugees and asylum-seekers of particular ethnicities have been forcibly returned to countries where there are substantial grounds for believing that they may suffer serious human rights violations (art. 5).

The Committee recommends that the State party provide detailed information on the situation of refugees and asylum-seekers, on the legal protection provided to them including their rights to legal assistance and judicial appeal against deportation orders, and on the legal basis for deportation. The Committee also urges the State party to ensure, in accordance with article 5 (b) of the Convention, that no refugees are forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations. The Committee encourages the State party to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness.

246. Religious questions are of relevance to the Committee when they are linked with issues of ethnicity and racial discrimination. In this connection, and while acknowledging the effort made by the State party to fight ethno-religious violence, the Committee remains concerned about the situation of ethno-religious minorities, such as the Yezidi-Kurds (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on the situation of ethno-religious minorities, and that it adopt the bill on freedom of conscience and religion designed to protect those minorities against discrimination and, in particular, against acts of violence.

247. Poverty is a human rights issue and a factor which impedes the full enjoyment by all, including vulnerable minority groups, of those rights. The Committee is concerned about the extreme poverty in which part of the population of the State party lives and its effects on the most vulnerable minority groups for the enjoyment of their human rights and regrets that the State party's programme to reduce poverty and stimulate economic growth has not yet been adopted (art. 5).

The Committee recommends that the State party include information in its next periodic report on its economic situation, in particular regarding minorities, and adopt all the necessary measures to reduce poverty, especially regarding the most vulnerable minority groups, and stimulate economic growth, including the adoption of a national plan to this effect.

248. The Committee is concerned by allegations of arbitrary arrests and detention, excessive use of force by law enforcement officials, and ill-treatment in police custody of members of minority groups and non-citizens, and about the lack of investigation of those cases (arts. 5 and 6).

The Committee recommends that the State party take appropriate measures to eradicate all forms of ill-treatment by law enforcement officials and ensure prompt, thorough, independent and impartial investigations into all allegations of ill-treatment, especially of members of ethnic groups and non-citizens; perpetrators should be prosecuted and punished, and victims granted compensation.

249. While noting the existence of an Ombudsman, the Committee regrets the insufficiency of detailed information regarding the independence, competencies and effectiveness of this institution (art. 6).

The Committee recommends that the State party provide in its next periodic report detailed information on the independence, competencies and effective results of the activities of the Ombudsman. Furthermore, the Committee encourages the State party to strengthen this institution and provide it with adequate resources so as to allow it to function as an independent national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134).

250. While noting with appreciation that the Convention may be invoked directly before the national courts, the Committee notes the lack of information on complaints of racial discrimination, the absence of court cases regarding racial discrimination in the State party and the need for further dissemination of the Convention amongst State authorities (arts. 6 and 7).

The Committee recommends that the State party ensure that the lack of court cases on racial discrimination is not the result of victims' lack of awareness of their rights or limited financial means, individuals' lack of confidence in the police and judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination. The Committee urges that the State party ensure that appropriate provisions are available in national legislation regarding effective protection and remedies against violation of the Convention and disseminate to the public information on the legal remedies available against those violations as widely as possible. Further, the Committee also recommends that the State party take measures to sensitize police and judicial officers about the Convention.

251. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

252. The Committee requests that the State party's report and the present concluding observations be widely disseminated throughout the State party in the appropriate languages, and that the next periodic report be brought to the attention of non-governmental organizations operating in the country before being submitted to the Committee.

253. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

254. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 238, 244 and 245 above, within one year of the adoption of the present conclusions.

255. The Committee recommends that the State party submit its fourth periodic report jointly with its fifth periodic report on 2 July 2008, and that it address all points raised in the present concluding observations.

ICELAND

256. The Committee considered the seventeenth and eighteenth periodic reports of Iceland, due between 2002 and 2004 and submitted in a single document (CERD/C/476/Add.5), at its 1715th and 1716th meetings (CERD/C/SR.1715 and 1716) on 10 and 11 August 2005. It adopted the concluding observations below at its 1725th meeting (CERD/C/SR.1725), held on 17 August 2005.

A. Introduction

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

B. Positive aspects

258. The Committee welcomes the State party's ratification of a number of human rights treaties since the consideration of its fifteenth and sixteenth periodic reports in 2001, including both Optional Protocols to the Convention on the Rights of the Child as well as regional instruments relevant to the Committee's mandate.

259. The Committee notes with satisfaction that recent legislative changes enhance the legal status of foreign nationals, such as the Act on the Employment Rights of Foreign Nationals in 2002, the amendment in 2002 of the Municipal Elections Act extending the right to vote in municipal elections and eligibility for municipal office to foreign nationals, as well as the application for the first time of this amendment in the municipal elections of 2002, when some 1,000 foreign nationals availed themselves of their right to vote.

260. The Committee welcomes the current establishment of the Committee for Refugees and Asylum-Seekers and the Icelandic Immigration Council, to be composed of representatives of relevant ministries and one immigrant representative and responsible for making recommendations on immigration policy to the Government and for coordinating the provision of services and information to immigrants.

261. The Committee notes with appreciation that the Supreme Court of Iceland, in a judgement dated April 2002, confirmed the conviction of an individual under article 233 (a) of the General Penal Code for having publicly assaulted a group of people on account of their nationality, colour and race.

262. The Committee welcomes the establishment in 2001 of an office of the Reykjavik police functioning as a link between the police and persons of foreign origin which, inter alia, refers complaints made by foreigners to the competent authorities.

C. Concerns and recommendations

263. The Committee notes that the Convention has not been incorporated into the State party's domestic legal order.

The Committee encourages the State party to consider incorporating the substantive provisions of the Convention into its domestic law, with a view to ensuring comprehensive protection against racial discrimination.

264. While recognizing that there are no serious social conflicts within Icelandic society, the Committee nevertheless considers that the State party should adopt a more proactive approach in preventing racial discrimination or related intolerance (art. 2).

The Committee recalls that the notion of prevention is inherent in many provisions of the Convention and encourages the State party to take direct measures to prevent racial discrimination in all spheres of life and, to that effect, consider the possibility of adopting comprehensive anti-discrimination legislation providing, inter alia, for effective remedies against racial discrimination in civil and administrative proceedings.

265. The Committee notes that direct funding for the Icelandic Human Rights Centre has been cut in the national budget for 2005 and that funds previously earmarked for the Centre have been reallocated to human rights projects in general (art. 2, para. 1 (e)).

The Committee invites the State party to maintain its level of cooperation with non-governmental organizations combating racial discrimination, including helping to ensure the adequate funding and independence of such organizations, bearing in mind that, according to article 2, paragraph 1 (e), of the Convention, each State party undertakes to encourage, where appropriate, integrationist multiracial organizations and movements.

266. While noting that members of the border police receive training on international human rights standards and refugee law, the Committee is concerned about reports that asylum requests are not always properly handled by border guards (art. 5).

The Committee encourages the State party to intensify its efforts to provide systematic training to border guards, with a view to increasing their knowledge about all relevant aspects of refugee protection, as well as about the situation in the countries of origin of asylum-seekers.

267. While noting that the purpose of the requirement that a foreign "spouse or partner in cohabitation or registered partnership of a person lawfully staying in Iceland" must be 24 years of age or older to obtain a permit to stay as a family member is to prevent forced or sham marriages, the Committee is nevertheless concerned that this requirement may have discriminatory effects, bearing in mind that the minimum age of marriage under the Icelandic Marriage Act No. 31/1993 is 18 years (art. 5 (d) (iv)).

The Committee recommends that the State party reconsider this age requirement and explore alternative means of preventing forced or sham marriages.

268. While noting that the issuance of temporary work permits to employers of foreign workers rather than to the employees themselves serves to better oversee the situation of the labour market, and that copies of such permits indicating the expiry date are handed out to the employees, who may change jobs during the period covered by the permit, the Committee is concerned that this situation may lead to breaches of the labour rights of temporary foreign workers (art. 5, para. (e) (i)).

Recalling its general recommendation XXX (2004) on discrimination against non-citizens, the Committee recommends to the State party that it strengthen legal safeguards to prevent such breaches and to ensure that foreign workers are protected against discrimination, in particular in relation to working conditions and work requirements.

269. The Committee is concerned at reported cases where access to public places such as bars, discotheques, etc. has been denied on racist grounds, and notes the absence of court judgements under article 180 of the General Penal Code prohibiting such discriminatory acts (art. 5 (f)).

The Committee recalls the right of all individuals to access public places without discrimination and recommends that the State party regulate the burden of proof in civil proceedings involving denial of access to public places based on race, colour, descent, and national or ethnic origin so that once an individual has established a prima facie case that he or she has been a victim of such denial, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.

270. The Committee notes with concern that applicants whose asylum applications have been rejected or who are being expelled by the Directorate of Immigration can only appeal that decision to the Minister of Justice as the supervisory authority, whose decision is subject only to a limited court review on procedure rather than substance (art. 6).

The Committee recommends that the State party consider introducing a full review by an independent judicial body of decisions of the Directorate of Immigration and/or the Minister of Justice concerning the rejection of asylum applications or expulsion of asylum-seekers.

271. The Committee notes the absence in Iceland of a national human rights institution that conforms to the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134).

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

272. The Committee encourages the State party to consider ratifying the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness and to complete the ratification process of the Additional Protocol to the Convention on cybercrime, concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

273. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

274. The Committee recommends that the State party continue to publicize its periodic reports to the Committee, as well as the concluding observations of the Committee on these reports.

275. The Committee recommends to the State party that it submit its nineteenth and twentieth periodic reports in a single report, due on 4 January 2008.

NIGERIA

276. The Committee considered the fourteenth to eighteenth periodic reports of Nigeria, submitted in one document (CERD/C/476/Add.3), at its 1720th and 1722nd meetings (CERD/C/SR.1720 and 1722), held on 15 and 16 August 2005. At its 1728th meeting (CERD/C/SR.1728), held on 19 August 2005, it adopted the following concluding observations.

A. Introduction

277. The Committee welcomes the report submitted by the State party and the additional written information provided. The Committee welcomes the attendance of a delegation and the opportunity it has afforded to resume dialogue with the State party. The Committee regrets, however, that the report does not fully conform to the Committee's reporting guidelines and lacks sufficient information on the practical implementation of the Convention.

278. Noting that the report was more than eight years overdue when submitted, the Committee invites the State party to respect the deadline set for the submission of its future reports.

B. Positive aspects

279. The Committee notes with satisfaction the State party's ratification, in 2002, of the International Labour Organization Discrimination (Employment and Occupation) Convention, 1958 (No. 111).

280. The Committee welcomes the establishment of the National Human Rights Commission of Nigeria, pursuant to the Human Rights Commission Act, adopted in 1995.

281. The Committee welcomes the adoption, in 2004, of the National Plan of Action on the promotion and protection of human rights.

282. The Committee welcomes the establishment of the National Inter-religious Council and of the Institute for Peace and Conflict to promote inter-ethnic, intercommunal and interreligious harmony. It also welcomes the creation of the National Revenue Allocation System, which aims to improve the distribution of resources among different States.

283. The Committee welcomes the establishment of human rights desks in police stations to deal with complaints relating to human rights violations committed by members of the police force.

284. The Committee notes with appreciation the provision of mobile schools for children of nomadic communities.

C. Concerns and recommendations

285. While noting the concerns of the State party that identification of its population by ethnicity or religion may lead to national disunity, the Committee is concerned that the State party has submitted no precise figures on the ethnic composition of the population, and points out that such information is necessary to assess how the Convention is applied in practice.

> **The Committee invites the State party to complete the next census as soon as possible and to include indicators disaggregated by ethnicity, religion and gender on the basis of voluntary self-identification, which will make it possible to determine the situation of groups falling within the definition of article 1 of the Convention. In this connection, the Committee draws the attention of the State party to its general recommendation IV (1973) on reporting by States, as well as to paragraph 8 of its reporting guidelines.**

286. The Committee is concerned about the absence of a legal definition of racial discrimination in Nigeria's domestic law (Convention, art. 1).

The Committee invites the State party to request its National Assembly Joint Committee, set up to review the Constitution, to consider adopting a definition of discrimination that includes the elements contained in article 1 of the Convention.

287. The Committee regrets the paucity of information in the State party's report on the rights of non-citizens temporarily or permanently residing in Nigeria, including refugees, stateless persons, displaced persons and migrant workers. Furthermore, the Committee notes that the guarantees against racial discrimination contained in section 42 of the Constitution do not extend to non-citizens (arts. 1 and 2).

In the context of the current constitutional review and the drafting of an Anti-Discrimination Bill by the Parliament, the Committee invites the State party to consider extending the scope of its domestic legislation so as to protect non-citizens from racial discrimination. The Committee requests the State party to provide an update of developments in this regard and to include further information on the enjoyment of rights by non-citizens residing in Nigeria, in particular refugees, stateless persons, displaced persons and migrant workers, in its next periodic report. In this regard, the Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens.

288. The Committee notes with concern that the main principles of the Convention have not been incorporated in domestic law, in order that it can be directly invoked in the Nigerian courts (art. 2).

The Committee invites the State party to take all necessary steps to incorporate the substantive provisions of the Convention in its domestic law, with a view to ensuring comprehensive protection against racial discrimination.

289. The Committee is seriously concerned that despite attempts to foster national unity, prejudices and feelings of hostility among some ethnic groups persist in Nigeria, including active discrimination by people who consider themselves to be the original inhabitants of their region against settlers from other states. The Committee is particularly concerned at the persistence of inter-ethnic, intercommunal and interreligious violence in the country stemming from these hostile sentiments as well as at disputes over commercial interests and resource control, which have claimed thousands of lives and led to the displacement of a significant proportion of the population (art. 2).

The Committee encourages the State party to continue monitoring all initiatives and tendencies that may give rise to racist and xenophobic behaviour, and to combat the negative consequences of such tendencies. The Committee recommends that the State party carefully monitor the negative impact of its efforts to promote national unity through regional and state action and, in particular, the effects on relations between and among ethno-religious groups. The Committee recommends that the State party endeavour, by encouraging genuine dialogue, to improve relations

between different ethnic and religious communities with a view to promoting tolerance and overcoming prejudices and negative stereotypes. It invites the State party to conduct studies with a view to effectively assessing and evaluating occurrences of racial discrimination.

290. While noting that the 1958 Osu Abolition Law legally abolished work- and descent-based discrimination, the Committee remains concerned about persistent allegations that members of the Osu and other similar communities are still subjected to social exclusion, segregation and mistreatment, as well as discrimination in employment and marriage (arts. 2, 3 and 5).

The Committee draws the State party's attention to its general recommendation XXIX (2002) concerning racial discrimination based on descent, and suggests that a detailed response on this issue should be included in the State party's next report. It strongly recommends that the State party develop, in cooperation with non-governmental organizations and religious leaders, effective programmes to prevent, prohibit and eliminate private and public practices that constitute segregation of any kind, including a wide-ranging information and public-awareness campaign to put an end to these practices.

291. The Committee expresses deep concern about numerous reports of ill-treatment, use of excessive force and extrajudicial killings as well as arbitrary arrests and detentions by law enforcement officials in attempts to quell incidents of intercommunal, inter-ethnic and interreligious violence. The Committee is particularly disturbed at reports of serious acts of violence targeting members of particular ethnic groups in reprisal for attacks on security forces, including the October 2001 incident in Benue State. While the Committee takes note of the establishment of numerous bodies to investigate these incidents, including panels of enquiry, it is concerned that most of the investigations have failed to produce prosecutions and sentences commensurate with the gravity of the crimes committed, leading to the appearance of impunity (arts. 2, 4 and 5).

The Committee recommends that the State party intensify its action to halt this phenomenon and requests that it submit detailed information about the number of persons who died and their ethnic affiliations, the prosecution of persons in relation to these events, and the sentences, if any, that were pronounced. The Committee urges the State party to make public the results of all investigations previously announced in response to these events and to sanction those responsible.

292. The Committee expresses concern about the absence of an explicit penal provision in the State party's legislation prohibiting organizations and propaganda activities that advocate racial hatred, as required by article 4 (b) of the Convention (art. 4).

In the light of its general recommendation XXX (2004), the Committee recommends that the State party introduce in its criminal law a provision to the effect that committing an offence with racist motivation or aim constitutes an aggravating circumstance. The Committee would also appreciate more detailed information on the procedure applicable to and the authorities competent to deal with cases of organizations reported to be racist.

293. The Committee is concerned about the persistence of discrimination against persons belonging to various ethnic groups in the fields of employment, housing and education, including discriminatory practices by people who consider themselves to be the original inhabitants of their region against settlers from other states. While noting the efforts taken by the State party to improve the representation of different ethnic groups in the public service, most notably by the Federal Character Commission, the Committee remains concerned about the reports of continuing practices of patronage and traditional linkages based on ethnic origin, leading to the marginalization of certain ethnic groups in Government, legislative bodies and the judiciary (arts. 2 and 5).

The Committee recommends that the State party continue to promote equal opportunities for all persons without discrimination in order to ensure their full enjoyment of their rights, in accordance with article 2, paragraph 2, and article 5 of the Convention. In this connection, the Committee urges the State party to strengthen its Affirmative Action Plans in favour of underrepresented or marginalized groups, including women, in its employment policies with regard to the public service, and to submit in its next periodic report more detailed information on achievements under these programmes.

294. The Committee is deeply concerned about the adverse effects on the environment of ethnic communities through large-scale exploitation of natural resources in the Delta Region and other River States, in particular, the Ogoni areas. It is concerned at the State party's failure to engage in meaningful consultation with the concerned communities, and about the deleterious effects of the oil production activities on the local infrastructure, economy, health and education. In this regard, the Committee also notes with concern that the Land Use Act of 1978 and the Petroleum Decree of 1969 are contrary to the provisions of the Convention. Furthermore, the Committee is alarmed at the reports of assaults, use of excessive force, summary executions and other abuses against members of local communities by law enforcement officers as well as by security personnel employed by petroleum corporations (arts. 2 and 5).

In the light of general recommendation XXIII (1997) on the rights of indigenous peoples, the Committee urges the State party to take urgent measures to combat "environmental racism" and degradation. In particular, it recommends that the State party repeal the Land Use Act of 1978 and the Petroleum Decree of 1969 and the adoption of a legislative framework which clearly sets forth the broad principles governing the exploitation of the land, including the obligation to abide by strict environmental standards as well as fair and equitable revenue distribution. The Committee reiterates that along with the right to exploit natural resources there are specific, concomitant obligations towards the local population, including effective and meaningful consultation. It further urges the State party to conduct full and impartial investigations of cases of alleged human rights violations by law enforcement officials and by private security personnel, institute proceedings against perpetrators and provide adequate redress to victims and/or their families.

295. In the light of the "intersectionality" of ethnic and religious discrimination, the Committee remains concerned that members of ethnic communities of the Muslim faith, in particular, Muslim women, can be subjected to harsher sentences than other Nigerians. While noting the explanations provided by the delegation that all persons have the freedom to make their own choice with regard to the application of statutory, customary or religious law, the Committee notes that concerned persons may not necessarily be in a position to exercise individual choice in the matter (art. 5 (a)).

The Committee reminds the State party that all persons shall have the right to equal treatment before the courts and all other organs administering justice, and draws the attention of the State party to its general recommendation XXV (2000) on gender-related dimensions of racial discrimination.

296. The Committee notes with concern that the provision regarding the acquisition of nationality as laid down in section 26 (2) (a) of the Constitution does not appear to comply fully with article 5 (d) (iii) of the Convention, since it stipulates that a foreign man is unable to acquire Nigerian nationality in the same manner as a foreign woman (art. 5).

The Committee recommends that the State party consider reviewing section 26 (2) (a) of its Constitution, so as to bring it into line with the provisions of the Convention, and update the Committee on this matter in the next periodic report. In this connection, it draws the attention of the State party to general recommendation XXV (2000) and to general recommendation XXX (2004), which requests States parties to ensure that particular groups of non-citizens are not discriminated against with regard to access to citizenship or naturalization.

297. While welcoming the extensive counter-trafficking measures taken by the State party, including the establishment in 2003 of the National Agency for Prohibition of Trafficking in Persons and the adoption in 2003 of the Anti-Human Trafficking Law, the Committee remains concerned that human trafficking, including trafficking of foreign women, men and children, remains a serious problem in the State party (art. 5).

The Committee recommends that the State party include information in its next periodic report on human trafficking and continue to undertake necessary legislative and policy measures to prevent and combat trafficking. The Committee urges the State party to provide support and assistance to victims, wherever possible in their own language. While underlining the paramount importance of prompt and impartial investigations, the Committee recommends to the State party that it continue to make determined efforts to prosecute the perpetrators.

298. The Committee regrets that no statistics were provided on cases where the relevant provisions of domestic legislation concerning racial discrimination were applied. The Committee reminds the State party that the mere absence of complaints and legal action by victims of racial discrimination may be an indication of the absence of relevant specific legislation, a lack of awareness of the availability of legal remedies, or insufficient will by the authorities to prosecute (art. 6).

The Committee recommends that the State party provide for the relevant provisions in national legislation and inform the public of the availability of all legal remedies in the field of racial discrimination. The Committee further requests that the State party include in its next periodic report statistical information on prosecutions launched, and penalties imposed, in cases of offences that relate to racial discrimination and where the relevant provisions of the existing domestic legislation have been applied.

299. The Committee, while taking note of information on measures taken by the State party to enhance better understanding, respect and tolerance between different ethnic groups living in Nigeria, is of the view that the measures taken to promote intercultural understanding and education between ethnic groups are unsatisfactory (art. 7).

The Committee recommends that the State party strengthen measures to promote understanding, tolerance and friendship between ethnic groups, including comprehensive public education campaigns and intercultural education in school curricula. The Committee requests the State party to provide more detailed information on this issue in its next periodic report.

300. The Committee, while noting the information provided by the delegation, reiterates its previous concern that measures taken to educate the public, law enforcement officials, members of political parties and media professionals on the provisions of the Convention remain insufficient (art. 7).

The Committee encourages the State party to expand and strengthen existing efforts regarding human rights education. Furthermore, particular attention should be paid to general recommendation XIII (1993), according to which law enforcement officials should receive specific training to ensure that, in the performance of their duties, they respect and protect human dignity and maintain and uphold the human rights of all persons without distinction as to race, colour, descent or national or ethnic origin.

301. The Committee invites the State party to consider ratifying:

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

(b) The International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169).

302. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention. The Committee strongly recommends that the State party consider the possibility of making the declaration.

303. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its

resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

304. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level, in particular the preparation and implementation of the national plan of action.

305. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

306. Pursuant to article 9, paragraph 1, of the Convention and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 289, 291 and 294 above, within one year of the adoption of the present conclusions. The Committee recommends that the State party submit its nineteenth periodic report jointly with its twentieth periodic report on 4 January 2008, and that it address all points raised in the present concluding observations.

TURKMENISTAN

307. The Committee considered the initial to fifth periodic reports of Turkmenistan, submitted in one document (CERD/C/441/Add.1), at its 1717th and 1718th meetings (CERD/C/SR.1717 and 1718), held on 11 and 12 August 2005. At its 1725th and 1727th meetings (CERD/C/SR.1725 and 1727), held on 17 and 18 August 2005, it adopted the following concluding observations.

A. Introduction

308. The Committee welcomes the report submitted by Turkmenistan and the opportunity thus offered to open a dialogue with the State party. It regrets, however, that the report, which lacks detailed information on the practical implementation of the Convention, does not fully comply with the reporting guidelines.

309. The Committee notes with deep concern the major contradictions between, on the one hand, consistent information from both intergovernmental and non-governmental sources relating to the existence of grave violations of the Convention in Turkmenistan, and, on the other hand, the sometimes categorical denials by the State party. The Committee stresses that the consideration of reports is designed to institute a constructive and sincere dialogue, and encourages the State party to increase its efforts to that end.

310. Noting that the report was about nine years overdue when submitted, the Committee invites the State party to respect the deadlines set for the submission of its future reports.

B. Positive aspects

311. The Committee appreciates the attendance of a high-level delegation and the efforts it made to respond to the numerous questions posed by Committee members. It notes the delegation's assurances relating to the willingness of the State party to pursue the dialogue with the Committee.

312. The Committee notes with satisfaction that the State party has ratified most of the United Nations core human rights treaties since independence.

313. The Committee appreciates the passing of a regulation in March 2005, on the implementation of refugee status determination, as well as the generous hosting of more than 10,000 refugees from Tajikistan on a prima facie basis.

314. The Committee welcomes the amendment of 2 November 2004 of the Criminal Code rescinding article 223/1, which stipulated criminal penalties for unregistered activities of public associations, including non-governmental organizations.

C. Concerns and recommendations

315. The Committee notes with concern the lack of consistent data relating to the ethnic composition of the population. It notes that the proportion of national and ethnic minorities in Turkmenistan seems to have significantly diminished between 1995 and 2005, but finds it difficult to interpret these figures, which may have resulted, at the same time, from an assimilation policy conducted by the State party, the emigration of many members of minority groups, and the alleged distortion of statistics by the State party so as to diminish the importance of minorities on its territory.

The Committee requests the State party to provide consistent information on the ethnic composition of its population.

316. The Committee notes that under article 6 of the Constitution, the State party recognizes the primacy of generally recognized norms of international law, but is concerned that the status of the Convention in domestic law remains unclear. It is further concerned about the existing gap between law and practice in Turkmenistan (art. 2).

The Committee recommends to the State party that it fully ensure the rule of law, which is indispensable to the implementation of the Convention, and that it provide more detailed information on the status of the Convention in domestic law.

317. The Committee is deeply concerned about reported instances of hate speech against national and ethnic minorities, including statements attributed to high-ranking government officials and public figures supporting an approach to Turkmen ethnic purity, which is reported to have a significant detrimental impact on the population given the severe restrictions on freedoms of opinion and expression impeding opposition to such discourses. The Committee is further concerned that such speech is inconsistent with the fundamental principle of racial and ethnic equality underlying the Convention (art. 4).

The Committee urges the State party to abide by its obligation under article 4 (c) of the Convention not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination. The Committee wishes to receive more detailed information on the practical implementation of article 4 of the Convention in its entirety.

318. The Committee is deeply concerned by consistent information relating to the policy of "Turkmenization" conducted by the State party, and implemented through various measures in the field of employment, education and political life (arts. 2 and 5).

The Committee recalls that policies of forced assimilation amount to racial discrimination and constitute grave violations of the Convention. It urges the State party to respect and protect the existence and cultural identity of all national and ethnic minorities within its territory. The Committee wishes to receive detailed information on the measures adopted to that end, including those aimed at addressing the situation of the Baluchi minority, the existence of which as a distinct cultural community is reported to be at risk.

319. The Committee is concerned that, according to some information, and in the light of paragraph 2 (e) of General Assembly resolution 59/206 of 22 December 2004, national and ethnic minorities face severe restrictions on their participation in the labour force, in particular in public sector employment. It is particularly disturbed about reports relating to the removal of many non-ethnic Turkmen from State employment and to "third generation tests" imposed on persons wishing to access higher education and public sector employment (arts. 2 and 5).

The Committee invites the State party to verify whether "third generation tests" exist and to ensure the right to work without discrimination based on national or ethnic origin. The State party is requested to provide reliable statistical data on the effective participation of members of national minorities in the labour force, in particular in public sector employment.

320. The Committee notes with deep concern information that the State party has internally forcibly displaced populations, targeting in particular ethnic Uzbeks, to inhospitable parts of Turkmenistan. It is further concerned about reported restrictions on freedom of movement imposed through internal travel documents and special permits to travel to internal border regions, which have a particular impact on persons belonging to national and ethnic minorities (arts. 2 and 5).

The Committee requests the State party not to forcibly displace populations and to re-examine its policy in this regard. The State party is requested to provide information to the Committee about the number of individuals who have been resettled under the terms of the 18 November 2002 Presidential Decree and relevant provisions of the Criminal Code, their ethnic origin, the dates and reasons for their resettlement, and their place of residence prior to and following resettlement. The Committee further recommends to the State party that it lift restrictions on freedom of movement having a disproportionate impact on members of national minorities.

321. The Committee is concerned about information that persons belonging to national and ethnic minorities are impeded from exercising their right to enjoy their own culture. In particular, it is concerned about the reported closure of minority cultural institutions and of numerous schools teaching in minority languages, in particular Uzbek, Russian, Kazakh and Armenian languages, and the reduced possibilities for the use of minority languages in the media (arts. 2 and 5).

The Committee recommends that the State party fully respect the cultural rights of persons belonging to national and ethnic minorities. In particular, the State party should consider reopening Uzbek, Russian, Kazakh, Armenian and other minority language schools. The Committee suggests that the State party reconsider the requirement that students belonging to national or ethnic minorities wear Turkmen national dress, and to provide more information on this issue. The State party should ensure that members of national and ethnic minorities are not discriminated against in their access to the media and have the possibility of creating and using their own media in their own language.

322. The Committee notes that, in 2003, the bilateral agreement between the Russian Federation and Turkmenistan on dual citizenship was repealed by the State party. It notes with concern that persons who chose Russian citizenship were allegedly required to leave the country rapidly (arts. 2 and 5).

The Committee, stressing that deprivation of citizenship on the basis of national or ethnic origin is a breach of the obligation to ensure non-discriminatory enjoyment of the right to nationality, urges the State party to refrain from adopting any policy that directly or indirectly leads to such deprivation. The Committee draws the attention of the State party to its general recommendation XXX on non-citizens and wishes to receive more detailed information on the number of affected persons and the practical consequences for them.

323. The Committee, while stressing the complex relationship between ethnicity and religion in Turkmenistan, notes with concern information that members of religious groups do not fully enjoy their rights to freedom of religion and that some religious confessions remain unregistered. It notes, however, the relaxation of registration rules in 2004.

The Committee recalls the State party's obligation to ensure that all persons enjoy their right to freedom of religion, without any discrimination based on national or ethnic origin, in accordance with article 5 (d) of the Convention. The State party should accordingly respect the right of members of registered and unregistered religions to freely exercise their freedom of religion, and register religious groups who wish to be registered. Detailed information on religions actually registered in Turkmenistan should be provided to the Committee.

324. The Committee appreciates the announcement made by the State party that it will grant citizenship to about 16,000 refugees who have been residing in Turkmenistan for some years, and permanent resident status to 3,000 other refugees (art. 5).

The Committee encourages the State party to continue the naturalization process without discrimination based on ethnic origin. It recommends, in particular, that the same treatment be granted to refugees of Turkmen, Uzbek, or other ethnic origin such as those coming from Afghanistan. The Committee wishes to receive detailed data on the outcome of this process, disaggregated by ethnic origin.

325. The Committee is deeply concerned by information that the State party has adopted measures drastically limiting access to foreign culture and art, foreign media and the Internet. While taking note of the abolition of the exit visa in 2004, it also remains concerned about the reported impediments imposed on Turkmen students wishing to study abroad (art. 7).

The Committee recommends to the State party that it respect the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or other media, in order to foster common understanding and tolerance amongst nations and ethnic groups. The Committee also recommends that the State party allow students to study abroad and that it provide detailed information on the actual regulations and practices relating to the recognition of foreign degrees.

326. The Committee notes that the "Ruhnama" reportedly dominates the school curriculum in Turkmenistan. The Committee is concerned about the content of this text, and would appreciate receiving a copy (art. 7).

The Committee recommends that the State party ensure that school curricula foster understanding, tolerance, and friendship among nations and ethnic groups.

327. The Committee notes that, since independence, no case of racial discrimination has been referred to the courts. According to some information, members of national and ethnic minorities who suffer racial discrimination do not complain to courts because they fear reprisals and lack confidence in the police and the judicial authorities, and because of the authorities' lack of impartiality and of sensitivity to cases of racial discrimination (art. 6).

