

**Indigenous Peoples
and
United Nations Human Rights Bodies**

**A Compilation of UN Treaty Body Jurisprudence and the
Recommendations of the Human Rights Council**

**Volume III
2007-2008**

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Preface

This document contains Volume III in the series of compilations of United Nations human rights bodies' jurisprudence pertaining to indigenous peoples.¹ Volume III covers the years 2007 and 2008. In addition to the jurisprudence of the UN treaty bodies, this volume for the first time also contains the results of the Human Rights Council's Universal Peer Review mechanism. It also for the first time contains jurisprudence developed under: the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict; and the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography.

A cursory review of the period 2007-2008 shows that the Committee on the Elimination of Racial Discrimination continues to adopt detailed and responsive observations and recommendations, including under its follow up and early warning and urgent action procedures. With regard to the latter, the Committee appears to have moved away from adopting formal decisions in favour of sending letters to states parties. Whether this amounts to much of a difference in effect remains to be seen. Nevertheless, it does seem to indicate that the Committee now sees the adoption of formal decisions as a more serious action or perhaps even a last resort.

Importantly, the Committee has begun to make reference to 2007 UN Declaration on the Rights of Indigenous Peoples and explained that states should use this Declaration "as a guide to interpret [their] obligations under the Convention relating to indigenous peoples."² It has also increased its attention to racial discrimination experienced by indigenous women,³ opening up significant possibilities for indigenous women to raise issues and concerns.⁴ In this respect, it also is noteworthy that the Committee on Elimination of Discrimination Against Women has explicitly begun to acknowledge "the multiple forms of discrimination [indigenous women] face, which limit their de facto enjoyment of their human rights and full participation in all spheres of life."⁵ This is a significant improvement over its earlier practice.

The Human Rights Committee continues to invoke the right to self-determination in relation to indigenous peoples, particularly Article 1(2) of the Covenant on Civil and Political Rights (the right to freely dispose of natural wealth and the right to be secure in the means of subsistence).

¹ Volume I (1993-2004) and Volume II (2005-2006) are available at: http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_sept05_eng.pdf and; http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_vol2_06_eng.pdf

² United States, 08 May 2008, CERD/C/USA/CO/6, at para. 29. *See also* Nicaragua, 28/11/2008, E/C.12/NIC/CO/4, at para. 35 (where the Committee on Economic, Social and Cultural Rights "encourages the State party to continue with its efforts to promote and implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples"); and, Committee on the Rights of the Child, *General Comment No. 11, Indigenous children and their rights under the Convention*. UN Doc. CRC/C/GC/11, January 2009, para. 10.

³ In 2000, CERD adopted *General Recommendation No. XXV on Gender Related Dimensions of Racial Discrimination* (at para. 1, explaining that "that racial discrimination does not always affect women and men equally or in the same way. There are circumstances in which racial discrimination only or primarily affects women, or affects women in a different way, or to a different degree than men").

⁴ *See inter alia* Canada, 25/05/2007, CERD/C/CAN/CO/18, para. 15 and 20; Costa Rica, 17/08/2007, CERD/C/CRI/CO/18, para. 17 and; India, CERD/C/IND/CO/19, 05/05/2007, para. 15.

⁵ Nicaragua, 02/02/2007, CEDAW/C/NIC/CO/6, at para. 31. *See also* Sweden, 08/04/2008 CEDAW/C/SWE/CO/7, para.38; Finland, 18/07/2008, CEDAW/C/FIN/CO/6, para. 33-4; and Ecuador, 07/11/2008, CEDAW/C/ECU/CO/7, para. 34-5.

It normally does so in conjunction with Article 27 of the Covenant.⁶ The Committee on Economic, Social and Cultural Rights has also made reference to Article 1 in connection with “the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources.”⁷ Contrary to the years covered in prior volumes of this series, the Human Rights Committee has not decided any formal cases submitted pursuant to Optional Protocol I concerning indigenous peoples in the period 2007-2008.

The results of the Human Rights Council’s Universal Peer Review mechanism have been disappointing to say the least. Where indigenous peoples’ rights are raised by certain states during the (often congratulatory) ‘interactive dialogue’, the corresponding recommendations, if any, are for the most part weak and lack specificity. Recommendations are also often accompanied by qualifying language that further weakens their value as assessments of a state’s human rights performance and benchmarks against which future behaviour may be judged. In some cases, the report indicates that the state explicitly rejects certain recommendations. Hopefully, this mechanism will improve when states are called back and asked to explain the measures they have adopted to implement the recommendations and improve their human rights protection more generally.

Finally, please be aware that the jurisprudence contained in this volume is excerpted from larger treatments of country situations so that only those sections that either directly refer to indigenous peoples or otherwise are known to be about indigenous peoples are included. Also, while we have tried to locate and include all jurisprudence from this period, this document may not be comprehensive. We hope that you find it a useful tool that contributes to awareness about and, ultimately, respect for the rights of indigenous peoples in practice.

January 2009

⁶ See Panama, 17/04/2008, CCPR/C/PAN/CO/3; and Chile, 18/05/2007, CCPR/C/CHL/CO/5.

⁷ See Philippines, 01/12/2008, E/C.12/PHL/CO/4, at para. 16; and Sweden, 01/12/2008, E/C.12/SWE/CO/5.

I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

A. Concluding Observations

1. INDIA: CERD/C/IND/CO/19, 5 MAY 2007

4. The Committee welcomes the special measures adopted by the State party to advance the equal enjoyment of rights by members of scheduled castes and scheduled tribes, such as reservation of seats in Union and State legislatures and of posts in the public service.

5. The Committee welcomes the establishment of institutions responsible for the implementation of anti-discrimination legislation such as the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and for the monitoring of acts of discrimination and violence against members of scheduled castes and scheduled tribes, including the Ministry of Social Justice and Empowerment, the Union and State Parliamentary Committees on Social Justice, the Ministry of Tribal Affairs, and the National Commissions on Scheduled Castes and on Scheduled Tribes.

10. The Committee notes with concern that the State party does not recognize its tribal peoples as distinct groups entitled to special protection under the Convention. (arts. 1 (1) and 2)
The Committee recommends that the State party formally recognize its tribal peoples as distinct groups entitled to special protection under national and international law, including the Convention, and provide information on the criteria used for determining the membership of scheduled and other tribes, as well as on the National Tribal Policy. In this regard, the Committee refers the State party to its General Recommendation No. 23.[]

11. The Committee is concerned that the so-called denotified and nomadic tribes, which were listed for their alleged “criminal tendencies” under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1952). (art. 2 (1) (c))
The Committee recommends that the State party repeal the Habitual Offenders Act and effectively rehabilitate the denotified and nomadic tribes concerned.

12. The Committee notes with concern that the State party has not implemented the recommendations of the Committee to Review the Armed Forces (Special Powers) Act (1958) to repeal the Act, under which members of the armed forces may not be prosecuted unless such prosecution is authorized by the Central Government and have wide powers to search and arrest suspects without a warrant or to use force against persons or property in Manipur and other north-eastern States which are inhabited by tribal peoples. (arts. 2 (1) (c), 5 (b), (d) and 6)
The Committee urges the State party to repeal the Armed Forces (Special Powers) Act and to replace it “by a more humane Act,” in accordance with the recommendations contained in the 2005 report of the above Review Committee set up by the Ministry of Home Affairs. It also requests the State party to release the report.

14. The Committee is concerned about reports of arbitrary arrest, torture and extrajudicial killings of members of scheduled castes and scheduled tribes by the police, and about the frequent failure to protect these groups against acts of communal violence. (arts. 5 (b) and 6)
The Committee urges the State party to provide effective protection to members of scheduled castes and scheduled and other tribes against acts of discrimination and violence, introduce mandatory training on the application of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) for police, judges and

prosecutors and take disciplinary or criminal law measures against police and other law enforcement officers who violate their duty of protection and/or investigation in relation to crimes against scheduled castes and scheduled and other tribes.

15. The Committee is concerned about the alarming number of allegations of acts of sexual violence against Dalit women primarily by men from dominant castes, in particular rape, and about the sexual exploitation of Dalit and tribal women who are being trafficked and forced into prostitution. (art. 5 (b))

The Committee urges the State party to effectively prosecute and punish perpetrators of acts of sexual violence and exploitation of Dalit and tribal women, sanction anyone preventing or discouraging victims from reporting such incidents, including police and other law enforcement officers, take preventive measures such as police training and public education campaigns on the criminal nature of such acts, and provide legal, medical and psychological assistance, as well as compensation, to victims. The State party should also consider adopting victim-sensitive rules of evidence similar to that of Section 12 of the Protection of Civil Rights Act (1955) and establishing special court chambers and task forces to address these problems.

17. The Committee notes with concern reports that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other elected bodies or not to exercise their mandate, that many Dalits are not included in electoral rolls or otherwise denied the right to vote, and that public service posts reserved for scheduled castes and scheduled tribes are almost exclusively filled in the lowest category (e.g. sweepers). The Committee is also concerned that scheduled castes and scheduled and other tribes are underrepresented in the Union, State and local governments and legislatures, as well as in the public service. (arts. 5 (c) and 2 (2))

The Committee recommends to the State party to effectively enforce the reservation policy; to ensure the rights of members of scheduled castes and scheduled and other tribes to freely and safely vote and stand for election and to fully exercise their mandate if elected to their reserved seats; to apply the reservation policy to all categories of public service posts, including the highest, and to extend it to the judiciary; to ensure adequate representation of scheduled castes, scheduled and other tribes and ethnic minorities in Union, State and local governments and legislatures; and to provide updated statistical data on such representation in its next periodic report.

19. The Committee notes that the State party does not fully implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples. It is also concerned that large scale projects such as the construction of several dams in Manipur and other north-eastern States on territories primarily inhabited by tribal communities, or of the Andaman Trunk Road, are carried out without seeking their prior informed consent. These projects result in the forced resettlement or endanger the traditional lifestyles of the communities concerned. (art. 5 (d) (v) and 5 (e))

The Committee urges the State party to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities over the lands traditionally occupied by them in its practice concerning tribal peoples, in accordance with ILO Convention 107 on Indigenous and Tribal Populations (1957). The State party should seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects and provide adequate compensation and alternative land and housing to those communities. Furthermore, it should protect tribes such as the Jarawa against encroachments on their lands and resources by settlers,

poachers, private companies or other third parties and implement the 2002 order of the Indian Supreme Court to close the sections of the Andaman Trunk Road that run through the Jarawa reserve.

20. The Committee is concerned about reports that Dalits are often denied access to and evicted from land by dominant castes, especially if it borders land belonging to such castes, and that tribal communities have been evicted from their land under the 1980 Forest Act or in order to allow private mining activities (art. 5 (d) (v) and 5 (e) (i) and (iii)).

The Committee recommends that the State party ensure that Dalits, including Dalit women, have access to adequate and affordable land and that acts of violence against Dalits due to land disputes are punished under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989). The State party should also ensure that tribal communities are not evicted from their lands without seeking their prior informed consent and provision of adequate alternative land and compensation, that bans on leasing tribal lands to third persons or companies are effectively enforced, and that adequate safeguards against the acquisition of tribal lands are included in the Recognition of Forest Rights Act (2006) and other relevant legislation.

24. The Committee is concerned about reports that members of scheduled castes and scheduled and other tribes are disproportionately affected by hunger and malnutrition, infant, child and maternal mortality, sexually transmitted diseases, including HIV/AIDS, tuberculosis, diarrhoea, malaria and other water borne diseases and that health care facilities are either unavailable in tribal areas or substantially worse than in non-tribal areas. (art. 5 (e) (iv))

The Committee recommends that the State party ensure equal access to ration shops, adequate health care facilities, reproductive health services, and safe drinking water for members of scheduled castes and scheduled and other tribes and to increase the number of doctors and of functioning and properly equipped primary health centres and health sub-centres in tribal and rural areas.

26. The Committee notes with concern allegations that the police frequently fail to properly register and investigate complaints about acts of violence and discrimination against members of scheduled castes and scheduled tribes, the high percentage of acquittals and the low conviction rate in cases registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989), and the alarming backlog of atrocities cases pending in the courts. (art. 6)

The Committee urges the State party to ensure that members of scheduled castes and scheduled and other tribes who are victims of acts of violence and discrimination have access to effective remedies and, to that effect, encourage victims and witnesses to report such acts and protect them from acts of retaliation and discrimination; ensure that complaints under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (1989) and other criminal law provisions are properly registered and investigated, perpetrators prosecuted and sentenced and victims compensated and rehabilitated; and establish and make operational special courts trying atrocity cases as well as committees monitoring the implementation of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act in all States and districts, as mandated by the Act. In this regard, the State party is invited to include in its next report information on the number and nature of complaints registered, the convictions and sentences imposed on perpetrators, and the remedies and assistance provided to victims of such acts.

27. The Committee notes with concern that caste bias as well as racial and ethnic prejudice and stereotypes are still deeply entrenched in the minds of wide segments of Indian society, particularly in rural areas. (art. 7)

The Committee recommends that the State party strengthen its efforts to eradicate the social acceptance of caste-based discrimination and racial and ethnic prejudice, e.g. by intensifying public education and awareness raising campaigns, incorporating educational objectives of inter-caste tolerance and respect for other ethnicities, as well as instruction on the culture of scheduled castes and scheduled and other tribes, in the National Curriculum Framework, and ensuring adequate media representation of issues concerning scheduled castes, tribes and ethnic minorities, with a view to achieving true social cohesion among all ethnic groups, castes and tribes of India.

28. The Committee recommends that the State party consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

2. CANADA: CERD/C/CAN/CO/18, 25 MAY 2007

4. The Committee also welcomes the enactment of the Human Rights Act in Nunavut, which prohibits racial discrimination.

7. The Committee notes with appreciation the expressed commitment of the State party to address through negotiations the assertion of Aboriginal rights and title to land.

15. The Committee notes with regret the lack of substantial progress made by the State party in its efforts to address residual discrimination against First Nations women and their children in matters relating to Indian status, band membership and matrimonial real property on reserve lands, despite its commitment to resolving this issue through a viable legislative solution (articles 2 and article 5 d)).

The Committee urges the State party to take the necessary measures to reach a legislative solution to effectively address the discriminatory effects of the Indian Act on the rights of Aboriginal women and children to marry, to choose one's spouse, to own property and to inherit, in consultation with First Nations organisations and communities, including aboriginal women's organisations, without further delay.

17. The Committee notes with concern the reports of adverse effects of economic activities connected with the exploitation of natural resources in countries outside Canada by transnational corporations registered in Canada on the right to land, health, living environment and the way of life of indigenous peoples living in these regions (article 2.1d), article 4 a) and article 5e)).

In light of article 2.1 d) and article 4 a) and b) of the Convention and of its general recommendation 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada. In particular, the Committee recommends to the State party that it explore ways to hold transnational corporations registered in Canada accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard.

20. While acknowledging measures taken by the State party, including the support extended to the Sisters in Spirit Initiative of the Native Women's Association of Canada (NWAC), the Committee remains concerned about serious acts of violence against Aboriginal women, who constitute a disproportionate number of victims of violent death, rape and domestic violence.

Furthermore, the Committee is concerned that services for victims of gender-based violence are not always readily available or accessible, particularly in remote areas (article 5 b)).

In light of its general recommendation 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party strengthen and expand existing services, including shelters and counselling, for victims of gender-based violence, so as to ensure their accessibility. Furthermore, it recommends that the State party take effective measures to provide culturally-sensitive training for all law enforcement officers, taking into consideration the specific vulnerability of aboriginal women and women belonging to racial/ethnic minority groups to gender based violence.

21. While welcoming the commitments made in 2005 by the federal government and provincial/territorial governments under the Kelowna Accord, aimed at closing socioeconomic gaps between Aboriginal and non-Aboriginal Canadians, the Committee remains concerned at the extent of the dramatic inequality in living standards still experienced by Aboriginal peoples. In this regard, the Committee, recognising the importance of the right of indigenous peoples to own, develop, control and use their lands, territories and resources in relation to their enjoyment of economic, social and cultural rights, regrets that in its report, the State party did not address the question of limitations imposed on the use by Aboriginal people of their land, as previously requested by the Committee. The Committee also notes that the State party has yet to fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples (article 5 e)).

In light of article 5 e) and of general recommendation 23 (1997) on the rights of indigenous peoples, the Committee urges the State party to allocate sufficient resources to remove the obstacles that prevent the enjoyment of economic, social and cultural rights by Aboriginal peoples. The Committee also once again requests that the State party provide information on limitations imposed on the use by Aboriginal people of their land, in its next periodic report, and that it fully implement the 1996 recommendations of the Royal Commission on Aboriginal Peoples without further delay.

22. While acknowledging the information that the “cede, release and surrender” approach to Aboriginal land titles has been abandoned by the State party in favour of “modification” and “non-assertion” approaches, the Committee remains concerned about the lack of perceptible difference in results of these new approaches in comparison to the previous approach. The Committee is also concerned that claims of Aboriginal land rights are being settled primarily through litigation, at a disproportionate cost for the Aboriginal communities concerned due to the strongly adversarial positions taken by the federal and provincial governments (article 5 d)v)).

In line with the recognition by the State party of the inherent right of self-government of Aboriginal peoples under section 35 of the Constitution Act, 1982, the Committee recommends the State party to ensure that the new approaches taken to settle aboriginal land claims do not unduly restrict the progressive development of aboriginal rights. Wherever possible, the Committee urges the State party to engage, in good faith, in negotiations based on recognition and reconciliation, and reiterates its previous recommendation that the State party examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts. Treaties concluded with First Nations should provide for periodic review, including by third parties, where possible.

24. The Committee, while acknowledging the important role played by the Canadian Human Rights Commission in eradicating racial discrimination in the field of employment, including its audit of federally regulated employers pursuant to the Employment Equity Act (EEA), remains

concerned that minority groups within the meaning of article 1 of the Convention, in particular, African Canadians and Aboriginal peoples, continue to face discrimination in recruitment, remuneration, access to benefits, job security, qualification recognition and in the workplace, and are significantly under-represented in public offices and government positions (Article 5(e)(i)).

The Committee recommends that legislation prohibiting discrimination in employment and all discriminatory practices in the labour market be fully implemented in practice and that further measures be taken to reduce unemployment among the minority groups, particularly among African Canadians and aboriginal peoples. The Committee also encourages the State party to strengthen or adopt, as necessary, specific programmes to ensure appropriate representation of ethnic communities in government and public administration, at federal and provincial/territorial levels. The Committee requests the State party to include information on the measures taken and the results achieved in its next periodic report.

25. The Committee, while welcoming the recent decision of the State party to repeal Section 67 of the Canadian Human Rights Act (CHRA) which effectively shielded the provisions of the Indian Act and decisions made pursuant to it from the protection provided by the CHRA, notes that the repeal in itself does not guarantee enjoyment of the right to access to effective remedies by on-reserve Aboriginal individuals (article 6).

The Committee urges the State party to engage in effective consultations with aboriginal communities so that mechanisms that will ensure adequate application of the Canadian Human Rights Act (CHRA) with regard to complaints under the Indian Act are put in place following the repeal.

26. While noting the existence of relevant legal aid mechanisms, the Committee is concerned about the difficulties of access to justice for aboriginal peoples, African Canadians and persons belonging to minority groups within the meaning of article 1 of the Convention, in particular in light of the decision announced by the State party on 25 September 2006 to cancel the Court Challenges Program which had provided funds to support test cases “in order to clarify the rights of official language minority communities and the equality rights of disadvantaged groups” (State party report, para. 80), and that no equivalent support mechanism has been put in place (article 6).

The Committee recommends that the State party take the necessary measures to ensure access to justice for all persons within its jurisdiction without discrimination. In this connection, the Committee urges the State party to reinstate the Court Challenges Program, or devise a functional replacement mechanism with equivalent effect, as a matter of priority.

27. In view of the positive contributions made and the support given by the State party in the process leading up to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee regrets the change in the position of the State party in the Human Rights Council and the General Assembly.

The Committee recommends to the State party that it support the immediate adoption of the United Nations Declaration on the Rights of Indigenous Peoples, and that it consider ratifying the ILO Indigenous and Tribal Peoples Convention No.169.

3. ETHIOPIA, CERD/C/ETH/CO/15, 20 JUNE 2007

13. While acknowledging the complex federal structure of the State party, based on the nations, nationalities and peoples of Ethiopia, the Committee is concerned that, in the absence of

disaggregated information on the ethnic composition and geographical location of the population of the State party, a clear vision of the diversity of Ethiopian society cannot be obtained, nor an accurate assessment made of the enjoyment of the rights provided for in the Convention by all the different nationalities and peoples of the State party (article 1).

The Committee recommends that the State party include, in its overdue report, disaggregated data on the ethnic composition, geographical location and languages of its population, at the federal and regional levels, and, in this connection, draws the attention of the State party to its general recommendation No. 24 (1999) on reporting of persons belonging to different races, national/ethnic groups, or indigenous peoples and to paragraph 8 of its general guidelines (CERD/C/70/Rev.5) of 5 December 2000.

19. The Committee is alarmed at information according to which military and police forces have been systematically targeting certain ethnic groups, in particular the Anuak and the Oromo peoples, and reports of summary executions, rape of women and girls, arbitrary detention, torture, humiliations and destruction of property and crops of members of those communities (articles 5 (b), (d), (e) and (f) and 6 of the Convention).

The Committee urges the State party to put an end to human rights violations perpetrated by military and police forces, especially racially motivated violence targeting the Anuak and Oromo, and recommends that it provide, in its overdue report, information on the measures taken to ensure the right to security for members of all ethnic groups.

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee further recommends that the State party provide detailed information on investigations, prosecutions and convictions for human rights violations, in particular for racially motivated violence perpetrated by the military and police forces (including in the Gambella region in 2003 and 2004), as well as on the reparations provided to the victims of such acts.

20. The Committee is concerned at the programme of voluntary resettlements of rural communities to fertile agricultural lands, in particular when not done in an intraregional context, and at the measures taken to ensure the equal enjoyment of economic, social and cultural rights by those who participate in such programmes (article 5 (b) and (e) of the Convention).

The Committee recommends that the State party adopt all necessary measures to ensure that resettlements occur on a genuinely voluntary basis and that, especially when in a different region, the resettled population is guaranteed non-discriminatory enjoyment of economic, social and cultural rights, in particular regarding adequate infrastructure for an effective improvement in their living conditions.

The Committee further recommends that the State party provide information, in its overdue report, on any initiatives undertaken to resolve disputes concerning land and resource distribution between ethnic groups and the support offered to civil society organizations involved in the peaceful mediation of such conflicts.

22. While acknowledging the provisions of article 40(5) of the constitution, the Committee remains concerned about the consequences for indigenous groups of the establishment of national parks in the State party and their ability to pursue their traditional way of life in such parks (article 5(c), (d) and (e) of the Convention).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party provide, in its overdue report, information on the effective participation of indigenous communities in the decisions directly relating to their rights and interests, including their informed consent in the

establishment of national parks, and as to how the effective management of those parks is carried out.

The Committee also recommends that the State adopt all measures to guarantee that national parks established on ancestral lands of indigenous communities allow for sustainable economic and social development compatible with the cultural characteristics and living conditions of those indigenous communities.

4. INDONESIA, CERD/C/IDN/CO/3, 15 AUGUST 2007

15. The Committee notes that the State party recognizes the existence of indigenous peoples on its territory, while using several terms to designate them. It is concerned, however, that under domestic law, these peoples are recognized “as long as they remain in existence”, without appropriate safeguards guaranteeing respect for the fundamental principle of self-identification in the determination of indigenous peoples. (art. 2 and 5)

The Committee draws the attention of the State party to its General recommendation 8 (1990), and recommends the State party to respect the way in which indigenous peoples perceive and define themselves. It encourages the State party to take into consideration the definitions of indigenous and tribal peoples as set out in I.L.O. Convention No. 169 of 1989 on Indigenous and Tribal Peoples, and to envisage ratification of this instrument.

16. The Committee welcomes the acknowledgement made by the State party that it is a multi-ethnic, multi-cultural, multi-religious, and multi-lingual country, as well as its commitment to achieve “unity in diversity” and respect of human rights for all on an equal basis. The Committee is concerned, however, that in practice, the rights of indigenous peoples have been compromised, due to the interpretations adopted by the State party of national interest, modernization and economic and social development. (arts. 2 and 5)

The State party should amend its domestic laws, regulations and practices to ensure that the concepts of national interest, modernization and economic and social development are defined in a participatory way, encompass world views and interests of all groups living on its territory, and are not used as a justification to override the rights of indigenous peoples, in accordance with the Committee’s General Recommendation 23 (1997) on indigenous peoples. The State party should recognize and respect indigenous culture, history, language and way of life as an enrichment of the State’s cultural identity and provide indigenous peoples with conditions allowing for a sustainable economic and social development compatible with their cultural characteristics.

17. The Committee notes with concern the plan to establish oil palm plantations over some 850 kilometers along the Indonesia-Malaysia border in Kalimantan as part of the Kalimantan Border Oil Palm Mega-project, and the threat this constitutes for the rights of indigenous peoples to own their lands and enjoy their culture. It notes with deep concern reports according to which a high number of conflicts arise each year throughout Indonesia between local communities and palm oil companies. The Committee is concerned that references to the rights and interests of traditional communities contained in domestic laws and regulations are not sufficient to guarantee their rights effectively. (arts. 2 and 5)

The Committee, while noting that land, water and natural resources shall be controlled by the State party and exploited for the greatest benefit of the people under Indonesian law, recalls that such a principle must be exercised consistently with the rights of indigenous peoples. The State party should review its laws, in particular Law No. 18 of 2004 on Plantations, as well as the way they are interpreted and implemented in practice, to ensure that they respect the rights of indigenous peoples to possess, develop, control and use their communal lands. While noting that the Kalimantan Border Oil Palm Mega-project is being

subjected to further studies, the Committee recommends that the State party secure the possession and ownership rights of local communities before proceeding further with this Plan. The State party should also ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in the Plan.

18. The Committee notes with concern that, although it has been abolished, the transmigration programme has longstanding effects, as exemplified by the conflict that took place between the Dayak and the Madura ethnic groups in Palangkaraya, Central Kalimantan. The Committee also notes with concern the challenges faced by the State party due to the increased number of internally displaced persons, resulting not only from natural disasters but also from conflicts, and the cultural misunderstandings that have arisen between communities. (arts. 2 and 5)

The Committee strongly recommends that the State party increase its efforts to prevent the resurgence of ethnic conflicts on its territory. It should assess the adverse impact of the transmigration programme, in particular on the rights of local communities, and promote mutual understanding between communities, as well as mutual knowledge and respect for their histories, traditions and languages. It should ensure that violent acts are duly investigated, prosecuted and sentenced. The Committee also encourages the State party to prepare a set of guiding principles for internally displaced persons with the aim of preventing racial discrimination, as envisaged by the State party. It suggests in this regard that the State party take into consideration the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2).

21. The Committee, while noting the statement made by the delegation that there are no “recognized” or “non-recognized” religions in Indonesia, expresses concern at the distinction made between Islam, Protestantism, Catholicism, Hinduism, Buddhism and Confucianism, which are often referred to in legislation, and other religions and beliefs. The Committee is concerned at the adverse impact of such a distinction on the rights to freedom of thought, conscience and religion of persons belonging to ethnic groups and indigenous peoples. It notes with particular concern that under Law N° 23 of 2006 on Civic administration, individuals are to mention their faiths on legal documents such as identity cards and birth certificates, and that those wishing either to leave the column blank or to register under one of the “non-recognized” religions, reportedly face discrimination and harassment. The Committee also notes with concern that men and women of different religions face great difficulties in officially registering their marriages, and that their children are not provided with birth certificates, as acknowledged by the State party. (arts. 2 and 5)

The Committee recommends that State party treat equally all religions and beliefs and ensure the enjoyment of freedom of thought, conscience and religion for ethnic minorities and indigenous peoples. Noting that the State party is considering removing the mention of religion on identification cards in order to be in line with the objectives of the Convention, the Committee strongly recommends it to do so in a timely manner, and to extend such a policy to all legal documents. The Committee also recommends the adoption of legislation allowing individuals to contract a civil marriage if they so wish.

22. The Committee welcomes efforts made towards the decentralization of power and consolidation of regional autonomy. It regrets, however, that it has not received sufficient information on the status of implementation of the Papua Special Autonomy Law No. 21 of 2001, and expresses concern about information according to which Papuans continue to experience great poverty. (arts. 2 and 5)

The Committee recommends that the State party provide information on the implementation of the Papua Special Autonomy Law No. 21 of 2001, as well as on

measures adopted to ensure the enjoyment by Papuans of their human rights without any discrimination.