The Committee recommends to the State party that it inform victims of their rights, including remedies available to them, facilitate their access to justice, guarantee their right to just and adequate reparation, and publicize the relevant laws. The State party should ensure that its competent authorities proceed to a prompt and impartial investigation on complaints of racial discrimination, or whenever there are reasonable grounds to believe that racial discrimination has been committed on its territory. Judges and lawyers, as well as law enforcement personnel, should be trained accordingly.

328. The Committee, while noting the delegation's statement that in 1996, the State party established a Human Rights Institute, notes that this institution does not seem to qualify as an independent National Human Rights Institution under the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134) (art. 6).

The Committee invites the State party to consider establishing such an independent national human rights institution, with the mandate, in particular, to monitor compliance with the obligations of the Government of Turkmenistan under the Convention.

329. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

330. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider the possibility of doing so.

331. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

332. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized, in Turkmen and in the main minority languages, in particular Russian.

333. The Committee invites the State party to take advantage of the technical assistance available under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights for the purpose of reviewing its laws and policies in a way that addresses the Committee's concerns set out above. In view of the situation in Turkmenistan, the Committee strongly recommends to the State party that it extend an invitation to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to visit its territory.

334. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 317, 319, 320, 321 and 326 above, within one year of the adoption of the present conclusions.

335. The Committee recommends to the State party that it submit its sixth and seventh periodic reports in a single report, due on 29 October 2007.

UNITED REPUBLIC OF TANZANIA

336. The Committee considered the eighth to sixteenth periodic reports of the United Republic of Tanzania, submitted in one document (CERD/C/452/Add.7), at its 1713th and 1714th meetings (CERD/C/SR.1713 and 1714), held on 9 and 10 August 2005. At its 1725th meeting (CERD/C/SR.1725), held on 17 August 2005, it adopted the following concluding observations.

A. Introduction

337. The Committee welcomes the report submitted by the State party as well as the additional oral information provided by the delegation. However, the Committee regrets that the report does not contain sufficient information on the measures taken to give effect to the provisions of the Convention.

338. The Committee appreciates the presence of a high-ranking delegation and the constructive and frank dialogue with the State party's delegation and expresses its appreciation for the opportunity to resume its dialogue with the State party.

339. Noting that the periodic report was presented after a 17-year delay, the Committee invites the State party to respect the deadline set for the submission of its next reports.

B. Positive aspects

340. The Committee acknowledges with appreciation that, despite a decline in the number of refugees, Tanzania continues to host more than 600,000 refugees, the largest number in Africa.

341. The Committee notes that Tanzania is a multi-ethnic State, with more than 120 ethnic and minority groups, and acknowledges its efforts to build a State where all groups live in harmony.

342. The Committee welcomes the establishment of the Commission for Human Rights and Good Governance with, inter alia, competence to conduct inquiries into complaints of human rights violations and to disseminate information on human rights.

343. The Committee acknowledges the role of ward tribunals in administering justice at the grass-roots level, speeding up the delivery of justice and enhancing its access to the population.

C. Concerns and recommendations

344. While acknowledging the reasons presented by the State party for not gathering disaggregated data on the ethnic groups that make up its population, the Committee understands that, as a result of the lack of statistical information on the composition of its population, an adequate picture of the full complexity of the Tanzanian society cannot be obtained (art. 1).

> **The Committee recommends that the State party endeavour to include in its next periodic report at least an approximate evaluation of the ethnic and linguistic composition of its population as well as of the number of non-citizens and, in this connection, draws the attention of the State party to paragraph 8 of its reporting guidelines, as well as to its general recommendation XXIV (1999).**

345. While noting that article 13 of the Constitution prohibits racial discrimination and that article 9 of the Constitution ensures that State organs must ensure equality, the Committee is concerned about the absence of specific legislation on racial discrimination in the State party (arts. 1 and 2).

The Committee recommends that the State party adopt specific legislation on racial discrimination implementing the provisions of the Convention, including a legal definition of racial discrimination in line with article 1 of the Convention.

346. Bearing in mind that the State party has a dualist legal system, the Committee remains concerned about the fact that the Convention has not been incorporated in domestic law and that the position as to its direct applicability in the State party is unclear (art. 2).

The Committee strongly recommends that the State party envisage incorporating the Convention into its domestic legal order.

347. While noting the provisions of section 63 (b) (1) of the Penal Code, the Committee is concerned about the insufficiency of specific penal provisions implementing article 4 of the Convention in the domestic legislation of the State party (art. 4).

The Committee recommends that the State party adopt legislation, in the light of its general recommendation XXV (1993), to ensure the full and adequate implementation of article 4 of the Convention in its domestic legal system.

348. While welcoming the fact that female genital mutilation has been a criminal offence in the State party since 1998, the Committee is concerned that it is still a persistent practice in some ethnic communities (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on the practice of female genital mutilation. The Committee further recommends that the State party reinforce the measures adopted to eradicate this persistent practice, in particular through sensitization programmes directed at promoting changes in attitudes towards this practice, in consultation with traditional communities.

349. The Committee notes with concern the lack of information from the State party regarding the expropriation of the ancestral territories of certain ethnic groups, and their forced displacement and resettlement (art. 5).

The Committee recommends that the State party provide detailed information on the expropriation of the land of certain ethnic groups, on compensation granted and on their situation following their displacement.

350. The Committee regrets the lack of information on the numbers of non-citizens in the State party and on their situation as far as the enjoyment of their rights is concerned (art. 5).

The Committee recommends that the State party include detailed information in its next periodic report on non-citizens and their situation, especially on immigrants and asylum-seekers, as well as on long-term foreign residents and the possibility of their acquiring citizenship, according to general recommendation XXX (2004).

351. The Committee also notes with concern the lack of information on certain vulnerable ethnic groups, notably nomadic and semi-nomadic populations, inter alia the Barbaig, Maasai and Hadzabe, on the difficulties they allegedly face due to their specific way of life and on special measures taken to guarantee the enjoyment of their human rights (arts. 5 and 2).

The Committee recommends that the State party provide detailed information on the situation of nomadic and semi-nomadic ethnic groups and on any special measures taken with a view to ensuring the enjoyment of their rights under the Convention, notably their freedom of movement and their right to participate in decisions which affect them.

352. The Committee is concerned that, according to information brought to its attention by reliable sources, some refugees have been forcibly returned to countries where there are substantial grounds for believing that they may suffer serious human rights violations (art. 5).

The Committee recommends that the State party provide information on the situation of refugees, the legal basis for their deportation, and on the legal protection provided to them including their right to legal assistance and judicial appeal against deportation orders. The Committee also urges the State party to ensure, in accordance with article 5 (b) of the Convention, that no refugees are forcibly returned to a country where there are substantial grounds for believing that they may suffer serious human rights violations.

353. The Committee is concerned about allegations of arbitrary arrests and detention, excessive use of force and ill-treatment of refugees, in particular women, by law enforcement officials, and about the lack of investigation of those cases (arts. 5 and 6).

The Committee recommends that the State party take appropriate measures to eradicate all forms of ill-treatment by law enforcement officials of refugees, in particular women, and ensure prompt, thorough, independent and impartial investigations into all allegations of ill-treatment of refugees. The Committee further recommends that the persons responsible for the ill-treatment be prosecuted and punished, and victims granted compensation.

354. While noting that a reform of the legal sector has been undertaken and that the issue of access to justice is being considered, the Committee remains concerned about the difficulties of access to justice, especially for the poor and members of minority groups (arts. 5 and 6).

The Committee recommends that the State party take the necessary measures to establish mechanisms to improve the capacity and efficiency of the judicial system, so as to ensure access to justice to all without discrimination, and to establish mechanisms to provide legal aid to all members of vulnerable groups.

355. Religious questions are of relevance to the Committee when they are linked with ethnicity and racial discrimination. In this connection, the Committee is concerned about the lack of information on the ethno-religious composition of the State party's population and about allegations of tensions between ethno-religious groups (arts. 5 and 7).

The Committee recommends that the State party include detailed information in its next periodic report on the situation of ethno-religious communities and the measures taken to promote tolerance between them.

356. The Committee regrets the insufficiency of detailed information regarding the independence, competencies and effectiveness of the Commission for Human Rights and Good Governance. The Committee notes that, since the establishment of the Ombudsman in 1966, no complaints about racial discrimination have been brought to this institution (art. 6).

The Committee recommends that in its next periodic report, the State party provide detailed information on the independence, competencies and effective results of the activities of the Commission for Human Rights and Good Governance and encourages the State party to strengthen this institution in line with the Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134) and provide it with adequate resources. The Committee further recommends that the State party widely disseminate information on the existence of this institution, especially on its capacity to investigate violations of human rights.

357. The Committee notes the lack of information on complaints of racial discrimination and the absence of court cases regarding racial discrimination (arts. 6 and 7).

The Committee recalls that the absence of cases may be due to the victims' lack of information about the existing remedies, and therefore recommends that the State party ensure that appropriate provisions are available in national legislation regarding effective protection and remedies against violation of the Convention and that the public at large is appropriately informed about their rights and the legal remedies available against their violation. The Committee further recommends that the State party provide information on future complaints and cases in its next periodic report.

358. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention. It further recommends that it include in its next periodic report information on measures taken to implement the Durban Declaration and Programme of Action at the national level.

359. The Committee requests that the State party's report and the present concluding observations be widely disseminated throughout the State party, and that the next periodic report be brought to the attention of non-governmental organizations operating in the country before being submitted to the Committee.

360. The Committee strongly 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, concerning the funding of its meetings by the United Nations regular budget. In this connection, the Committee refers to General Assembly resolution 59/176

of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

361. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 348, 352 and 353 above, within one year of the adoption of the present conclusions.

362. The Committee recommends that the State party submit its seventeenth periodic report jointly with its eighteenth periodic report on 26 November 2007, and that it address all points raised in the present concluding observations.

VENEZUELA (BOLIVARIAN REPUBLIC OF)

363. The Committee considered the fourteenth to eighteenth periodic reports of the Bolivarian Republic of Venezuela, which were due on 4 January 1996, 1998, 2000, 2002 and 2004, respectively, submitted as one document (CERD/C/476/Add.4), at its 1703rd and 1704th meetings (CERD/C/SR.1703 and 1704), held on 2 and 3 August 2005. At its 1725th meeting (CERD/C/SR.1725), held on 17 August 2005, it adopted the following concluding observations.

A. Introduction

364. The Committee welcomes the periodic report of the State party and the fact that the State party was represented by a delegation composed of officials from various State agencies involved in matters relating to the implementation of the Convention. It expresses its satisfaction with the quality of the renewed dialogue with the Bolivarian Republic of Venezuela. The Committee thanks the delegation for its frank and detailed replies to the numerous questions asked.

365. While the Committee acknowledges the efforts made by the State party to comply with the Committee's guidelines for the preparation of reports, it notes that the report has not addressed some of the concerns and recommendations raised in previous concluding observations.

B. Positive aspects

366. The Committee welcomes with satisfaction the rights and principles contained in the Constitution of the Bolivarian Republic of Venezuela of 1999, in particular the preamble, which establishes the multi-ethnic and multicultural nature of Venezuelan society, as well as article 21 and chapter VIII which guarantees the rights of indigenous peoples, such as the right to intercultural bilingual education, the right to traditional medicine and the right to participate in political life.

367. The Committee notes with satisfaction that federal and State legislation recently adopted by the State party follows the basic principles of the Constitution and builds on its guarantees of racial and ethnic non-discrimination.

368. The Committee takes note of the establishment of specialized institutions to combat racial discrimination such as the Presidential Commission to Combat All Forms of Racial Discrimination and Other Discrimination in the Venezuelan Educational System, the National Coordination Group for Indigenous Health, which answers to the Ministry of Health and Social Development, and the Department of Indigenous Education of the Ministry of Education, Culture and Sport.

369. The Committee notes with satisfaction that indigenous peoples are represented in the National Assembly, which has at least three indigenous deputies with their respective alternates, elected by indigenous peoples in keeping with their traditions and customs.

370. The Committee notes with interest the existence of special courts to settle conflicts in accordance with the traditions and customs of indigenous peoples, as well as the post of Special Ombudsman on Indigenous Issues.

371. The Committee notes with satisfaction Presidential Decree No. 1795 of 27 May 2002 concerning protection of the languages of indigenous peoples. It notes that indigenous peoples may make use of their languages in their dealings with the authorities or, where appropriate, have an official interpreter, and that the Constitution has been translated into the Wayuu language.

372. The Committee welcomes the fact that article 31 of the Constitution recognizes the right to address petitions to the international human rights treaty bodies, and that in 2003 the State party made the optional declaration provided for in article 14 of the Convention thus responding to a request of the Committee, and hopes that the public is being appropriately informed about the possibilities and procedures under the mentioned article of the Convention.

373. The Committee welcomes the State party's ratification in 2002 of International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (No. 169) concerning indigenous and tribal peoples in independent countries.

374. The Committee notes with satisfaction that one of the objectives of the Radio and Television Social Responsibility Act of 2004 is to promote tolerance among peoples and ethnic groups.

375. The Committee notes with satisfaction progress in the interaction between the Government and non-governmental organizations representing Afro-descendants and, as one of the expressions of this interaction, the designation of 10 May as Afro-Venezuelan Day.

C. Concerns and recommendations

376. The Committee notes with concern that the State party does not have disaggregated statistical data on the Afro-descendants. The Committee recalls that such information is necessary for evaluating the implementation of the Convention and for monitoring policies that affect minorities.

The Committee recommends that the State party include in its next periodic report disaggregated statistical data on Afro-descendants, which would make it possible to evaluate their situation more accurately.

377. The Committee notes that the identity document issued to indigenous persons in accordance with the Regulations under the Organization Act on the Identification of Indigenous Persons includes the name of the ethnic group, the people and community to which such persons belong.

The Committee requests the State party to ensure that, in accordance with its general recommendation VIII, the identity document for indigenous persons be based upon self-identification by the individual concerned.

378. Taking note of article 369 of the draft criminal code, which punishes acts of racial discrimination, the Committee wishes to receive information on complaints of acts of racial discrimination and on the relevant legal action taken by the victims or on their behalf.

The Committee encourages the State party to adopt the draft criminal code as soon as possible and requests it to include in its next periodic report disaggregated statistical information on cases involving racial discrimination and on penalties imposed, in which the relevant provisions of domestic law have been applied.

379. Bearing in mind the State party's efforts, the Committee reiterates its concern at the persistence of profound structural social and economic inequalities which have an impact on the enjoyment of human rights, particularly economic and social rights, and affect Afro-descendants and indigenous peoples.

The Committee encourages the State party to step up its efforts to improve the economic and social rights situation of Afro-descendants and indigenous people, such as the right to housing, the right to health and sanitation services, the right to work and the right to adequate nutrition, in order to combat racial discrimination and eliminate structural inequalities.

380. The Committee notes with great concern that between 1995 and 2003, 61 persons, most of whom were indigenous or Afro-descendants, were murdered in land conflicts, presumably by private armed groups (*sicarios*), and that this problem has worsened since 2001.

The Committee requests the State party to take efficient and urgent measures to end this violence, which mainly affects indigenous peoples and Afro-descendants, including the establishment of an independent monitoring mechanism to investigate such incidents in order to ensure that they do not go unpunished.

381. The Committee notes with concern that, according to the report by the State party, the indigenous peoples of the upper Orinoco and the Casiquiare and Guainia-Río Negro basins have problems of various kinds. More particularly, in the centres of illegal gold prospecting, there is evidence that indigenous children and adolescents are subjected to labour exploitation and the worst forms of child labour, including servitude and slavery, child prostitution, trafficking and sale.

The Committee recommends that the State party adopt urgent measures to tackle this situation, and that it submit information on the implementation of the measures taken.

382. While the Committee takes note of the State party's efforts to demarcate indigenous lands, such as the promulgation of the Indigenous Peoples Habitat and Lands, Demarcation and Protection Act, it is concerned that the effective ownership and use of indigenous lands and resources continue to be threatened and restricted by repeated aggression from individuals and private groups against indigenous peoples, in order to move them from their land.

> **In the light of general recommendation XXIII on the rights of indigenous peoples, the Committee recommends that the State party take measures to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands, territories and resources. In this regard, the Committee invites the State party to provide information on the settlement of cases of conflicting interests relating to indigenous lands and resources, particularly those in which indigenous groups have been displaced from their lands.**

383. The Committee recommends that the State party take account of the relevant parts of the Durban Declaration and Programme of Action when incorporating the Convention, particularly articles 2 to 7, into its domestic law. It also recommends that, in its next periodic report, the State party provide information on measures it has taken to give effect to the Durban Declaration and Programme of Action at the national level, particularly the preparation and implementation of a national plan of action.

384. The State party has informed the Committee that it will increase its efforts with a view to ratifying the amendment to article 8, paragraph 6, of the Convention, which was 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 resolution 59/176, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

385. The Committee invites the State party to consider the possibility of ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

386. The Committee recommends that the reports of the State party be made public as soon as they are submitted to the Committee, and that the concluding observations of the Committee on these reports be widely publicized.

387. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 376, 380 and 381 above, within one year of the adoption of the present conclusions.

388. The Committee recommends that the State party submit its nineteenth and twentieth reports in a single report, due on 4 January 2008.

ZAMBIA

389. The Committee considered the twelfth to sixteenth periodic reports of Zambia, submitted in one document (CERD/C/452/Add.6/Rev.1), at its 1707th and 1708th meetings (CERD/C/SR.1707 and 1708), held on 4 and 5 August 2005. At its 1721st and 1723rd meetings (CERD/C/SR.1721 and 1723), held on 15 and 16 August 2005, it adopted the following concluding observations.

A. Introduction

390. The Committee welcomes the report submitted by the State party, the quality of which demonstrates Zambia's willingness to resume dialogue with the Committee. It notes with satisfaction that the report complies with the reporting guidelines and contains relevant information on the factors and difficulties encountered in the implementation of the Convention.

391. The Committee appreciates the efforts made by the delegation to respond to the numerous questions posed by its members, and encourages the State party to increase its efforts so as to ensure that substantial answers are provided to the Committee in the course of future dialogues.

392. Noting that the report was about nine years overdue when submitted, the Committee invites the State party to respect the deadlines set for the submission of its future reports.

B. Positive aspects

393. The Committee notes with appreciation the establishment of several national institutions, in particular the Zambian Human Rights Commission and the Police Public Complaints Authority.

394. The Committee particularly welcomes the fact that the delegation agreed to the participation of the Zambian Human Rights Commission in the dialogue with the Committee, which further demonstrates the State party's readiness to enter into a frank and constructive dialogue with the Committee. It also appreciates that the Zambian Human Rights Commission as well as civil society participated in the elaboration of the periodic report.

395. The Committee notes with satisfaction the State party's generous approach in hosting and providing protection to more than 271,000 refugees over many years.

396. The Committee welcomes the State party's efforts to enhance the access of refugees to the courts and in particular the establishment of mobile special courts and special police units to serve in refugee camps and settlements.

C. Concerns and recommendations

397. The Committee, while welcoming the establishment of a Constitution Review Commission in 2003, reiterates its concern that article 23 of the Constitution, which allows for extended restrictions to the prohibition of discrimination with respect to non-citizens, matters of personal law and of customary law, is not in compliance with the Convention (art. 1).

The Committee recommends to the State party that it facilitate the constitutional review process and amend article 23 (4) of the Constitution so as to ensure the full implementation of the prohibition of racial discrimination. The Committee draws the attention of the State party to its general recommendation XXX (2004) on non-citizens. It also stresses that respect for customary law and practices should not be ensured through a general exception to the principle of non-discrimination, but should rather be implemented through positive recognition of cultural rights.

398. The Committee, while taking note of the delegation's statement that first steps have been undertaken by the Government to incorporate the Convention into domestic law, reiterates its concern that this has not been fully achieved (art. 2).

The Committee invites the State party to proceed with the incorporation of the provisions of the Convention into domestic law, and requests that detailed information on actual plans to this end be provided.

399. The Committee is concerned in particular that, under article 11 of the Constitution, the right of everyone not to be discriminated against is applicable to a limited list of mainly civil and political rights, and that the Directive Principles of State Policy, also included in the Constitution, do not contain any non-discrimination clause with regard to economic, social and cultural rights. It further regrets the lack of precise information regarding legislation prohibiting racial discrimination in the enjoyment of civil, political, economic, social and cultural rights, and its implementation in practice (arts. 1, 2 and 5).

The Committee recommends to the State party that it guarantee the right of everyone not to be discriminated against in the enjoyment of civil, political, economic, social, and cultural rights. More detailed information on the existing legislation and its practical implementation should be provided to the Committee in this regard.

400. The Committee notes the 1996 amendment to the Constitution, which requires that a presidential candidate be a second-generation Zambian.

The Committee recommends to the State party that it review this provision so as to ensure full compliance with article 5 (c) of the Convention.

401. The Committee notes with concern the decision of the State party to appeal the High Court judgement in the case *Roy Clarke v. Attorney-General*, which quashed a deportation order concerning a British long-term resident on the basis that he would not have been punished for his journalistic activities if he were a Zambian citizen (art. 5 (d) (viii)).

The Committee recalls that under the Convention, differential treatment based on citizenship constitutes discrimination if the criteria for such differentiation are not applied pursuant to a legitimate aim, and are not proportional to the achievement of this aim. It recommends to the State party that it respect the right to freedom of expression without any discrimination based on citizenship, and that it provide the Committee with detailed information on the results of the above-mentioned appeal.

402. The Committee notes the efforts made by the State party to address the demands in the sphere of education, health care and food in regions hosting a large population of refugees, in particular through the Zambia Initiative. It remains concerned, however, about the fate of thousands of long-term refugees who are unable to return to their countries of origin, in particular Angolans, in a context where the 1970 Zambian Refugee Control Act does not encourage their local integration (art. 5).

The Committee encourages the State party to review its current refugee policy with a view to enhancing prospects for local integration of long-term refugees. To this end, the Committee recommends to the State party that it review the Refugee Control Act and consider withdrawing its reservation to the 1951 Convention relating to the Status of Refugees.

403. The Committee notes with concern that de facto racial discrimination by non-State actors poses daily challenges to the State party (arts. 4 and 5).

The Committee urges the State party to develop strategies to tackle this issue, in cooperation with the Zambian Human Rights Commission and other stakeholders.

404. The Committee reiterates its concern that the provisions of article 4 (b) of the Convention have not yet been fully incorporated in domestic law.

The Committee recommends that the State party recognize participation in organizations promoting and inciting racial discrimination as a punishable offence.

405. The Committee regrets the lack of statistical data on cases of racial discrimination lodged before relevant Zambian institutions (arts. 4 and 6).

The State party should include in its next periodic report statistical information on complaints of racial discrimination lodged before national courts and the Zambian Human Rights Commission, as well as on the outcome of these cases. Information on specific cases should also be provided.

406. The Committee notes that complaints of racial discrimination have failed before institutions such as the Zambian Human Rights Commission and the Industrial Relations Court, because of the impossibility of proving racial discrimination (art. 6).

The Committee recommends that complaints of racial discrimination be fully dealt with, including when they are coupled with complaints of violation of other rights, such as labour rights. It also recommends that full attention be paid to the possible existence of indirect discrimination, which is prohibited under the Convention. Further, it encourages the State party to envisage regulating the burden of proof in civil proceedings involving racial discrimination so that once a person has established a prima facie case that he or she has been a victim of such discrimination, it shall be for the respondent to provide evidence of an objective and reasonable justification for the differential treatment.

407. While welcoming the efforts pursued by the State party in the field of human rights education, the Committee remains concerned that most people living in Zambia are not aware of their rights and thus find it difficult to seek redress if their rights are violated. The Committee further recalls that the fact that victims of racial discrimination rarely report on such matters to the appropriate authorities can also be the result of, inter alia, the limited resources available to victims, their lack of confidence in the police and the judicial authorities, or the authorities' lack of attention or sensitivity to cases of racial discrimination (art. 6).

The State party should strengthen its efforts to raise the awareness of people on their rights, inform the victims of all remedies available to them, facilitate their access to justice, and train judges, lawyers, and law enforcement personnel accordingly.

408. The Committee notes with concern the difficulties encountered by the Zambian Human Rights Commission as described in the report, in particular inadequate staffing, inadequate means of transportation, centralization, and slow response from concerned State authorities to the Commission's requests for action. It notes with interest, however, the State party's plan to decentralize the Commission's offices and the information that the new draft Constitution contains provisions enhancing the effectiveness of the Commission (art. 6).

The Committee recommends that the State party increase its efforts to enhance the effectiveness of the Human Rights Commission, in particular through adequate budget allocations. The Principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles) (General Assembly resolution 48/134) should be taken into consideration in the elaboration of the constitutional reform relating to the Human Rights Commission. The Committee wishes to receive detailed information about the follow-up by the State authorities to the Commission's recommendations, as well as on relationships established between the Commission and civil society.

409. The Committee recommends that the State party take into account the relevant parts of the Durban Declaration and Programme of Action when implementing the Convention in the domestic legal order, in particular in respect of articles 2 to 7 of the Convention, and that it include in its next periodic report information on action plans or other measures taken to implement the Durban Declaration and Programme of Action at the national level.

410. The Committee notes that the State party has not made the optional declaration provided for in article 14 of the Convention, and recommends that it consider the possibility of doing so.

411. The Committee strongly recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee refers to General Assembly resolution 59/176 of 20 December 2004, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

412. The Committee recommends that the State party's reports be made readily available to the public from the time they are submitted and that the observations of the Committee on these reports be similarly publicized.

413. Pursuant to article 9, paragraph 1, of the Convention, and article 65 of the Committee's rules of procedure, as amended, the Committee requests the State party to inform it of its implementation of the recommendations contained in paragraphs 401, 402 and 407 above, within one year of the adoption of the present conclusions.

414. The Committee recommends to the State party that it submit its seventeenth, eighteenth and nineteenth periodic reports in a single report, due on 5 March 2009.

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

415. At its 1698th meeting held on 10 March 2005, the Committee adopted terms of reference for the work of the coordinator on follow-up (see the terms of reference in annex IV).

416. The Committee, at its 1699th meeting, on 10 March 2005, decided to send the following letter to the Permanent Representative of Botswana to the United Nations Office at Geneva:

Letter to Botswana

"10 March 2005

"Excellency,

"The Committee wishes to inform you that it considered, at its sixty-sixth session in March 2005 the preliminary responses provided by the Republic of Botswana in its letter dated 10 February 2005, regarding the implementation of paragraph 301 of the Committee's previous concluding observations on Botswana, adopted in August 2002 (see A/57/18).

"The Committee welcomes with appreciation the extensive and substantial information provided by the Republic of Botswana, as requested by the Committee in its letters dated 20 August and 23 September 2004. It appreciates the willingness of the State party to pursue a dialogue with the Committee in a constructive manner.

"The Committee notes with a particular interest the useful information provided by the State party on the history of Botswana, and its implications regarding territories, tribes, and representation in the House of Chiefs. While understanding that traditions and customs constitute an important heritage of Botswana, the Committee wishes to stress, however, that the State party should also take into consideration the obligations it has undertaken under the International Convention on the Elimination of All Forms of Racial Discrimination.

"The Committee reiterates its views that the Tribal Territories Act, the Chieftainship Act and sections 77 to 79 of the Constitution, as currently drafted, have a discriminatory effect, in particular against those ethnic groups which are subordinate to a dominant tribe on a Tribal Territory, and are not represented on an equal basis in the House of Chiefs. It notes that the High Court of Botswana, in a decision adopted on 23 November 2001, declared that the Chieftainship Act was discriminatory and ordered that its section 2 be amended in order to give equal protection and treatment to all tribes under that Act.

"The Committee welcomes efforts made by the State party to ensure better representation in the House of Chiefs, and notes its willingness to enhance territorial representation rather than ethnic representation in this House.

"The Committee wishes to stress, however, that whatever system is chosen, it should not discriminate between groups, and should not lead to a situation where some groups are recognized while others are not, or where the interests of some groups are taken into consideration while interests of other groups are not. In this regard, the Committee wishes to stress that the Convention prohibits direct as well as indirect discrimination, and draws the attention of the State party to its general recommendation XXIV, according to which criteria for recognition of groups should be consistently applied. It further notes that, according to some information, non-Tswana-speaking regions all rejected the proposed bill.

"The State party indicates that it is currently redrafting those aspects of section 2 of the Chieftainship Act which had been declared discriminatory by the High Court, and that the draft Bill on the House of Chiefs will be amended accordingly. The Committee wishes to be kept closely informed about the ongoing reform process, and requests that copies of the new draft bills be transmitted to it as soon as they are available. It would also like to receive more detailed information clarifying what the terms 'dominant tribe' and 'historical agreement of all concerned', by which a paramount chief rules over all tribal groupings living in Tribal Territories, actually mean.

"Please allow us, Excellency, to reiterate the wish of the Committee to pursue the constructive dialogue renewed with your Government in 2002, and to underline that the Committee's observations and request for further information is made with a view to ensuring the implementation of the Convention in cooperation with your Government.

"Yours sincerely,

"(*Signed*): Mario Yutzis
Chairman
Committee on the Elimination
of Racial Discrimination

Morten Kjaerum
Coordinator of the Committee on the
Elimination of Racial Discrimination on
follow-up"

417. At its 1700th meeting, on 11 March 2005, the Committee adopted the following decision:

Decision 3 (66) on Suriname

1. At its sixty-fourth session, which took place from 23 February to 12 March 2004, the Committee considered the first to tenth periodic reports of Suriname and welcomed the opportunity to engage, for the first time, in a constructive dialogue with the State party.

2. In the concluding observations which it adopted following examination of these reports, the Committee recommended "legal acknowledgement by the State party of the rights of indigenous and tribal peoples to possess, develop, control and use their

communal lands and to participate in the exploitation, management and conservation of the associated natural resources", and that "the State party strive to reach agreements with the peoples concerned, as far as possible, before awarding any concessions".[1]

3. The Committee also adopted the following conclusion and recommendation:

> "The Committee notes that, under the draft Mining Act, indigenous and tribal peoples will be required to accept mining activities on their lands following agreement on compensation with the concession holders, and that if agreement cannot be reached, the matter will be settled by the executive, and not the judiciary. More generally, the Committee is concerned that indigenous and tribal peoples cannot as such seek recognition of their traditional rights before the courts because they are not recognized legally as juridical persons.
>
> "The Committee recommends that indigenous and tribal peoples should be granted the right of appeal to the courts, or any independent body specially created for that purpose, in order to uphold their traditional rights and their right to be consulted before concessions are granted and to be fairly compensated for any damage."[2]

4. The revised version of the draft Mining Act, which was approved by Suriname's Council of Ministers at the end of 2004 and is likely to be scheduled for adoption by the National Assembly within the next few months, may not be in conformity with the Committee's recommendations.

5. The Committee therefore invites the State party to comment on the above assessment of the draft law, and recommends that such comments be submitted to it before 11 April 2005.

6. The Committee wishes to draw once again the attention of the State party to its general recommendation XXIII (1997) on the rights of indigenous peoples. It also reiterates the conclusions and recommendations it adopted following the examination of the first to tenth periodic reports of Suriname. It recommends to the State party that it ensure the compliance of the revised draft Mining Act with the International Convention on the Elimination of All Forms of Racial Discrimination, as well as with recommendations formulated by the Committee.

7. The Committee wishes to pursue the constructive dialogue it has engaged in with Suriname in 2004, and stresses that its request for clarification is made with a view to ensuring the implementation of the Convention in cooperation with the State party.

9 March 2005
1696th meeting

418. At its 1728th meeting, on 19 August 2005, the Committee decided to request the Chairman to send a letter to the Government of the United States of America, informing it that the Committee had considered on a preliminary basis the requests submitted by the

Western Shoshone National Council and by the Western people of the Timbisha Shoshone Tribe, Winnemucca Indian Colony and Yomba Shoshone Tribe, asking the Committee to act under its early warning and urgent action procedure on the situation of the Western Shoshone indigenous people in the United States of America.