5. NEW ZEALAND, CERD/C/NZL/CO/17, 15 AUGUST 2007

7. The Committee appreciates the reduction of socio-economic disparities between Maori and Pacific peoples on the one hand, and the rest of the population on the other hand, in particular in the areas of employment and education.

8. The Committee appreciates the significant increase in the number of adults, including non-Maori, who can understand, speak, read and write the Maori language.

13. The Committee notes that the Treaty of Waitangi is not a formal part of domestic law unless incorporated into legislation, making it difficult for Maori to invoke Treaty provisions before courts and in negotiations with the Crown.⁸ It welcomes, however, the holding of a public discussion on the status of the Treaty and the efforts to enhance Crown-Maori relationships. The Committee remains concerned that other steps such as those described in paragraphs below tend to diminish the importance and relevance of the Treaty and to create a context unfavourable to the rights of Maori. (arts. 2 and 5)

The Committee encourages the State party to continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. The State party should ensure that such debate is conducted on the basis of a full presentation of all aspects of the matter, bearing in mind the importance of enhancing Crown-Maori relationship at all levels and the enjoyment by indigenous peoples of their rights.

14. The Committee notes with concern the proposal to remove statutory references to the Treaty of Waitangi through the Principles of the Treaty of Waitangi Deletion Bill (2006). It welcomes, however, the undertaking by the State party not to support the progress of that Bill any further. (arts. 2 and 5)

The State party should ensure that the Treaty of Waitangi is incorporated into domestic legislation where relevant, in a manner consistent with the letter and the spirit of that Treaty. It should also ensure that the way the Treaty is incorporated, in particular regarding the description of the Crown's Treaty obligations, enables a better implementation of the Treaty.

15. The Committee is concerned that, in the report of the State party, historical treaty settlements have been categorized as special measures for the adequate development and protection of Maori. It notes, however, the statement made by the delegation that such categorization should indeed be reconsidered. (art.2 (2))

The Committee draws the attention of the State party to the distinction to be drawn between special and temporary measures for the advancement of ethnic groups on the one hand and permanent rights of indigenous peoples on the other hand.

16. The Committee notes the steps adopted by the State party to review policies and programmes in the Public service, which has led to the re-targeting of some programmes and

⁸ The term "Crown" is understood to refer to the Executive branch of Government. The Executive is comprised of those Members of Parliament who are Ministers of the Crown (collectively, the Executive Council) and the public service (including all government agencies and departments).

policies on the basis of need rather than ethnicity. The Committee, while stressing that special measures are temporary and should be re-assessed on a regular basis, is concerned that these steps have been adopted in a political climate unfavourable to the rights of Maori. (art.2 (2))

The State party should ensure, when assessing and reviewing special measures adopted for the advancement of groups, that concerned communities participate in such a process, and that the public at large is informed about the nature and relevance of special measures, including the State party's obligations under article 2 (2) of the Convention.

17. The Committee welcomes the progress achieved in the settlement of historical Treaty claims, and notes that 2008 has been chosen as a cut-off date for the lodging of historical Treaty claims. While noting the assurances provided by the State party that claims submitted before 2008 can still be amended and supplementary information taken into account, the Committee notes the concerns expressed by some Maori that such a cut off date may unfairly bar legitimate claims. (arts. 2 and 5)

The Committee recommends that the State party ensure that the cut-off date for the lodging of historical Treaty claims will not unfairly bar legitimate claims. It should pursue its efforts to assist claimants groups in direct negotiations with the Crown.

18. The Committee notes with concern that recommendations made by the Waitangi Tribunal are generally not binding, and that only a small percentage of these recommendations are followed by the Government. The Committee considers that such arrangements deprive claimants of a right to an effective remedy, and weaken their position when entering into negotiations with the Crown. (arts. 2, 5 and 6)

The Committee recommends that the State party consider granting the Waitangi Tribunal legally binding powers to adjudicate Treaty matters. The State party should also provide the Tribunal with increased financial resources.

19. The Committee notes the information provided by the State party on the follow-up given to its decision 1(66) in relation to the Foreshore and Seabed Act 2004. It remains concerned by the discrepancy between the assessment made by the State party and that made by non governmental organizations on the issue. (arts. 5 and 6)

The Committee reiterates its recommendations that a renewed dialogue between the State party and the Maori community take place with regard to the Foreshore and Seabed Act 2004, in order to seek ways of mitigating its discriminatory effects, including through legislative amendment where necessary; that the State party continue monitoring closely the implementation of the Act; and that it 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.

20. The Committee notes with concern that the New Zealand Curriculum, Draft for consultation 2006, does not contain explicit references to the Treaty of Waitangi. It notes, however, the assurances provided by the State party that other elements of the National Educational Guidelines as well as the Educational Act 1989 require an explicit reference to the Treaty of Waitangi, and that it is considering the recommendation to make references to the Treaty more explicit in the final version of the New Zealand Curriculum. (arts. 2 and 7)

The Committee encourages the State party to include references to the Treaty of Waitangi in the final version of New Zealand Curriculum. The State party should ensure that references to the Treaty in the curriculum are adopted or modified in consultation with the Maori.

21. The Committee reiterates its concern regarding the over-representation of Maori and Pacific people in the prison population and more generally at every stage of the criminal justice system. It welcomes, however, steps adopted by the State party to address this issue, including research on the extent to which the over-representation of Maori could be due to racial bias in arrests, prosecutions and sentences. (arts. 2 and 5)

The Committee recommends that the State party enhance its efforts to address this problem, which should be considered as a matter of high priority. The Committee also draws the attention of the State party to its General recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

27. The Committee recommends that the State party consider ratifying the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Convention relating to the Status of Stateless Persons, as well as the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

6. COSTA RICA, CERD/C/CRI/CO/18, 17 AUGUST 2007

4. The Committee welcomes the establishment of the Office of the Attorney for Indigenous Affairs in the Public Prosecutor's Office and the formation of a corps of indigenous-language translators attached to the courts.

5. The Committee notes with satisfaction the "Equality in the exercise of the right to vote" programme, the publication of the leaflet entitled "Protocol for an electoral process accessible to indigenous communities", which refers to Convention rights, and the "How to vote" poster, which has been translated into Bribri, Maleku and Cabecar.

8. The Committee notes the shortcomings of the ninth population census, taken in 2000, which failed to permit a precise determination of the characteristics of the different ethnic groups in the Costa Rican population, including those resulting from a mixing of cultures. The Committee recalls that information on the makeup of the population is necessary to evaluate the implementation of the Convention and monitor the policies affecting minorities and indigenous peoples.

The Committee recommends that the State party continue to improve its census methodology in order to reflect more fully the ethnic complexity of the Costa Rican society, bearing in mind the principle of self-identification, in accordance with its general recommendation No. IV (1973) and to paragraph 9 and 9 of the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session.

9. The Committee notes with concern that, despite the recommendation contained in its final comments of 2002, the Autonomous Development of Indigenous Peoples Bill has not been adopted owing to legislative obstacles. The Committee is disturbed to learn that the bill may once again be shelved.

The Committee again urges the State party to remove without delay the legislative obstacles preventing the adoption of the Autonomous Development of Indigenous Peoples Bill (art. 2).

10. The Committee notes the reinstatement of the National Commission on Indigenous Affairs (CONAI), with a new executive board comprising seven members who are representatives of the indigenous communities. The Committee is nevertheless concerned at information received

to the effect that CONAI failed to represent the interests of the indigenous peoples and that, as the State party recognizes, it has in the past strayed from its functions and responsibilities.

The Committee recommends that the State party ensure that the mandate and operation of CONAI are consistent with the Convention and that this body will act to defend and protect the rights of the indigenous peoples (art. 2).

12. While taking note of the explanation provided by the State party, i.e., the difficulty of access to the indigenous territories, the Committee is concerned at the fact, that only 7.6 percent of indigenous people in those territories have their basic needs met, and that this problem might result in indigenous people being obliged to leave their ancestral lands in search of better opportunities. The Committee is particularly concerned at the situation in the canton of Talamanca and in the banana plantations; it recalls that discrimination is not always an effect of a deliberate policy and that the State party has an obligation to rectify situations of de facto discrimination.

The Committee urges the State party to take the necessary steps to remove the economic, social and geographical barriers that prevent it from guaranteeing access to basic services in the indigenous territories, so that indigenous people do not find themselves compelled to leave their ancestral lands. The Committee invites the State party to pay particular attention to the community of Talamanca and the banana plantations.

13. The Committee notes with concern the low wages of the indigenous population compared with the rest of the population, and their problems of access to education and health.

The Committee urges the State party to step up its efforts to improve the indigenous peoples' enjoyment of economic and social rights, and in particular to take steps to ensure equal pay for indigenous people and other sectors of the population, and access to education and health. To this end, the Committee invites the State party to take into account its general recommendation No. XXIII on indigenous peoples (art. 5(e) (i), (iii), (iv) and (v)).

14. The Committee is alarmed at the fact that child mortality rates in the cantons with large indigenous populations are still very much higher than the national average.

The State party should make strenuous efforts to combat child mortality in the indigenous communities. (art. 5 (iv)).

15. While noting that domestic legislation protects indigenous peoples' right to ownership of their lands, the Committee is concerned that this right is not guaranteed in practice. The Committee shares the State party's concern at the trend towards the concentration of indigenous land in the hands of non-indigenous settlers.

The Committee urges the State party to strengthen its efforts to guarantee the indigenous peoples' right to land tenure. The State party should take the necessary steps to implement Constitutional Chamber decision No. 3468-02 ordering the delimitation of the lands of the Rey Curré, Terraba and Boruca communities and the recovery of indigenous lands lost through improper transfer (art. 5 (d) (v)).

17. The Committee is concerned at the lack of any gender policy specifically for indigenous women that would enable the State party to effectively protect their rights.

The Committee recommends that the State party take the necessary steps to combat double discrimination, on the basis of gender and ethnicity, and invites it to adopt a national gender plan for indigenous women that will effectively coordinate policies to protect their rights. The indigenous peoples should participate in the elaboration of such a plan. To that

end, the Committee draws the State party's attention to its general Recommendation No. XXV, on gender-related dimensions of racial discrimination (art. 5 (e) (i) and (v)).

20. The Committee notes with concern the disappearance of two indigenous languages, Chorotega and Huetar.

The Committee invites the State party to take the necessary steps to preserve the indigenous peoples' cultural heritage, including their languages (art. 7).

7. DEMOCRATIC REPUBLIC OF CONGO, CERD/C/COD/CO/15, 17 AUGUST 2007

10. While noting the State party's intention to conduct a scientific census in 2009, the Committee remains concerned at the fact that the last census in the Democratic Republic of the Congo was taken in 1970, and that as a result the information provided by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and displaced persons, is not comprehensive. The Committee recalls that information on demographic characteristics enables both Committee and State party to better assess the implementation of the Convention at the national level.

(a) The Committee recommends that the State party should include the information yielded in the 2009 census in its next report and encourages it to ensure that the census form contains relevant questions that will make it possible to obtain a clear picture of the ethnic and linguistic make-up of the population, including the indigenous peoples. The Committee draws the attention of the State party to the guidelines for the CERD-specific document, as adopted by the Committee at its 71st session.

14. The Committee takes note that, according to the State Party's Constitution, the State party's aim of building a nation based on the principle of equality for all is to be pursued with safeguards for ethnic and cultural diversity. It notes with regret, on the other hand, the State party's reluctance to acknowledge the existence of indigenous peoples in its territory. It also regrets that it has received no clarification of the contradiction between article 51 of the Constitution, which establishes a duty to ensure the protection and advancement of vulnerable groups and all minorities, on the one hand, and the delegation's repeated statements to the effect that minorities are not recognized by the State party.

The Committee wishes to remind the State party that the principle of non-discrimination requires it to take account of the cultural characteristics of ethnic groups. The Committee strongly urges the State party to respect and protect the existence and cultural identity of all the ethnic groups living in its territory. It further invites the State party to review its position on indigenous peoples and minorities, and in that context to take into account the way in which such groups perceive and define themselves. The Committee recalls in this regard its general recommendations Nos. 8 (1990), concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention, and 23 (1997) on the rights of indigenous peoples (arts. 2 and 5).

18. The Committee notes with concern that the rights of the Pygmies (Bambuti, Batwa and Bacwa) to own, exploit, control and use their lands, their resources and their communal territories are not guaranteed and that concessions to the lands and territories of indigenous peoples are granted without prior consultation.

The Committee recommends that the State party should take urgent and adequate measures to protect the rights of the Pygmies to land and: (a) make provision for the forest rights of indigenous peoples in domestic legislation; (b) register the ancestral lands of the Pygmies in the land registry; (c) proclaim a new moratorium on forest lands; (d) take the interests of the Pygmies and environmental conservation needs into account in matters of

land use; (e) provide domestic remedies in the event that the rights of indigenous peoples are violated; and (f) ensure that article 4 of Ordinance-law No. 66-342 of 7 June 1966, on the prohibition of racism and tribalism, is not used to ban associations engaged in defending the rights of indigenous peoples. In addition, the Committee invites the State party to take account of its general recommendation No. 23 on indigenous peoples (art. 5).

19. The Committee remains concerned that Pygmies are subjected to marginalization and discrimination with regard to the enjoyment of their economic, social and cultural rights, in particular their access to education, health and the labour market. The Committee is particularly concerned at reports that Pygmies are sometimes subjected to forced labour.

The Committee encourages the State party to intensify its efforts to improve the indigenous populations' enjoyment of economic, social and cultural rights and invites it in particular to take measures to guarantee their rights to work, decent working conditions and education and health (art. 5).

22. The Committee is concerned at the persistence of tensions between the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups

The Committee invites the State party to take steps to enable the Bantu, Sudanic, Nilotic, Hamitic and Pygmy ethnic groups to live in harmony. It also invites it to promote their cultural identities and preserve their languages (art. 7).

8. FIJI, CERD/C/FJI/CO/17, 16 MAY 2008

8. The Committee commends the ratification by the State party of the ILO Conventions No. 111 on Discrimination in Employment and Occupation and No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

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

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

10. Notwithstanding the State party's intention to finalize a Peoples' Charter for Change and Progress as a guideline for future policies through consultation and dialogue with various stakeholders including civil society, the Committee is concerned that this needs to be an inclusive process.

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

13. While noting the explanation offered by the delegation, the Committee observes that its interpretation of the concept of "indigenous Fijians" remains unclear, in particular in relation to the general concept of "indigenous peoples" in international law. Moreover, the relationship

between the rights of “indigenous Fijians” and those of other Fijians needs further explanation. (art.2).

The Committee recommends that the State party reflect further on how the concept of “indigenous Fijians” relates to the understanding of indigenous peoples in international law, in particular as reflected in ILO Convention 169 on indigenous and tribal peoples’ rights and the 2007 United Nations Declaration on the Rights of Indigenous Peoples. Furthermore, the State party is invited to explain how the concept of indigenous Fijians is applied in law and practice and its impact on the enjoyment of human rights by everyone in Fiji.

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

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

22. The Committee regrets that it did not receive adequate information regarding the nature of the relationship between the indigenous communities and their lands and the extent of the land base subject to customary norms. Furthermore, while taking note that the issue of land rights will be addressed in the proposed Peoples’ Charter, the Committee remains concerned that the current status of land distribution in the State party inhibits the economic development of non-indigenous communities, in particular Indo-Fijians. (art.5(d))

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

9. UNITED STATES OF AMERICA, CERD/C/USA/CO/6, 08 MAY 2008

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

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

26. While welcoming the various measures adopted by the State party to prevent and punish violence and abuse against women belonging to racial, ethnic and national minorities, the Committee remains deeply concerned about the incidence of rape and sexual violence experienced by women belonging to such groups, particularly with regard to American Indian and Alaska Native women and female migrant workers, especially domestic workers. The Committee also notes with concern that the alleged insufficient will of federal and state authorities to take action with regard to such violence and abuse often deprives victims belonging to racial, ethnic and national minorities, and in particular Native American women, of their right to access to justice and the right to obtain adequate reparation or satisfaction for damages suffered. (Articles 5 (b) and 6)

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

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

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

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

The Committee recommends that the State party take all appropriate measures – in consultation with indigenous peoples concerned and their representatives chosen in accordance with their own procedures – to ensure that activities carried out in areas of spiritual and cultural significance to Native Americans do not have a negative impact on the enjoyment of their rights under the Convention. The Committee further recommends that the State party recognise the right of Native Americans to participate in decisions affecting them, and consult and cooperate in good faith with the indigenous peoples concerned before adopting and implementing any activity in areas of spiritual and cultural significance to Native Americans. While noting the position of the State party with regard to the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295), the Committee finally recommends that the declaration be used as a guide to interpret the State party's obligations under the Convention relating to indigenous peoples.

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

In light of article 2, paragraph 1 (d), and 5 (e) of the Convention and of its general recommendation no. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable. The Committee requests the State party to include in its next periodic report information on the effects of activities of transnational corporations registered in the United States on indigenous peoples abroad and on any measures taken in this regard.

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

10. NICARAGUA, CERD/C/NIC/CO/14, 19 JUNE 2008

6. The Committee welcomes the adoption of general legislation containing special provisions to protect the rights of indigenous peoples, including the General Act on the Environment and Natural Resources, the Act on the Official Use of the Languages of the Communities of the Atlantic Coast, the Act on the Communal Property Regime of the Indigenous Peoples and Ethnic Communities of the Autonomous Regions of the Atlantic Coast of Nicaragua and the Bocay, Coco, Indio and Maíz Rivers, the Decree declaring National Garifuna Day and the Children and Adolescents Code.

8. The Committee notes with satisfaction the entry into force in 2006 of the General Education Act establishing the Regional Autonomous Education System (SEAR), and hopes that such law recognize the rights of indigenous peoples and ethnic communities of the Caribbean coast to intercultural education in their mother tongues.

9. The Committee welcomes the information received regarding the establishment of the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities in each of the autonomous regions of the Atlantic coast, empowered to receive complaints from persons who consider that their human rights have been violated by State officials.

12. Bearing in mind that the Political Constitution and the Autonomy Statute of the Atlantic Coast regions recognize the country's ethnic and cultural diversity and guarantee the specific rights of the indigenous peoples and afrodescendant communities, the Committee is concerned that indigenous peoples and afrodescendant communities continue to suffer in practice from racism and racial discrimination in the State party.

The Committee recommends that the State party should commit itself to fighting racial discrimination by developing a comprehensive national policy against racism and racial discrimination and effectively applying the Autonomy Statute.

13. While welcoming the information in the periodic report on statistical data concerning the indigenous peoples, the Committee notes the deficiencies of the National Population Census of 2005, which failed to yield precise figures on the characteristics of the different ethnic groups and indigenous peoples that make up the Nicaraguan population, including those of mixed heritage.

The Committee recommends that the State party should continue to improve the methodology used in the census so as to reflect the ethnic complexity of Nicaraguan society, taking the principle of self-identification into account, in accordance with its general recommendation 8 (1990) and paragraphs 10 and 11 of the guidelines on the CERD-specific document, adopted by the Committee at its seventy-first session (CERD/C/2007/1). Accordingly, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population.

15. While taking note of the new legislation adopted to protect the rights of indigenous peoples, the Committee is concerned that the indigenous peoples in the Pacific, central and northern regions do not have a special law recognizing and protecting their rights (art. 2).

The Committee calls upon the State party to speed up the process of adoption of the Act on Indigenous Peoples of the Pacific, central and northern regions of Nicaragua and the establishment of a Special Procurator's Office for the indigenous peoples of the Pacific, central and northern regions of Nicaragua.

16. The Committee welcomes the establishment in 2001 of the National Commission for the Elimination of Racial Discrimination, composed of members from State institutions, civil society organizations and movements of indigenous peoples and afrodescendant communities. However, the Committee is concerned at reports that this body is not functioning effectively in practice (art. 2).

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

18. While noting with satisfaction that the Constitution of Nicaragua, the Organic Act on the Judiciary and the Autonomy Statute recognize the right of indigenous peoples and communities of African descent to administer justice in accordance with their cultures and traditions, the Committee expresses concern that this recognition in law has not been implemented in practice through a model for the administration of justice in the Autonomous Regions incorporating and implementing indigenous law (art. 5 (a)).

The Committee reminds the State party of its general recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)) and calls on the State party to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international law concerning human rights. In this regard, the Committee encourages the State party to continue implementing the programme for the establishment of assistance, mediation, information and guidance centres (CAMINOS) and the use of rural judicial facilitators to improve access to justice for indigenous peoples and African descent communities as well as court-appointed lawyers.

19. The Committee is concerned that according to information received justice is administered only in Spanish in the Autonomous Regions, in direct violation of the Act on the Official Use of the Languages of the Communities of the Atlantic Coast, which provides that the languages of indigenous peoples and those of African descent shall be officially used in the Autonomous Regions, and may be used at all stages in the administration of justice (art. 5 (a)).

Bearing in mind its general recommendation 31 (2005), the Committee recommends that the State party should guarantee the right of indigenous peoples to use during judicial procedures their language as it is provided in the Act on the Official Use of Languages of the Communities of the Atlantic Coast, as well as bilingual interpreters, if necessary.

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

The Committee reminds the State party of its general recommendation 23 (1997) on the rights of indigenous peoples, section (d), paragraph 4 (l), and recommends that it should

step up its efforts to ensure full participation of indigenous peoples and afrodescendant communities in political affairs of the State at all levels.

21. While recognizing the steps recently taken by the State party to comply with the judgement of the Inter-American Court of Human Rights in the *Awas Tingni* case of 2001, the Committee is still concerned at the ongoing delays in the demarcation and titling of the traditional territory of the *Awas Tingni* community. In this regard, the Committee expresses concern at the renewed postponement of the award of title to the community as a result of alleged land disputes with neighbouring communities, which should already have been settled, according to the procedure in force. It is also concerned that the prolonged delay in the process of implementation has given rise to illegal incursions in the territory of *Awas Tingni* by non-indigenous settlers and loggers, severely damaging the land and resources of *Awas Tingni* (art. 5 (d)).

The Committee urges the State party to proceed immediately with the demarcation and titling of the lands of the *Awas Tingni* community, without prejudice to the potential rights of other communities, in accordance with the terms of the relevant judgement of the Inter-American Court of Human Rights and general recommendation 23 (1997), paragraph 5, on the rights of indigenous peoples. Lastly, the Committee requests the State party to inform it in its next periodic report on the status with regard to the process of demarcation and titling of the lands of the *Awas Tingni* community.

22. While welcoming the adoption of the General Health Act, which allows the Autonomous Regions to define a health-care model in line with their traditions, cultures and customs, the Committee notes with concern the difficulty of access in practice to health services and infrastructures for the indigenous peoples and afrodescendant communities of the Atlantic Autonomous Region (art. 5 (e) (iv)).

The Committee urges the State party to step up its efforts to guarantee the right to public health, medical care, social security and social services of indigenous peoples and afrodescendant communities especially in the Atlantic Autonomous Region, as well as to provide financial and institutional support to access to traditional indigenous medicine.

23. The Committee expresses concern at the fact that the maternal mortality rate in the Atlantic Autonomous Region is still far higher than the national average (art. 5 (iv)).

The Committee calls upon the State party to take effective steps to combat maternal mortality in the Atlantic Autonomous Region.

24. While noting with satisfaction the Plan for the Regional Autonomous Education System (SEAR) 2003-2013 under the new General Education Act, the Committee is concerned at the high illiteracy rate among the indigenous peoples and afrodescendant communities, especially in the Autonomous Region of the North Atlantic (art. 5 (e) (v)).

The Committee encourages the State party to take action in the short and medium term to reduce illiteracy, especially in the Autonomous Region of the North Atlantic.

25. While welcoming the authority of the Office of the Special Procurator for Defence of the Rights of Indigenous Peoples and Ethnic Communities in the North Atlantic and South Atlantic region to receive individual and collective complaints, the Committee notes that it has not been given information on the nature and results of the 521 complaints received in 2007 (art. 6).

The Committee recommends that the State party should provide information in its next report on the results of the complaints relating to racial discrimination against indigenous peoples and afrodescendant communities and whether the victims received due compensation.

26. The Committee is concerned about information according to which women belonging to indigenous peoples and afrodescendant communities are victims of double discrimination.

Bearing in mind its general recommendation 25 (2000) concerning the gender related dimension of racial discrimination, the Committee recommends that the State party pay special attention to the protection of women belonging to indigenous peoples and afrodescendant communities.

27. The Committee is concerned by the racial discrimination towards indigenous peoples and afrodescendant communities that exists in the media, including stereotyped and denigrating portrayals of indigenous peoples in television programmes and press articles (art. 7).

The Committee recommends that the State party should adopt appropriate measures to combat racial prejudice leading to racial discrimination in the media, both on public and private channels and in the press, in particular those targeting indigenous peoples and afrodescendant communities. The Committee further recommends that, in the field of information, the State party should promote understanding, tolerance and friendship among the various racial groups existing in the State party, inter alia by encouraging the adoption of a code of media ethics committing the media to respect the identity and culture of the indigenous peoples and afrodescendant communities.

29. The Committee recommends that the State party should speed up the process of acceding to International Labour Organization Convention No. 169 concerning indigenous and tribal peoples.

11. ECUADOR: CERD/C/ECU/CO/19, 15 AUGUST 2008

3. The Committee welcomes the fact that in July 2008 the Constituent Assembly adopted the draft of the new Constitution, which will be the subject of a referendum in September 2008 and in particular the recognition of the multiethnic and multicultural nature of the country.

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

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

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

8. Bearing in mind that the draft Constitution guarantees the specific rights of the indigenous peoples and the Afro-Ecuadorian communities, the Committee remains concerned that a high

proportion of persons belonging to the indigenous peoples and Afro-Ecuadorian communities continue to suffer in practice from racism and racial discrimination in the State party.

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

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

The Committee recommends that the State party should continue to refine the census methodology so that it reflects the ethnic complexity of Ecuadorian society, bearing in mind the principle of self-identification, in keeping with its General Recommendation 8 (1990) and with paragraphs 10 to 12 of the guidelines adopted at its seventy-first session for the submission of specific Committee reports (CERD/C/2007/1). In that context, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population.

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

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

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

The Committee reminds the State party of its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (section B, paragraph 5(e)) and urges the State party to ensure respect for and recognition of the traditional systems of justice of the indigenous peoples, in conformity with international human rights law. In that regard, the Committee encourages the State party to expedite the process of adoption of the bill to harmonize and allocate responsibilities for the administration of justice, whose principal objective is to ensure compatibility between the functions of the system of justice of the indigenous peoples and those of the national system of justice.

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

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

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

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

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

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

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

The Committee urges the State party to enforce the Consultation and Participation Act fully in practice and that in light of its General Recommendation 23, section 4(d), consult the indigenous population concerned at each stage of the process and obtain their consent in advance of the implementation of projects for the extraction of natural resources. The Committee also encourages the State party to ensure that oil companies carry out environmental impact studies in the areas where they plan to begin operations before obtaining licences in accordance with the 2002 Government decree.

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

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

18. The Committee is concerned at the limited enjoyment of economic, social and cultural rights by indigenous peoples and Afro-Ecuadorians, particularly where housing, education, health and

employment are concerned, principally as a result of the growing and persistent poverty in the State party (art. 5 (e)).

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

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

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

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

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

21. While the Committee is pleased to welcome the fact that the National Department for the Defence of the Rights of Indigenous Peoples is authorized to receive individual and collective complaints, it notes that it has not received any information on whether the cases handled by the Department have been settled before the domestic courts (art. 6).

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

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

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

27. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the Committee's recommendations in paragraphs 10, 13 and 16 within one year from the adoption of the present concluding observations.

12. SWEDEN, CERD/C/SWE/CO/18, 21 AUGUST 2008

19. While noting the State party's stated intention to address the reports of various inquiries regarding Sami land and resource rights¹ in a bill to be submitted to Parliament in March 2010, the Committee reiterates its concern about the limited progress achieved in resolving Sami rights issues. It is also concerned about the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights, as well as the lack of resources allocated to these inquiries. (arts. 5(d)(v), 5(e)(vi), and 6)

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

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

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

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

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

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

The Committee encourages the State party to implement the recommendations contained in the study by the Ombudsman on Ethnic Discrimination published in July 2008. The State party is encouraged to raise greater awareness among the Sami regarding the availability of mother tongue tuition and to implement distance learning programmes as a

measure to avoid teacher shortfalls and lack of funding. The Committee encourages the State party to learn from best practices in other countries with Sami communities.