419. The Chairman, on behalf of the Committee, expressed appreciation for the frank and open preliminary discussion that took place on 8 August 2005 between representatives of the United States of America and the Committee's working group on early warning and urgent action procedures, together with the coordinator on follow-up and other Committee members. The Chairman stated that the Committee had noted with interest the assurances given by the State party that its fourth and fifth periodic reports, which were due on 20 November 2003, were being prepared and that comprehensive information relating to the follow-up given to the Committee's 2001 concluding observations[3] would be included in these periodic reports. It was to be regretted, however, that the State party was not in a position to undertake to submit the reports by a specific date.

420. The Chairman also stressed that the Committee had noted with concern the allegation that the Western Shoshone indigenous people were being denied their traditional rights to land and that actions taken by the State party in relation to the status, use and occupation of these lands may cumulatively lead to irreparable harm to this community.

421. In light of the above information, the Chairman informed the Government of the United States of America that the Committee considered that the opening of a substantial dialogue on these issues would help to clarify the situation before the submission and examination of the fourth and fifth periodic reports of the State party. In order to facilitate this dialogue, and in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, the Committee drew the attention of the Government to a list of questions regarding which it was requested to send responses by 31 December 2005, so that they could be examined at its sixty-eighth session, to be held from 20 February to 10 March 2006.

422. At the same meeting, the Committee also decided to request the Chairman to send a letter to the Government of Ukraine informing it that the Committee had considered on a preliminary basis the request submitted by the Research and Support of Indigenous Peoples of Crimea Foundation, asking the Committee to act under its early warning and urgent action procedures on the situation of the Tatars in Crimea.

423. After recalling the relevant provisions of its concluding observations adopted in 1998[4] and in 2001,[5] and in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, the Chairman drew the attention of the State party to a list of questions to which it wished to receive a response at the latest by 31 December 2005, so that the matter could be discussed at its sixty-eighth session.

424. The Chairman also reiterated the wish of the Committee to pursue the constructive dialogue with the Government of Ukraine and to underline that this request for further information was made with a view to ensuring the implementation of the Convention in cooperation with the State party. The Committee further reminded the State party that the seventeenth and eighteenth periodic reports of Ukraine, to be submitted in one document, were due on 6 April 2004. The Committee therefore strongly encouraged the State party to submit its overdue periodic report as soon as possible.

Notes

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18), paras. 190 and 192.

[2] Ibid., para. 193.

[3] Ibid., *Fifty-sixth Session, Supplement No. 18* (A/56/18), paras. 380-407.

[4] Ibid., *Fifty-third Session, Supplement No. 18* (A/53/18), para. 153.

[5] Ibid., *Fifty-sixth Session, Supplement No. 18* (A/56/18), para. 374.

V. REVIEW OF THE IMPLEMENTATION OF THE CONVENTION IN STATES PARTIES WHOSE REPORTS ARE SERIOUSLY OVERDUE

A. Reports overdue by at least 10 years

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

Sierra Leone	Fourth to eighteenth periodic reports (due from 1976 to 2004)
Liberia	Initial to fourteenth periodic reports (due from 1977 to 2003)
Gambia	Second to thirteenth periodic reports (due from 1982 to 2004)
Togo	Sixth to sixteenth periodic reports (due from 1983 to 2003)
Somalia	Fifth to fifteenth periodic reports (due from 1984 to 2004)
Papua New Guinea	Second to twelfth periodic reports (due from 1985 to 2005)
Solomon Islands	Second to twelfth periodic reports (due from 1985 to 2005)
Central African Republic	Eighth to seventeenth periodic reports (due from 1986 to 2004)
Mozambique	Second to eleventh periodic reports (due from 1986 to 2004)
Afghanistan	Second to eleventh periodic reports (due from 1986 to 2004)
Seychelles	Sixth to fourteenth periodic reports (due from 1989 to 2005)
Ethiopia	Seventh to fifteenth periodic reports (due from 1989 to 2005)
Congo	Initial to ninth periodic reports (due from 1989 to 2005)
Antigua and Barbuda	Initial to eighth periodic reports (due from 1989 to 2003)
Saint Lucia	Initial to eighth periodic reports (due from 1991 to 2005)
Maldives	Fifth to eleventh periodic reports (due from 1993 to 2005)

B. Reports overdue by at least five years

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

Chad	Tenth to fourteenth periodic reports (due from 1996 to 2004)
Monaco	Initial to fifth periodic reports (due from 1996 to 2004)
Nicaragua	Tenth to fourteenth periodic reports (due from 1997 to 2005)
Democratic Republic of the Congo	Eleventh to fifteenth periodic reports (due from 1997 to 2005)
Malawi	Initial to fifth periodic reports (due from 1997 to 2005)
United Arab Emirates	Twelfth to sixteenth periodic reports (due from 1997 to 2005)
Burkina Faso	Twelfth to sixteenth periodic reports (due from 1997 to 2005)
Namibia	Eighth to eleventh periodic reports (due from 1997 to 2003)

Bulgaria	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
India	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Kuwait	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Niger	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Pakistan	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Panama	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Philippines	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Serbia and Montenegro	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
Swaziland	Fifteenth to eighteenth periodic reports (due from 1998 to 2004)
The former Yugoslav Republic of Macedonia	Fourth to seventh periodic reports (due from 1998 to 2004)
Peru	Fourteenth to seventeenth periodic reports (due from 1998 to 2004)
Burundi	Eleventh to fourteenth periodic reports (due from 1998 to 2004)
Cambodia	Eighth to eleventh periodic reports (due from 1998 to 2004)
Iraq	Fifteenth to eighteenth periodic reports (due from 1999 to 2005)
Cuba	Fourteenth to seventeenth periodic reports (due from 1999 to 2005)
Gabon	Tenth to thirteenth periodic reports (due from 1999 to 2005)
Jordan	Thirteenth to sixteenth periodic reports (due from 1999 to 2005)

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

427. At its sixty-sixth and sixty-seventh sessions, the Committee reviewed the question of delays and non-submission of reports by States parties in accordance with their obligations under article 9 of the Convention.

428. 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 the 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 implementation of the provisions 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.

429. Following its sixty-fifth session, the Committee decided to schedule at its sixty-sixth session a review of the implementation of the Convention in the following States parties whose periodic reports were seriously overdue: Bosnia and Herzegovina, Ethiopia, El Salvador, Nicaragua and Papua New Guinea. El Salvador was withdrawn from the list prior to the sixty-sixth session following the submission of a report. In the cases of Bosnia and Herzegovina, Ethiopia and Nicaragua, the reviews were postponed at the request of the States parties, which indicated their intention to submit the requested reports shortly. At its 1695th meeting, the Committee reviewed the implementation of the Convention in Papua New Guinea (see paragraph 431).

430. Following its sixty-sixth session, the Committee decided to schedule at its sixty-seventh session a review of the implementation of the Convention in the following States parties whose initial and periodic reports were seriously overdue: Bosnia and Herzegovina, Malawi, Mozambique, Seychelles and Saint Lucia. Bosnia and Herzegovina was withdrawn from the list prior to the sixty-seventh session following the submission of a report. In the case of Mozambique, the review was postponed at the request of the State party, which indicated its intention to submit the report by 31 December 2005. The Committee reviewed the implementation of the Convention in Malawi at its 1712th meeting, and in Seychelles and Saint Lucia at its 1719th meeting (see paragraphs 432-434).

D. Decisions

431. At its 1695th meeting, held on 8 March 2005, the Committee decided to request the Chairman to send a letter to the Permanent Representative of Papua New Guinea to the United Nations. In his letter of 11 March 2005, the Chairman informed the Permanent Representative that the Committee had reviewed the situation of Papua New Guinea in the absence of a report. Furthermore, he reiterated the strong appeal made in 2003 to resume the dialogue interrupted since 1984, and to that end submit a report in accordance with article 9 of the Convention. The Committee regretted that, despite its repeated requests, Papua New Guinea had not yet fulfilled its obligations under article 9, paragraph 1, of the Convention. In order to stimulate the Committee's future discussion on the implementation of the Convention at its sixty-eighth session, the Chairman attached to his letter a list of questions elaborated by the Committee with a request for a response by 30 November 2005. The Committee once again drew the State party's attention to the possibility of availing itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights.

432. At its 1712th meeting, held on 9 August 2005, the Committee decided to request the Chairman to send a letter to the Permanent Representative of Malawi to the United Nations. In his letter of 19 August 2005, the Chairman informed the State party that it had reviewed the implementation of the Convention in Malawi in the absence of a report and deeply regretted the fact that Malawi was seriously overdue in the submission of its initial to fifth periodic reports to the Committee, due respectively from 1997 to 2005. In order to assist in the initiation of a dialogue on the measures adopted by Malawi to implement the Convention, the Committee decided to send a list of questions to the State party and requested written responses to this list

by 31 January 2006. In the absence of any response from Malawi by that date, the Committee would proceed with the adoption of concluding observations on Malawi under its review procedure.

433. At its 1719th meeting, held on 12 August 2005, the Committee decided to request the Chairman to send a letter to the Permanent Representative of Seychelles to the United Nations. In his letter of 19 August 2005, the Chairman informed the State party that it had reviewed the implementation of the Convention in Seychelles in the absence of a report. The Chairman regretted the interruption of a dialogue between the Committee and Seychelles since 1988. In order to assist in the resumption of a dialogue, the Committee decided to send a list of questions to the State party and requested written responses to this list by 31 January 2006. In the absence of any response from Seychelles by that date, the Committee would proceed with the adoption of concluding observations under its review procedure. The Committee drew the State party's attention to the possibility of availing itself of the technical assistance offered under the advisory services and technical assistance programme of the Office of the United Nations High Commissioner for Human Rights.

434. At the same meeting, the Committee also decided to request the Chairman to send a letter to the Permanent Representative of Saint Lucia to the United Nations. In his letter of 19 August 2005, the Chairman informed the State party that it had reviewed once again the implementation of the Convention in Saint Lucia in the absence of a report. He recalled that the Committee had already examined the situation in Saint Lucia without a report at its sixty-fourth session, held in March 2004, and decided at its sixty-fifth session, held in August 2004, to proceed with the publication of its provisional concluding observations in its annual report to the General Assembly.[1] The Chairman deeply regretted the fact that Saint Lucia was seriously overdue in the submission of its initial to seventh periodic reports to the Committee, due respectively from 1991 to 2003, to be submitted in one combined document, and had still not given any indication regarding the state of preparation of this report. The Chairman requested that the Government of Saint Lucia indicate to the Committee whether it wished to avail itself of the advisory services available under the technical cooperation programme of the Office of the High Commissioner for Human Rights, with a view to assisting it in the drafting of the overdue report. In order to assist in the resumption of a dialogue, the Committee decided to send a list of questions to the State party and requested written responses to this list by 31 January 2006. In the absence of any response by that date, the Committee would proceed with the adoption of concluding observations under its review procedure.

Note

[1] *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18), paras. 434-458.

VI. CONSIDERATION OF COMMUNICATIONS UNDER ARTICLE 14 OF THE CONVENTION

435. 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 46 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I. In the period under review, one more State has made the declaration under article 14: Georgia.

436. 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.

437. At its sixty-sixth session, the Committee declared communication No. 30/23 admissible. It also adopted Opinions on communications No. 31/2003 (*L.R. v. Slovakia*), No. 32/2003 (*Sefic v. Denmark*) and No. 33/2003 (*Quereshi v. Denmark* (No. 2)). These Opinions are reproduced in full in annex III, section A.

438. In case No. 31/2003 (*L.R. v. Slovakia*), the petitioners, 27 Slovak Roma, complained about a discriminatory denial of the right to housing, contrary to articles 2 and 5 of the Convention, coupled with denial of the right to an effective remedy guaranteed by article 6. A municipal council had drawn up and approved a plan to develop low-cost housing, principally benefiting local Roma. The decision gave rise to a petition by local inhabitants, referring disparagingly to the Roma beneficiaries of the plan, which sought cancellation of the municipal decision. At a subsequent meeting, the council, citing the petition, annulled its original decision without any substitution of an alternative. Criminal and constitutional complaints up to the level of the Constitutional Court were unsuccessful.

439. At the admissibility stage, the Committee affirmed that acts of municipal councils were sufficient to invoke the State party's international responsibility and, further, that domestic remedies had been properly pursued. On the merits, the Committee considered that the circumstances disclosed a case of indirect discrimination against Roma in the form of the second council resolution. The Committee went on to hold that the necessary preliminary policymaking step represented by the first resolution was an important and practical component necessary for the realization of the right to housing. That stage was thus covered by the protections of the Convention, even though the resolution did not itself confer a directly enforceable right to housing. As a result, the petitioners were victims of racial discrimination in breach of articles 2 and 5 (e), of the Convention. The failure of the State party's courts to remedy that discrimination represented a separate violation of article 6. By way of remedy, the Committee indicated that the petitioners should be returned to the situation they were in when the first resolution was adopted.

440. In case No. 32/2003 (*Sefic v. Denmark*), the petitioner, a Bosnian citizen residing in Denmark, sought to buy third-party liability insurance from a local insurance company. He was advised that he was not eligible for an insurance contract, as he did not speak Danish.

He complained to the authorities, arguing that the language requirement was not objectively motivated but discriminatory within the meaning of section 1 (1) of the Danish Anti-Discrimination Act. In its opinion, the Committee noted that the author's claim and the evidence produced by him concerning the reasons behind the insurance company's policy had been fully considered by the competent authorities, including the public prosecutor, who had concluded that the language requirement was not based on the complainant's race or ethnic origin, but designed to facilitate communication with customers. The Committee concluded that the reasons for the language requirement adduced by the insurance company, in particular the fact that it was a relatively small company and primarily operating through telephone contacts with customers, were reasonable and objective grounds for the requirement. Consequently, the facts did not disclose a violation of the Convention.

441. In the case of *Quereshi v. Denmark* (No. 2) (No. 33/2003), the petitioner brought a follow-up petition to a petition earlier declared admissible. The petitioner, a Member of Parliament, observed a party political broadcast on public television in which a series of party members made offensive remarks. The first communication, which sought to attribute responsibility for the remarks to a member of the party's executive board, was found not to disclose a violation of the Convention, given that criminal proceedings were pending against the individual speakers. The current petition sought to challenge the decision not to prosecute one of those speakers. After declaring the communication admissible, in part on the basis that further domestic remedies would be unduly prolonged given the nature of the case, the Committee found no violation of the Convention. It recalled that a number of the speakers had been convicted of criminal offences, so that the State party's system of criminal law could not be considered generally ineffective. In relation to the particular speaker, the Committee concluded that his statements did not single out a group of persons on the basis of the criteria set out in article 1, and he thus did not engage in an act of racial discrimination that would in turn attract the requirements of the Convention for the State party.

442. During its sixty-sixth session, the Committee declared admissible complaint No. 30/2003, submitted on behalf of members of the Jewish communities of Oslo and Trondheim and various individuals regarding racist comments made by a member of the right-wing "Bootboys" in a speech commemorating a Nazi leader. The speech led to the speaker's prosecution and eventual acquittal by the Supreme Court of Norway, on freedom of speech grounds.

443. The State party had objected to the admissibility of the complaint, on the basis that none of the groups or individuals concerned were "victims" of the remarks in question; they were not present when the speech was made, and none of them had been singled out. It also argued that the authors had not exhausted domestic remedies, as, although the speaker could not be retried, none of the authors had ever complained about the speech to the authorities. However, the Committee found that "victim" status could pertain to all members of a particular group of potential victims and that, although none of them had complained to the authorities, the authors had had no possibility of altering the course of the criminal proceedings against the speaker.

444. On 15 August 2005, the Committee considered the merits of the complaint. While it acknowledged that the Supreme Court had thoroughly analysed the facts of the case, it remained the Committee's responsibility to ensure the coherence of the interpretation of the provisions of article 4 of the Convention in the light of its general recommendation XV. As to whether the

incriminated statements fell within any of the categories of impugned speech set out in article 4, the Committee considered that the statements contained ideas based on racial superiority or hatred; the deference shown to the principles of former Nazi leaders had to be taken as incitement to racial discrimination, if not violence.

445. On the issue of whether the incriminated statements were protected by the "due regard" clause in article 4, the Committee considered that to give the right to freedom of speech a more limited role in the context of article 4 did not deprive the "due regard" clause of significant meaning, especially taking into account that all international instruments protecting freedom of speech provide for the possibility of limiting, under certain conditions, the exercise of this right. As the incriminated statements were of an exceptionally offensive character, they were not protected by the "due regard" clause, and there had been a violation of article 4 and consequently article 6 of the Convention.

446. Finally, the Committee considered that, as argued by the State party, its competence to receive and consider communications under article 14 of the Convention is not limited to complaints alleging a violation of one or more of the rights set forth in article 5 (paragraph 10.6 of the Opinion). The Committee's Opinion is reproduced in annex III, section B, to the present report.

Follow-up to Opinions adopted by the Committee under article 14 of the Convention

447. In the past, the Committee has only informally monitored whether, how or the extent to which States parties have implemented its recommendations in Opinions in which the Committee found violations of the Convention. In the light of the positive experience that other treaty bodies have made with follow-up procedures, the Committee discussed the establishment of a procedure for following up on its Opinions adopted under article 14 of the Convention during the sixty-sixth session. It requested the Secretariat to prepare a background and options paper on this issue (see CERD/C/67/FU/1, available for consultation on the OHCHR website).

448. During its sixty-seventh session, the Committee considered an options paper prepared by the Secretariat about the justifications for, and possible modalities of, a procedure for following up the Committee's Opinions adopted pursuant to article 14, paragraph 7, of the Convention. There was consensus that the establishment of a follow-up procedure was both legally possible and appropriate, with a view to securing State party action on the Committee's suggestions and recommendations. On 8 August 2005, therefore, the Committee decided to establish such a procedure. On 15 August, it adopted two new paragraphs spelling out the modalities of the follow-up procedure, added to rule 95 of the Committee's rules of procedure. These two new paragraphs are reproduced in annex IV to the present report.

449. On 9 June 2005, the Government of Slovakia presented its follow-up observations on the Committee's Opinion in case No. 31/2003 (*L.R. v. Slovakia*), adopted during the sixty-sixth session. The Government stated that the Opinion had been translated and distributed to relevant government offices and State authorities, including municipalities and the National Centre for Human Rights; in particular, the Opinion had been transmitted to the town of Dobšiná and the Roznava District Prosecutor, pointing out that the Slovak Republic had the obligation to provide the petitioners with an effective remedy, and that measures should be taken to return the

petitioners to the situation they were in when the Municipal Council of Dobšiná adopted the first resolution. On 26 April 2005 the Council, taking into consideration the Committee's Opinion, decided to cancel both resolutions and reached an agreement that it would become engaged in proposals related to low-cost housing in the concerned area. In that context, the Council would pay serious attention to the housing problems of the Roma community with a view to the practical realization of their right to housing. Regarding the alleged discriminatory petition of the inhabitants of Dobšiná, legal proceedings had been initiated against the five-member "petition committee", under section 198a of the Penal Code (inciting to ethnic or racial hatred).

450. The State party also indicated that the preparation of the National Action Plan for the Prevention of All Forms of Discrimination, Racism, Xenophobia, Anti-Semitism and Other Expressions of Intolerance for the period 2006-2008 was under way. In that context, the Foreign Ministry had proposed the inclusion in the Plan of activities aiming at disseminating the work of CERD, its competence under article 14 and its jurisprudence.

VII. THEMATIC DISCUSSIONS AND GENERAL DEBATES

451. In examining the periodic reports of States parties, the Committee has found that some forms of discrimination within the terms of article 1 of the Convention are common to several States and can usefully be examined from a more general perspective. In August 2000, the Committee organized a thematic debate on the issue of discrimination against Roma and, in August 2002, it held a discussion on descent-based discrimination. At its sixty-fourth session held in March 2004, the Committee held a third thematic discussion on non-citizens and racial discrimination. These three thematic debates led to the adoption of general recommendation XXVII on discrimination against Roma, general recommendation XXIX on descent-based discrimination and general recommendation XXX on discrimination against non-citizens.

452. At its sixty-fifth session, the Committee decided to hold at its next session a fourth thematic discussion on the prevention of genocide, with a view, inter alia, to identifying indicators of a developing genocidal process. In this connection, it requested the views of States parties concerning the prevention of genocide.

453. This fourth thematic discussion to be organized by the Committee was held at its 1684th meeting (sixty-fifth session), on 1 March 2005 (see CERD/C/SR.1684); it was preceded by a meeting with concerned NGOs, Governments, and other United Nations human rights mechanisms and entities held on 28 February 2005 (see CERD/C/SR.1683).

454. The Committee was able to draw upon extensive information from its own activities, including under its early warning and urgent action procedures. In addition, a number of States replied to the invitation extended by the Committee to submit written information. The Committee also had relevant information from other United Nations human rights mechanisms and from other United Nations agencies and bodies.

455. During the informal meeting, NGOs raised many issues of concern. In response to the invitation addressed to them, some government representatives, the Special Adviser to the Secretary-General on the Prevention of Genocide, the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and a representative of OHCHR addressed the gathering.

456. Based on the information submitted and collected for the thematic discussion, the Committee, following extensive debate, adopted at its 1701st meeting, a declaration on the prevention of genocide (for the text, see chapter VIII), which had been prepared in an informal drafting group chaired by Mr. Shahi.

457. At its sixty-seventh session, the Committee issued a decision on follow-up to its declaration on the prevention of genocide in which it identified indicators of massive and systematic patterns of racial discrimination (see chapter II).

458. At its sixty-fifth session, the Committee decided to hold general debates at its future sessions on various issues of interest. Following the decision taken at its sixty-fifth session,

the Committee held a general debate on the question of multiculturalism on 8 March 2005 at its 1694th meeting (see CERD/C/SR.1694) on the basis of a working paper prepared by Mr. Lindgren Alves. It decided to continue this debate at its sixty-seventh session on the basis, inter alia, of a working paper prepared by the Secretariat, including a compilation of its past concluding observations referring to issues relevant to the debate. This debate took place at its 1724th meeting (see CERD/C/SR.1724), on 17 August 2005. Several members expressed their views and suggested working towards the adoption of a new general recommendation on multiculturalism.

VIII. DECLARATIONS

459. The Committee adopted the following declaration at its sixty-sixth session:

Declaration on the prevention of genocide

The Committee on the Elimination of Racial Discrimination,

Recalling that 133 States Members of the United Nations have adhered to the Convention on the Prevention and Punishment of the Crime of Genocide, assuming the obligation to prevent and punish genocide, including war crimes and crimes against humanity,

Condemning the genocides that have been perpetrated since the founding of the United Nations in which tens of millions men, women and children have been killed,

Noting that genocide is often facilitated and supported by discriminatory laws and practices or lack of effective enforcement of the principle of equality of persons irrespective of race, colour, descent, or national or ethnic origin,

Recalling that, for more than a decade, the Committee, acting under its prevention of discrimination early warning and urgent action procedures, has brought to the attention of the Security Council, through the Secretary-General, a number of country situations where systematic violations of human rights and persistent patterns of racial discrimination could escalate into violent conflict and genocide,

Noting that the first international conference on the prevention and punishment of genocide since the adoption of the Convention, held in Stockholm in January 2004, called for a strategy for genocide prevention that must include provisions for the worst case when prevention fails and atrocities occur, and for military action as an extreme measure to stop genocide in extreme cases,

Endorsing the Secretary-General's Action Plan to Prevent Genocide, including, inter alia, swift and military action in extreme cases, presented to the Commission on Human Rights on 7 April 2004 - the tenth anniversary of the Rwanda genocide - recalling that the international community had failed to prevent the genocides in Rwanda and Srebrenica because of lack of will,

Noting that the High-level Panel on Threats, Challenges and Change found that the international community has a further responsibility to act, inter alia with force if necessary as a last resort, in collective response to threats of genocide and other massive violations of human rights when a State fails to protect its citizens,

Having held a timely and constructive thematic discussion at its sixty-sixth session on the prevention of genocide, with the participation of States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, the Special Adviser to the Secretary-General on the Prevention of Genocide, the Special Rapporteur of the Commission on Human Rights on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, other United Nations organizations and international non-governmental organizations,

Taking note that economic globalization frequently has negative effects on disadvantaged communities and in particular on indigenous communities,

Acting under its prevention of discrimination early warning and urgent procedures adopted at its 979th meeting in 1993,[1] whereby the Committee makes recommendations, through the Secretary-General, to the Security Council for action to prevent situations of persistent patterns of racial discrimination and other systematic violations of human rights that could lead to violent conflict and genocide,

Responding to the Secretary-General's exhortation at the Stockholm Conference that there can be no more important issue and no more binding obligation than the prevention of genocide,

Adopts this declaration on the prevention of genocide for the consideration of the States parties, the Special Adviser, the Secretary-General, as well as of the Security Council,

The Committee:

1. *Welcomes* the appointment of the Special Adviser on the Prevention of Genocide with the mandate to sound early warning and make appropriate recommendations for prevention to the Security Council through the Secretary-General, to enable the international community to take timely action to prevent genocide from occurring;

2. *Finds it imperative* to stimulate stronger ties and interaction between the local and global levels in, inter alia, developing national strategies for the prevention of genocide linked to national action plans for the elimination of racial discrimination developed in close collaboration with civil society, national human rights institutions and other non-State actors, as well as involving international bodies such as the Committee on the Elimination of Racial Discrimination and the Office of the United Nations High Commissioner for Human Rights;

3. *Declares* its determination to provide the Special Adviser on the Prevention of Genocide with timely and relevant information on laws, policies and practices that may indicate systematic or systemic discrimination based on race, colour, descent, or national or ethnic origin which may potentially result in violent conflict and genocide. To facilitate and focus this exchange, the Committee intends to develop a special set of indicators related to genocide, including the cultural and historic roots of genocide and the importance of recognizing the multicultural dimension of most societies, as suggested by the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;

4. *Expresses its resolve* to strengthen and refine its anti-racial discrimination early warning and urgent action as well as follow-up procedures in all situations where indications of possible violent conflict and genocide prevail; in such cases, it will consider in-country visits to obtain first-hand information on the situation;

5. *Considers it of vital importance* that stronger interaction is established between United Nations human rights treaty bodies and the Security Council, and in this regard the Committee will explore how the former can work together in raising awareness about possible outbreaks of violent conflict and genocide and address the Secretary-General and the Special Adviser to pass on concerns and warning to the Security Council;

6. *Agrees* with the High-level Panel's finding that the developed countries have particular responsibility to do more to transform their armies into units suitable for deployment to peace operations, and that more States will have to place their contingents on standby for United Nations purposes and keep air transport and other strategic lift capacities available to assist peace operations. This will require resources commensurate with the scale of the challenges ahead;

7. *Notes* the Global Peace Operations Initiative proposal for Western States to train, equip and provide logistical support to the international military forces willing to participate in peacekeeping operations to be funded by members of the Group of Seven (G-7) States;

8. *Urges* increased resource allocation by States Members of the United Nations, more particularly by the developed countries, and that developed countries reinforce peacekeeping contingents from the developing countries by contributing their own contingents;

9. *Considers it essential* to build the capacity of peacekeeping contingents for more rapid deployment;

10. *Commends* the global cooperation between the United Nations and the African Union in the field of peace and security;

11. *Considers it imperative* to dispel the climate of impunity that is conducive to war crimes and crimes against humanity by referring all perpetrators of these crimes to the International Criminal Court;

12. *Urges* the international community to look at the need for a comprehensive understanding of the dimensions of genocide, including in the context of situations of economic globalization adversely affecting disadvantaged communities, in particular indigenous peoples.

1701st meeting
11 March 2005

Note

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

IX. GENERAL RECOMMENDATIONS

460. At its sixty-fifth session, the Committee decided to entrust Mr. de Gouttes with the task of drafting a new general recommendation on racial discrimination in the administration of justice. Following discussion of the draft general recommendation during the sixty-sixth and sixty-seventh sessions, the Committee adopted the following general recommendation at its 1724th meeting:

General recommendation XXXI on the prevention of racial discrimination in the administration and functioning of the criminal justice system

The Committee on the Elimination of Racial Discrimination,

Recalling the definition of racial discrimination set out in article 1 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Recalling the provisions of article 5 (*a*) of the Convention, under which States parties have an obligation to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the right to equal treatment before the tribunals and all other organs administering justice,

Recalling that article 6 of the Convention requires States parties to assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination,

Referring to paragraph 25 of the declaration adopted by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, held in Durban, South Africa, in 2001, which expressed "profound repudiation of the racism, racial discrimination, xenophobia and related intolerance that persist in some States in the functioning of the penal system and in the application of the law, as well as in the actions and attitudes of institutions and individuals responsible for law enforcement, especially where this has contributed to certain groups being overrepresented among persons under detention or imprisoned",

Referring to the work of the Commission on Human Rights and of the Sub-Commission on the Promotion and Protection of Human Rights (see E/CN.4/Sub.2/2005/7) concerning discrimination in the criminal justice system,

Bearing in mind the reports of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance,

Referring to the 1951 Convention relating to the Status of Refugees, in particular article 16, which stipulates that "[a] refugee shall have free access to the courts of law on the territory of all Contracting States",

Bearing in mind the observations relating to the functioning of the system of justice made in the Committee's conclusions concerning reports submitted by States parties and in general recommendations XXVII (2000) on discrimination against Roma, XXIX (2002) on discrimination based on descent and XXX (2004) on discrimination against non-citizens,

Convinced that, even though the system of justice may be regarded as impartial and not affected by racism, racial discrimination or xenophobia, when racial or ethnic discrimination does exist in the administration and functioning of the system of justice, it constitutes a particularly serious violation of the rule of law, the principle of equality before the law, the principle of fair trial and the right to an independent and impartial tribunal, through its direct effect on persons belonging to groups which it is the very role of justice to protect,

Considering that no country is free from racial discrimination in the administration and functioning of the criminal justice system, regardless of the type of law applied or the judicial system in force, whether accusatorial, inquisitorial or mixed,

Considering that the risks of discrimination in the administration and functioning of the criminal justice system have increased in recent years, partly as a result of the rise in immigration and population movements, which have prompted prejudice and feelings of xenophobia or intolerance among certain sections of the population and certain law enforcement officials, and partly as a result of the security policies and anti-terrorism measures adopted by many States, which among other things have encouraged the emergence of anti-Arab or anti-Muslim feelings, or, as a reaction, anti-Semitic feelings, in a number of countries,

Determined to combat all forms of discrimination in the administration and functioning of the criminal justice system which may be suffered, in all countries of the world, by persons belonging to racial or ethnic groups, in particular non-citizens - including immigrants, refugees, asylum-seekers and stateless persons - Roma/Gypsies, indigenous peoples, displaced populations, persons discriminated against because of their descent, as well as other vulnerable groups which are particularly exposed to exclusion, marginalization and non-integration in society, paying particular attention to the situation of women and children belonging to the aforementioned groups, who are susceptible to multiple discrimination because of their race and because of their sex or their age,

Formulates the following recommendations addressed to States parties:

I. General steps

A. Steps to be taken in order to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system; the search for indicators attesting to such discrimination

1. Factual indicators

1. States parties should pay the greatest attention to the following possible indicators of racial discrimination:

(a) The number and percentage of persons belonging to the groups referred to in the last paragraph of the preamble who are victims of aggression or other offences, especially when they are committed by police officers or other State officials;

(b) The absence or small number of complaints, prosecutions and convictions relating to acts of racial discrimination in the country. Such a statistic should not be viewed as necessarily positive, contrary to the belief of some States. It may also reveal either that victims have inadequate information concerning their rights, or that they fear social censure or reprisals, or that victims with limited resources fear the cost and complexity of the judicial process, or that there is a lack of trust in the police and judicial authorities, or that the authorities are insufficiently alert to or aware of offences involving racism;

(c) Insufficient or no information on the behaviour of law enforcement personnel vis-à-vis persons belonging to the groups referred to in the last paragraph of the preamble;

(d) The proportionately higher crime rates attributed to persons belonging to those groups, particularly as regards petty street crime and offences related to drugs and prostitution, as indicators of the exclusion or the non-integration of such persons into society;

(e) The number and percentage of persons belonging to those groups who are held in prison or preventive detention, including internment centres, penal establishments, psychiatric establishments or holding areas in airports;

(f) The handing down by the courts of harsher or inappropriate sentences against persons belonging to those groups;

(g) The insufficient representation of persons belonging to those groups among the ranks of the police, in the system of justice, including judges and jurors, and in other law enforcement departments.

2. In order for these factual indicators to be well known and used, States parties should embark on regular and public collection of information from police, judicial and prison authorities and immigration services, while respecting standards of confidentiality, anonymity and protection of personal data.

3. In particular, States parties should have access to comprehensive statistical or other information on complaints, prosecutions and convictions relating to acts of racism and xenophobia, as well as on compensation awarded to the victims of such acts, whether such compensation is paid by the perpetrators of the offences or under State compensation plans financed from public funds.

2. Legislative indicators

4. The following should be regarded as indicators of potential causes of racial discrimination:

(a) Any gaps in domestic legislation on racial discrimination. In this regard, States parties should fully comply with the requirements of article 4 of the Convention and criminalize all acts of racism as provided by that article, in particular the dissemination of ideas based on racial superiority or hatred, incitement to racial hatred, violence or incitement to racial violence,

but also racist propaganda activities and participation in racist organizations. States parties are also encouraged to incorporate a provision in their criminal legislation to the effect that committing offences for racial reasons generally constitutes an aggravating circumstance;

(b) The potential indirect discriminatory effects of certain domestic legislation, particularly legislation on terrorism, immigration, nationality, banning or deportation of non-citizens from a country, as well as legislation that has the effect of penalizing without legitimate grounds certain groups or membership of certain communities. States should seek to eliminate the discriminatory effects of such legislation and in any case to respect the principle of proportionality in its application to persons belonging to the groups referred to in the last paragraph of the preamble.

B. Strategies to be developed to prevent racial discrimination in the administration and functioning of the criminal justice system

5. States parties should pursue national strategies the objectives of which include the following:

(a) To eliminate laws that have an impact in terms of racial discrimination, particularly those which target certain groups indirectly by penalizing acts which can be committed only by persons belonging to such groups, or laws that apply only to non-nationals without legitimate grounds or which do not respect the principle of proportionality;

(b) To develop, through appropriate education programmes, training in respect for human rights, tolerance and friendship among racial or ethnic groups, as well as sensitization to intercultural relations, for law enforcement officials: police personnel, persons working in the system of justice, prison institutions, psychiatric establishments, social and medical services, etc.;

(c) To foster dialogue and cooperation between the police and judicial authorities and the representatives of the various groups referred to in the last paragraph of the preamble, in order to combat prejudice and create a relationship of trust;

(d) To promote proper representation of persons belonging to racial and ethnic groups in the police and the system of justice;

(e) To ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law;

(f) To make the necessary changes to the prison regime for prisoners belonging to the groups referred to in the last paragraph of the preamble, so as to take into account their cultural and religious practices;

(g) To institute, in situations of mass population movements, the interim measures and arrangements necessary for the operation of the justice system in order to take account of the particularly vulnerable situation of displaced persons, in particular by setting up decentralized courts at the places where the displaced persons are staying or by organizing mobile courts;

(h) To set up, in post-conflict situations, plans for the reconstruction of the legal system and the re-establishment of the rule of law throughout the territory of the countries concerned, by availing themselves, in particular, of the international technical assistance provided by the relevant United Nations entities;

(i) To implement national strategies or plans of action aimed at the elimination of structural racial discrimination. These long-term strategies should include specific objectives and actions as well as indicators against which progress can be measured. They should include, in particular, guidelines for prevention, recording, investigation and prosecution of racist or xenophobic incidents, assessment of the level of satisfaction among all communities concerning their relations with the police and the system of justice, and recruitment and promotion in the judicial system of persons belonging to various racial or ethnic groups;

(j) To entrust an independent national institution with the task of tracking, monitoring and measuring progress made under the national plans of action and guidelines against racial discrimination, identifying undetected manifestations of racial discrimination and submitting recommendations and proposals for improvement.

II. Steps to be taken to prevent racial discrimination with regard to victims of racism

A. Access to the law and to justice

6. In accordance with article 6 of the Convention, States parties are obliged to guarantee the right of every person within their jurisdiction to an effective remedy against the perpetrators of acts of racial discrimination, without discrimination of any kind, whether such acts are committed by private individuals or State officials, as well as the right to seek just and adequate reparation for the damage suffered.

7. In order to facilitate access to justice for the victims of racism, States parties should strive to supply the requisite legal information to persons belonging to the most vulnerable social groups, who are often unaware of their rights.

8. In that regard, States parties should promote, in the areas where such persons live, institutions such as free legal help and advice centres, legal information centres and centres for conciliation and mediation.

9. States parties should also expand their cooperation with associations of lawyers, university institutions, legal advice centres and non-governmental organizations specializing in protecting the rights of marginalized communities and in the prevention of discrimination.

B. Reporting of incidents to the authorities competent for receiving complaints

10. States parties should take the necessary steps to ensure that the police services have an adequate and accessible presence in the neighbourhoods, regions, collective facilities, camps or centres where the persons belonging to the groups referred to in the last paragraph of the preamble reside, so that complaints from such persons can be expeditiously received.

11. The competent services should be instructed to receive the victims of acts of racism in police stations in a satisfactory manner, so that complaints are recorded immediately, investigations are pursued without delay and in an effective, independent and impartial manner, and files relating to racist or xenophobic incidents are retained and incorporated into databases.

12. Any refusal by a police official to accept a complaint involving an act of racism should lead to disciplinary or penal sanctions, and those sanctions should be increased if corruption is involved.

13. Conversely, it should be the right and duty of any police official or State employee to refuse to obey orders or instructions that require him or her to commit violations of human rights, particularly those based on racial discrimination. States parties should guarantee the freedom of any official to invoke this right without fear of punishment.

14. In cases of allegations of torture, ill-treatment or executions, investigations should be conducted in accordance with the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions[1] and the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[2]

C. Initiation of judicial proceedings

15. States parties should remind public prosecutors and members of the prosecution service of the general importance of prosecuting racist acts, including minor offences committed with racist motives, since any racially motivated offence undermines social cohesion and society as a whole.

16. In advance of the initiation of proceedings, States parties could also encourage, with a view to respecting the rights of the victims, the use of parajudicial procedures for conflict resolution, including customary procedures compatible with human rights, mediation or conciliation, which can serve as useful options for the victims of acts of racism and to which less stigma may be attached.

17. In order to make it easier for the victims of acts of racism to bring actions in the courts, the steps to be taken should include the following:

(a) Offering procedural status for the victims of racism and xenophobia and associations for the protection of the rights of such victims, such as an opportunity to associate themselves with the criminal proceedings, or other similar procedures that might enable them to assert their rights in the criminal proceedings, at no cost to themselves;

(b) Granting victims effective judicial cooperation and legal aid, including the assistance of counsel and an interpreter free of charge;

(c) Ensuring that victims have information about the progress of the proceedings;

(d) Guaranteeing protection for the victim or the victim's family against any form of intimidation or reprisals;

(e) Providing for the possibility of suspending the functions, for the duration of the investigation, of the agents of the State against whom the complaints were made.

18. In countries where there are assistance and compensation plans for victims, States parties should ensure that such plans are available to all victims without discrimination and regardless of their nationality or residential status.

D. Functioning of the system of justice

19. States parties should ensure that the system of justice:

(a) Grants a proper place to victims and their families, as well as witnesses, throughout the proceedings, by enabling complainants to be heard by the judges during the examination proceedings and the court hearing, to have access to information, to confront hostile witnesses, to challenge evidence and to be informed of the progress of proceedings;

(b) Treats the victims of racial discrimination without discrimination or prejudice, while respecting their dignity, through ensuring in particular that hearings, questioning or confrontations are carried out with the necessary sensitivity as far as racism is concerned;

(c) Guarantees the victim a court judgement within a reasonable period;

(d) Guarantees victims just and adequate reparation for the material and moral harm suffered as a result of racial discrimination.

III. Steps to be taken to prevent racial discrimination in regard to accused persons who are subject to judicial proceedings

A. Questioning, interrogation and arrest

20. States parties should take the necessary steps to prevent questioning, arrests and searches which are in reality based solely on the physical appearance of a person, that person's colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion.

21. States parties should prevent and most severely punish violence, acts of torture, cruel, inhuman or degrading treatment and all violations of human rights affecting persons belonging to the groups referred to in the last paragraph of the preamble which are committed by State officials, particularly police and army personnel, customs authorities, and persons working in airports, penal institutions and social, medical and psychiatric services.

22. States parties should ensure the observance of the general principle of proportionality and strict necessity in recourse to force against persons belonging to the groups referred to in the last paragraph of the preamble, in accordance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.[3]

23. States parties should also guarantee to all arrested persons, whatever the racial, national or ethnic group to which they belong, enjoyment of the fundamental rights of the defence enshrined in the relevant international human rights instruments (especially the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights), in particular the right not to be arbitrarily arrested or detained, the right to be informed of the reasons for their arrest, the right to the assistance of an interpreter, the right to the assistance of counsel, the right to be brought promptly before a judge or an authority empowered by the law to perform judicial functions, the right to consular protection guaranteed by article 36 of the Vienna Convention on Consular Relations and, in the case of refugees, the right to contact the Office of the United Nations High Commissioner for Refugees.

24. As regards persons placed in administrative holding centres or in holding areas in airports, States parties should ensure that they enjoy sufficiently decent living conditions.

25. Lastly, as regards the questioning or arrest of persons belonging to the groups referred to in the last paragraph of the preamble, States parties should bear in mind the special precautions to be taken when dealing with women or minors, because of their particular vulnerability.

B. Pretrial detention

26. Bearing in mind statistics which show that persons held awaiting trial include an excessively high number of non-nationals and persons belonging to the groups referred to in the last paragraph of the preamble, States parties should ensure:

(a) That the mere fact of belonging to a racial or ethnic group or one of the aforementioned groups is not a sufficient reason, de jure or de facto, to place a person in pretrial detention. Such pretrial detention can be justified only on objective grounds stipulated in the law, such as the risk of flight, the risk that the person might destroy evidence or influence witnesses, or the risk of a serious disturbance of public order;

(b) That the requirement to deposit a guarantee or financial security in order to obtain release pending trial is applied in a manner appropriate to the situation of persons belonging to such groups, who are often in straitened economic circumstances, so as to prevent this requirement from leading to discrimination against such persons;

(c) That the guarantees often required of accused persons as a condition of their remaining at liberty pending trial (fixed address, declared employment, stable family ties) are weighed in the light of the insecure situation which may result from their membership of such groups, particularly in the case of women and minors;

(d) That persons belonging to such groups who are held pending trial enjoy all the rights to which prisoners are entitled under the relevant international norms, and particularly the rights specially adapted to their circumstances: the right to respect for their traditions as regards religion, culture and food, the right to relations with their families, the right to the assistance of an interpreter and, where appropriate, the right to consular assistance.

C. The trial and the court judgement

27. Prior to the trial, States parties may, where appropriate, give preference to non-judicial or parajudicial procedures for dealing with the offence, taking into account the cultural or customary background of the perpetrator, especially in the case of persons belonging to indigenous peoples.

28. In general, States parties must ensure that persons belonging to the groups referred to in the last paragraph of the preamble, like all other persons, enjoy all the guarantees of a fair trial and equality before the law, as enshrined in the relevant international human rights instruments, and specifically.

1. The right to the presumption of innocence

29. This right implies that the police authorities, the judicial authorities and other public authorities must be forbidden to express their opinions publicly concerning the guilt of the accused before the court reaches a decision, much less to cast suspicion in advance on the members of a specific racial or ethnic group. These authorities have an obligation to ensure that the mass media do not disseminate information which might stigmatize certain categories of persons, particularly those belonging to the groups referred to in the last paragraph of the preamble.

2. The right to the assistance of counsel and the right to an interpreter

30. Effectively guaranteeing these rights implies that States parties must set up a system under which counsel and interpreters will be assigned free of charge, together with legal help or advice and interpretation services for persons belonging to the groups referred to in the last paragraph of the preamble.

3. The right to an independent and impartial tribunal

31. States parties should strive firmly to ensure a lack of any racial or xenophobic prejudice on the part of judges, jury members and other judicial personnel.

32. They should prevent all direct influence by pressure groups, ideologies, religions and churches on the functioning of the system of justice and on the decisions of judges, which may have a discriminatory effect on certain groups.

33. States parties may, in this regard, take into account the Bangalore Principles of Judicial Conduct adopted in 2002 (E/CN.4/2003/65, annex), which recommend in particular that:

- Judges should be aware of the diversity of society and differences linked with background, in particular racial origins;

- They should not, by words or conduct, manifest any bias towards persons or groups on the grounds of their racial or other origin;

– They should carry out their duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and their colleagues, without unjustified differentiation; and

– They should oppose the manifestation of prejudice by the persons under their direction and by lawyers or their adoption of discriminatory behaviour towards a person or group on the basis of their colour, racial, national, religious or sexual origin, or on other irrelevant grounds.

D. Guarantee of fair punishment

34. In this regard, States should ensure that the courts do not apply harsher punishments solely because of an accused person's membership of a specific racial or ethnic group.

35. Special attention should be paid in this regard to the system of minimum punishments and obligatory detention applicable to certain offences and to capital punishment in countries which have not abolished it, bearing in mind reports that this punishment is imposed and carried out more frequently against persons belonging to specific racial or ethnic groups.

36. In the case of persons belonging to indigenous peoples, States parties should give preference to alternatives to imprisonment and to other forms of punishment that are better adapted to their legal system, bearing in mind in particular International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

37. Punishments targeted exclusively at non-nationals that are additional to punishments under ordinary law, such as deportation, expulsion or banning from the country concerned, should be imposed only in exceptional circumstances and in a proportionate manner, for serious reasons related to public order which are stipulated in the law, and should take into account the need to respect the private family life of those concerned and the international protection to which they are entitled.

E. Execution of sentences

38. When persons belonging to the groups referred to in the last paragraph of the preamble are serving prison terms, the States parties should:

(a) Guarantee such persons the enjoyment of all the rights to which prisoners are entitled under the relevant international norms, in particular rights specially adapted to their situation: the right to respect for their religious and cultural practices, the right to respect for their customs as regards food, the right to relations with their families, the right to the assistance of an interpreter, the right to basic welfare benefits and, where appropriate, the right to consular assistance. The medical, psychological or social services offered to prisoners should take their cultural background into account;

(b) Guarantee to all prisoners whose rights have been violated the right to an effective remedy before an independent and impartial authority;

(c) Comply, in this regard, with the United Nations norms in this field, and particularly the Standard Minimum Rules for the Treatment of Prisoners,[4] the Basic Principles for the Treatment of Prisoners[5] and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment;[6]

(d) Allow such persons to benefit, where appropriate, from the provisions of domestic legislation and international or bilateral conventions relating to the transfer of foreign prisoners, offering them an opportunity to serve the prison term in their countries of origin.

39. Further, the independent authorities in the States parties that are responsible for supervising prison institutions should include members who have expertise in the field of racial discrimination and sound knowledge of the problems of racial and ethnic groups and the other vulnerable groups referred to in the last paragraph of the preamble; when necessary, such supervisory authorities should have an effective visit and complaint mechanism.

40. When non-nationals are sentenced to deportation, expulsion or banning from their territory, States parties should comply fully with the obligation of non-refoulement arising out of the international norms concerning refugees and human rights, and ensure that such persons will not be sent back to a country or territory where they would run the risk of serious violations of their human rights.

41. Lastly, with regard to women and children belonging to the groups referred to in the last paragraph of the preamble, States parties should pay the greatest attention possible with a view to ensuring that such persons benefit from the special regime to which they are entitled in relation to the execution of sentences, bearing in mind the particular difficulties faced by mothers of families and women belonging to certain communities, particularly indigenous communities.

Notes

[1] Recommended by the Economic and Social Council in its resolution 1989/65 of 24 May 1989.

[2] Recommended by the General Assembly in its resolution 55/89 of 4 December 2000.

[3] Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990.

[4] Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Geneva, 22 August-3 September 1955, and approved by the Economic and Social Council in its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

[5] Adopted and proclaimed by the General Assembly in its resolution 45/111 of 14 December 1990.

[6] Adopted by the General Assembly in its resolution 43/173 of 9 December 1988.

X. 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

461. Under article 15 of the Convention, the Committee on the Elimination of Racial Discrimination is empowered to consider copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories to which General Assembly resolution 1514 (XV) applies, transmitted to it by the competent bodies of the United Nations, and to submit to them and to the General Assembly its expressions of opinion and recommendations relating to the principles and objectives of the Convention in those territories.

462. At the request of the Committee, Mr. Pillai examined the documents made available to the Committee in order for it to perform its functions pursuant to article 15 of the Convention. At its 1727th meeting (sixty-seventh session), Mr. Pillai presented his report, for the preparation of which he had taken into account the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples covering its work during 2004 (A/59/23) and copies of the working papers on the 16 Territories prepared by the Secretariat for the Special Committee and the Trusteeship Council in 2004 and listed in document CERD/C/503 as well as in annex V to the present report.

463. The Committee noted, as it has done in the past, that it was difficult to fulfil its functions comprehensively under article 15 of the Convention as a result of the absence of any copies of petitions pursuant to paragraph 2 (a) and owing to the fact that the copies of the reports received pursuant to paragraph 2 (b) contain only scant information directly relating to the principles and objectives of the Convention.

464. The Committee would like to repeat its earlier observation that in the reports of the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples, reference is made to the relations between the Special Committee and the Committee's continuous monitoring of related developments in Territories, having regard to the relevant provisions of article 15 of the Convention. The Committee further noted, however, that issues concerning racial discrimination, and directly relating to the principles and objectives of the Convention, are not reflected in the sections of the report of the Special Committee which deal with a review of its work and the future work of the Special Committee.

XI. ACTION TAKEN BY THE GENERAL ASSEMBLY AT ITS FIFTY-NINTH SESSION

465. The Committee considered this agenda item at its sixty-sixth and sixty-seventh sessions. For its consideration of this item the Committee had before it General Assembly resolution 59/176 of 20 December 2004 in which the Assembly, inter alia: (a) commended the Committee for its contributions to the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination; (b) urged States that had not yet become parties to the Convention to ratify it or accede to it as a matter of urgency, with a view to achieving universal ratification by 2005; (c) requested States parties to the Convention to consider making the declaration provided for in article 14 thereof; (d) called upon States parties to fulfil their reporting obligations; (e) urged States parties to withdraw reservations that are contrary to the object and purpose of that Convention and to review their reservations on a regular basis with a view to withdrawing them; (f) expressed its appreciation for the efforts made so far by the Committee to improve the efficiency of its working methods, and encouraged the Committee to continue its activities in this regard; (g) encouraged the continued participation of members of the Committee in the annual inter-committee meetings and meetings of chairpersons of the human rights treaty bodies, especially with a view to a more coordinated approach to the activities of the treaty body system and standardized reporting; and (h) strongly urged States to accelerate ratification of the amendment to article 8 of the Convention concerning the financing of the Committee.

XII. THIRD DECADE TO COMBAT RACISM AND RACIAL DISCRIMINATION; FOLLOW-UP TO THE WORLD CONFERENCE AGAINST RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE

466. The Committee considered the question of the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Third Decade to Combat Racism and Racial Discrimination at its sixty-sixth and sixty-seventh sessions.

467. At its sixty-sixth session, the Committee was informed of, and discussed, the third session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action (see E/CN.4/2005/20), held from 11 to 22 October 2004, and, in particular, the mandate of the Working Group relating to the preparation of complementary international standards to strengthen and update international instruments against racism, racial discrimination, xenophobia and related intolerance in all their aspects. Following the recommendation of the Working Group, which requested "OHCHR to organize a four- to five-day high-level seminar within the fourth session of the Working Group" (ibid., para. 73, recommendation 36), the Committee, during its sixty-seventh session, discussed its participation in the fourth session of the Working Group. The Committee decided that it should be duly represented at that meeting, in view of the fact that the International Convention on the Elimination of All Forms of Racial Discrimination is the main international legal instrument in that field.

XIII. OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

468. An overview of the methods of work of the Committee was included in its report to the fifty-first session of the General Assembly.[1] It highlighted changes introduced in recent years and was designed to improve the Committee's procedures.

469. At its sixtieth session, the Committee decided to review its working methods at its sixty-first session and asked Mr. Valencia Rodríguez, convenor of an open-ended working group on this issue, to prepare and submit a working paper for consideration. The working paper submitted by Mr. Valencia Rodríguez was discussed and revised further by the Committee at its sixty-second and sixty-third sessions and adopted at the sixty-third session, with the exception of one paragraph which remains pending. The text of the paper as adopted was included in an annex to the Committee's report to the fifty-eighth session of the General Assembly.[2]

470. At its sixty-fourth session, the Committee continued to discuss its working methods and, in particular, the question of follow-up to the recommendations addressed to States parties after consideration of their initial or periodic reports. The Committee decided to add a new paragraph to rule 65 of its rules of procedure concerning the request for additional information from States parties. The text of rule 65 as amended can be found in annex III to the Committee's report to the fifty-ninth session of the General Assembly.[3]

471. At its 1670th meeting (sixty-fifth session), the Committee decided, in accordance with paragraph 2 of rule 65 of its rules of procedure, to appoint the following members as coordinator and alternate coordinator to further the implementation of paragraph 1 of rule 65 of its rules of procedure concerning requests for additional information from States parties.

Coordinator: Mr. Morten Kjaerum (2004-2006)

Alternate: Mr. Nourredine Amir (2004-2006)

472. The terms of reference for the work of the coordinator are reproduced in annex IV (see paragraph 447 for a reference to the decision of the Committee to establish a follow-up procedure for its Opinions adopted under article 14 of the Convention).

473. At its 1659th meeting (sixty-fifth session), the Committee established a working group on early warning and urgent action procedures. This working group includes the following five members of the Committee:

Coordinator: Ms. Patricia Nozipho January-Bardill (2004-2006)

Members: Mr. Alexei S. Avtonomov (2004-2006)

Mr. Jose Francisco Cali Tzay (2004-2006)

Mr. Régis de Gouttes (2004-2006)

Mr. Agha Shahi (2004-2006)

474. The working group met for the first time during the sixty-fifth session of the Committee to discuss a number of cases brought to its attention. The working group also met during the sixty-sixth and sixty-seventh sessions.

Notes

[1] *Official Reports of the General Assembly, Fifty-first Session, Supplement No. 18* (A/51/18), paras. 587-627.

[2] Ibid., *Fifty-eighth Session, Supplement No. 18* (A/58/18), annex IV.

[3] Ibid., *Fifty-ninth Session, Supplement No. 18* (A/59/18), annex III.

XIV. DISCUSSION ON REFORM OF TREATY BODY SYSTEM

475. Concerning the effective implementation of international instruments on human rights, including reporting obligations under international instruments on human rights, the Committee had before it the report of the seventeenth meeting of persons chairing the human rights treaty bodies. At its sixty-seventh session, the Committee discussed in particular the point concerning future consultations on proposals for reform of the United Nations human rights framework, including those relating to a unified standing treaty body. After an initial discussion on 16 August 2005 (see CERD/C/SR.1723), the Committee had a dialogue on this issue on 18 August 2005 with María-Francisca Ize-Charrin, Officer-in-Charge of the Office of the High Commissioner for Human Rights (see CERD/C/SR.1726).

476. Members of the Committee highlighted various questions that will need clarifying in the context of the discussion regarding a unified standing treaty body. They stressed the need to take into account the opinion of all stakeholders, including not only States parties and treaty body members, but also national human rights institutions, non-governmental organizations and victims of human rights violations. They also asked whether a single treaty body would necessarily result in a single report. The risk of marginalization of some instruments and some human rights issues, including the Convention and the question of racial discrimination, was highlighted by several members who also underscored that racial discrimination is a major human rights issue in the current world context which should continue to be given all necessary attention.

477. Some members also asked whether an amending protocol would be necessary and, if this was the case, they expressed the fear that the implementation and entry into force of such a protocol could take several years. Some members said that there was also a risk that during the transition period, the whole system might come to a standstill. Questions were also asked concerning the membership of a unified standing body, the selection process and the length of mandate of prospective members. Some members wondered whether the body would be permanent and how it would be organized, in particular whether it would be composed of several chambers and on what criteria these chambers would be established.

478. The danger of losing the *acquis* of the existing human rights protection system was stressed by several members who also stated that a unified standing treaty body would not resolve the current difficulties of the system such as non-reporting and lack of political will of States vis-à-vis the implementation of treaty body recommendations. Some members made various proposals to improve the current system, including:

(a) To persevere with current steps towards improving working methods;

(b) To enhance the implementation of recommendations made by the chairpersons and inter-committee meetings;

(c) The creation of different chambers within treaty bodies that would address the issue of excessive delays in the examination of reports;

(d) To strengthen the Petitions Team in the Office of the High Commissioner for Human Rights;

(e) To envisage the creation of a single body to deal with individual communications;

(f) To strengthen follow-up to treaty body recommendations;

(g) To clarify the relationship between treaty bodies and a future Human Rights Council in order to avoid duplication;

(h) To ensure that a peer review system which may be put in place would use treaty body recommendations as a starting point and provide the required political support in order to ensure their implementation.

479. In her dialogue with the Committee, Ms. Ize-Charrin stressed that no decision had yet been taken and that extensive consultations were necessary in order to study the possible creation of a unified standing treaty body. She emphasized that the opinion of treaty body members and of all other stakeholders would be sought in order to render this process as informed and participatory as possible and, ultimately, to move towards decisions.

480. Ms. Ize-Charrin recalled that the Office of the High Commissioner had been actively engaged in strengthening the implementation of the recommendations of treaty bodies through various projects. She agreed with members that follow-up to treaty body recommendations must be enhanced and that the implementation of the recommendations of the chairpersons and inter-committee meetings should be strengthened.

481. Regarding the need to clarify the relationship between treaty bodies and a future Human Rights Council in order to avoid duplication and concerning the legal arrangements which the creation of a unified standing body would require, Ms. Ize-Charrin explained that it was too early to provide specific replies to these questions, which would be progressively clarified. She informed the Committee that the Office of the High Commissioner would shortly start drafting a concept paper that would study all these questions, and that treaty body members would be invited to provide comments during the process.

482. In her concluding remarks, Ms. Ize-Charrin stressed the full commitment of the High Commissioner to ensuring that any reform of the treaty body system will be one that enhances the protection of human rights for all groups and individuals at the national level, in particular in areas as important as that of discrimination, including racial discrimination, which the High Commissioner has identified in her Plan of Action as one of the main human rights challenges.

Annex I

STATUS OF THE CONVENTION

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (170) as at 19 August 2005*

Afghanistan, Albania, Algeria, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, 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 Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia and Montenegro, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (46) as at 19 August 2005

Algeria, Australia, Austria, Azerbaijan, Belgium, Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Senegal, Serbia and Montenegro, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela.

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* The following States have signed but not ratified the Convention: Andorra, Bhutan, Grenada, Guinea-Bissau, Nauru and Sao Tome and Principe.

C. States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties* (39) as at 19 August 2005

Australia, Bahamas, Belize, Bahrain, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Guinea, Holy See, Iceland, Iraq, Ireland, 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, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

* For the amendments to enter into force, two thirds of the States parties to the Convention must accept it.

Annex II

AGENDAS OF THE SIXTY-SIXTH AND SIXTY-SEVENTH SESSIONS

A. Sixty-sixth session (21 February-11 March 2005)

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 to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.

B. Sixty-seventh session (2-19 August 2005)

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. Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other territories in which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention.
9. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance.
10. Report of the Committee to the General Assembly at its sixtieth session under article 9, paragraph 2, of the Convention.

Annex III

DECISIONS AND OPINIONS OF THE COMMITTEE UNDER ARTICLE 14 OF THE CONVENTION

A. Sixty-sixth session

Opinion concerning

Communication No. 31/2003

Submitted by: Ms. L.R. et al. (represented by the European Roma Rights Center and the League of Human Rights Advocates)

Alleged victim(s): The petitioners

State party: Slovak Republic

Date of communication: 5 August 2003

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 7 March 2005,

Adopts the following:

OPINION

1. The petitioners are Ms. L.R. and 26 other Slovak citizens of Roma ethnicity residing in Dobšiná, Slovak Republic. They claim to be victims of a violation by the Slovak Republic of article 2, paragraph 1, subparagraphs (a), (c) and (d); article 4, paragraph (a); article 5, paragraph (e), subparagraph (iii); and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. They are represented by counsel of the European Roma Rights Center, Budapest, Hungary, and the League of Human Rights Advocates, Bratislava, Slovak Republic.

The facts as presented

2.1 On 20 March 2002, the councillors of the Dobšiná municipality adopted resolution No. 251-20/III-2002-MsZ, whereby they approved what the petitioners describe as a plan to construct low-cost housing for the Roma inhabitants of the town.[a] About 1,800 Roma live in the town in what are described as "appalling" conditions, with most dwellings comprising thatched huts or houses made of cardboard and without drinking water, toilets, or drainage or sewage systems. The councillors instructed the local mayor to prepare a project aimed at securing finance from a government fund set up expressly to alleviate Roma housing problems in the State party.

2.2 Thereupon, certain inhabitants of Dobšiná and surrounding villages established a five-member "petition committee", led by the Dobšiná chairman of the Real Slovak National Party. The committee drafted a petition with the following text:

> "I do not agree with the building of low-cost houses for people of Gypsy origin on the territory of Dobšiná, as it will lead to an influx of inadaptable citizens of Gypsy origin from the surrounding villages, even from other districts and regions."[b]

The petition was signed by some 2,700 inhabitants of Dobšiná and deposited with the municipal council on 30 July 2002. On 5 August 2002, the council considered the petition and unanimously voted, "having considered the factual circumstances", to cancel the earlier resolution by means of a second resolution which included an explicit reference to the petition.[c]

2.3 On 16 September 2002, in the light of the relevant law,[d] the petitioners' counsel requested the Rožňava District Prosecutor to investigate and prosecute the authors of the discriminatory petition, and to reverse the council's second resolution as it was based on a discriminatory petition. On 7 November 2002, the District Prosecutor rejected the request on the basis of purported absence of jurisdiction over the matter. The Prosecutor found that "… the resolution in question was passed by the Dobšiná Town Council exercising its self-governing powers; it does not constitute an administrative act performed by public administration and, as a result, the prosecution office does not have the competence to review the legality of this act or to take prosecutorial supervision measures in non-penal area".

2.4 On 18 September 2002, the petitioners' counsel applied to the Constitutional Court for an order determining that articles 12 and 33 of the Constitution, the Act on the Right of Petition and the Framework Convention for the Protection of National Minorities (Council of Europe) had been violated, cancelling the second resolution of the council and examining the legality of the petition. Further information was provided on two occasions at the request of the Court. On 5 February 2003, the Court, in closed session, held that the petitioners had provided no evidence that any fundamental rights had been violated by the petition or by the council's second decision. It stated that as neither the petition nor the second resolution constituted legal acts, they were permissible under domestic law. It further stated that citizens have a right to petition regardless of its content.

The complaint

3.1 The petitioners argue that the State party has violated article 2, paragraph 1, subparagraph (a), by failing to "ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation" [to engage in no act or practice of racial discrimination]. They argue, with reference to the Committee's jurisprudence, that a municipal council is a local public authority,[e] and that the council engaged in an act of racial discrimination by unanimously endorsing the petition and cancelling its resolution to build low-cost but adequate housing for local Roma.