28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 15, 16, and 20 above.

13. NAMIBIA, CERD/C/NAM/CO/12, 19 AUGUST 2008

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

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

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

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

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

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

21. The Committee acknowledges the State party's stated intention to review the development programmes currently in place, as well as the steps taken by the State party to improve the

economic and social situation of the indigenous communities, including by mobile school units, scholarships for San children, and non-discrimination training for employers. However, it remains concerned about the extreme poverty of the indigenous communities and its impact on their equal enjoyment of human rights. The Committee is particularly concerned about the high rate of HIV/AIDS infection among the San, their lack of access to identification documents, their low level of school attendance, and the comparatively low life expectancy among those communities. (art.5(e))

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

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

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

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

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

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

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

33. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 14, and 23 above.

14. RUSSIAN FEDERATION, CERD/C/RUS/CO/19, 20 AUGUST 2008

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

- (a) The establishment in 2004 of a Ministry of Regional Development comprising a Department on Inter-Ethnic Relations with primary responsibility in this field;
- (b) The establishment in 2004 of the Presidential Council for Promoting the Development of Civil Society Institutions and Human Rights and the important range of its activities
- (c) The creation in 2006 of the 'Social Forum' comprising a Commission for Tolerance and Freedom of Conscience with a mandate to proactively combat all forms of nationalism and intolerance;
- (d) The newly established Advisory Council on the Affairs of Autonomous Ethnic Cultural Organizations.

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

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

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

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

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

The Committee recommends that the State party take legislative and other effective measures to implement the Federal Law on Territories of Traditional Nature Use (2001); reinsert the concept of free-of-charge use of land by indigenous peoples into the revised Land Code and the Law on Territories of Traditional Nature Use, and the concept of preferential, non-competitive access to natural resources into the Forest and Water Codes;

seek the free informed consent of indigenous communities and give primary consideration to their special needs prior to granting licences to private companies for economic activities on territories traditionally occupied or used by those communities; ensure that licensing agreements provide for adequate compensation of the affected communities; and withdraw support for the Evenkiiskaya dam and other large scale projects threatening the traditional lifestyle of indigenous peoples.

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

B. Early Warning/Urgent Action and Follow Up Procedures

1. BELIZE, 9 MARCH 2007 URGENT ACTION (LETTER)

The Committee has the honour to state that, at its 72nd session, held from 18 February to 7 March 2008, it gave further consideration to the situation of the Maya people in Belize and their land claims.

The Committee regrets that it has not received as requested replies to the questions in its letters dated 9 March and 24 August 2007. Furthermore, the Committee has received new information according to which the State party reportedly continues to deny customary land rights to the Maya community, despite a decision by the Supreme Court of Belize of October 2007, which confirmed the recommendation of the Inter-American Commission of Human Rights to delimit, demarcate, and title the traditional territory of the Maya people.

In this context, the Committee, acting in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, reiterates its requests to the State party to provide answers to the questions raised in its letters dated 9 March and 24 August 2007. It also requests the State party to provide detailed information on how it intends to implement the above mentioned decision issued by the Supreme Court of Belize. The Committee wishes to receive a detailed response to these issues as a matter of urgency, and **no later than 1 July 2008**.

Furthermore, the Committee, noting that it has not received the State party's overdue reports, reiterates that in case of non-receipt of the reports, to be submitted in a single document, by **1 July 2008**, it will proceed with the full review of the implementation of the Convention in Belize and adopt concluding observations in the absence of a report and in light of information received from other sources, including non-governmental organizations, at its 73rd session, to be held from 28 July to 15 August 2008.

Pending receipt and examination of the overdue periodic reports of Belize, the Committee respectfully insists that priority consideration be paid to the issue raised in this and the previous letters.

[...]

2. BELIZE, 24 AUGUST 2007 URGENT ACTION (LETTER)

The Committee wishes to inform you that, at its 71st session, held from 30 July to 17 August 2007, it gave further consideration to the situation of the Maya people in Belize and their land claims.

The Committee wishes to thank the Government of Belize for its letter of 14 August 2007. It expresses its appreciation for the confirmation of the State party's seriousness when addressing the situation of the Maya community and the indication that the Supreme Court is currently hearing a case involving Maya land claims. The Committee regrets, however, that it has not received as requested replies to the four questions asked in its letter dated 9 March 2007.

Furthermore, the Committee has received new information according to which the State party reportedly continues to deny the customary land rights of the Maya community, despite the recommendation of the Inter-American Commission on Human Rights to delimit, demarcate and title the traditional territory of the Maya people.

In this context, the Committee, acting in accordance with Article 9(1), of the Convention, and Article 65 of its rules of procedure, requires the State party to provide answers to the questions raised in its letter dated 9 March 2007. It also requests the State party to provide detailed information on the law suit filed in the Supreme Court of Belize and its outcome.

The Committee, while noting the assurance of your Excellency's Government to provide further clarification as soon as possible, wishes to receive a detailed response to these issues as a matter of urgency, and **no later than 31 December 2007**.
[...]

3. Belize, 7 March 2008, URGENT ACTION (LETTER)

Recalling that Belize ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 14 November 2001, I write to inform you that in the course of its 70th session, the Committee on the Elimination of Racial Discrimination considered on a preliminary basis under its early warning and urgent action procedures information regarding the situation of the Maya people and their land claims sent by the University of Arizona Indigenous Peoples Law and Policy Program and the Maya Leaders Alliance, a non-governmental organization that represents the Mopan and Q'eqchi' Maya people of the Toledo District of southern Belize.

According to this information, the Maya people of Belize suffer from a persistent pattern of racial discrimination, and Mayan subsistence, culture and way of life may suffer irreparable harm. In particular, the Committee is preoccupied by reports regarding privatization and leasing of land without the prior consultation or consent of the Maya people, as well as the granting of concessions for oil development, logging and the production of hydro-electricity.

In view of the fact that the problems faced by the Maya people seem to call for immediate attention, and referring to its general recommendation 23 of 18 August 1997 on the rights of indigenous peoples (see attached), the Committee requests the State party to submit replies to the following questions as a matter of urgency and no later than **1 July 2007**:

1. Please provide the Committee with any information which may assist to have a full understanding of the factual situation concerning the Maya people and their land claims.
2. In particular, please provide information regarding the Maya land claim, which was never resolved in the Supreme Court of Belize, as well as information on actions undertaken by the State party pursuant to the recommendations included in the final report adopted by the Inter-American Commission on Human Rights in 2004;
3. Please provide information on measures taken by the State party to consult and seek consent of the Maya people in decisions affecting them and their land;

4. Please provide information on the current situation regarding the process of leasing and of issuing oil development, logging, and hydro-electric concessions on Maya traditional lands.

The above-mentioned issues pertaining to the land rights of Maya People will be considered by the Committee at its 71st session (30 July – 17 August 2007) under its early warning and urgent action procedures in the light of the replies of the State party as well as any additional information received from civil society organizations.

Furthermore, I take this opportunity to draw your attention to the fact that, in accordance with article 9, paragraph 1 of the Convention, Belize was due to submit its initial report to the Committee on the Elimination of Racial Discrimination one year after the entry into force of the Convention for the State party, and subsequent periodic reports at two-year intervals. Consequently, the initial, second and third periodic reports of Belize, due respectively on 14 December 2002, 2004 and 2006, which have not yet been submitted, are overdue.

Notwithstanding the submission by Your Excellency's Government of a detailed response to the specific questions raised above, the Committee strongly encourages Belize to submit as soon as possible its overdue initial to third periodic reports in a single document. This report should contain detailed information on the whole implementation of the Convention by the State party and be in conformity with the reporting guidelines adopted by the Committee (CERD/C/70/Rev.5, to be sent separately by the Secretariat).

I wish to inform you that in case of non-receipt of the overdue report by **31 December 2007**, the Committee will proceed with the full review of the implementation of the Convention in Belize and adopt concluding observations in light of information received from other sources at its 72nd session, to be held in Spring 2008.

Rest assured, Excellency, that the Committee is looking forward to initiating a constructive dialogue with the Government of Belize, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

4. BRAZIL, 14 MARCH 2007 URGENT ACTION (LETTER)

I wish to inform you that at its 70th session (19 February to 9 March 2007), the Committee on the Elimination of Racial Discrimination considered further the situation of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples in the indigenous area of Raposa Serra do Sol (RSS) of the State of Roraima, Brazil, in light of the responses provided by the Brazilian Government on 3 January 2007, as well as of the additional information received from non-governmental organizations.

The Committee wishes to thank the Brazilian Government for the responses provided, in particular regarding the Homologation Decree, the measure adopted after the homologation of indigenous land, the solutions found for legal impasses, and the follow-up mechanism for complaints regarding acts of violence committed by the federal police. The Committee also expresses its appreciation for the information provided on efforts made to improve the standard of living of indigenous peoples and on specific measures taken with regard to health, education, and "ethno-development" in the RSS. Furthermore, the Committee notes the on-going process of removal of non-indigenous occupants, of regularization of agrarian land and of payment of *bona fide* compensation.

The Committee, however, acting in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, requires further clarification on the latest developments regarding the issues already raised in my letter dated 18 August 2006, as well as on those listed below:

- 1) According to information before the Committee, the registration and evaluation of the occupations assessment have not yet been completed, nor has the removal of non-indigenous occupants been completed, despite the deadline of 15 April 2006 set by Portaria n° 534 (13 April 2005), homologated by the Presidential Decree of 15 April 2005. The Committee is also concerned about information according to which some occupants have refused the compensation granted to them, or have accepted it but have subsequently refused to leave. It is also reported that rice growers will soon start planting their crops, which will make their removal more difficult. Consequently, the Committee wishes to receive information and further clarification on:
 - a. The current situation regarding: the process of registration and evaluation of occupation; regularization of agrarian land; payment of compensation and removal of non-indigenous occupants;
 - b. Cases of refusal to accept compensation, or to leave, by non-indigenous occupants;
 - c. The new expected date for the total removal of non-indigenous occupants, pursuant to Portaria n° 534, of 15 April 2005.
- 2) The Committee notes that the decision of the Federal Supreme Court affirming its competence on all suits concerning this process is a positive step. It wishes to receive further information, however, on legal actions and their outcome, both at national and federal levels, and in particular decisions of the Federal Supreme Court, if any.
- 3) The Committee is concerned that, according to information received, the lack of security for indigenous peoples remains a problem in the area (e.g. intimidation of indigenous peoples, hate speech towards them, etc.). It notes the assurances of the Government that scattered incidents are unlikely to spread and affect all communities and peoples living in the indigenous area. It wishes to receive, however, specific information on:
 - a. Measures adopted to protect indigenous people and;
 - b. The number of complaints, prosecutions and conviction for acts of violence against indigenous people.
- 4) At the national level, the enactment of municipal legislation establishing non-indigenous governance over certain areas of the RSS is a matter of concern to the Committee. In particular, the Committee expresses its profound concern over the September 2006 adoption of two municipal laws in Pacaraima (Laws No. 110/2006 and No. 111/2006) that establish non-indigenous governance over areas of RSS by expanding the borders of the Pacaraima Municipality and creating a new district directly within the most contentious and heavily populated indigenous region of RSS. The Committee requests the Government of Brazil to provide information regarding the objectives of these laws and their impact on the indigenous peoples of RSS and their lands. This issue also raises questions as to the relationship between national legislation *vis-à-vis* federal acts in the State party, on which the Committee wishes to obtain further clarification;
- 5) At the federal level, the Committee is concerned about the possible adoption of legislation defining the exception of “relevant public interest of the Union” with regard to “acts with a view to occupation, domain and possession” of indigenous land, established in paragraph 6 of article 231 of the Constitution of the Federative

Republic of Brazil. The Committee is concerned that this might affect the constitutional guarantee provided to indigenous lands and wishes to be informed about the legal purpose and practical consequences of the possible adoption of such legislation.

The Committee would like to receive the State party's responses and additional written information and clarification **no later than 1 July 2007** and invites a delegation of the State party to be present at its 71st session, to be held from 30 July to 17 August 2007, so as to allow for a constructive dialogue on this issue between the Committee and the State party.

Allow me, Excellency, to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

5. BRAZIL, 24 AUGUST 2007 URGENT ACTION (LETTER)

I wish to inform you that at its 71st session (30th July to 17 August 2007), the Committee on the Elimination of Racial Discrimination considered further the situation of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples in the Indigenous Land of Raposa Serra do Sol (RSS) of the State of Roraima, Brazil, in the light of the responses provided by the Brazilian Government. In addition, information relevant to this matter was also received from the Special Rapporteurs on adequate housing as a component of the right to an adequate standard of living, on the right to food, and on the situation of human rights and fundamental freedoms of indigenous people as well as from the Special Representative of the Secretary-General on the situation of human rights defenders. Non-governmental organizations also provided relevant information.

The Committee wishes to thank the Brazilian Government for the responses to its letter of 14 March 2007 received on 16 July 2007. It further welcomes the openness demonstrated and additional information provided by Ambassador Sérgio de Abreu e Lima Florencio during his meeting with the Committee held on 2 August 2007.

In view of the information at its disposal, the Committee remains extremely preoccupied however, by the situation of the RSS. It notes with concern that the situation has not improved or has even deteriorated further in many regards and wishes to receive updating information from the State party in relation to the following issues:

1. Over 80 non-indigenous illegal occupants, including a number of those running large rice plantations, still remain in the RSS and continue their farming activities;
2. A precise date has not been indicated for the total and final removal of non-indigenous illegal occupants of the RSS, which should have occurred by 15 April 2006;
3. While the decision of the Federal Supreme Court determining that the illegal occupants have to leave the area is to be welcomed, the petition filed by the Federal General Attorney to abrogate the two Municipal Laws restricting the area of indigenous land is still pending before the Federal Supreme Court;
4. No specific measures to protect indigenous peoples have been taken by local or federal authorities since the Committee last considered the issue. This is particularly of concern as, according to information from various sources before the Committee, cases of violence against members of the indigenous communities have very recently occurred, including with the alleged participation of members of local authorities.

5. No information on complaints, investigations or convictions has been provided to the Committee despite the fact that the above-mentioned cases of violence against members of the indigenous communities have been communicated to the highest political and judicial authorities of the State party, thus reflecting the current climate of impunity and;
6. The confirmation that amendments to the Constitution are being considered by the Chamber of Representatives, with a view to decreasing the constitutional protection of indigenous lands.