3.2 The petitioners argue that there has been a violation of article 2, paragraph 1, subparagraph (c), on the basis that the State party failed to "nullify any laws or regulations which have the effect of creating or perpetuating racial discrimination". Neither the District Prosecutor nor the Constitutional Court took measures to cancel the council's second resolution, which was

itself based on a discriminatory petition. They also argue that there has been a violation of subparagraph (d) of paragraph 1, as well as article 4, paragraph (a), on the basis that the State party failed "to prohibit and bring to an end … racial discrimination by any persons, group or organization" by not effectively investigating and prosecuting the petition's authors. They argue that the petition's wording can be regarded as "incitement to racial discrimination", and refer to the Committee's decision in *L.K. v. The Netherlands*,[f] where the State party was found to have insufficiently investigated a petition and verbal threats designed to stop an immigrant from moving into a subsidized home.

3.3 The petitioners contend that article 5, paragraph (e), subparagraph (iii), was violated as the State party failed to safeguard the petitioners' right to adequate housing. The local conditions, described above, are, in the petitioners' view, well below an adequate level for housing and living conditions in the State party, and would have been resolved by the original council decision proceeding rather than being cancelled, without remedy, on the basis of a discriminatory petition.

3.4 Finally, the petitioners argue a violation of article 6 in that the State party failed to provide them with an effective remedy against acts of racial discrimination inflicted both by the authors of the petition and the council's second resolution, which was motivated by and based on such discrimination. They contend that no measures have been taken (i) to cancel the second resolution, (ii) to punish the petition's authors or (iii) to ensure that such discrimination does not recur.

3.5 As to the admissibility of the complaint, the petitioners state that no further appeal lies against the Constitutional Court's judgement and that no other international procedure of investigation or settlement has been invoked.

The State party's submissions on the admissibility of the petition

4.1 By submission of 26 November 2003, the State party disputed the admissibility of the petition on the basis of the petitioners' failure to exhaust domestic remedies. Firstly, it argues that the petitioners did not avail themselves of the possibility of challenging the District Prosecutor's decision, as provided for in section 34 of the Act on Prosecution.[g]

4.2 Secondly, with respect to the constitutional application, the State party argues that despite being urged to do so by the Constitutional Court, the petitioners did not "specify [with respect to the council's second decision] any fundamental right or freedom that was allegedly violated in conflict with the Constitution, other laws or other international instruments which are binding on the Slovak Republic". As a result, the Court held:

> "The provisions of article 12, paragraphs 1 and 4, article 13, paragraphs 1 and 4, and article 35 of the Constitution exclude, in general terms, the discrimination against natural or legal persons; however, they cannot be invoked without explicitly specifying the impact of a discriminatory procedure applied by a State authority or a State administration body on a fundamental right or freedom of a natural or legal person. An analogical approach may be applied to article 33 of the Constitution which has the aim of preventing any harm (discrimination or persecution) as a direct consequence of

belonging to a national minority or ethnic group. … None of the rights of the citizens who belong to a minority and enjoy constitutional protection entails a corresponding obligation on the part of the municipality to adopt certain decisions, i.e. the decisions on specific matters, such as construction of low-cost housing."

4.3 In the State party's view, the Court, in dismissing the complaint "as manifestly unsubstantiated on procedural grounds", did not decide on the merits, as a result of the petitioners' procedural mistake. It is thus open for the petitioners to pursue a new "substantive" complaint with the Constitutional Court. Finally, the State party argues that the petitioners did not argue a breach of the Convention before the Court, although international instruments are directly applicable and the Court can grant a remedy for breach thereof.

The petitioners' comments

5.1 By submission of 12 January 2004, the petitioners responded to the State party's observations. On the alleged failure to file a petition for review of the District Prosecutor's decision, they argue that this authority was the only one able to bring a criminal prosecution. The Prosecutor's decision contained no indication of a possibility of further appeal. Moreover, there is no indication that a higher prosecutor would have taken any different view from that of the Prosecutor, namely that a town or municipal council is not a "public administration body" whose decisions are reviewable for legality. This view was taken despite the rejection, by the Committee, of such an argument in the decision on the *Koptova* case. In the absence of any change to the "firmly settled" domestic jurisprudence on this issue and in the absence of any new facts, the petitioners argue that the State party has not shown that a higher prosecutor would take any different view if the complaint were re-presented. The same conclusion on the issue of exhaustion of the proposed remedy was also shared by the Committee in the *Koptova* case and *Lacko v. Slovakia*.[h]

5.2 As to the argument that a new application should be lodged with the Constitutional Court, the petitioners point out that the judgement describes itself as final and that in *Koptova*, the Committee rejected such an argument. Accordingly, as there is no prospect that repeated petitions to either body offer any chance of success, the petitioners claim to have exhausted all effective domestic remedies. They add that the State party's arguments should be viewed against the absence of a comprehensive anti-discrimination law; the only currently proscribed conduct is hate speech, racially motivated violence and discrimination in employment.

5.3 In response to arguments that municipal councils are not State organs, the petitioners invoke the Committee's general recommendation XV on article 4 for the contrary proposition. The Slovak Municipality System Act 1990 establishes a "direct relationship" between municipalities and the State, in terms of its subordinate financial, functional and organizational positions. Finally, in its Opinion on the *Koptova* case, the Committee found the council to be a public authority for the purposes of the Convention. Thus, the petitioners submit, the council's resolution should have been reviewed for lawfulness by the District Prosecutor and the State party's international responsibility is engaged.

5.4 The petitioners dispute the State party's argument that they did not specify the fundamental rights and freedoms violated in their petition to the Constitutional Court, arguing that they did so both in the original application and in subsequent pleadings. They claimed (i) violations of the right to equal treatment and dignity regardless of ethnic origin (art. 12);

(ii) violations of the right, as a member of an ethnic group or national minority, not to suffer detriment (art. 33); (iii) violations, on the basis of ethnic origin, of their right to housing; and (iv) discrimination against an ethnic group, the Roma. They point out that they continue to live in "appalling, substandard" conditions. They argue that articles 12 and 33 of the Constitution are not simply accessory provisions which, standing alone, have no substance; they confer substantive rights. They also point out that, while the domestic Constitution does not protect the right to housing, it does give precedence to international treaties such as, in addition to the Convention, the International Covenant on Economic, Social and Cultural Rights, which protects the right to housing and prohibits discrimination. Furthermore, the petitioners explicitly referred to the Council of Europe Framework Convention in their application. In any event, they argue that they have complied with their obligation, under the relevant jurisprudence, to raise the substance of a complaint.

5.5 The petitioners further contend that the racial discrimination suffered by them amounts to degrading treatment proscribed in article 12 of the Constitution. They refer to the case law of the European Commission on Human Rights, which held, in the *East African Asians* case, that immigration admission denied on the basis of colour and race amounted to such a violation of article 3 of the European Convention, and constituted an affront to human dignity.[i] They also argue that, under well-established principles, if a State party decides to confer a particular benefit (that it may not necessarily have had an obligation to confer *ab initio*), that benefit cannot be conferred in a discriminatory fashion.[j] Thus, even if the petitioners had no initial right to housing (which they contest), it cannot be cancelled, on discriminatory grounds, subsequent to its provision.

5.6 Finally, the petitioners object to any inference that they are not "victims" on the basis that the Constitutional Court held that no violation of the Slovak Constitution had been made. They argue that they were part of a specific group of people granted certain rights, and then had them abolished. Thus, once they are "directly targeted by the resolutions", to use the Committee's language in its Opinion on the *Koptova* case, they can be considered "victims". In addition, as the complaint lodged with the District Prosecutor did not lead to substantive review of the lawfulness of the council decision or to a criminal investigation of charges of incitement, they were victims of an absence of a remedy. The petitioners refer in this respect to the Committee's concluding observations on the State party's periodic report concerning discrimination in access to housing.[k]

The Committee's decision on the admissibility of the petition

6.1 At its sixty-fourth session, on 27 February 2004, the Committee examined the admissibility of the petition. As to the State party's contention that the petitioners did not renew their complaint before another prosecutor after it had been dismissed by the District Prosecutor, the Committee noted that the District Prosecutor had dismissed the case for lack of jurisdiction over an act of the municipal council. In the Committee's view, as far as the decision on lack of competence was concerned, the State party had not shown how re-presentation of the complaint would provide an available and effective remedy for the alleged violation of the Convention. Consequently, these avenues need not be pursued for purposes of exhaustion of domestic remedies. In this regard, the Committee recalled its own jurisprudence and that of the Human Rights Committee.[l]

6.2 With reference to the contention that the petitioners should renew their claim before the Constitutional Court, the Committee recalled its jurisprudence that where the Court dismissed a fully argued constitutional petition arguing alleged racial discrimination for failure to disclose the appearance of an infringement of rights, a petitioner could not be expected to re-present a petition to the Court.[m] In the present case, the Committee observed that the current petitioners also invoked several relevant constitutional rights alleged to have been violated, including rights of equality and non-discrimination. In the circumstances, the State party had not shown how renewal of their petition before the Constitutional Court, after it had been dismissed, could give rise to a different result by way of remedy. It followed that the petitioners have exhausted available and effective remedies before the Constitutional Court.

6.3 The Committee further recalled its jurisprudence that the acts of municipal councils, including the adoption of public resolutions of legal character such as in the present case, amounted to acts of public authorities within the meaning of the provisions of the Convention.[n] It followed that the petitioners, being directly and personally affected by the adoption of the resolution, as well as its subsequent cancellation after presentation of the petition, may claim to be "victims" for purposes of submitting their complaint before the Committee.[o]

6.4 The Committee also considered that the claims advanced by the petitioners were sufficiently substantiated, for purposes of admissibility. In the absence of any other obstacles to admissibility, the complaint was therefore declared admissible.

The State party's request for reconsideration of admissibility and submissions on the merits

7.1 By submission of 4 June 2004, the State party submitted a request for reconsideration of admissibility and its submissions on the merits of the petition. It argued that the petitioners had failed to exhaust domestic remedies, as they could have availed themselves of an effective remedy in the form of a petition pursuant to article 27 of the Constitution and the Right to Petition Act, challenging the second municipal council resolution and/or the petition lodged against the initial resolution. Presentation of such a petition would have obliged the municipality to accept the petition for review and to examine the factual situation. This remedy is not subject to time limits and is still available to the petitioners.

7.2 The State party argues that the failure of the petitioners to obtain the result that they sought from the prosecuting authorities and the courts cannot, of itself amount to a denial of an effective remedy. It refers to the decision of the European Court of Human Rights in *Lacko et al. v. Slovak Republic*[p] to the effect that a remedy, within the meaning of article 13 of the European Convention on Human Rights, "does not mean a remedy bound to succeed, but simply an accessible remedy before an authority competent to examine the merits of a complaint". It is the petitioners who should be held responsible for the failure of their claim before the Constitutional Court, on the basis that they failed to specify the fundamental right allegedly infringed by the council resolution in addition to simply invoking the general equality provision of article 12 of the Constitution.

7.3 The State party rejects the Committee's view that it was sufficient for the petitioners to plead certain relevant constitutional articles, without also pleading specific concrete injury, as both generally required by the Constitutional Court's jurisprudence and specifically requested of the petitioners by the Court in the instant case. The State party regards such a requirement of

particularized injury, i.e. a pleading of a violation of a general equality/non-discrimination guarantee *in combination with* a concrete right, to be wholly consistent with the spirit of the Convention.

7.4 On the remedies actually instituted by the petitioners, the State party argues that their application of 16 September 2002 to the Rožňava District Prosecutor contended only that the petition to the council amounted to an abuse of the right to petition under the Right to Petition Act, under which a petition must not incite violations of the Constitution or amount to a denial or restriction of personal, political or other rights of persons on the grounds of their nationality, sex, race, origin, political or other conviction, religious faith or social status, and must not incite to hatred and intolerance on the above grounds, or to violence or gross indecency. The petitioners neither argued how the factual circumstances amounted to such an abuse of the right to petition, nor mentioned the issue of racial discrimination, Roma ethnicity or other circumstances implicating the Convention.

7.5 In their application to the Constitutional Court, the petitioners requested a ruling that the council resolution infringed "the fundamental right of the petitioners to equal fundamental rights and freedoms irrespective of sex, race, colour, language, national origin, nationality or ethnic origin guaranteed under article 12 of the Constitution" and "the fundamental right of the petitioner to not suffer any detriment on account of belonging to a national minority or ethnic group guaranteed under article 33 of the Constitution". The State party observes that the Constitutional Court requested the petitioners, inter alia, to complete their complaint with information on "which of their fundamental rights or freedoms were infringed, which actions and/or decisions gave rise to the infringement, [and] which decisions of the municipal council they consider to be ethnically or racially motivated". The petitioners, however, completed their submission without specifying the rights allegedly violated, with the result that the Court dismissed the complaint as unfounded. In light of the above, the State party requests reconsideration of the admissibility of the petition.

7.6 On the merits, the State party argues that the petitioners failed to show an act of racial discrimination within the meaning of the Convention. Firstly, it argues that the petitioners mischaracterize the facts in important respects. It is not correct that the original resolution adopted by the municipal council approved a plan to construct low-cost housing; rather, the resolution "approv[ed] the concept of the construction of low-cost housing - family houses and/or apartment houses", making no mention of who would be the future dwellers, whether Roma or otherwise. It is also incorrect that the council instructed the local mayor to prepare a project aimed at securing finance from a government fund set up expressly to alleviate Roma housing problems; rather, the resolution only recommended that the mayor, as the State party describes it, "consider preparing project documentation and obtaining the funds for the construction from government subsidies".[9]

7.7 The State party points out that such resolutions, as purely internal organizational rules, are not binding ordinances and confer no objective or subjective rights that can be invoked before the courts or other authorities. As a result, neither Roma nor other inhabitants of Dobšiná can claim a violation of their "right to adequate housing" or discrimination resulting from such resolutions. Similarly, the Constitutional Court held that "none of the rights granted to the citizens who belong to a minority and enjoy constitutional protection entails an obligation by a municipality to make a certain decision or perform a certain activity, such as the construction of

low-cost housing". The municipal resolutions, which are general policy documents on the issue of housing in the municipality, make no mention of Roma and the petitioners infer an incorrect causal link. The tentative nature of the resolution is also shown by the absence of any construction timetable, as any construction necessarily depended on government funding.

7.8 The State party observes that the second resolution, after revoking the first resolution, instructed the council, in the words of the State party, "to prepare a proposal on addressing the existence of inadaptable citizens in the town of Dobšiná and to subsequently open the proposal for a discussion by municipal bodies and at a public meeting of the citizens".[r] This makes clear that the resolution is part of an ongoing effort to find a conceptual solution to the existence of "inadaptable citizens" in the town. As a result, policy measures taken by the municipal council to secure housing for low-income citizens clearly does not fall within the scope of the Convention. Rather, the council's activities can be viewed as a positive attempt to create more favourable conditions for this group of citizens, regardless of ethnicity. The State party observes that these actions of the municipality in the field of housing were taken against the background of the Government of Slovakia's resolution No. 335/2001 approving the Programme for the Construction of Municipal Rental Flats for low-income housing, and should be interpreted in that context.

7.9 The State party invokes the jurisprudence of the European Court of Human Rights in which the Court declined to entertain claims of discrimination advanced by travelling communities arising from the denial of residence permits on the basis of the public interest, such as environmental protection, municipal development and the like.[s] The State party argues that in this case local residents, committed to upgrading their municipality and properties, had legitimate concerns about certain risks including adverse social impacts arising from a mass influx of persons to low-income housing. It is noted that a number of Roma also signed the petition in question.

7.10 The State party argues that reference to other cases decided by the Committee such as *Lacko*[t] and *Koptova*[u] is inappropriate, as the facts and law of the present case differ. In particular, in *Koptova*, there was no context of an ongoing policy programme of housing development. The State party also observes that on 20 May 2004, Parliament passed a new anti-discrimination law laying down requirements for the implementation of the equal treatment principle and providing legal remedies for cases of infringement. The State party also rejects the reliance placed upon the European Court's judgements in the *East African Asians*[v] and *Belgian Linguistic*[w] cases. They emphasize that the second resolution did not cancel an existing project (and thus deprive existing benefits or entitlements), but rather reformulated the concept of how housing in the municipality would best be addressed.

7.11 On article 6, the State party reiterates its arguments developed in the context of the admissibility of the petition, namely that its courts and other instances provide complete and lawful consideration, in accordance with the requirements of due process, to any claim of racial discrimination. Concerning criminal prosecutions in the context of the petition on the basis of spreading racial hatred, the State party argues that the petitioners have failed to demonstrate that any actions of its public authorities were unlawful, or that the petition or its contents were unlawful. A violation of the right to an effective remedy protected by article 6 has accordingly not been established.

The petitioners' comments on the State party's submissions

8.1 With respect to the State party's argument related to the remedy of a petition, the petitioners argue that the only legal obligation is for it to be received by the relevant authority. The Constitutional Court has held that there is no obligation for the petition to be treated and given effect to; in the Court's words, "[n]either the Constitution nor the Petition Act give concrete guarantees of acceptance or consequences of dismissal of petitions". As a result, such an extraordinary remedy cannot be regarded as an effective remedy that must be exhausted for the purposes of petitioning the Committee.

8.2 On the merits, the petitioners reject the State party's characterization of the council resolutions as being without legal effect, and refer to the Committee's admissibility decision in which it was decided that "public resolutions of legal character such as in the present case" amounted to acts of public authorities. The petitioners also contest whether any Roma signed the petition against the first council resolution, stating that this is founded upon an assertion made in a letter dated 28 April 2004 by the mayor of Dobšiná to the Slovak Ministry for Foreign Affairs, without any further substantiation. In any event, the petitioners argue that the ethnicity of the persons signing the petition is irrelevant, as its content, purpose and effect are discriminatory. The petitioners also argue that the repeated use of the term "inadaptable citizens" by the State party reveals institutional prejudices against Roma.

8.3 The petitioners argue that, contrary to the State party's assertions, there is a compelling causal link between the council resolutions, the petition and discrimination in access to housing suffered by the petitioners. They argue that implementation of the social housing project would have resulted in their lives assuming a sense of dignity and alleviated dangers to their health. However, to date, the State party authorities have taken no steps to alleviate the inadequate housing situation of the petitioners. They argue that their situation is part of a wider context of discrimination in access to housing at issue in the State party and submit a number of reports of international monitoring mechanisms in support.[x]

8.4 The petitioners reject the argument that the State party authorities were under no obligation in the first place to provide housing, referring to the obligations under article 11 of the International Covenant on Economic, Social and Cultural Rights (right to "an adequate standard of living … including … housing"). In any event, they argue that the principle developed in the *Belgian Linguistic* case stands not only for the principle that when a State party decides to confer a benefit it must do so without discrimination, but also for the principle that having decided to implement a certain measure - in this case to pursue the housing scheme - a State party cannot later decide not to implement it and base itself on discriminatory considerations.

Issues and proceedings before the Committee

Review of consideration of admissibility

9.1 The State party has requested the Committee on the Elimination of Racial Discrimination, under rule 94, paragraph 6, of the Committee's rules of procedure, to reconsider its decision on admissibility. The Committee must therefore decide whether the petition remains admissible in the light of the further submissions of the parties.

9.2 The Committee notes that the State party's request for reconsideration raises the possible remedy of a petition to the municipal authority, advancing the matters currently before the Committee. The Committee observes, however, that under the State party's law, the municipal authority is solely under an obligation to receive the petition, but not to consider it or to make a determination on the outcome. In addition, the Committee observes that it is fundamental to the effectiveness of a remedy that its independence from the authority being complained against is assured. In the present case, however, the petition would re-present the grievance to the same body, the municipal council, that had originally decided on it. In such circumstances, the Committee cannot regard the right of petition as a domestic remedy that must be exhausted for the purposes of article 14, paragraph 7 (a), of the Convention.

9.3 As to the State party's remaining arguments, the Committee considered that these generally recast the arguments originally advanced to it in the course of the Committee's initial consideration of the admissibility of the petition. The Committee has already resolved these issues at that point of its consideration of the petition; accordingly, it would be inappropriate for the Committee to review its conclusions at the current stage of its deliberations.

9.4 In conclusion, therefore, the Committee rejects the State party's request for a reconsideration of the admissibility of the petition and proceeds to its consideration of the merits thereof.

Consideration of the merits

10.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

10.2 The Committee observes, at the outset, that it must determine whether an act of racial discrimination, as defined in article 1 of the Convention, has occurred before it can decide which, if any, substantive obligations in the Convention to prevent, protect against and remedy such acts have been breached by the State party.

10.3 The Committee recalls that, subject to certain limitations not applicable in the present case, article 1 of the Convention defines racial discrimination as follows: "any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field".

10.4 The State party argues firstly that the challenged resolutions of the municipal council make no reference to Roma, and must thus be distinguished from the resolutions at issue in, for example, the *Koptova*[y] case that were racially discriminatory on their face. The Committee recalls that the definition of racial discrimination in article 1 expressly extends beyond measures which are explicitly discriminatory to encompass measures that are not discriminatory at face value but are discriminatory in fact and effect, that is, if they amount to indirect discrimination. In assessing such indirect discrimination, the Committee must take full account of the particular context and circumstances of the petition, as by definition indirect discrimination can only be demonstrated circumstantially.

10.5 In the present case, the circumstances surrounding the adoption of the two resolutions by the municipal council of Dobšiná and the intervening petition presented to the council following its first resolution make abundantly clear that the petition was advanced by its proponents on the basis of ethnicity and was understood as such by the council as the primary, if not the exclusive basis for revoking its first resolution. As a result, the Committee considers that the petitioners have established a distinction, exclusion or restriction based on ethnicity, and dismisses this element of the State party's objection.

10.6 The State party argues, in the second instance, that the municipal council's resolution did not confer a direct and/or enforceable right to housing, but rather amounted to but one step in a complex process of policy development in the field of housing. The implication is that the second resolution of the council, even if motivated by ethnic grounds, thus did not amount to a measure "nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field", within the meaning of article 1, paragraph 1 *in fine*. The Committee observes that in complex contemporary societies the practical realization of, in particular, many economic, social and cultural rights, including those related to housing, will initially depend on and indeed require a series of administrative and policymaking steps by the State party's competent relevant authorities. In the present case, the council resolution clearly adopted a positive development policy for housing and tasked the mayor with pursuing subsequent measures by way of implementation.

10.7 In the Committee's view, it would be inconsistent with the purpose of the Convention, and elevate formalism over substance, to consider that the final step in the actual implementation of a particular human right or fundamental freedom must occur in a non-discriminatory manner, while the necessary preliminary decision-making elements directly connected to that implementation were to be severed and be free from scrutiny. As a result, the Committee considers that the council resolutions in question, taking initially an important policy and practical step towards realization of the right to housing, followed by its revocation and replacement with a weaker measure, taken together, do indeed amount to the impairment of the recognition or exercise on an equal basis of the human right to housing, protected by article 5, paragraph (e) (iii), of the Convention and further in article 11 of the International Covenant on Economic, Social and Cultural Rights. The Committee thus dismisses the State party's objection on this point.

10.8 In light of this finding that an act of racial discrimination has occurred, the Committee recalls its jurisprudence set out in paragraph 6.3 supra of its consideration of the admissibility of the petition, to the effect that acts of municipal councils, including the adoption of public resolutions of legal character such as in the present case, amount to acts of public authorities within the meaning of Convention provisions. It follows that the racial discrimination in question is attributable to the State party.

10.9 Accordingly, the Committee finds that the State party is in breach of its obligation under article 2, paragraph 1 (a), of the Convention to engage in no act of racial discrimination and to ensure that all public authorities act in conformity with this obligation. The Committee also finds that the State party is in breach of its obligation to guarantee the right of everyone to equality before the law in the enjoyment of the right to housing, contrary to article 5, paragraph (e) (iii), of the Convention.

10.10 With respect to the claim under article 6, the Committee observes that, at a minimum, this obligation requires the State party's legal system to afford a remedy in cases where an act of racial discrimination within the meaning of the Convention has been made out, whether before the national courts or, in this case, the Committee. The Committee having established the existence of an act of racial discrimination, it must follow that the failure of the State party's courts to provide an effective remedy discloses a consequential violation of article 6 of the Convention.

10.11 The Committee considers that the petitioners' remaining claims do not add substantively to the conclusions set out above and accordingly does not consider them further.

11. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of article 2, paragraph 1 (a), article 5, paragraph (e) (iii), and article 6 of the Convention.

12. In accordance with article 6 of the Convention, the State party is under an obligation to provide the petitioners with an effective remedy. In particular, the State party should take measures to ensure that the petitioners are placed in the same position that they were in upon adoption of the first resolution by the municipal council. The State party is also under an obligation to ensure that similar violations do not occur in the future.

13. The Committee wishes to receive, within 90 days, information from the Government of the Slovak Republic about the measures taken to give effect to the Committee's Opinion. The State party is requested also to give wide publicity to the Committee's Opinion.

[Adopted in English, French, Russian and Spanish, the English text being the original version. Subsequently to be translated in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[a] The State party provides, with its submissions on the merits of the petition, the following full text of the resolution:

> "On its 25th extraordinary session held on 20 March 2002 the Town Council of the town of Dobšiná adopted the following resolution from discussed reports and points:
>
> RESOLUTION 251-20/III-2002-MsZ
>
> After discussing the proposal by Lord Mayor Ing. Ján Vozár concerning the building of low-cost housing the Town Council of Dobšiná
>
> Approves
>
> the low-cost housing - family houses or apartment houses - development policy and

Recommends

the Lord Mayor to deal with the preparation of project documentation and acquisition of funds for this development from State subsidies."

[b] Petitioners' translation, which reflects exactly the text of the petition set out in the translated judgement of the Constitutional Court provided by the State party annexed to its submissions on the merits. The State party suggests in its submissions on the merits that a more appropriate translation would be: "I do not agree with the construction of flats for the citizens of Gypsy nationality (ethnicity) within the territory of the town of Dobšiná, as there is a danger of influx of citizens of Gypsy nationality from surrounding area [sic] and even from other districts and regions."

[c] The State party provides, with its submissions on the merits of the petition, the following full text of the resolution:

"RESOLUTION 288/5/VIII-2002-MsZ

I. After discussing the petition of 30 July 2002 and after determining the facts, the Town Council of Dobšiná, through the Resolution of the Town Council is in compliance with the law, on the basis of the citizens' petition

Cancels

Resolution 251-20/III-2002-MsZ approving the low-cost housing - family houses or apartment houses - development policy.

II. Tasks

The Town Council commissions with elaborating a proposal for solving the existence of inadaptable citizens in the town of Dobšiná and then to discuss it in the bodies of the town and at a public meeting of the citizens.

Deadline: November 2002

Responsible: Chairpersons of commissions."

[d] The petitioners refer to:

(i) Article 1 of the Act on the Right of Petition, which provides:

"A petition cannot call for a violation of the Constitution of the Slovak Republic and its laws, nor deny or restrict individual rights";

(ii) Article 12 of the Constitution, which provides:

(1) All human beings are free and equal in dignity and in rights. Their fundamental rights and freedoms are sanctioned; inalienable, imprescriptible and irreversible.

(2) Fundamental rights shall be guaranteed in the Slovak Republic to everyone regardless of sex, race, colour, language, belief and religion, political affiliation or other conviction, national or social origin, nationality or ethnic origin, property, descent or any other status. No one shall be aggrieved, discriminated against or favoured on any of these grounds.

(3) Everyone has the right to decide freely which national group he or she is a member of. Any influence and all manners of pressure that may affect or lead to a denial of a person's original nationality shall be prohibited.

(4) No injury may be inflicted on anyone, because of exercising his or her fundamental rights and freedoms;

(iii) Article 33 of the Constitution, which provides:

"Membership in any national minority or ethnic group may not be used to the detriment of any individual"; and

(iv) The Act on the Public Prosecution Office, which provides that the Prosecutor has a duty to oversee compliance by public administration bodies with laws and regulations, and to review the legality of binding regulations issued by public administration bodies.

[e] *Koptova v. Slovak Republic*, case No. 13/1998, Opinion of 8 August 2000.

[f] Case No. 4/1991, Opinion of 16 March 1993.

[g] This section provides that: "The applicant may request a review of the lawfulness of dealing with his motion by filing a repeated motion; this new motion shall be dealt with by a superior prosecutor."

[h] Case No. 11/1998, Opinion of 9 August 2001.

[i] 3 EHRR 76 (1973).

[j] The petitioners refer to the *Belgian Linguistic* case, 1 EHRR 252, 283.

[k] CERD/C/304/Add.110 of 1 May 2001.

[l] See *Lacko*, supra, and, with respect to the Human Rights Committee, *R.T. v. France*, case No. 262/87, decision adopted on 30 March 1989, and *Kaaber v. Iceland*, case No. 674/95, decision adopted on 11 May 1996.

[m] See *Koptova*, supra, at paras. 2.9 and 6.4.

[n] Ibid., at para. 6.6.

[o] Ibid., at para. 6.5.

[p] Application No. 47237 of 2 July 2002.

[q] See the full text of the resolution set out in note a.

[r] See the full text of the resolution set out in note c.

[s] *Chapman v. United Kingdom*, judgement of 18 January 2001, and *Coster v. United Kingdom*, judgement of 18 January 2001.

[t] Op. cit. at note h.

[u] Op. cit. at note e.

[v] Op. cit. at note i.

[w] Op. cit. at note j.

[x] The petitioners cite the Committee's own concluding observations, dated 1 June 2001, on the State party (CERD/C/304/Add.110) [Note of the Committee: The Committee's most recent concluding observations on the State party are dated 10 December 2004 (CERD/C/65/CO/7)]. The petitioners also cite the third report on the State party of the European Commission against Racism and Intolerance, dated 27 June 2003, a report on the situation of Roma and Sinti in the OSCE area, dated April 2000, by the Organization for Security and Cooperation in Europe, the 2004 Report on Human Rights in the OSCE Region by the International Helsinki Federation for Human Rights, the Human Rights Watch World Report 2001 and 2002, the concluding observations, dated 22 August 2003, of the Human Rights Committee on the State party (CCPR/CO/78/SVK), the concluding observations, dated 19 December 2002, of the Committee on Economic, Social and Cultural Rights (E/C.12/1/Add.81), the Opinion on Slovakia, dated 22 September 2000, adopted by the Advisory Committee on the Framework Convention for the Protection of National Minorities and the 2003 Country Reports (Slovakia) on Human Rights Practices of the United States of America Department of State.

[y] Op. cit.

Opinion concerning

Communication No. 32/2003

Submitted by: Mr. Emir Sefic (represented by the Documentation and Advisory Centre on Racial Discrimination)

Alleged victim(s): The complainant

State party: Denmark

Date of communication: 4 August 2003

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 7 March 2005,

Adopts the following:

OPINION

1. The petitioner is Mr. Emir Sefic, a Bosnian citizen currently residing in Denmark, where he holds a temporary residency and work permit. He claims to be a victim of violations by Denmark of articles 2, paragraph 1 (d), 5 and 6, of the International Convention on the Elimination of All Forms of Racial Discrimination. He is represented by the Documentation and Advisory Centre on Racial Discrimination (DRC), a non-governmental organization based in Denmark.

The facts as presented by the petitioner

2.1 On 22 July 2002, the petitioner contacted Fair Insurance A/S to purchase insurance covering loss of and damage to his car, as well as third-party liability insurance. He was told that they could not offer him insurance, as he did not speak Danish. The conversation took place in English and the sales agent fully understood his request.

2.2 In late July 2002, the petitioner contacted DRC, which requested confirmation of the petitioner's allegations from Fair Insurance A/S. In the meantime, the petitioner contacted the company again and was rejected on the same grounds. By letter dated 23 September 2002, Fair Insurance A/S confirmed that the language requirement was necessary to obtain any insurance offered by the company for the following reasons:

> "… [to] ensure that we cover the need of the customer to the extent that we can ensure that both the coverage of the insurance and the prices are as correct as possible. "… ensure that the customer understands the conditions and rights connected to every insurance … ensure that the customer in connection with a damage claim, particularly when it is critical (accident, fire, etc.), can explain what has happened in order that he/she can be given the right treatment and compensation.