Furthermore, bearing in mind its General Recommendation 23 on the rights of indigenous peoples, and recalling that, despite its federal structure, the State party is a single State under international law and has the obligation to implement the Convention throughout its territory, the Committee also recommends that the State party:

1. Complete the final and total removal of all illegal non-indigenous occupants of the RSS, as a matter of urgency, thus implementing the Portaria n.º 534 and the Presidential Decree of 15 April 2005 homologating it, as all legal impediments have allegedly been revoked;
2. Ensure, through adequate federal and state means, the security of all members of the indigenous communities, as well as the exercise of their rights under the Convention. This should include all necessary measures to prevent possible violence during the final removal of the illegal occupants of the RSS. Federal police stations in the RSS should be reopened in order to actively implement the State party's commitment to ensuring the security of all members of the indigenous communities, as provided by article 5 (b) of the Convention;
3. Ensure, in the light of the Committee's General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, that the absence of investigations or prosecutions is not due to the prejudice of the local police or judicial authorities towards the indigenous communities, or their complicity with the perpetrators of the violent acts against those communities. A federal investigation would help to clarify such allegations.
4. Provide adequate reparation to the indigenous communities for the illegal use of their lands and the environmental damage suffered, as an obligation assumed by the State party under article 6 of the Convention;
5. Investigate, prosecute and convict persons responsible for the dissemination of ideas based on racial superiority or hatred, as well as for acts of violence or incitement to such acts against the indigenous peoples in the RSS, as required under article 4 of the Convention;
6. Prevent and combat prejudice leading to racial discrimination, and provide information on the measures adopted with regard to promoting tolerance, in particular in the field of education and through awareness-raising campaigns, including in the local media, in accordance with article 7 of the Convention.

In accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, and in addition to its request for information on any relevant developments related to the removal of all illegal occupants of RSS, the Committee requires that the State party provide detailed information on the implementation of the above-mentioned recommendations, **no later than 30 November 2007**, in order to further decide on any action to be taken under its early warning and urgent action procedure.

Allow me, Excellency, to reiterate the wish of the Committee to continue the constructive dialogue with your Government, and to underline that the Committee's observations and

requests for information, as well as its recommendations, are made with a view to assisting your Government in the effective implementation of the Convention.

6. BRAZIL, 07 MARCH 2008 URGENT ACTION (LETTER)

Recalling the previous letters of the chairperson of the Committee on the Elimination of Racial Discrimination (CERD), I write to inform you that at its 72nd session (18th February to 7th March 2008), the Committee considered further the situation of the Macuxi, Wapichana, Taurepang, Ingaricó and Patamona peoples in the Indigenous Land of Raposa Serra do Sol (RSS) of the State of Roraima, Brazil, in light of the responses provided by the Brazilian Government and of information from non-governmental organizations.

The Committee wishes to thank the Brazilian Government for the responses provided on 3 and 5 March 2008 on the removal of illegal occupants of the RSS and on the hydroelectric power plant project in the RSS. It welcomes the Government's openness to dialogue expressed by its representative Ambassador Sérgio Florencio during the meeting held on 4 March 2008 with the Working Group on Early Warning and Urgent Action Procedures, as well as for the additional information provided. Furthermore, the Committee wishes to note with appreciation the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295) on 13 September 2007, with the favourable vote of Brazil.

In view of the information at its disposal, however, the Committee remains extremely preoccupied by the situation of the RSS which has not improved since the Committee last considered the matter during its previous session in August 2007 and wishes to receive clear information from the State party on the following:

1. Any remaining **legal or judicial impediments** that might prevent the full implementation of the Presidential Decree dated 15 April 2005, which should have been completed by 15 April 2006 with the removal of all illegal immigrants from the RSS;
2. The **exact date** on which the process of removing all illegal occupants begun and the expected date for its conclusion as, according to the information presented by the State party, the process has already begun and should last for approximately 130 days (paragraph 25 of the information received on 3 March);
3. The concrete measures taken to ensure a **peaceful removal** of all illegal occupants, including the measures adopted to prevent new illegal occupations in the RSS, as well as the results of the 88 investigations (paragraph 37 of the information received on 3 March), especially prosecutions and convictions, as the Committee welcomes, and shares, the preoccupation of the Brazilian Government with regard to the security in the RSS;
4. The process to obtain the **free, prior and informed consent** of the indigenous peoples in the RSS with regard to the project to explore hydroelectric resources in this indigenous land. While noting that the State party considers that this project has "a very limited possibility of being constructed" (last paragraph of the information received on 5 March), the Committee wishes to be informed if this consultation has been completed **prior** to presenting the project to the House of Representatives of the National Congress, pursuant to paragraph 3 of article 231 of the Brazilian Constitution.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, and while renewing its previous recommendations and being kept informed on any relevant developments related to the removal of all illegal occupants of RSS, the Committee requires that

the State party provide detailed information on the above mentioned issues, **no later than 30 June 2008**, in order to further decide on any action to be taken under any of its procedures.

Allow me, Excellency, to reiterate the wish of the Committee to continue the constructive dialogue with your Government, and to underline that the Committee's observations and requests for information, are made with a view to assisting your Government in the effective implementation of the Convention.

7. BRAZIL, 15 AUGUST 2008 URGENT ACTION (LETTER)

The Committee would like to recall its letter of 7 March 2008, by which, in accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, it requested the State party to provide detailed information, no later than 30 June 2008, with respect to issues in connection with the indigenous land of Raposa Serra do Sol, in particular regarding remaining legal or judicial impediments that might prevent the full implementation of the Presidential Decree of 15 April 2005; measures taken to ensure a peaceful removal of all illegal occupants, and the exact dates for the completion of this process; as well as the process to obtain free, prior and informed consent of the indigenous peoples concerned with regard to the project to explore hydroelectric resources in this indigenous land.

The Committee regrets not having received, to this date, any information from the State party in this respect. Meanwhile, the Committee has received information from other sources alleging that:

1. Following the beginning of the removal operation, the security situation in Raposa has been precarious, as illustrated by the violence on 5 May involving the shooting of 10 indigenous individuals;
2. In light of this violence, and following a request by the Governor of Roraima, the Federal Supreme Court has suspended all removal operations; leaving approximately 56 non-indigenous settlements that remain on indigenous lands, some of which are expanding their farms;
3. A law to authorize a dam on the Cotingo River running through Raposa has passed the Senate, and is currently under consideration by the House, without prior consultation with indigenous peoples.
4. The judiciary continues to deny indigenous peoples the ability to secure compliance before the court with the Presidential Decree, whereas investigations and prosecutions related to crimes committed against the indigenous peoples of Raposa remain uncompleted.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee wishes to receive, in addition to previously requested information, the views of your Government regarding the above, in particular regarding progress on the removal of non-indigenous settlers from Raposa; intentions to carry out consultations with affected indigenous peoples before the final adoption of the law authorizing the exploitation of water resources within Raposa; the status of investigations and possible prosecutions of crimes against indigenous peoples in Raposa; and measures taken to guarantee the security of the indigenous peoples of Raposa.

Allow me, Excellency, to reiterate the wish of the Committee to continue the constructive dialogue with your Government, and to underline that the Committee's observations and requests for information, are made with a view to assisting your Government in the effective implementation of the Convention.

8. CANADA, 15 AUGUST 2008 URGENT ACTION (LETTER)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 70th session held from 19 February to 9 March 2007, considered the seventeenth and eighteenth periodic reports of Canada and adopted concluding observations in relation thereto (CERD/C/CAN/CO/18).

Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requested in paragraph 32 of its concluding observations that your Government provide information, within one year, on the way it has followed up on the recommendations contained in paragraphs 14, 21, 22 and 26.

To date, the Committee has not received any information from the State party in this respect. Meanwhile, however, the Committee has been made aware of the unresolved dispute concerning the North Central Corridor Pipeline (TransCanada Corporation) between the Lubicon Lake Indian Nation and the federal and provincial governments. The information received points to a lack of clarity with regard to the land rights over territory through which the Pipeline would be routed, and therefore to doubts as to whether the Government of Alberta and the Alberta Utilities Commission may legitimately authorise the construction of a pipeline across Lubicon Territory without prior Lubicon consent.

In light of the above, the Committee would like to recall paragraph 22 of its concluding observations, in which the Committee, with regard to aboriginal land claims, urged the State party: "to engage, in good faith, in negotiations based on recognition and reconciliation, and ... examine ways and means to facilitate the establishment of proof of Aboriginal title over land in procedures before the courts".

In light of the above, and in order to continue a constructive dialogue with your Government, the Committee requests the State party to submit information on its response to the claims of the Lubicon Lake Indian Nation and on the status of the proceedings with respect to the construction of the pipeline referred to in this letter. The Committee also reiterates its request to receive comments with regard to the implementation of the recommendations contained in paragraphs 14, 21, 22 and 26 of its concluding observations. The Committee wishes to receive such comments no later than 31 December 2008.

Allow me, Excellency, to underline that the Committee's requests for information are made with a view to assisting your Government in the effective implementation of the Convention.

9. CHILE, 24 AUGUST 2007 URGENT ACTION (LETTER) (UNOFF. TRANS)

I am writing to inform you that prior to its 71st session the Committee considered reports on the situation of Mapuche communities in the region of Araucanía that have been affected by activities prejudicial to their environment, health and traditional ways of life. This includes the installation of landfills and plans to create water treatment facilities. Said reports were considered by the Committee on a preliminary basis under its early warning and urgent action procedures in light of the Convention on the Elimination of All Forms of Racial Discrimination and the Committee's General Recommendation 23 on the rights of indigenous peoples.

By virtue of article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee hereby requests detailed information on the following matters:

1. Please provide information on the steps that have been taken to ensure that the landfills that are currently operational in the region of Araucanía are in compliance with current environmental legislation and Indigenous Law 19.253, which makes mention of communities' right to consultation on projects that may affect them directly;
2. Please provide detailed information on the scientific studies that have been conducted on water pollution resulting from the landfills and any containment and repair measures that have been adopted in regard to said pollution.
3. Please provide detailed information on plans to install water treatment facilities in the region of Araucanía and on facilities that are already operational, addressing the following questions:
 - a. Have the affected communities been consulted?
 - b. Have these projects impacted spaces of spiritual or cultural significance to Mapuche communities or land that is being recovered through the above-mentioned law?
 - c. Have socio-environmental impact studies been conducted in relation to said projects?

The Committee requests that a response to this letter and all pertinent information or clarifications be submitted by the State party no later than 30 November 2007 for consideration during the 72nd session, which will take place 18 February - March 7 2008.

The Committee also wishes to remind your government that it has yet to receive periodic reports 15 through 18 on the fulfillment of the Convention by the State party, which should have been presented by 19 November 2000, 2002, 2004 and 2006, respectively.

I wish to inform you that in case of non-receipt of a single document containing the overdue reports by 30 June 2008, the Committee will proceed with a full review of the implementation of the Convention in Chile and adopt concluding observations in light of information received from other sources at its 73rd session, to be held 28 July-16 August 2008.

10. CHILE, 07 MARCH 2008, URGENT ACTION (LETTER) (UNOFF. TRANS)

I am contacting you in order to follow up on my letter dated 24 August 2007 regarding the situation of the Mapuche communities in the region of Araucanía that have been affected by activities that are prejudicial to their environment, health and traditional ways of life.

In said letter, by virtue of article 9(1) of the Convention and article 65 of its Rules of Procedure, I asked the State party to respond to the issues that the Committee had raised regarding this situation. I also requested all of the information or clarifications that you believe to be pertinent for consideration during the Committee's 72nd session, which took place last 18 February - 7 March 2008.

The Committee is reiterating its request for said information and asks that it be submitted no later than 30 June 2008. I also wish to remind you that in its letter dated 24 August 2007, the Committee indicated that in case of non-receipt of a document containing the overdue information by that date (30 June 2008), the Committee would proceed with the full review of the implementation of the Convention by Chile and adopt concluding observations in light of information received from other sources at its 73rd session, to be held 28 July – 16 August, 2008. The State party could consider including the information requested here in said document.

Please find enclosed a copy of the revised guidelines adopted by the Committee during the 71st session (CERD/C/2007/1). We ask that the State party submit the overdue report in accordance with said guidelines.

11. GUATEMALA, 15 AUGUST 2008 FOLLOW UP (LETTER) (UNOFF. TRANS)

I am writing to inform you that during its 73rd session, held 28 July - 15 August 2008, the Committee on the Elimination of Racial Discrimination considered the monitoring report presented by Guatemala (CERD/C/GTM/CO/11/Add2), pursuant to article 9(1) of the Convention and article 65 of its amended Rules of Procedure.

The Committee is satisfied with the information presented by Guatemala and the efforts made by the State party to comply with the Committee's recommendations, which appear in paragraphs 13, 15 and 19 of the concluding observations (CERD/C/GTM/CO/11) adopted by the Committee during the 68th session following the review of periodic reports 8-11, which were presented as a single document.

The Committee appreciates having the opportunity to maintain a dialogue with the State party. In this spirit, the Committee would like to call the State party's attention to the observations mentioned below. The Committee requests that the State party include the comments and responses regarding these matters in periodic reports 12 and 13.

In regard to paragraph 13 of the concluding observations : The Committee is satisfied with the information presented by the State party regarding the legislative dispositions focused on the classification of racial discrimination. However, the Committee notes that in the legislative framework presented (with the exception of the Judicial Career Law), no sanctions are provided for acts of racial discrimination, and the sanctions that have been issued thus far are focused on the administrative sphere. As a result, the Committee would like to remind the State party that any dissemination of ideas based on racial superiority or hatred, any incitement of racial discrimination and all acts of violence against indigenous peoples and people of African descent must be classified as punishable acts for which sanctions must be established. The Committee thus requests that the State party submit information on (i) the progress made in the bill by CODISRA; (ii) training programs provided to justice system operators; and (iii) current statistics on cases involving discrimination registered by the Prosecution Services and public prosecutor's offices.

In regard to paragraph 15 of the final observations : The Committee thanks the State party for the extensive information presented on existing programs that provide access to justice to indigenous women and requests more updated information on (i) the application of the recommendations issued through the analysis conducted by DEMI in March 2007 and (ii) the progress that has been made in the adoption of Initiative 3566 on sexual harassment, which was presented before Congress in November 2006. The Committee wishes to remind the State party that it has recommended the introduction of a bill that classifies aggravated sexual harassment as a crime that carries more serious sentences when the victims are indigenous women. In regard to facilitating access to justice for indigenous women, the Committee would appreciate receiving information regarding (i) the progress that has been made on measures adopted under the Tripartite Inter-Institutional Cooperation Agreement and (ii) the impact of the application of the project by the Department of Coordination of the Rights of Indigenous Peoples.

In regard to paragraph 19 of the concluding observations: The Committee accepts the information presented by the State party regarding the legislative framework for the consultation

procedure. However, the Committee notes that the State party does not directly refer to the recommendation contained in paragraph 19. As such, the Committee requests information on (i) the efforts that the State party has made to obtain informed consent from indigenous peoples in regard to decisions that are directly related to their rights and interests; (ii) the progress that has been made on the adoption of the Regulatory Law on the Consultation Procedure; (iii) the result of the consultations made thus far; and (iv) whether or not the State party has respected the communities' decisions.

Furthermore, the Committee recently received a series of reports regarding the situation of the Maya Achí, Maya Q'eqchí and Maya Kakchiquel communities, which will be affected by activities prejudicial to their environment, health and traditional ways of life. The Committee also has received information about the Xalalá Hydroelectric construction project in the municipality of Ixcán, Quiché; the Maya Níquel company's exploitation activities in the municipality of Cahabón, Alta Verapaz; and the project to install the San Juan Fabric Plant by the Guatemalan company Cementos Progreso S.A. in San Juan Sacatepéquez.

The reports suggest that these projects will result in a degradation of the natural resources that local communities need in order to subsist and will impact the communities' culture and identity, generating internal conflicts and divisions which could lead to violence. This would have consequences for human rights, including the rights to life and physical safety, property, work, freedom of movement, personal freedom, participation and the rights of indigenous peoples.

In view of the gravity of this situation, the Committee requests that the State party submit detailed information on the ways in which the Mayan peoples of the municipalities of Ixcán, Santa María Cahabón and San Juan Sacatepéquez will be affected by the exploitation activities and the construction of the hydroelectric plant. Specifically, the Committee requests detailed information on environmental and cultural studies conducted on the impact of the implementation of these mega-projects.

The Committee laments that the indigenous communities have not been consulted or informed of these projects and asks that the State party provide information on the measures that have been taken to protect the communities' rights to participation and consultation. The Committee is concerned about allegations that community leaders and members have been threatened and intimidated and recommends that the State party issue a statement regarding these allegations and take all steps necessary to ensure the safety of the interested parties.

Finally, the Committee requests information on the measures that have been taken to ensure that indigenous peoples who will be displaced from their territories will be compensated for that relocation and related costs.

As such, the Committee requests that the State party include in its response all of the pertinent information or clarifications that it can provide on these three situations along with the information requested in the above-mentioned recommendations by the Committee in its periodic reports 12 and 13, which were due on 17 February 2008 and should be submitted as soon as possible. [...]

12. GUYANA, 24 AUGUST 2007 FOLLOW UP (LETTER)

The Committee on the Elimination of Racial Discrimination considered, at its 68th session held from 20 February to 10 March 2006, the initial to fourteenth periodic reports of Guyana

(CERD/C/472/Add.1) and, at its 1758th and 1759th meetings (CERD/C/SR.1758 and 1759) held on 10 March 2006, adopted concluding observations (CERD/C/GUY/CO/14) including various recommendations.

Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requested in paragraph 28 of its concluding observations that your Government provide information on the way it has followed up on the recommendations contained in paragraphs 15, 16 and 19 within one year. By letter of 10 April 2007, the Coordinator on follow-up of the Committee, Mr. Morten Kjaerum, reminded Guyana of this request for information which unfortunately has yet to be received.

The follow-up procedure of the Committee is designed to assist States parties in the effective implementation of the Convention. In the interest of continuing a constructive dialogue with your Government, the Committee reiterates its request for information with respect to the implementation of the recommendations contained in paragraphs 15, 16 and 19 of its concluding observations. According to information from other sources made available to the Committee at its seventy-first session (31 July-17 August 2007), no steps have been taken by the State party to implement the recommendations set out in paragraphs 15, 16 and 19 of the concluding observations and; the situation has deteriorated further in certain areas, making the concerns expressed by the Committee in the above-mentioned paragraphs of its concluding observations all the more urgent. The Committee, therefore, wishes to recall the following:

- In paragraph 15 of its concluding observations, the Committee urged the State party to remove the discriminatory distinction between titled and untitled communities from the 2006 Amerindian Act and from any other legislation. Furthermore, the Committee called on the State party to recognize and support the establishment of Village Councils or other appropriate institutions in all indigenous communities, vested with the powers necessary for the self-administration and the control of the use, management and conservation of traditional lands and resources. According to the information received by the Committee, the distinction between titled and untitled communities has not been removed and the Minister of Amerindian Affairs, according to an article published by Guyana Government News Agency on 1 April 2006, has stated that this distinction will remain. In the same article, the Minister expressed the view that in some cases the Village Councils had too much power.
- In paragraph 16 of its concluding observations, the Committee urged the State party to recognize and protect the rights of all indigenous communities to own, develop and control the lands which they traditionally occupy, including water and subsoil resources, and to safeguard their right to use lands not exclusively occupied by them, to which they have traditionally had access for their subsistence. It also urged the State party, in consultation with the indigenous communities concerned, (a) to demarcate or otherwise identify the lands which they traditionally occupy or use, (b) to establish adequate procedures, and to define clear and just criteria to resolve land claims by indigenous communities within the domestic judicial system while taking due account of relevant indigenous customary laws. According to information submitted to the Committee, the State party continues to deny the indigenous groups right to subsoil and water resources in indigenous areas. Furthermore, to the extent title has been granted to indigenous groups, this has been done unilaterally by the State party, rather than within the framework of a procedure respecting the inherent rights of the indigenous groups to such areas.
- In paragraph 19 of its concluding observations, the Committee urged the State party to ensure the availability of adequate medical treatment in hinterland areas, in particular those inhabited by indigenous peoples, by increasing the number of skilled doctors and

of adequate health facilities in these areas, by intensifying the training of health personnel from indigenous communities, and by allocating sufficient funds to that effect. Furthermore, the Committee recommended the State party to undertake environmental impact assessments and seek the informed consent of concerned indigenous communities prior to authorizing any mining or similar operations which may threaten the environment in areas inhabited by these communities. The Committee has not received any specific information on the access to health services in the mentioned areas. It has received, however, information that would indicate a continued lack of respect for the interests of the indigenous population in a clean environment. The Committee has for example been informed that small – and medium - scale miners have been granted one more year of grace from provisions regulating the discharge of waste water into rivers and creeks used by indigenous communities. The Committee has also received information about large scale mining projects in territories traditionally used by indigenous peoples where consent was not sought, for example in the North Pakaraima Mountain area.

In light of the information available to the Committee and the absence of any response from your Government, please note, that failing receipt of the information requested by 30 November 2007, the Committee may decide to consider the relevant issues under its early warning and urgent action procedure at its 72nd session (18 February- 7 March 2008) in the light of information received from other sources.

Allow me, Sir, to underline that this request for information is made with a view to assisting your Government in the effective implementation of the Convention.

13. GUYANA, 24 AUGUST 2008, FOLLOW UP (LETTER)

Excellency, I wish to inform you that the Committee on the Elimination of Racial Discrimination, at its seventy-third session, held from 28 July to 15 August 2008, considered the follow-up report submitted by the Government of Guyana (CERD/C/GUY/CO/14/Add.1) pursuant to rule 65(1) of its rules of procedure.

The Committee welcomes the submission of extensive information, as requested, on the implementation of the recommendations contained in paragraphs 15, 16 and 19 of the concluding observations (CERD/C/GUY/CO/14)... The Committee also notes that the Government's response addressed two additional recommendations in a detailed manner.

The Committee appreciates the opportunity thus provided to continue its dialogue with the State party. In this spirit, the Committee would like to draw the State party's attention to the observations mentioned below. The Committee requests that the comments and responses on action taken on these issues be included in the State party's ... [next periodic report] ... due on 17 March 2008.

- **Paragraph 15 of the concluding observations:** The Committee invites the State party to provide further information on the progress achieved with respect to the implementation of the Amerindian Act, including with regard to land entitlement, as well as the extent and impact of the self-administration of indigenous communities at the local level (Village Councils) and national level.
- **Paragraph 16 of the concluding observations :** The Committee would like to recall that the full rights of indigenous populations over their lands include the right to the subsoil. The State party is therefore requested to provide information on the measures taken to

ensure that the *informed consent* of the indigenous communities is being sought for all mining projects on indigenous lands. The State party is also requested to provide an update on the mining operations currently taking place in the North Pakaraima Mountain Area. Furthermore, the State party is invited to provide examples of jurisprudence, if any, in which indigenous communities have challenged decisions on land entitlement in court, and information on the role of customary law within national jurisdiction in this regard.

- **Paragraph 19 of the concluding observations:** The Committee requests the State party to provide information on whether Mines Rangers discovering unacceptable practices may institute legal proceedings to address such practices. With respect to health care, the Committee would like to commend the State party on the improvements in this sector but also to request that it provided with disaggregated data on the situation of indigenous communities, as well as with an update on the impact of the National Malaria Program.

[...]

14. INDIA, 15 AUGUST 2008 URGENT ACTION (LETTER)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 70th session held from 19 February to 9 March 2007, considered the fifteenth to nineteenth periodic reports of India and adopted concluding observations in relation thereto (CERD/C/IND/CO/19).

Pursuant to Article 9, paragraph 1, of the Convention, and Article 65 of the Committee's rules of procedure, as amended, the Committee requested in paragraph 34 of its concluding observations that your Government provide information on the way it has followed up on the recommendations contained in paragraphs 12, 15, 19 and 26 within one year.

To date, the Committee has not received any information from the State party in this respect. On the other hand, the Committee has been made aware of the imminent construction of the Tipaimukh dam in Manipur, the Lower Subasiri dam in Arunchal Pradesh and other dams on indigenous territories, allegedly without the free prior informed consent of the affected indigenous communities, resulting in the forced resettlement and endangering of the traditional lifestyles of those communities. In this regard, the Committee recalls paragraph 19 of its concluding observations, in which it recommended that the State party "seek the prior informed consent of communities affected by the construction of dams in the Northeast or similar projects on their traditional lands in any decision-making processes related to such projects, and provide adequate compensation and alternative land and housing to those communities."

Moreover, the Committee has received information according to which no steps have been taken to repeal the Armed Forces (Special Powers) Act of 1958, as recommended in 2005 by a special Review Committee set up by the Ministry of Home Affairs, or to release the report of the Review Committee.

In light of this information, the Committee would like to refer to paragraph 12 of its concluding observations, in which I had urged the State party "to repeal the Armed Forces (Special Powers) Act and to replace it 'by a more humane Act,' in accordance with the recommendations contained in the 2005 report of the above Review Committee."

In light of the above, and with a view to continuing a constructive dialogue with your Government, the Committee requests the State party to submit comments with respect to the implementation of the recommendations contained in paragraphs 12 and 19 of its concluding observations, in particular with respect to the measures taken by the State party to safeguard the

rights of indigenous communities whose territories and traditional lifestyles are threatened by projects such as the Tipaimukh and Lower Subasiri dams, as well as the continued application of the Armed Forces (Special Powers) Act. The Committee also reiterates its request for the State party to provide comments with respect to the implementation of the recommendations contained in paragraphs 15 and 26 of its concluding observations. The Committee wishes to receive such comments no later than 31 December 2008.

Allow me, Excellency, to reiterate the Committee's wish to pursue a constructive dialogue with your Government and underline that the Committee's request for information are made with a view to assisting your Government in the effective implementation of the Convention.

15. MEXICO, 07 MARCH 2008 FOLLOW UP (LETTER)

I wish to inform you that the Committee on the Elimination of Racial Discrimination considered, at its 72nd session held from the 18 February to the 7 March 2008, the follow-up report submitted by the Government of Mexico (CERD/C/MEX/CO/15/Add.1) pursuant to rule 65 (1) of its rules of procedure.

The Committee welcomes the submission of information, as requested, on the implementation of the recommendations contained in paragraph 11, 12 and 17 of the concluding observations (CERD/C/MEX/CO/15) adopted by the Committee following the consideration at its 68th session of the 12th to 15th periodic reports of Mexico, submitted in one document.

The Committee appreciates the opportunity thus provided to continue its dialogue with the State party. In this spirit, the Committee would like to draw the State party's attention to the observations mentioned below. The Committee requests that comments and responses on action taken on these issues be included in the 16th and 17th periodic reports:

- **Paragraph 11 of the concluding observations:** The Committee welcomes the information on the estimated number of persons belonging to communities of African descent and commends the initiatives taken to include people of African descent as a specific category in the next census. The Committee invites the State party to present the main points of the 2006 study *Persons of African descent in Mexico – Survey and proposals to prevent discrimination* and to report on steps taken on the basis of this study.
- **Paragraph 12 of the concluding observations:** While welcoming the important information on the legislative framework and the structure of the advisory board of the National Commission for the Development of Indigenous Peoples (CDI), the Committee regrets that no information on the actual programmes and strategies carried out or supported by CDI has been supplied. The Committee would appreciate such information, in particular on the specific steps taken to “*foster regional development in the indigenous areas and to upgrade their living conditions*”, one of the stated purposes of the constitutional reform with respect to indigenous rights. Finally, the Committee would appreciate receiving information on the number and nature of cases on indigenous rights decided by the National Human Rights Commission.
- **Paragraph 17 of concluding observations:** The Committee welcomes the extensive overview of the rules and programmes in place to supply family planning and reproductive health services to the population. The Committee would further appreciate receiving information on any cases where health officials or others have been found to violate rules requiring informed consent.

As the National Human Rights Commission appears to be the main recipient of complaints in cases covered by paragraphs 12 and 17, the State party is requested to supply general information on the activities and competencies of the National Human Rights Commission, in particular with respect to complaints.

In the latest concluding observations, the State party was requested to submit its 16th and 17th periodic reports jointly on 22 March 2008. In light of the above requests specific information on various issues to be included in the next periodic report, the Committee has decided to postpone the deadline for submission of the report to 22 June 2008, so as to provide the State party with sufficient time to gather the requested information.

Allow me, Excellency, to reiterate the wish of the Committee to pursue its constructive dialogue with your Government, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

16. NORWAY, 07 MARCH 2008 FOLLOW UP (LETTER)

I wish to inform you that the Committee on the Elimination of Racial Discrimination, at its seventy-third session, held from 28 July to 15 August 2008, considered the follow-up report submitted by the Government of Norway (CERD/C/NOR/CO/18/Add.1) pursuant to rule 65(1) of its rules of procedure.