> "To fulfil these demands it is … of the utmost importance that the dialogue with the customers is carried out in a language that both the customer and we are familiar with and that for the time being we can only fulfil this requirement and offer service to our customers in Danish. The reason being that we as a young (3½ years) and relatively small company have limited resources to employ persons in our customer services department with knowledge of insurance issues in languages other than Danish or develop or maintain material on insurances in languages other than Danish."

2.3 On 8 October 2002, DRC filed a complaint with the Danish Financial Supervisory Authority, which monitors financial companies. By letter of 25 November 2002, the Supervisory Authority replied that the complaint should be made to the Board of Appeal of Insurances ("the Board"). However, the Supervisory Authority would consider whether a general policy of rejection on the basis of language was in accordance with Danish law. It pointed out that, under section 1 (1) of the Instruction on Third-Party Liability Insurances for Motor Vehicles (No. 585, 9 July 2002), the company was legally obliged to offer any customer public liability insurance.

2.4 On 12 December 2002, DRC filed a complaint with the Board and specifically asked whether the language requirement was compatible with the Act against Discrimination. On 31 January 2003, the Board informed DRC that it was highly unlikely that it would consider the legality of the requirement in regard to any legislation other than the Act on Insurance Agreements. However, the case was being given due consideration. The letter also contained a response, dated 29 January 2003, from Fair Insurance A/S to the Board, which stated as follows:

> "Regarding the Act on Insurance Agreements … we are clearly aware of the fact that anybody accepting our conditions of insurance can demand to be offered third-party liability insurance. We regret that Emir Sefic was not offered [the] third-party liability insurance that he could have claimed. On this basis, we have explained in more detail to our employees the legal rules in regard to the liability insurance."

2.5 On 10 January 2003, the Supervisory Authority informed DRC that in its determination on whether Fair Insurance A/S had complied with "upright business activity and good practice", its assessment would be based on section 3 of the Act on Financial Business. On 11 March 2003, it informed DRC that it was of the view that the requirement did not violate section 3. The Supervisory Authority did not consider whether the language requirement violated any other legislation, in particular the Act against Discrimination.

2.6 On 12 December 2002, DRC filed a complaint with the Commissioner of Police of Copenhagen ("the Commissioner"). On 24 April 2003, the Commissioner informed DRC that "it appears from the material received that the possible discrimination only consists of a requirement that the customers can speak Danish in order for the company to arrange the work routines in the firm. Any discrimination based on this explanation and being objectively motivated is not covered by the prohibition in section 1 (1) of the Act against Discrimination".

2.7 On 21 May 2003, DRC filed an appeal with the Regional Public Prosecutor of Copenhagen ("the Prosecutor"). On 13 June 2003, the Prosecutor rejected the complaint under section 749 (1) of the Administration of Justice Act. He explained that the language requirement "was not based on the customer's race, ethnic origin or the like, but in the wish to be able to

communicate with the customers in Danish, as the company has no employees who in regard to insurances in other languages than Danish have skills. Discrimination based on such a clear linguistic basis combined with the information given by the company is not in my opinion covered by the Act on the prohibition of differential treatment based on race, etc. Moreover, it is my view that Fair Insurance A/S's acknowledgement of the fact that the company was obliged to offer a third-party liability insurance to Emir Sefic, in accordance with the Act on Insurance Agreements, is of no relevance in regard to … the Act on the prohibition of differential treatment based on race, etc. … I have based this on the information provided by Fair Insurance A/S that it was due to a mistake that no third-party liability insurance was offered to Emir Sefic".

2.8 The petitioner argues that he has exhausted domestic remedies. Any decision by the regional prosecutors relating to the investigation by the police departments cannot be appealed to other authorities. As questions relating to the pursuance by the police of charges against individuals are entirely up to the discretion of the police, there is no possibility of bringing the case before the Danish courts. He submits that a civil claim under the Act on Civil Liability would not be effective, as both the Commissioner and the Prosecutor have rejected his complaint. Furthermore, the Eastern High Court, in a decision of 5 February 1999, has held that an incident of racial discrimination does not in itself imply a violation of the honour and reputation of a person under section 26 of the Act on Civil Liability. Thus, racial discrimination in itself does not amount to a claim for compensation by the person offended.

The complaint

3.1 As to the definition of discrimination under article 1, subparagraph 1, of the Convention, the petitioner argues that, although a language requirement is not specifically included in this definition, discrimination may conflict with the obligation laid down in the Convention, especially under circumstances where the requirement in fact constitutes discrimination based, inter alia, on national or ethnic origin, race or colour, as the requirement has such an effect. Further, any language requirement used with the purpose of excluding, inter alia, customers of a specific national or ethnic origin would be contrary to article 1 of the Convention. Such a requirement should also have a legitimate aim and respect the requirement of proportionality in order to constitute a legal ground for discrimination.

3.2 The petitioner claims that the State party has violated articles 2, subparagraph 1 (d), and 6, by not providing effective remedies against a violation of the rights relating to article 5. He refers to the Committee's decisions in *L.K. v. The Netherlands*[a] and *Habassi v. Denmark*,[b] in which it was established that States parties have a positive obligation to take effective action against reported incidents of racial discrimination. The petitioner submits that the language requirement cannot be considered as an objective requirement, and argues that the Danish authorities could not come to such a conclusion without initiating a formal investigation. They merely based their claim on the letter from Fair Insurance A/S of 23 September 2003, the complaint of DRC to the Commissioner of 12 December 2003 and the appeal to the Prosecutor of 21 May 2003. Neither the Commissioner nor the Prosecutor examined whether the language requirement constituted direct or indirect discrimination on the basis of national origin and/or race.

3.3 The petitioner highlights the following questions and issues, which in his view the Danish authorities failed to consider in examining whether the language requirement constituted racial discrimination. Firstly, to what extent were the petitioner and Fair Insurance A/S able to communicate in the present case? As the latter did understand the petitioner sufficiently to reject his claim, the authorities should have examined whether Fair Insurance A/S had understood the needs of the petitioner, to ensure that he understood the conditions and rights connected to each insurance and that he would be able to inform the company about the relevant facts in connection with a potential damage claim. Secondly, the authorities should have examined the extent to which the situation concerning language skills in regard to statutory insurance (the third-party liability insurance) differed from the situation in regard to voluntary insurance (the insurance covering loss of and damage to a car). As the third-party insurance is statutory, the company is obliged, even if the customer only speaks English, as in the present case, to provide an offer and accept any customer who accepts its conditions. An investigation "could" have uncovered whether Fair Insurance A/S was able to "communicate on a sufficient basis" the demands, requirements and rights connected to the statutory insurance to the petitioner.

3.4 Thirdly, the authorities should have examined whether Fair Insurance A/S had any customers who were unable to speak Danish. If this were the case (especially relating to the statutory insurance), it would be of interest to reveal how the company communicated with such customers, and why the company could not communicate with other potential customers requesting other insurances. In addition, the petitioner claims that the failure by the Commissioner and the Prosecutor to interview him and Fair Insurance A/S further demonstrates that no proper investigation was carried out to try and establish whether the reasons given by Fair Insurance A/S were correct. The petitioner argues that there "may" have been other reasons for the language requirement and refers to a test case conducted by a television show, which revealed that Fair Insurance A/S offered insurance at a higher price to an individual of non-Danish national origin than to a person of Danish national origin.

State party's submission on the admissibility and merits

4.1 On 18 December 2004, the State party provided comments on the admissibility and merits. On admissibility, it submits that, although the petitioner has exhausted available remedies under criminal law, there remain two civil actions which he has not pursued. Thus, the case is inadmissible for failure to exhaust domestic remedies. Firstly, the petitioner could bring an action against Fair Insurance A/S, claiming that it acted in contravention of the law by exposing him to racial discrimination, and thus request damages for both pecuniary and non-pecuniary loss.

4.2 The State party argues that this case differs from the *Habassi* decision, in which the Committee found that the bringing of a civil action in a case of alleged discrimination contrary to the Act against Discrimination was not an effective remedy, as, unlike the petitioner in that case, the petitioner in the current case claims that he has suffered a financial loss, as he subsequently had to take out insurance with another insurance company at a higher premium. The same argument is made to distinguish the current case from the Committee's decision in the case of *B.J. v. Denmark*.[c]

4.3 The second civil remedy is an action against Fair Insurance A/S under the rules of the Danish Marketing Practices: under section 1 (1) thereof, a private business may not perform acts contrary to "good marketing practices". The petitioner could have submitted that Fair Insurance A/S had acted in contravention of the Act against Discrimination in its treatment of his insurance application and had thus also acted in contravention of "good marketing practices". The petitioner could have claimed damages under general rules of Danish law, both for the financial loss allegedly suffered by him and for non-pecuniary loss. Acts contrary to this Act can be prohibited by judgement and give rise to liability in damages.

4.4 As to the merits, the State party submits that there has been no violation of the Convention. It acknowledges that States parties have a duty to initiate a proper investigation when faced with complaints about acts of racial discrimination, which should be carried out with due diligence and expeditiously and must be sufficient to determine whether or not an act of racial discrimination has occurred.[d] However, in the State party's view, it does not follow from the Convention or the Committee's case law that an investigation has to be initiated in all cases reported to the police. If no basis is found to initiate an investigation, the State party finds it to be in accordance with the Convention to dismiss the report. In the present case, the Commissioner and the Prosecutor received a detailed written report enclosing a number of annexes from DRC illustrating the case sufficiently to conclude, without initiating any investigation, whether it could reasonably be presumed that a criminal offence subject to public prosecution had been committed.

4.5 As to the petitioner's argument that the Commissioner should have investigated whether the language requirement constituted direct or indirect discrimination, the State party submits that the Act against Discrimination does not make this distinction, but refers to the person who "refuses to serve" another person on the same conditions as others on account of race, nationality, etc. It was, therefore, not decisive in itself to clarify whether direct or indirect discrimination had occurred, but rather whether section 1 of the Act against Discrimination had been violated intentionally, whether the alleged discrimination contrary to the Act was direct or indirect. As to the petitioner's reference to the television survey, the State party finds this of no relevance to this context.

4.6 As to whether the Commissioner should have investigated the extent to which the petitioner and Fair Insurance A/S could communicate, the State party argues that it was not decisive to clarify whether the petitioner and Fair Insurance A/S had been able to communicate adequately, but rather whether section 1 of the Act against Discrimination had been violated intentionally. As the language requirement is due to the lack of resources to hire staff with insurance expertise in languages other than Danish and to the fact that it is a telephone-based company, the State party considers the requirement to be objectively justified, as the question involves the purchase of an insurance policy, which implies contractual rights and obligations, and the contents and consequences of which both the buyer and seller must be able to understand with certainty. It is therefore considered irrelevant to initiate an investigation of the extent to which the petitioner and Fair Insurance A/S were able to communicate in a language other than Danish. In this connection, the Government notes the decision of the Financial Supervisory Authority that this language policy does not violate section 3 of the Financial Business Act No. 660 of 7 August 2002, as the measure involved is a practical measure resulting from limited resources.

4.7 As to whether the Commissioner should have investigated the extent to which the situation concerning language skills in regard to statutory insurance differed from the situation in regard to voluntary insurance, the State party submits that it follows from Fair Insurance A/S's letter of 22 January 2003 that the company acknowledges that the petitioner should have been offered third-party liability insurance when he contacted the company. The State party notes that the task of the Commissioner was not to consider whether Fair Insurance A/S had a general practice contrary to the Act against Discrimination, but rather whether it had specifically violated the Act in connection with the petitioner's application, and thus committed a criminal act of racial discrimination.

4.8 As to whether the Commissioner should have investigated the extent to which Fair Insurance A/S had customers who are unable to speak Danish, the State party submits that in its letter of 19 September 2002, Fair Insurance A/S informed DRC that the company has many customers with an ethnic background other than Danish, but that these customers speak Danish. In this light, it was not considered necessary to investigate any further.

Petitioner's comments on State party's submission

5.1 On 27 February 2004, the petitioner responded to the State party's submission. On its admissibility arguments, he submits that the *Habassi* decision clearly indicates that "the civil remedies proposed by the State party could not be considered an adequate avenue of redress [because] … [t]he same objective could not be achieved by instituting a civil action, which would lead only to compensation for damages" and thus not to a criminal conviction. Furthermore, "the Committee was not convinced that a civil action would have any prospect of success …".[e] He submits that he has a right to an effective remedy against racial discrimination, as defined in articles 1 and 5 of the Convention.

5.2 As to the Danish Marketing Practices Act, the petitioner submits that this Act has nothing to do with racial discrimination and a decision in relation to this Act is not a "remedy" against such a violation of the petitioner's rights. In addition, the petitioner claims that if this civil legislation covered the situation in the current case there would have been no necessity for the State party to adopt a new Act on Equal Treatment, which was implemented and took effect on 1 July 2003 after the incident addressed in the present case. The petitioner maintains his arguments on the merits.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 The Committee notes that the State party objects to the admissibility of the complaint on the grounds of failure to exhaust civil domestic remedies. The Committee recalls its jurisprudence[f] that the types of civil remedies proposed by the State party may not be considered

as offering an adequate avenue of redress. The complaint, which was filed with the police department and subsequently with the Public Prosecutor, alleged the commission of a criminal offence and sought a conviction of the company Fair Insurance A/S under the Danish Act against Discrimination. The same objective could not be achieved by instituting a civil action, which would result only in compensation for damages awarded to the petitioner. Thus, the Committee considers that the petitioner has exhausted domestic remedies.

6.3 In the absence of any further objections to the admissibility of the communication, the Committee declares the petition admissible and proceeds to its examination of the merits.

Consideration of the merits

7.1 The Committee has considered the petitioner's case in the light of all the submissions and documentary evidence produced by the parties, as required under article 14, paragraph 7 (a), of the Convention and rule 95 of its rules of procedure. It bases its findings on the following considerations.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to take effective action against reported incidents of racial discrimination, with regard to the extent to which it investigated the petitioner's claim in this case.[g] The petitioner claims that the requirement to speak Danish as a prerequisite for the receipt of car insurance is not an objective requirement and that further investigation would have been necessary to find out the real reasons behind this policy. The Committee notes that it is not contested that he does not speak Danish. It observes that his claim together with all the evidence provided by him and the information about the reasons behind Fair Insurance A/S's policy were considered by both the police department and by the Public Prosecutor. The latter considered that the language requirement "was not based on the customer's race, ethnic origin or the like", but for the purposes of communicating with its customers. The Committee finds that the reasons provided by Fair Insurance A/S for the language requirement, including the ability to communicate with the customer, the lack of resources for a small company to employ persons speaking different languages, and the fact that it is a company operating primarily through telephone contact were reasonable and objective grounds for the requirement and would not have warranted further investigation.

8. In the circumstances, the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted do not disclose a violation of the Convention by the State party.

[Done in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[a] Case No. 4/1991, decision adopted on 16 March 1993.

[b] Case No. 10/1997, decision adopted on 17 March 1999.

[c] Case No. 17/1999, decision adopted on 17 March 2000.

[d] The State party refers to the Committee's jurisprudence on this issue: case No. 1/84, *A. Yilmaz v. The Netherlands*, decision adopted on 10 August 1988; case No. 4/1991, *L.K. v. The Netherlands*, op. cit.; case No. 10/1997, *Habassi v. Denmark*, op cit.; and case No. 16/1999, *Ahmad v. Denmark*, decision adopted on 13 March 2000.

[e] *Habassi v. Denmark*, op. cit., paras. 6.1 and 6.2.

[f] Ibid.

[g] *L.K. v. The Netherlands* and *Habassi v. Denmark*, op. cit.

Opinion concerning

Communication No. 33/2003

Submitted by: Mr. Kamal Quereshi (represented by the Documentation and Advisory Centre on Racial Discrimination)

Alleged victim(s): The petitioner

State party: Denmark

Date of communication: 11 December 2003

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 9 March 2005,

Adopts the following:

OPINION

1. The petitioner is Kamal Quereshi, a Danish national born 29 July 1970 and a current member of the State party's Parliament (Folketinget) for the Socialist Peoples Party (Socialistisk Folkeparti). He alleges that he is the victim of a violation by Denmark of articles 2, subparagraph 1 (d), 4 and 6 of the Convention. He is represented by counsel.

The facts as presented

2.1 On 26 April 2001, Ms. Pia Andersen, a member of the executive board of the Progressive Party (Fremskridtspartiet), faxed to the media two letters on party letterhead stating, inter alia: "No to more Mohammedan rapes! … Cultural enrichments [are] taking place in the shape of negative expressions and rapes against us Danish women, to which we are exposed every day. … Now it's too much, we will not accept more violations from our foreign citizens. Can the Mohammedans not show some respect for us Danish women, and behave like the guests they are in our country, [otherwise] the politicians in the Parliament have to change course and expel all of them."

2.2 On 15 May 2001, with respect to certain disturbances in an Odense neighbourhood, Ms. Andersen faxed a press release stating: "Engage the military against the Mohammedan terror! … Dear fellow citizen, it is that warlike culture these foreigners enrich our country with … Disrespect for this country's laws, mass rapes, violence abuse of Danish women by shouting things like 'whore', 'Danish pigs', etc. … And now this civil war-like situation."

2.3 On 5 September 2001, the Progressive Party placed an advertisement in a local newspaper for a lecture by the former leader of the Party, Mr. Mogens Glistrup, which stated, inter alia: "The Bible of the Mohammedans requires [that] the infidel shall be killed and slaughtered, until all infidelity has been removed."

2.4 The petitioner asserts that the Progressive Party established courses, parts of which were broadcast on a newsflash on State television, teaching members how to avoid attracting liability under section 266 (b) of the Criminal Code.[a]

2.5 Speeches made at the Progressive Party's annual meeting, held on 20 and 21 October 2001, were broadcast on the State party's public television system, which has a duty to broadcast from annual meetings of political parties seeking election. The petitioner contends that the following statements were made at the meeting from the podium:[b]

> Vagn Andreasen (party member): "The State has given the foreigners work. They work in our slaughterhouses where they can easily poison our food and endanger the agricultural exports. Another form of terrorism is to break into our waterworks and poison the water."
>
> Mogens Glistrup (former leader of the party): "The Mohammedans will exterminate the populations of the countries to which they have advanced." On 22 October, an article in the *Dagbladet Politiken* daily quoted this statement as: "Their holiest duty is, in the name of Allah, to exterminate the populations in the countries to which they have advanced."
>
> Erik Hammer Sørensen (party member, commenting on immigration to the State party): "There are fifth columnists about. Those that we have got in commit violence, murder and rape."
>
> Margit Petersen (party member, referring to her earlier conviction under section 266 (b) in the State party's courts): "I'm glad to be a racist. We want a Mohammedan-free Denmark"; "the Blacks breed like rats".
>
> Peter Rindal (party member): "Concerning Mohammedan burial grounds in Denmark, of course we should have such ones. And they should preferably be so large that there is room for all of them, and hopefully in one go."
>
> Bo Warming (party member): "The only difference between Mohammedans and rats is that rats don't draw social benefits." He allegedly distributed a drawing of a rat with the Koran under its arm to journalists present at the conference.

2.6 Upon viewing the meeting, the petitioner requested the Documentation and Advisory Centre on Racial Discrimination (DRC) to file complaints against the above individuals, as well as the members of the executive board of the Progressive Party for its approval of the statements made.

2.7 On 23 October 2001, DRC filed complaints with the Varde police, alleging that the statements of Ms. Guul and Mr. Warming separately violated section 266 (b) (1) and (2) of the Criminal Code on the basis that they threatened, insulted or degraded a group of persons on account of their race and ethnic origin.

2.8 On 25 October 2001, DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Andreasen violated section 266 (b) (1) and (2) on the basis that it insulted and degraded a group of people on account of their religious origin. DRC added that the statement postulated that immigrants and refugees were potential terrorists, thereby generally and unobjectively equating a group of people of an ethnic origin other than Danish with crime. The same day, DRC filed a complaint with the Varde police, alleging that the statement made by Mr. Rindal violated section 266 (b) (1) and (2) on the basis that it threatened a group of people on account of their race and ethnic origin.

2.9 On 26 October 2001, DRC filed a complaint with the Varde police alleging that the statement made by Mr. Glistrup violated section 266 (b) (1) and (2) on the basis that it insulted and degraded a group of people on account of their ethnic origin, including their Muslim faith. The same day, DRC filed a complaint with the Varde police alleging that the statement made by Mr. Sørensen violated section 266 (b) (1) and (2) on the basis that it threatened, insulted and degraded a group of people on account of their race and ethnic origin. DRC added that the statement equated a group of an ethnic origin other than Danish with crime.

2.10 In addition, DRC filed a complaint against the Progressive Party itself with the Thisted police (being the police with jurisdiction over the party leader's place of residence).

Subsequent proceedings against the individual speakers

2.11 On 28 March 2003, the Varde Police Chief Constable forwarded the six cases to the Sønderborg Regional Public Prosecutor with the following recommendations:

- Mr. Glistrup, Mr. Rindal and Mr. Warming should be prosecuted under section 266 (b) (1) of the Criminal Code. The part of the charge against Mr. Warming concerning the allegedly distributed drawing should, however, be withdrawn under section 721 (1) (ii) of the Administration of Justice Act, as the drawing could not be procured.[c]

- The charges against Ms. Petersen should be withdrawn under sections 721 (1) (ii)[d] and 722 (1) (iv)[e] of the Administration of Justice Act.

- The charges against Mr. Andreasen and Mr. Sørensen should be withdrawn under sections 721 (1) (ii) of the Administration of Justice Act.

2.12 On 23 April 2003, the Regional Public Prosecutor requested the Chief Constable to carry out further investigations of all six cases and to procure from the police television channel a transcript of the statements made at the party conference. On 9 May 2003 the Chief Constable modified his recommendations, advising the withdrawal of charges against Mr. Glistrup under section 721 (1) (ii) of the Administration of Justice Act. He also reported that the television channel had advised that it did not possess any non-broadcast material from the party conference.

2.13 After receipt of further information, the Regional Public Prosecutor, on 18 June 2003, made the following recommendations to the Director of Public Prosecutions (DPP), in relation to prosecution of the above; DPP accepted them on 6 August 2003:

- Mr. Rindal and Mr. Warming should be prosecuted under section 266 (b) (1) for their statements at the party conference. The part of the charges against Mr. Warming relating to the drawing was discontinued as it could not reasonably be presumed that a criminal offence had been committed, as it had not been possible to procure a copy of the drawing.

- The charges against Mr. Andreasen should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. DPP observed that the *actus reus* of section 266 (b) (1) required a statement to be directed at a group of persons on account of, inter alia, race, colour, national or ethnic origin and religion. In the view of DPP, this requirement had not been met as the concept of "foreigners" employed by Mr. Andreasen was "so diffuse that it does not signify a group within the meaning of the law".

- The charges against Mr. Glistrup should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. DPP observed that the journalist who attributed the reported statement to Mr. Glistrup had declared that the statement had been made from the rostrum and not in connection with an interview. However, the particular statement did not appear on the video recording of the television broadcast, and the television channel did not have any other non-broadcast material in its possession. For his part, Mr. Glistrup had stated that his remarks were unscripted. Accordingly, DPP concluded that it was "dubious" that the alleged statement could be proven to be in violation of section 266 (b).

- The charges against Mr. Sørensen should be withdrawn on the basis that that further prosecution could not be expected to lead to conviction and sentence. Referring to the *actus reus* requirements discussed above, DPP was of the view that the terms "fifth columnists" and "those that we have got in" employed by Mr. Sørensen were not directed at a group of persons as set out in section 266 (b).

- The charges against Ms. Petersen should be withdrawn on the basis that completion of the trial would entail difficulties, costs or trial periods not commensurate with the sanction to be expected in the event of conviction. DPP emphasized that on 20 November 2001, the Haderslev court had convicted Ms. Petersen to 20-day fines of DKr 300 for violation of section 266 (b) (1) and that her sentence would not have been much more severe if the current offence had been included in that case. DPP observed that her remarks at the conference had been in the nature of a summary of her trial and conviction by the Haderslev court.

2.14 On 26 and 28 August 2003, respectively, DRC appealed the DPP decisions regarding Mr. Andreasen (on the petitioner's behalf) and Mr. Sørensen (on its own behalf) to the Ministry of Justice. On 13 October 2003, the Ministry found both appeals inadmissible for lack of standing under rules of administrative law concerning appeals of DPP decisions. With respect to the appeal concerning Mr. Andreasen, the Ministry considered that the petitioner, Mr. Quereshi, did not have "an essential, direct and individual interest in the case, that he can be considered a party who is entitled to appeal". As to the appeal regarding Mr. Sørensen, the Ministry observed that, on the same principles, "lobby organizations, societies, etc. or persons handling the interests of others, of groups or of the general public on an idealistic, professional

organizational, work-related or similar basis cannot normally be considered parties to a criminal case unless they have a power of attorney from a party to the case". It went on to find that "this case does not present such circumstances that the DRC must be considered entitled to appeal".

2.15 In October 2003, Mr. Rindal and Mr. Warming were tried before the Grindsted District Court and convicted of offences against section 266 (b) (1). Mr. Rindal was sentenced on 26 November 2003 to a 20-day fine of DKr 50 for the statement he had made at the party conference. Mr. Warming, for his part, was sentenced to an additional punishment of 20-day fines of DKr 200 under section 89 for, firstly, stating at the party conference, "It may happen any day that all Muslims decide to throw Molotov cocktails into all the nearest homes and drive in all their expensive cars to as many more other homes as possible and throw in Molotov cocktails. ... They can halve Denmark's population or more than that in a much shorter time if they want to do like their fellow Muslims did with the World Trade Centre", and secondly, for stating, with the intent of wider dissemination in an interview at the party conference with a journalist, "The only difference between Mohammedans and rats is that rats don't draw social benefits." In assessing quantum, the court relied on two previous convictions of Mr. Warming for offences against section 266 (b) (1), both by the High Court of Eastern Denmark (on appeal) on 22 March 1999 and by the Copenhagen City Court on 30 January 2003.

2.16 On 17 March 2004, the Board of Appeal rejected Mr. Warming's application for leave to appeal the Grindsted District Court's decision to the High Court of Western Denmark. Mr. Rindal did not appeal the District Court's decision in his case.

Proceedings against the Progressive Party

2.17 The Thisted police rejected the complaint against the Progressive Party on the basis that the State party's law, as it then stood, did not permit a complaint of violation of section 266 (b) to be filed against entities with legal personality, including a political party. The Regional Public Prosecutor subsequently upheld this decision.

2.18 On 11 December 2002, DRC, at the petitioner's request, filed a new complaint against Ms. Andersen with the Odense police (having jurisdiction over her place of residence), arguing that in light of what is described in paragraphs 2.1 to 2.5 above, she had participated in a violation of section 266 (b) as a member of the Party's executive board. On 7 January 2002, the Chief Police Constable of the Odense police rejected the complaint as there was no reasonable evidence to support the conclusion that an unlawful act had been committed by Ms. Andersen as a member of the Party's executive board. He considered that membership of a political party's executive does not of itself create a basis for criminal participation in relation to possible criminal statements made during the party's annual meeting by other persons. On 25 January 2002, the Odense District Court convicted Ms. Andersen of offences against section 266 (b) of the Criminal Code for the publication of the press releases.

2.19 On 11 March 2002, the Fyn Regional Public Prosecutor rejected DRC appeal, on the basis that neither it nor the petitioner had the required essential, direct, individual or legal interest in the case to become parties to it. As a result, DRC filed the petitioner's first petition before the Committee on the Elimination of Racial Discrimination, which found that there had been no violation with respect to the State party's action concerning Ms. Andersen.[f] It emphasized that proceedings had been lodged with respect to those directly responsible for the statements in question at the party conference.

The complaint

3.1 The petitioner alleges two counts of violation of articles 2, subparagraph 1 (d), 4 and 6 of the Convention. He first alleged that the State party failed to discharge its positive obligation to take effective action to examine and investigate reported incidents of racial discrimination; as the charge against Mr. Andreasen was discontinued, none of the speakers at the party conference was prosecuted, and an investigation of Ms. Andersen's role was not initiated. In his view, the failure to prosecute those directly responsible for the statements (despite their having initially been charged) violated article 6, while the Regional Public Prosecutor's decision (not subject to appeal by the petitioner) that Mr. Andreasen's statements fell outside the scope of section 266 (b) of the Criminal Code violated article 2, subparagraph 1 (d), of the Convention. The petitioner relies on a decision of the High Court of Eastern Denmark of 1980 for the proposition that such statements do in fact fall within the scope of section 266 (b).

3.2 Secondly, the petitioner argues that the decision of the Public Prosecutor to discontinue Mr. Andreasen's case, confirmed on grounds of lack of standing by the Ministry of Justice, violates the obligation imposed by the same articles, but especially article 6, to ensure effective protection and remedies against any act of racial discrimination. In his view, as a result of these decisions, he could not take action against the acts of racial discrimination to which he had been exposed, as part of a group of persons against whom the statements were directed.

3.3 As to the exhaustion of domestic remedies, the petitioner argues that to take (unspecified) legal actions directly against Mr. Andreasen would not be effective given the rejection of the complaint by the Regional Public Prosecutor and the Ministry of Justice. The petitioner also contends that a complaint under section 26 of the Act on Civil Liability (providing civil damages for infringements of a person's honour and reputation) would be ineffective, citing a 1999 decision of the Eastern High Court to the effect that racial discrimination does not in itself give rise to a claim for compensation to the offended person under the section in question. The petitioner also rejects any possible constitutional remedy under section 63 of the Constitution (providing for review of scope of executive authority), claiming that it is necessary to have the status of a party to the case in order to bring such an action. This petitioner was, however, denied such status both by the Regional Public Prosecutor (in the earlier decision concerning the case of Ms. Pia Andersen, see paragraph 2.19, supra) and by the Ministry of Justice in the current case.

State party's submissions on the admissibility and merits of the petition

4.1 By submission of 17 June 2004, the State party contests both the admissibility and the merits of the petition. It argues that the petitioner has failed to exhaust domestic remedies available in criminal proceedings in three respects. Firstly, the petitioner only appealed the DPP decision of 14 August 2003 related to Mr. Andreasen, and did not appeal any of the DPP decisions on the other individuals concerned. In respect of those individuals, therefore, domestic remedies have not been exhausted.

4.2 Secondly, the State party repeats its argument, also advanced in the petitioner's first petition to the Committee, that section 63 of the Constitution enables decisions of administrative authorities, including DPP and the Ministry of Justice, to be reviewed as to their lawfulness before the courts. It rejects the petitioner's argument that such an application would be ineffective as a result of the DPP refusal to prefer charges and the Ministry's finding the

petitioner's appeal to be inadmissible. On the contrary, the petitioner could have applied to the courts for a review of whether the DPP view of the scope of section 266 (b) (1) or of the Ministry's view of his standing was correct. The DPP decisions on the other cases could also have been reviewed. Thirdly, the State party argues that even where a prosecution under section 266 (b) (1) of the Criminal Code has not been pursued, a private prosecution under section 267 of the Criminal Code[g] protecting personal honour is available. In *Sadic v. Denmark*,[h] the Committee accepted, in circumstances where a complaint under section 266 (b) had not been pursued by the police, that the requirements of section 267 are different and a petitioner should be expected to exhaust that alternative and effective remedy before approaching the Committee.

4.3 On the merits, the State party argues that the petition discloses no violation of the Convention. As to alleged violations of articles 2, 4 and 6 arising from the processing and assessment of the criminal complaints lodged, the thorough treatment at the levels of police, Regional Public Prosecutor and DPP fully met the State party's obligation to take effective action. The State party points out that the Convention does not guarantee the specific outcome on allegations of conduct in breach of the Convention, but rather sets out certain parameters for the processing of such allegations. The State party's authorities complied with their duty to initiate a proper investigation, and carried it out with due diligence and expedition in order to determine whether or not an act of racial discrimination took place. Upon such investigation, some complaints - those against Mr. Rindal and Mr. Warming concerning their conference statements - were found to make out a case to answer, while in others no basis for prosecution was found.

4.4 For those cases for which it was determined not to proceed further, the State party argues that each result was the product of careful and proper individual investigation and justified on the merits of each complaint. In the case of the drawing allegedly distributed by Mr. Warming, the police questioned both Mr. Warming and the journalist who had allegedly been offered the drawing before concluding that there was no basis for prosecution. The State party emphasizes that the Convention does not require every investigation of every case reported to the police to result in prosecution, including, for example, if the requisite proof is not available.

4.5 Concerning the DPP decision concerning Ms. Petersen that the resources involved in a prosecution would not be commensurate with the punishment expected, the State party observes that the Regional Public Prosecutor procured a transcript of the videotape of the television broadcast and questioned Ms. Petersen, disclosing sufficient examination of the case. DPP determined that Ms. Petersen's earlier sentence of 20 November 2001 (20-day fines of DKr 300 for violating section 266 (b) (1)) would not have been much more severe if the current complaint had been included in that case, thus justifying the DPP's decision under section 89 of the Criminal Code not to proceed. The State party also recalls that her conference statements were in the nature of a summary of her earlier trial and conviction. The case was thus examined in accordance with the requirements of the Convention.

4.6 As to the decision that it was impossible to determine the context of Mr. Glistrup's statement, the State party notes that the police questioned him and the journalist involved and procured a transcript of the tape of the television broadcast, on which the alleged statement at

the rostrum did not appear. The State party observes that it is important for due process reasons that evidence be of a certain probity before being put to the courts in criminal proceedings. The withdrawal of charges in this case, having been found inadequate in evidentiary terms, followed effective investigation consistent with the Convention.

4.7 Concerning the decisions concerning Mr. Andreasen and Mr. Sørensen that the *actus reus* of the offence requiring statements concerning groups of persons on account of race, colour, or national or ethnic origin had not been made out with use of terms such as "foreigners" and "fifth columnists", the State party points out that section 266 (b) clearly identifies the specific groups to be covered. It points out that the 1980 decision of the High Court of Eastern Denmark referred to by the petitioner found that the designation "guest worker" did fall within "a group of persons", within the meaning of section 266 (b). The Court emphasized, however, that according to general understanding, that expression designated a person living in Denmark of South European, Asian or African origin, particularly Yugoslavs, Turks or Pakistanis. Unlike the much broader terms at issue in the present case, therefore, this conclusion was possible as the designation was used to refer to persons originating from specific countries. The finding that it was impossible to establish that the terms used by Mr. Andreasen and Mr. Sørensen concerned a specific group of people characterized by race, colour, or national or ethnic origin thus followed an examination in accordance with the Convention's requirements.

4.8 The State party argues that section 266 (b), as applied in practice and detailed in its fourteenth and fifteenth periodic reports to the Committee, satisfies the State party's obligation under article 2 (1) (d) of the Convention to prohibit and end, by appropriate means including legislation, all racial discrimination. As to the portion of the complaint concerning the petitioner's inability to appeal the decision concerning Mr. Andreasen, the State party refers to its submissions on admissibility concerning the available possibilities of a constitutional complaint and a private prosecution under section 267 of the Criminal Code.

The petitioner's comments on the State party's submissions

5.1 By letter of 2 August 2004, the petitioner disputes the State party's submissions on admissibility and reiterates his earlier submissions on the merits. On the possibility of a constitutional complaint challenging the decisions of DPP and Ministry of Justice, he argues that since the Ministry itself declared that he had no essential, direct and individual interest in the case which would confer standing, it would not be correct to place an obligation on him to pursue such a case and delay the possibility of a petition to the Committee. In any event, even if a court found that he did have standing, this would be futile, as the deadline for bringing a prosecution (related to the Ministry's decision) has passed. Thus, in violation of articles 4 and 6 of the Convention, no sanction can ever be imposed on Mr. Andreasen.

5.2 Concerning a private prosecution under section 267 of the Criminal Code, the petitioner argues that, whether or not Mr. Andreasen's statement fell within the scope of that provision, a court would reject such a claim on the basis that he had no essential, direct and individual interest in the case. He thus again argues that it would not be appropriate to require him to pursue such an avenue and delay a petition to the Committee.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claims contained in a petition, the Committee on the Elimination of Racial Discrimination must, in accordance with rule 91 of its rules of procedure, decide whether or not it is admissible under the Convention.

6.2 On the issue of exhaustion of domestic remedies, the Committee notes that the petitioner confines his complaint to the handling of the complaint made against Mr. Andreasen, a case in which he did appeal to the Ministry of Justice. The Committee thus need not address the argument that the petitioner did not also appeal the adverse decisions in certain other cases, though the Committee would note that there is nothing to suggest that the Ministry's decision of lack of standing would have been any different in those cases.

6.3 Turning to the State party's argument that the petitioner should have initiated a private prosecution under the general provisions of section 267 of the Criminal Code, the Committee recalls that, in its Opinion in *Sadic*,[i] it indeed required the petitioner in that case to pursue such a course. In that case, however, the facts fell outside the scope of section 266 (b) of the Criminal Code on the basis that the disputed comments were essentially private or were made within a very limited circle; in that light, section 267, which could capture the conduct in question, complemented the scope of protection of section 266 (b) and was a reasonable course more appropriate to the facts of that case. In the present case, by contrast, the statements were made squarely in the public arena, which is the central focus of both the Convention and section 266 (b). It would thus be unreasonable to expect the petitioner to initiate separate proceedings under the general provisions of section 267 after having unsuccessfully invoked section 266 (b) of the Danish Criminal Code in respect of circumstances directly implicating the language and object of that provision.

6.4 As to the State party's argument that judicial review of the DPP and Ministry's decisions in the form of a constitutional application remained available, the Committee recalls that the petitioner pursued his complaint through four levels of administrative decision-making in a process lasting just weeks short of two years, with respect to facts which were in the public domain from the outset and which did not require complex investigation. In those circumstances, the Committee considers that the application of further remedies in the courts at the present time would be unreasonably prolonged within the meaning of article 14, paragraph 7 (a), of the Convention. They thus need not be exhausted for the purposes of the present complaint. The Committee notes, moreover, that the petitioner has questioned the effectiveness of such an application, arguing that as the deadline for prosecution had passed any judicial decision on the legality of action taken would be devoid of practical effect for the proceedings in question.

6.5 In light of the foregoing and in the absence of any other objection to the admissibility of the petition, the Committee declares it admissible and proceeds to the examination of the merits.

Consideration of the merits

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioner and the State party.

7.2 The Committee recalls that in its decision on the first petition presented by the complainant it emphasized that the focus of its examination was on steps taken on the basis of the State party's legislation, primarily criminal, against the individual actors alleged to have personally engaged in an act of racial discrimination. Thus, in that case, it noted that Ms. Andersen had been convicted for the conduct she had personally engaged in.[j] In the present case, two speakers at the party conference were convicted and sentenced for violations against section 266 (b) of the Criminal Code.[k] Indeed, one of those speakers was given a more severe sentence after two earlier convictions with less severe sentences for offences against section 266 (b). Meanwhile, a further speaker was not further prosecuted on the basis that her sentence would not have been materially greater in comparison to what she had already incurred under an earlier conviction under section 266 (b).[l] With respect to another speaker's statement, the investigation carried out showed that the statement alleged to have been made from the rostrum had not in fact occurred.[m] It is against the background of the operation of the State party's criminalization of acts of statements of racial discrimination, both in respect of instances outside the present party conference as well as of statements made at the conference, that the merits of the petition concerning resolution of the complaint against Mr. Andreasen must be considered.

7.3 The Committee recalls that Mr. Andreasen made offensive statements about "foreigners" at the party conference. The Committee notes that, regardless of what may have been the position in the State party in the past, a general reference to foreigners does not at present single out a group of persons, contrary to article 1 of the Convention, on the basis of a specific race, ethnicity, colour, descent, or national or ethnic origin. The Committee is thus unable to conclude that the State party's authorities reached an inappropriate conclusion in determining that Mr. Andreasen's statement, in contrast to the more specific statements of the other speakers at the conference, did not amount to an act of racial discrimination contrary to section 266 (b) of the Danish Criminal Code. It also follows that the petitioner was not deprived of the right to an effective remedy for an act of racial discrimination in respect of Mr. Andreasen's statement.

8. Nevertheless, the Committee considers itself obliged to call the State party's attention (i) to the hateful nature of the comments concerning foreigners made by Mr. Andreasen and of the particular seriousness of such speech when made by political figures and, in this context, (ii) to its general recommendation XXX, adopted at its sixty-fourth session, on discrimination against non-citizens.

9. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the Convention, is of the opinion that the facts before it do not disclose a violation of the Convention.

[Done in English, French and Spanish, the English text being the original version. Subsequently to be issued in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

Notes

[a] Section 266 (b) of the Criminal Code stipulates:

> "(1) Any person who, publicly or with the intention of wider dissemination, makes a statement or imparts other information by which a group of people are threatened, insulted or degraded on account of their race, colour, national or ethnic origin, religion, or sexual inclination shall be liable to a fine or to imprisonment for any term not exceeding two years.
>
> "(2) When the sentence is meted out, the fact that the offence is in the nature of propaganda activities shall be considered an aggravating circumstance."

[b] The form of the statements is as reported in the criminal complaints to the police lodged by the Documentation and Advisory Centre on Racial Discrimination.

[c] Section 721 (1) of the Administration of Justice Act provides:

> "Charges in a case may be withdrawn in full or in part in cases:
>
> "(i) Where the charge has proved groundless;
>
> "(ii) Where further prosecution cannot anyway be expected to lead to conviction of the suspect; or
>
> "(iii) Where completion of the case will entail difficulties, costs or trial periods which are not commensurate with the significance of the case and with the punishment, the imposition of which can be expected in case of conviction."

[d] Ibid.

[e] Section 722 (1) (iv) of the Administration of Justice Act provides that: "Prosecution in a case may be waived in full or in part in cases … where section 89 of the Criminal Code is applicable when it is deemed that no punishment or only an insignificant punishment would be imposed and that conviction would not otherwise be of essential importance." Section 89 provides: "Where a person already sentenced [for another offence] is found guilty of another criminal offence committed prior to the judgment, an additional sentence must be imposed provided that simultaneous adjudication would have resulted in a more severe sentence."

[f] *Quereshi v. Denmark* (No. 1), case No. 27/2002, Opinion adopted on 19 August 2003.

[g] Section 267 of the Criminal Code provides: "(1) Any person who violates the personal honour of another by offensive words or conduct or by making or spreading allegations of an act likely to disparage him in the esteem of his fellow citizens, shall be liable to a fine or imprisonment for any term not exceeding four months."

[h] Case No. 25/2002, Opinion adopted on 25 May 2002.

[i] Ibid.

[j] See para. 2.18, supra.

[k] See para. 2.15, supra.

[l] See para. 2.13, supra.

[m] Ibid.

B. Sixty-seventh session

Opinion concerning

Communication No. 30/2003

Submitted by: The Jewish community of Oslo; the Jewish community of Trondheim; Rolf Kirchner; Julius Paltiel; the Norwegian Antiracist Centre; and Nadeem Butt (represented by counsel, Mr. Frode Elgesen)

Alleged victim(s): The petitioners

State party: Norway

Date of communication: 17 June 2003

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 15 August 2005,

Adopts the following:

OPINION

1. The authors of the communication, dated 17 June 2003, are Mr. Rolf Kirchner, born on 12 July 1946, leader of the Jewish community in Oslo, Mr. Julius Paltiel, born on 4 July 1924, leader of the Jewish community in Trondheim, and Nadeem Butt, born on 16 June 1969, leader of the Norwegian Antiracist Centre (NAC). They claim to be victims of violations by Norway of articles 4 and 6 of the Convention. They are represented by counsel.

The facts as presented

2.1 On 19 August 2000, a group known as the "Bootboys" organized and participated in a march in commemoration of the Nazi leader Rudolf Hess in Askim, near Oslo. Some 38 people took part in the march, which was routed over 500 m through the centre of Askim, and lasted five minutes. The participants wore "semi-military" uniforms, and a significant number allegedly had criminal convictions. Many of the participants had their faces covered. The march was headed by Mr. Terje Sjolie. Upon reaching the town square, Mr. Sjolie made a speech, in which he stated:

> "We are gathered here to honor our great hero, Rudolf Hess, for his brave attempt to save Germany and Europe from Bolshevism and Jewry during the Second World War. While we stand here, over 15,000 Communists and Jew-lovers are gathered at Youngsroget in a demonstration against freedom of speech and the white race. Every day immigrants rob, rape and kill Norwegians, every day our people and country are being

> plundered and destroyed by the Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts. We were prohibited from marching in Oslo three times, whilst the Communists did not even need to ask. Is this freedom of speech? Is this democracy? …
>
> "Our dear Führer Adolf Hitler and Rudolf Hess sat in prison for what they believed in, we shall not depart from their principles and heroic efforts, on the contrary we shall follow in their footsteps and fight for what we believe in, namely a Norway built on National Socialism …"[a]

2.2 After the speech, Mr. Sjolie asked for a minute's silence in honour of Rudolf Hess. The crowd, led by Mr. Sjolie, then repeatedly made the Nazi salute and shouted "Sieg Heil". They then left.

2.3 The authors claim that the immediate effect of the march appeared to be the founding of a Bootboys branch in nearby Kristiansand, and that for the next 12 months the city was "plagued" by what the authors describe as incidents of violence directed against Blacks and political opponents. They further state that, in the Oslo area, the march appears to have given the Bootboys confidence, and that there was an increase in "Nazi" activity. Several violent incidents took place, including the murder by stabbing on 26 January 2001 of a 15-year-old boy, Benjamin Hermansen, who was the son of a Ghanaian man and a Norwegian woman. Three members of the Bootboys were later charged and convicted in connection with his death; one was convicted of murder with aggravating circumstances, because of the racist motive of the attack. The authors state that he and one of the other persons convicted in this case had participated in the march on 19 August 2000.

2.4 The authors state that the Bootboys have a reputation in Norway for their propensity to use violence, and cite 21 particular instances of both threats and the use of violence by the Bootboys between February 1998 and February 2002. Mr. Sjolie himself is currently serving a term of imprisonment for attempted murder in relation to an incident in which he shot another gang member.

2.5 Some of those who witnessed the commemorative march filed a complaint with the police. On 23 February 2001, the District Attorney of Oslo charged Mr. Sjolie with a violation of section 135a of the Norwegian Penal Code, which prohibits a person from threatening, insulting, or subjecting to hatred, persecution or contempt any person or group of persons because of their creed, race, colour, or national or ethnic origin. The offence carries a penalty of a fine or a term of imprisonment of up to two years.

2.6 On 16 March 2001, Mr. Sjolie was acquitted by the Halden City Court. The prosecutor appealed to the Borgarting Court of Appeal, where Mr. Sjolie was convicted of a violation of section 135a because of the references in his speech to Jews. The Court of Appeal found that, at the least, the speech had to be understood as accepting the mass extermination of the Jews, and that this constituted a violation of section 135a.

2.7 Mr. Sjolie appealed to the Supreme Court. On 17 December 2002, the Supreme Court, by a majority of 11 to 6, overturned the conviction. It found that penalizing approval of Nazism would involve prohibiting Nazi organizations, which it considered would be incompatible with the right to freedom of speech.[b] The majority also considered that the statements in the speech

were simply Nazi rhetoric, and did nothing more than express support for National Socialist ideology. It did not amount to approval of the persecution and mass extermination of the Jews during the Second World War. It held that there was nothing that particularly linked Rudolph Hess to the extermination of the Jews; noted that many Nazis denied that the Holocaust had taken place; and that it was not known what Mr. Sjolie's views on this particular subject were. The majority held that the speech contained derogatory and offensive remarks, but that no actual threats were made, nor any instructions to carry out any particular actions. The authors note that the majority of the Court considered article 4 of the Convention not to entail an obligation to prohibit the dissemination of ideas of racial superiority, contrary to the Committee's position as set out in general recommendation XV.

2.8 The authors claim that the decision will serve as a precedent in cases involving section 135a of the Penal Code, and that it will henceforth not be possible to prosecute Nazi propaganda and behaviour such as occurred during the march of 19 August 2000. Following the Supreme Court decision, the Director of Public Prosecutions expressed the view that, in light of the Supreme Court's decision, Norway would be a safe haven for Nazi marches, due to the prohibition on such marches in neighbouring countries.

The complaint

3.1 The authors contend that they are victims of violations by the State party of articles 4 and 6 of the Convention. They allege that, as a result of the Supreme Court's judgement of 17 December 2002, they were not afforded protection against the dissemination of ideas of racial discrimination and hatred, as well as incitement to such acts, during the march of 19 August 2000; and that they were not afforded a remedy against this conduct, as required by the Convention.

Status as victims

3.2 The authors argue that they are victims of the above violations because of the general inability of Norwegian law to protect them adequately against the dissemination of anti-Semitic and racist propaganda, and incitement to racial discrimination, hatred and violence. They concede that the Committee has not previously had the opportunity to consider the concept of "victim" in this context, but submit that the Committee should adopt the approach of both the Human Rights Committee and the European Court of Human Rights. They state that the "victim" requirement in the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and the European Convention on Human Rights is framed in equivalent terms, and submit that the Human Rights Committee and the European Court have recognized that by the mere existence of particular domestic laws, a person's rights may be directly affected in a way that results in their becoming a victim of violations. Reference is made to the decisions of the Human Rights Committee in *Toonen v. Australia*[c] and *Ballantyne et al. v. Canada*,[d] and the decision of the European Court of Human Rights in *Dudgeon v. United Kingdom*.[e] In the *Toonen* case, the Human Rights Committee held that the author could claim to be a victim of a violation of his right to privacy, even though he had not been prosecuted, because of the existence of a provincial law that criminalized sexual relations between consenting male adults. An analogous result was reached by the European Court in the *Dudgeon* case. Similarly, in *Ballantyne*, a case involving the prohibition in Quebec of the use of the English language in public outdoor advertising, the Human Rights Committee found that the author could claim to be a victim, although he had not

been prosecuted under the relevant legislation. The authors claim that these cases demonstrate that the "victim" requirement may be satisfied by all members of a particular group, as the mere existence of a particular legal regime may directly affect the rights of the individual victims within the group. In this instance, the authors contend that they, together with any other Jews, immigrants, or others facing an imminent risk of suffering racial discrimination, hatred or violence can claim to be victims of violations of articles 4 and 6 of the Convention.

3.3 The authors submit that they are victims notwithstanding the absence of any direct confrontation with the participants in the march. In this regard, it must be recalled that the Convention is concerned not only with the dissemination of racist ideas as such, but also the effects of this (art. 1, para. 1). Further, it will rarely be the case that racist views are imparted directly to persons of the race concerned - it will usually be the case that the views are disseminated to like-minded people. If article 4 were not to be read in this context, it would be rendered ineffective.

3.4 The authors also refer to decisions of the European Court of Human Rights that recognize the right of a potential victim to bring a claim against alleged human rights violation. In *Campbell and Cosans v. United Kingdom*,[f] the Court held that a schoolboy could claim to be a victim of a violation of article 3 of the Convention owing to the use of corporal punishment as a disciplinary measure at the school he attended, even though he himself had never been subjected to it. The general threat of being subjected to such treatment was sufficient to substantiate his claim of being a "victim". The authors contend that the existence of violent Nazi groups in Norway, together with the state of Norwegian law after the Supreme Court judgement in the *Sjolie* case, entail a real and imminent risk of being exposed to the effects of dissemination of ideas of racial superiority and incitement to racial hatred and violence, without their being protected or provided with a remedy, as required by articles 4 and 6 of the Convention.

3.5 The authors further state that, in any event, they have already been personally affected by the alleged violations. The march and speech referred to had a serious adverse effect on Mr. Paltiel, who survived a concentration camp during the war, and who has previously had threats made on his life because of his educational work. The same considerations apply to Mr. Kirchner, whose family was also deeply affected by the persecution of Jews during the war. In addition, the petitioners that are organizations are directly affected, as it is said that they will no longer be able to rely on the protection of the law in conducting their work. They argue that the Supreme Court's decision hands over the task of protecting against the effects of racist advocacy to private organizations, and creates new responsibilities for those who are the targets of the racial discrimination.

Exhaustion of domestic remedies

3.6 The authors submit that there are no available domestic remedies to be exhausted. The decision of the Supreme Court is final and there is no possibility of appeal.

On the merits

3.7 In relation to the merits of the claim, the authors refer to the Committee's general recommendation XV, paragraph 3, which requires States parties to penalize four categories of misconduct: dissemination of ideas based on racial superiority or hatred; incitement to racial

hatred; acts of violence against any race; and incitement to such acts. They consider that the decision of the Supreme Court is incompatible with the Committee's general recommendation in relation to article 4 in this regard.

3.8 The authors note that, in the Committee's concluding observations on Norway's fifteenth periodic report, it noted that the prohibition on dissemination of racial hatred is compatible with the right to freedom of speech; article 20 of the International Covenant on Civil and Political Rights stipulates the same. The authors invoke paragraph 6 of general recommendation XV, which states that organizations which promote and incite racial discrimination shall be prohibited, and submit that the State party's alleged failure to meet these requirements has been noted with concern by the Committee on previous occasions.[g] The authors submit that it is fully acceptable for a State party to protect democratic society against anti-democratic propaganda. In particular, they state that there is no basis for the Supreme Court's conclusion that article 4 of the Convention does not require States parties to penalize the dissemination of ideas of racial superiority, given the Committee's clear position on this issue.

3.9 The authors contend that the Supreme Court underestimated the danger of what it termed "Nazi rhetoric", and that the object of article 4 is to combat racism at its roots. As the Supreme Court minority pointed out, Mr. Sjolie's speech accepted and encouraged violent attacks on Jews, and paid homage to their mass extermination during the Second World War. In particular, the declaration that the group would follow in the Nazis' footsteps and fight for what they believed in had to be understood as an acceptance of and incitement to violent acts against Jews. The use of the Nazi salute made clear that the gathering was not peaceful, and, given the Bootboys' record of violence, the commemorative march was frightening and the incitement to violence evident.

3.10 The authors state that, in light of the Supreme Court's decision, section 135a of the Penal Code is unacceptable as a standard for protection against racism. They therefore argue that the State party violated article 4 of the Convention, and consequently violated article 6, as the legal regime laid down by the Supreme Court necessarily implies that no remedies, such as compensation, can be sought.

Observations by the State party

4.1 By note dated 3 October 2003, the State party challenges the admissibility of the communication and requests that the Committee address the question of admissibility separately from the merits.

4.2 It submits that the authors' communication amounts to an *actio popularis*, the aim of which is to have the Committee assess and evaluate the relationship between section 135a of the Penal Code, as applied by the Supreme Court, and article 4 of the Convention. The State party considers that issues of such a general nature are best dealt with by the Committee under the reporting procedure. It notes that the Committee recently addressed this very issue when considering the sixteenth report of the State party; the Committee had noted with concern that the strict interpretation of section 135a may not cover all aspects of article 4 (a) of the Convention and invited the State party to review this provision and provide information to the Committee in its next periodic report.[h] The State party submits that it is currently preparing a White Paper on proposed amendments to section 100 of the Constitution, which guarantees

freedom of speech, and the scope of section 135a of the Penal Code. The State party assures the Committee that its concluding observations will be a weighty consideration in considering relevant amendments to these provisions.

4.3 The State party submits that neither the Jewish Communities of Oslo and Trondheim, nor the Antiracist Centre, can be considered "groups of individuals" for the purposes of article 14, paragraph 1. The Jewish Communities are religious congregations comprising numerous members. The Antiracist Centre is a non-governmental organization which seeks to promote human rights and equal opportunity, and conducts research on racism and racial discrimination. The State party submits that, whilst the jurisprudence of the Committee is silent on this issue, a "group of individuals" should be understood as meaning a group of which every individual member could claim to be a victim of the alleged violation. What is significant is not the group per se, but those individuals who comprise it. It is the individuals, rather than the groups, who have standing.

4.4 In relation to the individual authors, Mr. Kirchner, Mr. Paltiel and Mr. Butt, the State party contends that they have not exhausted domestic remedies. It refers to the decision of the Committee in the case of *POEM and FASM v. Denmark*, where it noted that the petitioners had not been plaintiffs in any domestic proceedings, and considered that it was a "basic requirement of admissibility" that domestic remedies be exhausted "by the petitioners themselves".[i] The State party notes that none of the individual petitioners in the present case was a party to the domestic proceedings leading to the Supreme Court's judgement, and that the only complaint about the incident to the police was made by a local politician in the town of Askim. It states that the petitioners have not filed any complaints with the domestic authorities or made any requests for protection.

4.5 The State party contends that the authors are not "victims" for the purpose of article 14, paragraph 1. There have only been two instances in which the Committee has appeared to find that article 4 gives rise to an individual right, capable of being invoked in the context of a communication under article 14 of the Convention. In both of those cases, the racist expressions had been directed specifically at the petitioners in question, and had involved adverse effects on their substantive rights under article 5. By contrast, none of the petitioners in this case was present when the remarks were made during the commemorative march. They were not personally targeted by the remarks, nor have they specified how, if at all, their substantive rights under article 5 were affected by the comments of Mr. Sjolie. Accordingly, the State party contends that the authors are not victims for the purpose of article 14, paragraph 1.

Comments by the petitioners

5.1 In comments on the State party's submissions of 2 December 2003, the authors contend that the communication is truly individual in nature. They state that, in any event, the issue of inadequate protection against racist speech under article 4 had been an issue in the Committee's dialogue with the State party for some time, and that the concerns expressed by the Committee in its concluding observations have had little impact on the State party.

5.2 The authors reiterate that the Jewish Communities and the Antiracist Centre should be considered "groups of individuals" for the purpose of article 14 of the Convention, and that they have standing to submit communications to the Committee. They note that there is nothing in the wording of article 14 which supports the interpretation that all members of the group must be

able to claim victim status on their own. If such a strict reading were applied, the words "groups of individuals" would be deprived of any independent meaning. They contrast the wording of article 14, paragraph 1, with the corresponding provision in the Optional Protocol to the International Covenant on Civil and Political Rights (art. 1), which provides that only individuals may submit complaints for consideration by the Human Rights Committee. They contend that the expression "groups of individuals", whatever its outer limits may be, clearly covers entities that organize individuals for a specific, common purpose, such as congregations and membership organizations.

5.3 As to the requirement of exhaustion of domestic remedies, the authors claim that, in light of the judgement of the Supreme Court, any legal proceedings taken by them in Norway would have no prospect of success. They invoke a decision of the European Court of Human Rights to the effect that the obligation to exhaust domestic remedies did not apply in circumstances where, owing to an authoritative interpretation of the law by domestic judicial authorities, any legal action by the petitioners would be pointless.[j] They argue that the same approach should be adopted by the Committee in relation to article 14 of the Convention. Thus, even if the authors had not exhausted domestic remedies, the Supreme Court dispensed with this requirement by handing down a final and authoritative interpretation of the relevant law.

5.4 On the State party's submission that they are not "victims" for the purpose of article 14, the petitioners reiterate that article 4 guarantees to individuals and groups of individuals a *right* to be protected against hate speech. Failure to afford adequate protection against hate speech is of itself a violation of the individual rights of those who are directly affected by the State's failure to fulfil its obligations. They reiterate that, just as a person's status as a potential victim may arise when people are formally required to breach the law in order to enjoy their rights, so too may it arise where the domestic law or a court's decision impedes the individual's future enjoyment of Convention rights. They further state that, in the present case, the individual authors are public figures and leaders of their respective Jewish communities, and therefore potential victims of violations of the Convention. Mr. Paltiel has received death threats by neo-Nazi groups in the past. However, the intent of article 4 is to fight racism at its roots; there is a causal link between hate speech of the type made by Mr. Sjolie and serious violent racist acts. Persons like Mr. Paltiel are seriously affected by the lack of protection against hate speech. It is submitted that all the authors belong to groups of obvious potential victims of hate speech, against which Norwegian law affords no protection. They claim that there is a high degree of possibility that they will be adversely affected by the violation of article 4 of the Convention.

5.5 In a further submission dated 20 February 2004, the petitioners draw the Committee's attention to the third report of the European Commission against Racism and Intolerance (ECRI) on Norway, dated 27 June 2003. In this report, ECRI stated that Norwegian legislation did not provide individuals with adequate protection against racist expression, particularly in light of the Supreme Court's judgment in the *Sjolie* case. ECRI recommended that Norway strengthen protection against racist expression through relevant amendments to its Constitution and criminal law.

Committee's request for clarification from the State party

6.1 At its sixty-fourth session, the Committee instructed the Secretariat to seek clarification from the State party as to whether, under Norwegian law, any of the petitioners could have requested to become a party to the criminal proceedings instituted after the remarks made by

Mr. Sjolie on the occasion of the march of the "Bootboys" and, in the affirmative, to clarify whether intervention by the petitioners as third parties would have had any prospect of success. The request for clarification was sent to the State party on 3 March 2004; it was also transmitted for information to the petitioners.

6.2 By letter of 19 June 2004, the petitioners submitted that they had no possibility of participating in the criminal proceedings that had been instigated in relation to the "Bootboys" march; they also added that they had not suffered any pecuniary loss which could form the basis of a civil claim.

6.3 In its submission dated 19 August 2004, the State party advised that the petitioners were not at liberty to institute private criminal proceedings or to join the public prosecution against Mr. Sjolie for alleged breaches of section 135a. However, it submits that the lack of such a possibility has no bearing on the question of whether the petitioners had exhausted domestic remedies, and states that the present case is indistinguishable from the Committee's decision in *POEM and FASM v. Denmark*, referred to in paragraph 4.3 above, where the Committee had found the communication in question to be inadmissible, as none of the petitioners had been plaintiffs in the domestic proceedings. The State party submits that there is no significant difference between Norwegian and Danish criminal procedure law as regards the possibility of instituting private criminal proceedings or joining a public prosecution of racist expression. In the Danish case, as in the instant case, the communication was admissible because the petitioners did not take any procedural steps to secure the conviction of the alleged perpetrator. In the Danish case, as in the present case, the petitioners had not filed complaints with the police. None of the petitioners took any steps to address the statements of Mr. Sjolie before presenting their communication to the Committee, some three years after the comments were made. The State party submits that there is no basis to distinguish the present case from the Committee's earlier decision in the Danish case.

6.4 The State party further submits that the individual petitioners, and most likely the Jewish Communities, could have filed proceedings against Mr. Sjolie for criminal defamation, which is open to persons who feel targeted by denigrating or defamatory speech under articles 246 and 247 of the Criminal Code. Had they done this, the petitioners could have joined their action for criminal defamation to the criminal proceedings already under way against Mr. Sjolie. The petitioners could thereby have had an impact on the proceedings. While sections 246 and 247 are not directed specifically against discrimination, they are applicable also to racist statements. In its decision in *Sadic v. Denmark*,[k] the Committee noted that the notion of an "effective remedy" for the purposes of article 6 of the Convention is "not limited to criminal prosecutions based on provisions which specifically, expressly and exclusively penalize acts of racial discrimination". It extends to "a general provision criminalizing defamatory statements, which is applicable to racist statements". The Committee stated in the same decision that "mere doubts about the effectiveness of available civil remedies do not absolve a petitioner from pursuing them".[l]

6.5 Finally, the State party submits that, should the Committee declare the communication admissible and consider it on the merits, it should bear in mind that the Government is proposing significant enhancements of the protection offered by section 135a, and that a White Paper has been presented to Parliament on possible amendments to section 100 of the Norwegian Constitution. It is too early to inform about the outcome of the legislative process, and the State party will elaborate further upon this in the course of its next periodic report to the Committee.

6.6 In their reply dated 22 August 2004, the petitioners state that the Danish case referred to by the State party is distinguishable from their own case, as the criminal proceedings in that case had been discontinued by the police, without any action being taken by the authors to press civil or criminal proceedings against the alleged perpetrator. In the present case, Mr. Sjolie's comments were held by the Supreme Court to be protected by the constitutional right to freedom of speech, and consequently any action by the authors would be futile. They further submit that the applicability of defamation law to racist speech is an unresolved issue in Norwegian law, and for this reason defamation laws are not invoked in cases dealing with racist speech. They state that it would have been untenable for the authors to seek to consolidate defamation proceedings with the criminal proceedings instituted by the authorities; they are not aware of this ever having happened before.

Decision on admissibility

7.1 At its sixty-fifth and sixty-sixth sessions, the Committee considered the admissibility of the communication.

7.2 The Committee noted the State party's submission that the authors had not exhausted domestic remedies because none of them complained to the authorities about Mr. Sjolie's conduct; reference was made to the Committee's decision in the *POEM and FASM* case. However, as the authors pointed out, the *POEM and FASM* case involved criminal proceedings which were discontinued by the police, without any action being taken on the part of the authors to have the proceedings reinstigated. The present case involved an authoritative decision by the highest Norwegian court to acquit a person accused of racist statements. In the former case, the authors could have taken the initiative to protest the decision by the police to discontinue the criminal proceedings, but did not. In the present case, the authors had no possibility of altering the course of the criminal proceedings. Further, Mr. Sjolie had now been acquitted and cannot be retried. The Committee further noted that, in answer to the question asked of it by the Committee during its sixty-fourth session, the State party confirmed that the authors could not have requested to become a party to the criminal proceedings against Mr. Sjolie. The State party submitted that the authors could have taken defamation action against Mr. Sjolie. However, the authors contended that the application of defamation laws to racist speech was an unresolved issue in Norwegian law, and the Committee was not in a position to conclude that such proceedings constituted a useful and effective domestic remedy. In the circumstances, the Committee considered that there were no effective domestic remedies to be exhausted, and that accordingly no barrier to admissibility arose in this regard.

7.3 The authors claimed that they were "victims" of alleged violations of articles 4 and 6 of the Convention because of the general inability of Norwegian law to protect them against the dissemination of anti-Semitic and racist propaganda. They also claimed that they were "victims" because of their membership of a particular group of potential victims; the authors, together with any other Jews or immigrants, faced an imminent risk of suffering racial discrimination, hatred or violence. They referred in particular to the jurisprudence of other international human rights bodies to support their argument. They invoked the decision of the Human Rights Committee in the case of *Toonen v. Australia*, where the very existence of a particular legal regime was considered to have directly affected the author's rights in such a way as to give rise to a violation of the International Covenant on Civil and Political Rights. They also referred to the decision of the European Court of Human Rights in *Open Door and Dublin Well Women v. Ireland*, in which the Court found certain authors to be "victims" because they belonged to a class of

persons which might in the future be adversely affected by the acts complained of. Similarly, in the present case the authors stated that, following the decision of the Supreme Court, they are at risk of being exposed to the effects of the dissemination of ideas of racial superiority and incitement to racial hatred, without being afforded adequate protection. They also submitted that the decision contributed to an atmosphere in which acts of racism, including acts of violence, are more likely to occur, and in this regard they referred to specific incidents of violence and other "Nazi" activities. The Committee agreed with the authors' submissions; it saw no reason why it should not adopt a similar approach to the concept of "victim" status as was adopted in the decisions referred to above. It considered that, in the circumstances, the authors had established that they belong to a category of potential victims.

7.4 The Committee did not consider the fact that three of the authors are organizations posed any problem to admissibility. As has been noted, article 14 of the Convention refers specifically to the Committee's competence to receive complaints from "groups of individuals". The Committee considered that to interpret this provision in the way suggested by the State party, namely to require that each individual within the group be an individual victim of an alleged violation, would be to render meaningless the reference to "groups of individuals". The Committee had not hitherto adopted such a strict approach to these words. The Committee considered that, bearing in mind the nature of the organizations' activities and the classes of person they represent, they too satisfied the "victim" requirement in article 14.

7.5 On 9 March 2005, the Committee therefore declared the communication admissible.

State party's submissions on the merits

8.1 By a communication of 9 June 2005, the State party submits that there has been no violation of articles 4 or 6 of the Convention. It states that, consistent with the provisions of the Convention, section 135a of the Norwegian Penal Code must be interpreted with due regard to the right to freedom of expression. The State party's obligation to criminalize certain expressions and statements must be balanced against the right to freedom of expression, as protected by other international human rights instruments.[m] In the present case, the Norwegian Supreme Court carefully assessed the case following a full hearing, including arguments on the requirements of the relevant international instruments. It concluded that the proper balance of these rights resulted in there being no violation of section 135a in the present case, a conclusion which the Court considered to be consistent with the State party's obligations under the Convention, taking account of the "due regard" clause in article 4 of the Convention.

8.2 For the State party, States must enjoy a margin of appreciation in balancing rights at the national level, and that this margin has not been overstepped in the present case. The majority of the Supreme Court found that section 135a applied to remarks of a distinctly offensive character, including remarks that incite or support violations of integrity and those which entail a gross disparagement of a group's human dignity. The majority considered that the remarks had to be interpreted in the light of the context in which they were made and the likely perception of the remarks by an ordinary member of the audience.[n] The State party submits that the Committee should give due respect to the Supreme Court's interpretation of these remarks, since it had thoroughly examined the entire case.

8.3 The State party submits that the Committee's general recommendation XV should be interpreted as recognizing that the application of article 4 requires a balancing of the right to freedom of expression against the right to protection from racial discrimination.

8.4 The State party notes the Committee's decision that the authors belong to a "category of potential victims"; to the extent that the authors are "potential victims", the State party draws attention to recent changes in Norwegian law which strengthen legal protection against the dissemination of racist ideas. It argues that, following the adoption of recent changes to section 100 of the Constitution and section 135a of the Penal Code, the authors can no longer be considered "potential victims" of racial discrimination contrary to the Convention; any possible violation could only relate to the period preceding the adoption of these amendments.

8.5 A completely revised version of section 100 of the Constitution entered into force on 30 September 2004, affording the Parliament greater scope to pass laws against racist speech, in conformity with its obligations under international conventions. Parliament has since used this new power to amend section 135a of the Penal Code to provide that racist remarks may be subject to prosecution even if they are not disseminated among the public. Racist statements made negligently are now also proscribed - intent need not be proved. The maximum punishment has been raised from two to three years' imprisonment. The balance between section 135a and freedom of speech, however, must be weighed by the courts in each case. According to the State party, these recent amendments contradict the authors' assertion that the verdict in the *Sjolie* case would serve as a precedent, and that it will be more difficult to prosecute dissemination of ideas of racist discrimination and hatred. The State party further refers to the adoption of a new Discrimination Act, which incorporates the Convention and provides criminal sanctions for serious cases of incitement to or participation in discrimination, thus supplementing the new provisions of section 135a. The Government is also developing a new Mandate of Anti-Discrimination Ombudsman to monitor and enforce these new provisions.

8.6 The State party submits that, in light of the above changes in the State party's laws and their effect on the authors as "potential victims", the Committee should reconsider its decision on admissibility, pursuant to rule 94, paragraph 6, of its rules of procedure, at least as far as the communication raises questions regarding the general legal effects of the Supreme Court's judgement.[o]

8.7 Finally, the State party notes that the authors have not identified how the remarks of Mr. Sjolie have had adverse effects on their enjoyment of any substantive rights protected by article 5 of the Convention.

Authors' comments on State party's submissions on the merits

9.1 In their comments on the State party's submissions dated 4 July 2005, the authors invoke their earlier submissions, in which issues relating to the merits were addressed. They emphasize that it remains undisputed that, under Norwegian law as it presently stands, only three of the four relevant categories of racial discrimination referred to in article 4 of the Convention are penalized; contrary to article 4 and general recommendation XV, dissemination of ideas based on racial superiority or hatred may go unpunished.

9.2 In relation to the State party's request for the Committee to reopen the question of admissibility of the complaint, the authors state that the Committee must review and assess the communication on the basis of the facts at the material time, and not on the basis of legislation adopted subsequently. In any event, the new legislation has not addressed the authors' main concern, namely the failure of the law to proscribe all relevant categories of misconduct under the Convention; thus the authors remain potential victims.

9.3 In respect of the "due regard" clause in article 4, the authors maintain that penalizing all four categories of misconduct is clearly compatible with any international principle of freedom of speech. For them, the Committee must undertake its own interpretation of the impugned statements, rather than defer to the interpretation adopted by the Norwegian Supreme Court.[p] In characterizing the speech, the authors note that Hess was well known as Hitler's deputy and confidant, instrumental in the development of the Nuremberg laws. They maintain that, as the minority of the Supreme Court found, anyone with a basic knowledge of Hitler and National Socialism would have understood Mr. Sjolie's speech as an acceptance and approval of mass violence against Jews in the Nazi era.

9.4 The authors refer to jurisprudence of the European Court and the Human Rights Committee, both of which have accorded racist and hate speech little protection under the freedom of speech provisions of their respective conventions.[q] According to the authors, the role of the "due regard" clause is to protect the role of the media in imparting information about issues of public importance, provided the objective is not advocacy of racial hatred. It is submitted that the State party offers a much broader level of protection to hate speech than standards established in international case law. The authors further state that the Supreme Court decision in the *Sjolie* case is already having a significant effect as a precedent, despite the entry into force of the new legislation. They provide a decision by the Oslo police dated 31 May 2005 not to prosecute the leader of a neo-Nazi organization, in relation to statements made to the effect that Jews had killed millions of "his people", that Jews should be "cleansed", and were "not human beings" but "parasites". The police dropped the case with explicit reference to the *Sjolie* case.

9.5 The authors further submit that invoking freedom of speech for racist and discriminating purposes amounts to an abuse of the right of submission. They reiterate that the balance between freedom of speech and protection from hate speech following the *Sjolie* decision is such that persons are afforded protection only against the most distinctive and offensive remarks, entailing severe violations of a group's dignity.

9.6 Finally, the authors note that Norway does not prohibit racist organizations and that the Supreme Court in the *Sjolie* case built on the view that such a ban would be unacceptable, contrary to the Committee's general recommendation XV, paragraph 6.

Consideration of the merits

10.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioners and the State party.

10.2 In relation to the State party's request that the Committee should reconsider its decision on admissibility pursuant to rule 94, paragraph 6, of its rules of procedure in the light of recent legislative changes, the Committee considers that it must review and assess the communication on the basis of the facts as they transpired at the material time, irrespective of subsequent changes in the law. Further, the authors have referred to at least one incident following the recent amendments to the relevant legislation where the judgement in the *Sjolie* case was apparently interpreted as a bar to the prosecution of hate speech.

10.3 The Committee has noted the State party's submission that it should give due respect to the consideration of the *Sjolie* case by the Supreme Court, which conducted a thorough and exhaustive analysis, and that States should be afforded a margin of appreciation in balancing their obligations under the Convention with the duty to protect the right to freedom of speech. The Committee notes that it has indeed fully taken account of the Supreme Court's decision and is mindful of the analysis contained therein. However, the Committee considers that it has the responsibility to ensure the coherence of the interpretation of the provisions of article 4 of the Convention as reflected in its general recommendation XV.

10.4 At issue in the present case is whether the statements made by Mr. Sjolie, properly characterized, fall within any of the categories of impugned speech set out in article 4, and if so, whether those statements are protected by the "due regard" provision as it relates to freedom of speech. In relation to the characterization of the speech, the Committee does not share the analysis of the majority of the members of the Supreme Court. While the content of the speech is objectively absurd, the lack of logic of particular remarks is not relevant to the assessment of whether or not they violate article 4. In the course of the speech, Mr. Sjolie stated that his "people and country are being plundered and destroyed by Jews, who suck our country empty of wealth and replace it with immoral and un-Norwegian thoughts". He then refers not only to Rudolf Hess, in commemoration of whom the speech was made, but also to Adolf Hitler and *their* principles, stating that his group will "follow in their footsteps and fight for what (we) believe in". The Committee considers these statements to contain ideas based on racial superiority or hatred; the deference to Hitler and his principles and "footsteps" must, in the Committee's view, be taken as incitement at least to racial discrimination, if not to violence.

10.5 As to whether these statements are protected by the "due regard" clause contained in article 4, the Committee notes that the principle of freedom of speech has been afforded a lower level of protection in cases of racist and hate speech dealt with by other international bodies, and that the Committee's own general recommendation XV clearly states (para. 4) that the prohibition of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression. The Committee notes that the "due regard" clause relates generally to all principles embodied in the Universal Declaration of Human Rights, not only freedom of speech. Thus, to give the right to freedom of speech a more limited role in the context of article 4 does not deprive the "due regard" clause of significant meaning, all the more so since all international instruments that guarantee freedom of expression provide for the possibility, under certain circumstances, of limiting the exercise of this right. The Committee concludes that the statements of Mr. Sjolie, given that they were of an exceptionally/manifestly offensive character, are not protected by the "due regard" clause and that accordingly, his acquittal by the Supreme Court of Norway gave rise to a violation of article 4, and consequently article 6, of the Convention.

10.6 Finally, in relation to the State party's submission that the authors have failed to establish how the remarks of Mr. Sjolie adversely affected their enjoyment of any substantive rights protected under article 5 of the Convention, the Committee considers that its competence to receive and consider communications under article 14 is not limited to complaints alleging a violation of one or more of the rights contained in article 5. Rather, article 14 states that the Committee may receive complaints relating to "any of the rights set forth in this Convention". The broad wording suggests that the relevant rights are to be found in more than just one provision of the Convention. Further, the fact that article 4 is couched in terms of States parties' obligations, rather than inherent rights of individuals, does not imply that they are matters to be left to the internal jurisdiction of States parties, and as such immune from review under article 14. If such were the case, the protection regime established by the Convention would be weakened significantly. The Committee's conclusion is reinforced by the wording of article 6 of the Convention, by which States parties pledge to assure to all individuals within their jurisdiction effective protection and a right of recourse against any acts of racial discrimination which violate their "human rights" under the Convention. In the Committee's opinion, this wording confirms that the Convention's "rights" are not confined to article 5. Finally, the Committee recalls that it has previously examined communications under article 14 in which no violation of article 5 has been alleged.[r]

11. The Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7, of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the view that the facts before it disclose violations of articles 4 and 6 of the Convention.

12. The Committee recommends that the State party take measures to ensure that statements such as those made by Mr. Sjolie in the course of his speech are not protected by the right to freedom of speech under Norwegian law.

13. The Committee wishes to receive, within six months, information from the State party about the measures taken in the light of the Committee's Opinion. The State party is requested also to give wide publicity to the Committee's Opinion.

[Done in English, French, Spanish and Russian, the English text being the original version. Subsequently to be issued also in Arabic and Chinese as part of the Committee's annual report to the General Assembly.]

Notes

[a] The speech was recorded on video by the magazine *Monitor*. It was later used in the criminal proceedings against Mr. Sjolie.

[b] Section 100 of the Norwegian Constitution guarantees the right to freedom of speech.

[c] Communication No. 488/1992, Views adopted on 31 March 1994.

[d] Communications No. 359/1989 and No. 385/1989, Views adopted on 31 March 1993.

[e] Judgement (Merits) of 22 October 1981, Series A, No. 45.

[f] Judgement (Just Satisfaction) of 22 March 1983, Series A, No. 60.

[g] The authors refer to paragraph 14 of the concluding observations adopted in 2000 (CERD/C/304/Add.88) on the fifteenth periodic report and paragraph 13 of the concluding observations (CERD/C/304/Add.40) adopted in 1997 on the twelfth to fourteenth periodic reports.

[h] CERD/C/63/CO/8, para. 12.

[i] Communication No. 22/2002, decision of 19 March 2003, para. 6.3.

[j] *Case of Open Door and Dublin Well Women v. Ireland*, judgement of 29 October 1992, Series A, No. 246-A.

[k] Communication No. 25/2002, decision on admissibility adopted on 16 March 2003, para. 6.3.

[l] Ibid., para. 6.5.

[m] Reference is made to article 10 of the European Convention on Human Rights and article 19 of the International Covenant on Civil and Political Rights.

[n] The State party draws the Committee's attention to the reasoning of the majority set out on pages 11 and 12 of the English version of the judgement; however the Court's conclusions in this regard are not summarized in the submission. In the judgement, the majority concludes that various remarks in question are "absurd", "defy rational interpretation", and "cliché", and that they expressed no more than general support for Nazi ideology which, according to the majority, did not imply support for the extermination of or other systematic and serious acts of violence against Jews. Hess, in whose memory the march was held, was not particularly associated with the Holocaust. The majority also notes that the group of Mr. Sjolie's supporters was small, and those opposing the speech were in the majority and able to voice their disapproval.

[o] The submission then reads: "The Government, however, trusts the Committee to undertake any required assessments at this point."

[p] Reference is made to decisions of the European Court of Human Rights in *Lehideux and Isorni v. France*, judgement of 23 September 1998, *Reports 1998-VII*, paras. 50-53 and *Jersild v. Denmark*, judgement of 23 September 1994, Series A, No. 298, para. 35.

[q] Particular mention is made of *Jersild v. Denmark*, ibid., concerning racist comments by the "Greenjackets" against Africans and foreigners, held not to be protected by freedom of speech, and *J.R.T. and W.G. v. Canada*, communication No. 104/1981, Views adopted on 6 April 1983.

[r] See for example: *Ziad Ben Ahmed Habassi v. Denmark*, communication No. 10/1997, Opinion adopted on 17 March 1999, paras. 9.3 and 10, where the Committee found a violation of arts. 2 and 6; *Kashif Ahmed v. Denmark*, communication No. 16/1999, Opinion adopted on 13 March 2000, paras. 6.2-9, where the Committee found a violation of art. 6; and *Kamal Qureshi v. Denmark*, communication No. 27/2002, Opinion adopted on 19 August 2003, paras. 7.1-9.

Annex IV

OVERVIEW OF THE METHODS OF WORK OF THE COMMITTEE

I. TERMS OF REFERENCE FOR THE WORK OF THE COORDINATOR ON FOLLOW-UP TO THE OBSERVATIONS AND RECOMMENDATIONS OF THE COMMITTEE UNDER ARTICLE 9, PARAGRAPH 1, OF THE CONVENTION

Pursuant to article 9 (1) (b) of the International Convention on the Elimination of All Forms of Racial Discrimination and rule 65, paragraph 1, of the rules of procedure of the Committee (see HRI/GEN/3/Rev.2), the Committee on the Elimination of Racial Discrimination may make a request for an additional report or for further information from a State party. It may indicate both the manner and time within which such information should be received. At its sixty-fourth session, the Committee decided to amend its rules of procedure relevant to follow-up activities in adopting a second paragraph to rule 65.[a] The paragraph provides for the appointment of a coordinator in order to further the implementation of rule 65, paragraph 1. At its sixty-fifth session, the Committee appointed a coordinator and an alternate.[b]

The mandate of the coordinator took effect as from the sixty-fourth session of the Committee.

Terms of reference

1. The coordinator is mandated to monitor the follow-up by States parties to the observations and recommendations of the Committee, cooperating with the respective country rapporteur.

2. The Committee may ask the State party to submit information at a specified time before the next reporting session of the State concerned. The coordinator will be responsible for monitoring respect by the State party for deadlines set by the Committee. The coordinator will be responsible for sending reminders (within a month of expiry of the deadline) to a State party when it has not supplied the additional information on time.

3. The coordinator will analyse and assess the information received from the State party pursuant to a request by the Committee for further information. This task should be shared with the country rapporteur. If the coordinator finds that further information is needed, the coordinator will take the matter up with the State party.

4. The coordinator may make recommendations for appropriate action to the Committee when information as mentioned in paragraph 2 is received and in the case of non-receipt of such information. The coordinator may, inter alia, recommend that the Committee take note of the information, request further information in the next periodic report, or remind the State party of recommendations included in the last concluding observations of the Committee and its obligations as party to the Convention. The meeting is held in private.

5. The coordinator shall submit a succinct progress report to the Committee at each session. The Committee should set aside sufficient time for discussion of the coordinator's findings and the adoption of formal recommendations, if any, including, where appropriate, reconsideration of the date on which the next periodic report of the State party is due. The meeting is held in private.

6. The coordinator's findings will be included in the chapter of the annual report on follow-up activities. If no information is received in spite of reminders, this will be recorded in the Committee's subsequent report to the General Assembly.

II. FOLLOW-UP ON OPINIONS ADOPTED BY THE COMMITTEE UNDER ARTICLE 14, PARAGRAPH 7, OF THE CONVENTION

At its 1721st meeting (sixty-seventh session), on 15 August 2005, the Committee added the following two paragraphs to rule 95 of its rules of procedure:

> 6. The Committee may designate one or several Special Rapporteurs for follow-up on Opinions adopted by the Committee under article 14, paragraph 7, of the Convention, for the purpose of ascertaining the measures taken by States parties in the light of the Committee's suggestions and recommendations.
>
> 7. The Special Rapporteur(s) may establish such contacts and take such action as is appropriate for the proper discharge of the follow-up mandate. The Special Rapporteur(s) will make such recommendations for further action by the Committee as may be necessary; he/she (they) will report to the Committee on follow-up activities as required, and the Committee shall include information on follow-up activities in its annual report.

Notes

[a] For the text, see *Official Records of the General Assembly, Fifty-ninth Session, Supplement No. 18* (A/59/18), annex III.

[b] Ibid., para. 482.

Annex V

DOCUMENTS RECEIVED BY THE COMMITTEE AT ITS SIXTY-SIXTH AND SIXTY-SEVENTH SESSIONS IN CONFORMITY WITH ARTICLE 15 OF THE CONVENTION

The following is a list of the working papers referred to in chapter V submitted by the Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples:

A/AC.109/2004/2	Pitcairn
A/AC.109/2004/3	British Virgin Islands
A/AC.109/2004/4	Western Sahara
A/AC.109/2004/5	Guam
A/AC.109/2004/6	American Samoa
A/AC.109/2004/7	Gibraltar
A/AC.109/2004/8	Tokelau
A/AC.109/2004/9	St. Helena
A/AC.109/2004/10	Anguilla
A/AC.109/2004/11	New Caledonia
A/AC.109/2004/12	Falkland Islands (Malvinas)
A/AC.109/2004/13	Montserrat
A/AC.109/2004/14	Bermuda
A/AC.109/2004/15	Cayman Islands
A/AC.109/2004/16	Turks and Caicos Islands
A/AC.109/2004/17	United States Virgin Islands

Annex VI

COUNTRY RAPPORTEURS FOR REPORTS OF STATES PARTIES CONSIDERED BY THE COMMITTEE AND FOR STATES PARTIES CONSIDERED UNDER THE REVIEW PROCEDURE AT THE SIXTY-SIXTH AND SIXTY-SEVENTH SESSIONS

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Australia Thirteenth and fourteenth periodic reports (CERD/C/428/Add.2)	Mr. Pillai
Azerbaijan Third and fourth periodic reports (CERD/C/440/Add.1)	Mr. Tang
Bahrain Sixth and seventh periodic reports (CERD/C/443/Add.1)	Mr. Boyd
France Fifteenth and sixteenth periodic reports (CERD/C/430/Add.4)	Mr. Sicilianos
Ireland Initial and second periodic reports (CERD/C/460/Add.1)	Mr. Herndl
Lao People's Democratic Republic Sixth to fifteenth periodic reports (CERD/C/451/Add.1)	Mr. Amir
Luxembourg Tenth to thirteenth periodic reports (CERD/C/449/Add.1)	Mr. de Gouttes
Papua New Guinea (review procedure) Overdue reports: initial to eleventh periodic reports	Ms. Dah
Barbados Eighth to sixteenth periodic reports (CERD/C/452/Add.5)	Mr. Thornberry
Georgia Second and third periodic reports (CERD/C/461/Add.1)	Mr. Valencia

Initial and periodic reports considered by the Committee and countries considered under the review procedure	Country rapporteur
Iceland Seventeenth and eighteenth periodic reports (CERD/C/476/Add.5)	Mr. Sicilianos
Malawi (review procedure) Overdue reports: initial to fourth periodic reports	Mr. Amir
Mozambique (review procedure) Overdue reports: second to eleventh periodic reports	Mr. de Gouttes
Nigeria Fourteenth to eighteenth periodic reports (CERD/C/476/Add.3)	Ms. January-Bardill
Saint Lucia (review procedure) Overdue reports: initial to eighth periodic reports	Mr. Kjaerum
Seychelles (review procedure) Overdue reports: sixth to fourteenth periodic reports	Mr. Pillai
United Republic of Tanzania Eighth to sixteenth periodic reports (CERD/C/452/Add.7)	Mr. Lindgren Alves
Turkmenistan Initial to fifth periodic reports (CERD/C/441/Add.1)	Mr. Tang
Bolivarian Republic of Venezuela Fourteenth to eighteenth periodic reports (CERD/C/476/Add.4)	Mr. Avtonomov
Zambia Twelfth to sixteenth periodic reports (CERD/C/452/Add.6/Rev.1)	Mr. Cali Tzay

Annex VII

COMMENTS OF STATES PARTIES ON THE CONCLUDING OBSERVATIONS ADOPTED BY THE COMMITTEE

Sixth and seventh periodic reports of Bahrain

The following comments were sent on 2 September 2005 by the Permanent Representative of Bahrain to the United Nations concerning the concluding observations adopted by the Committee following the consideration of the sixth and seventh periodic reports submitted by the State party:*

"The Kingdom of Bahrain confirms its commitment to the International Convention on the Elimination of All Forms of Racial Discrimination. In this context, while the Government of the Kingdom welcomes the concluding observations which were adopted by the Committee following its consideration of the Kingdom's sixth and seventh periodic reports, it would nevertheless like to make the following points:

"1. As the Kingdom's reports clearly show, the Convention is part of Bahrain's domestic law, Bahrain's legislation and policies affirm the principles of equality and non-discrimination and there are means of redress available to deal with any allegation of racial discrimination.

"2. The Committee expressed concern about the abolition of one human rights association, even though the delegation of Bahrain had explained that the decision to abolish the association in question had been taken in accordance with law and that the association's appeal against the decision had been reviewed by the courts. The delegation had furthermore described the legal safeguards which are provided for civil society organizations.

"3. The Committee expressed concern about the situation of migrant workers and their enjoyment of social, economic and cultural rights, even though the Kingdom's reports and its delegation had clearly explained that migrant workers enjoy all of these rights, together with legal protection and access to services offering advice on their rights and the means for protecting them.

"4. The Committee, in the light of some questions raised during the debate, expressed concern about repeated allegations of discrimination facing some groups that may be distinguishable by virtue of their tribal or national origin, descent, culture or language. The Committee recommended that the State party should ensure that everyone, without distinction as to race, colour, or national or ethnic origin, enjoyed the rights to work and to health and social security, adequate housing and education. In this connection, the Government of the Kingdom of Bahrain should like to make the following comments:

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* See paragraphs 71-94 of the present report.

"(a) Although the questions raised about these allegations were essentially based on the religious angle, and although the religious angle has nothing to do with the Convention, the delegation of the Kingdom, in a spirit of cooperation, replied to the questions by explaining that the allegations were unfounded;

"(b) Since the questions related to whether or not there was any truth to the allegations, we had hoped that the Committee's observation would have taken account of the additional information which had been requested on that subject;

"(c) The Government of the Kingdom of Bahrain confirms that, in accordance with the Convention, it spares no effort to guarantee everyone the right to work, health, social security, housing and education without discrimination, and that this is reflected in the State's laws and policies and the Government's programmes.

"The Government of the Kingdom of Bahrain should like to express its gratitude to the Committee for its appreciative comments about the positive political, legal and economic developments unfolding in the Kingdom of Bahrain with regard to respect for human rights. In this connection, the Government also expresses its satisfaction that the Advisory Council and the House of Deputies of Bahrain are currently debating two draft laws on the Government's accession to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights."

Annex VIII

LIST OF DOCUMENTS ISSUED FOR THE SIXTY-SIXTH AND SIXTY-SEVENTH SESSIONS OF THE COMMITTEE*

CERD/C/498	Provisional agenda and annotations of the sixty-sixth session of the Committee
CERD/C/499	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the sixty-sixth session of the Committee
CERD/C/501	Provisional agenda and annotations of the sixty-seventh session of the Committee
CERD/C/502	Submission of reports by States parties under article 9, paragraph 1, of the Convention for the sixty-seventh session of the Committee
CERD/C/503	Consideration of copies of petitions, copies of reports and other information relating to Trust and Non-Self-Governing Territories and to all other Territories to which General Assembly resolution 1514 (XV) applies, in conformity with article 15 of the Convention
CERD/C/SR.1673-1701	Summary records of the sixty-sixth session of the Committee
CERD/C/SR.1702-1729	Summary records of the sixty-seventh session of the Committee
CERD/C/AUS/CO/14	Concluding observations of the Committee on the Elimination of Racial Discrimination - Australia
CERD/C/AZE/CO/4	Concluding observations of the Committee on the Elimination of Racial Discrimination - Azerbaijan
CERD/C/BHR/CO/7	Concluding observations of the Committee on the Elimination of Racial Discrimination - Bahrain
CERD/C/FRA/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - France
CERD/C/IRL/CO/2	Concluding observations of the Committee on the Elimination of Racial Discrimination - Ireland

* This list only concerns documents issued for general distribution.

CERD/C/LAO/CO/15	Concluding observations of the Committee on the Elimination of Racial Discrimination - Lao People’s Democratic Republic
CERD/C/LUX/CO/13	Concluding observations of the Committee on the Elimination of Racial Discrimination - Luxembourg
CERD/C/DEC/SDN/1	Decisions of the Committee on the Elimination of Racial Discrimination - Situation in Darfur
CERD/C/DEC/NZL/1	Decisions of the Committee on the Elimination of Racial Discrimination - New Zealand Foreshore and Seabed Act
CERD/C/DEC/SUR/1	Decisions of the Committee on the Elimination of Racial Discrimination - decision 3 (66) on Suriname
CERD/C/DEC/SUR/2	Decisions of the Committee on the Elimination of Racial Discrimination - decision 1 (67) on Suriname
CERD/C/BRB/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - Barbados
CERD/C/GEO/CO/3	Concluding observations of the Committee on the Elimination of Racial Discrimination - Georgia
CERD/C/ISL/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Iceland
CERD/C/NGA/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Nigeria
CERD/C/TKM/CO/5	Concluding observations of the Committee on the Elimination of Racial Discrimination - Turkmenistan
CERD/C/TZA/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - United Republic of Tanzania
CERD/C/VEN/CO/18	Concluding observations of the Committee on the Elimination of Racial Discrimination - Bolivarian Republic of Venezuela
CERD/C/ZMB/CO/16	Concluding observations of the Committee on the Elimination of Racial Discrimination - Zambia
CERD/C/428/Add.2	Thirteenth and fourteenth periodic reports of Australia
CERD/C/440/Add.1	Third and fourth periodic reports of Azerbaijan
CERD/C/443/Add.1	Sixth and seventh periodic reports of Bahrain
CERD/C/430/Add.4	Fifteenth and sixteenth periodic reports of France

CERD/C/460/Add.1	Initial and second periodic reports of Ireland
CERD/C/451/Add.1	Sixth to fifteenth periodic reports of the Lao People's Democratic Republic
CERD/C/449/Add.1	Tenth to thirteenth periodic reports of Luxembourg
CERD/C/452/Add.5	Eighth to sixteenth periodic reports of Barbados
CERD/C/461/Add.1	Second and third periodic reports of Georgia
CERD/C/476/Add.5	Seventeenth to eighteenth periodic reports of Iceland
CERD/C/476/Add.3	Fourteenth to eighteenth periodic reports of Nigeria
CERD/C/452/Add.7	Eighth to sixteenth periodic reports of the United Republic of Tanzania
CERD/C/441/Add.1	Initial to fifth periodic reports of Turkmenistan
CERD/C/476/Add.4	Fourteenth to eighteenth periodic reports of the Bolivarian Republic of Venezuela
CERD/C/452/Add.6	Twelfth to sixteenth periodic reports of Zambia

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