The Committee welcomes the submission of extensive information, as requested, on the implementation of the recommendations contained in paragraphs 17, 19 and 21 of the concluding observations (CERD/C/NOR/CO/18)....

The Committee appreciates the opportunity thus provided to continue its dialogue with the State party. In this spirit, the Committee would like to draw the State party's attention to the observations mentioned below. The Committee requests that the comments and responses on action taken on these issues be included in the State party's ... [next periodic report] ... due on 05 September 2009.

- **Paragraph 17 of the concluding observations:** The Committee is grateful to the State party for the extensive information provided on the situation of the East Sami. The Committee understands that a paper on the general principles governing Norwegian policies towards the Sami people was to be submitted to the Norwegian Parliament at the end of 2007 and would appreciate receiving information on the contents of this paper as well as on the outcome of the submission. The Committee would also welcome information on the present status of the Draft Nordic Sami Convention, as the necessary assessments were to be carried out by the relevant governments by October 2006. Finally, the State party is requested to provide information on its experience with respect to the new Finnmark Act, specifically on the composition and work of the Finnmark Commission.

[...]

17. NICARAGUA, 24 AUGUST 2007 URGENT ACTION (LETTER) (UNOFF. TRANS)

I am writing to inform you that on 14 August 2007, in the course of its 71st session, the Committee continued to consider under its early warning and urgent action procedures the

situation of the Awas Tingni community in light of the reports it has received, including the responses presented by the State party on 18 August 2006.

The Committee is satisfied with the report drafted by the State party in June 2007 regarding the implementation of the Convention. The report, which will be considered during the Committee's 72nd session (18 February - 7 March 2008), will allow the constructive dialogue between the Committee and the State party to progress.

The Committee is concerned about the reports that it has received regarding a new delay in the granting of titles to communal lands to the Awas Tingni community, which should have occurred 9 August 2007. According to the most recent information that the Committee has received, the granting of said titles was impeded by new complaints against said titling presented by blocks of the Tasba Raya and Diez communities.

The Committee expresses its concern over this situation, particularly in light of the information provided by the State party, which indicated that the dispute resolution procedure had concluded on 15 February 2007 by resolution of the Regional Council.

The Committee once again expresses its concern regarding the situation of the Awas Tingni community as a result of the climate of uncertainty and insecurity generated by the lack of titling of its lands. Specifically, the Committee expresses its concern over new reports of a massive influx of colonists and members of the lumber industry into the area to which the community is to have a title as well as threats made against community members and the technical staff responsible for marking boundaries by groups who oppose the titling.

Finally, the Committee has received information about the concern expressed by the Awas Tingni community regarding sites that are sacred to it and the situation of several families who are not protected by the Regional Council's February 2007 resolution.

In this context, by virtue of article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee urgently requests that the State party provide new information on the matters mentioned in its 18 August 2007 letter as well as the following points:

- 1) The new date for the granting of the definitive title of the communal property of the Awas Tingni community and for the demarcation of the community's land in keeping with the findings of the Inter-American Court and Law 445.
- 2) The steps that have been taken to protect the community's land from the actions of third parties and the legal rectification of said lands in accordance with the Inter-American Court's Sentence and Resolution of Protective Measures and Law 445.
- 3) The measures that have been taken regarding recent threats against members of the Awas Tingni community by groups that oppose the titling of their lands.
- 4) The measures that have been taken to protect the sacred sites of the Awas Tingni community and the families who were excluded from the February 2007 resolution of the Regional Council.

The Committee asks that the State party submit a response and all information or clarifications by 30 September 2007. During its 72nd session, the Committee will engage in a detailed review of the situation of the Awas Tingni community in the context of the State party report.

18. PANAMA, 15 AUGUST 2008 URGENT ACTION (LETTER) (UNOFF. TRANS)

The purpose of this letter is to inform you that in the course of its 73rd session, which was held 28 July - 15 August 2008, the Committee on the Elimination of Racial Discrimination considered the situation of the Ngobe indigenous community of Carco la Pava in the district of Changuinola, Bocas del Toro Province, under its early warning and urgent action procedures.

Specifically, the Committee has received information regarding the AES Changuinola Company's project to build the CHAN 75 dam in the municipality of Charco la Pava. This will lead to the arbitrary displacement of the local community and the degradation of the natural resources necessary for the subsistence of the Carco la Pava and neighboring communities. Furthermore, it will impact the community's culture and identity, generating internal conflicts and divisions that may lead to violence. All of this will have consequences for human rights, including the rights to life and physical safety, property, work, freedom of circulation, personal freedom, participation, and the rights of indigenous peoples.

The Committee laments that the affected communities have not been consulted and informed of this project and is concerned about allegations that community leaders and their followers have been threatened and intimidated, that their movements are constantly controlled, and that some families have been given 18 days to relocate with no previous agreement. The Committee urges the State party to issue a statement regarding allegations and to take all necessary steps to ensure the safety of the interested parties.

Given the gravity of the situation, the Committee requests that the State party respond in detail as soon as possible regarding the situation described in this letter.

The Committee also would like to recall its letter of 14 March 2008 in which it extended the deadline for the submission of a single document containing periodic reports 15 through 19 by 30 June 2008. (Said reports have been overdue since 4 January 1998 through 4 January 2006, respectively.) In case of non-receipt of the overdue report, the Committee will proceed with the full review of the implementation of the Convention in Panama and adopt concluding observations in light of information received from other sources at its 74th session.

Allow me, Excellency, to reiterate that the Committee's requests for information are made with a view to assisting your Government in the effective implementation of the Convention.

19. PERU, 09 MARCH 2007 URGENT ACTION (LETTER) (UNOFF. TRANS)

I would like to recall my letter of 18 August 2006, in which I informed you that during its 69th session and under its early warning and urgent action procedures, the Committee completed a preliminary review of the information presented by the Legal Commission for the Self-Development of Native Andean Peoples (*Comisión Jurídica para el Autodesarrollo de los Pueblos Originarios Andinos*, CAPAJ) on the situation of the Aymara people in the prairies of the Peruvian altiplano.

As you may recall, in order to further clarify the situation and facilitate a constructive dialogue with Your Excellency's Government, the Committee had issued a list of questions and requested that responses be submitted by 31 December 2006 at the very latest. I lament that no answer has been received to date, and would appreciate it if Your Excellency could clarify the situation.

Having received more recent information from CAPAJ, the Committee is concerned about allegations of threats and intimidation against community leaders and their followers. The Committee recommends that the State party issue a statement regarding these allegations and that it take all steps necessary to ensure the safety of the interested parties.

I wish to inform you that the Committee has requested that a detailed response to the questions included in the letter dated 18 August 2006 and this letter be submitted **no later than 1 July 2007**. The Committee also invites the State party to send a delegation to its 71st session, to be held in Geneva from 30 July to 17 August 2007, in order to engage in a frank and constructive dialogue regarding these matters.

Finally, the Committee reiterates its request that the State party submit a single document containing period reports 14 through 18, which have been pending since 29 October 1998 through 29 October 2006, respectively, as soon as possible.

Allow me, Excellency, to reiterate that the Committee's requests for information are made with a view to assist your Government in the effective implementation of the Convention.

20. PERU, 03 SEPTEMBER 2007 URGENT ACTION (LETTER) (UNOFF. TRANS)

I am writing to inform you that on 31 July 2007, in the course of its 71st session and in light of information furnished by the State party and other sources, the Committee continued its consideration of the situation of the Ancomarca community and other Aymara communities of Tacna Province under its early warning and urgent action procedures. This situation was the subject of the Committee's letters dated 18 August 2006 and 9 March 2007.

The Committee wishes to thank the State party for its preliminary communication dated 11 July 2007 (No. 94-2007-JUS/CND-SE/CESAPI) and for the additional communication received from the State party on 22 August 2007 (No. 116-2007-JUS/CND-SE/CESAPI). The Committee wishes to note, however, that said report was not received in time for consideration during its 71st session. As a result, the Committee has decided to continue its examination of the situation of the Ancomarca community and other Aymara communities of Tacna Province during its 72nd session, to be held 18 February - 7 March 2008, in light of information received from the State party and other sources. To this end, the Committee requests that the State party submit the appendices of the communication dated 22 August 2007, which contain documentation requested by the Committee on previous occasions as well as complementary information on the matters included in the Committee's 9 March 2007 letter.

The Committee also has knowledge of the recent Special Report of the Ombudsman's Office on "Socio-environmental conflicts due to extractive activities in Peru," which was issued in April 2007. Said report describes the causes and impact of the socio-environmental disputes regarding the exploitation of natural resources between 2004 and 2007, including mining, hydrocarbon, lumber and other activities. The report describes 30 socio-environmental conflicts (active or in a latent state) in the country, most of which would affect indigenous communities.

In this sense, the Committee requests that the State party provide information on the measures that have been taken to implement the recommendations of the Special Report of the Ombudsman's Office on "The socio-environmental conflicts due to extractive activities in Peru." Specifically, the Committee requests that the State provide clarification or additional information on the legislative gaps identified in said report in regard to the environmental impact evaluation studies and the affected communities' rights to participation and consultation.

The Committee requests that the response and all of the information or clarifications be submitted no later than **30 November 2007**, and invites a delegation from the State party to take part in its 72nd session.

Finally, the Committee reiterates its urgent request that the State party present a single document containing periodic reports 14-18, which were due on 29 October 1998 through 29 October 2006, respectively. The Committee wishes to inform you that in case of non-receipt of the overdue materials by 30 June 2008, it will proceed with the full review of the implementation of the Convention in Peru and adopt concluding observations in light of information received from other sources at its 73rd session, to be held 28 July - 16 August 2008.

21. PERU, 07 MARCH 2008 URGENT ACTION (LETTER) (UNOFF. TRANS)

I am contacting you in regard to my letter of 3 September 2007 on the situation of the Ancomarca community and other Aymara communities of Tacna Province. In my last letter, which I am resubmitted for your review, the Committee requested that the State party provide additional information on said community for its analysis during its 72nd session, which was held 18 February - 7 March 2008. In the letter, the Committee also asked the State party to provide information on the measures that have been taken to implement the recommendations of the Special Report of the Ombudsman's Office on "Socio-environmental conflicts due to extractive activities in Peru," which was issued in April 2007.

The purpose of this letter is to inform you that prior to its 72nd session, the Committee received a series of reports on the impact of the exploitation of hydrocarbons in the Corrientes River basin in Loreto Province on the health and subsistence activities of the Achuar, Quechua and Urarinas communities that traditionally live in the area. According to said reports, the exploitation of hydrocarbons over the past decades has caused serious environmental pollution and irreparable damage to the health and wellbeing of the members of the indigenous communities. The reports also indicate that the State has granted new concessions in indigenous territories in the area without consulting the communities that will be directly affected.

The situation of the indigenous communities in the Corrientes River basin was analyzed by the Committee on 27 February 2008 during its 72nd session under its early warning and urgent action procedures. The Committee notes that this situation presents characteristics that are similar to other cases of environmental pollution of which it has had direct knowledge and others that are described in the Special Report of the Ombudsman's Office, "Socio-environmental conflicts due to extractive activities."

The Committee expresses its concern over the environmental pollution and degradation derived from the activities of the extractive industries in the traditional territories of Peru's indigenous peoples and their impact on the health and traditional ways of life of said peoples. As was indicated by the Special Report of the Ombudsman's Office, these situations seem to be linked to the existence of legislative gaps regarding the environmental impact evaluation studies and the consultation and participation of the affected communities.

In this sense, and in order to guide the review of the situation by the Committee under its early warning and urgent action procedures, the Committee hereby requests information on the following matters:

- a) Please provide the Committee with any information that you believe to be opportune on the situation of the Achuar and other indigenous communities affected by the exploitation of hydrocarbons in the Corrientes River, and in particular on the new concessions granted in that area.
- b) Please provide any and all information that you believe to be opportune on the situation of the Ancomarca and other Aymara communities affected by the exploitation of natural resources in Tacna Province.
- c) Please provide detailed information on current legislation on the exercise of the right to consultation and free and informed consent in the exploration and exploitation of natural resources in traditional territories and its application.
- d) Please provide detailed information on current legislation regarding environmental impact monitoring of exploration and exploitation of natural resources in indigenous territories and its application.
- e) Please provide detailed information on the measures taken to implement the recommendations of the Special Report of the Ombudsman's Office on "Socio-environmental conflicts due to extractive activities in Peru."

The Committee requests that a response to this letter and all information or clarifications be submitted by the State party no later than **30 June 2008**, and invites a delegation of the State party to participate in its 73rd session, which will take place 28 July - 15 August 2008.

I would also like to reiterate the Committee's request for a single document containing periodic reports 14 through 18, which have been overdue since 29 October 1998 through 29 October 2006, respectively, by **30 June 2008**. In case of non-receipt of the overdue report, the Committee will proceed with the full review of the implementation of the Convention in Peru and adopt concluding observations in light of information received from other sources at its 73rd session.

22. PHILIPPINES, 24 AUGUST 2007 URGENT ACTION (LETTER)

The Committee wishes to inform you that at its 71st session held from 30 July to 17 August 2007, it considered on a preliminary basis under its early warning and urgent action procedure the information received from the *Apu Manglang Glup' Pusaka*, the *Gukom Sog Pito Kobogolalan Sog Piot Kodulongan*, the *Pigsalabukan Bangsa Subanon*, the Legal Rights and Natural Resources Center, Tebtebba, Indigenous Peoples Links, and the Irish Centre for Human Rights concerning the situation of the Subanon of Mount Canatuan, Siocon, Zambonga del Norte.

Paragraph 17 of the concluding observations (CERD/304/Add.34) adopted by the Committee at its 51st session on 14 August 1997, following the examination of the eleventh to fourteenth periodic reports of the Philippines, submitted in one document, provides:

"In connection with article 5(d)(v) of the Convention, concern is expressed at reports of forced evictions and displacements of indigenous populations in development zones, as well as at reports that specific groups of indigenous peoples have been denied by force the right to return to some of their ancestral lands."

The Committee notes with appreciation the adoption of the Indigenous Peoples Rights Act in 1997 which requires the free, prior and informed consent of indigenous communities for any development projects on their ancestral lands. The Committee notes with concern, however, that, according to the information received, the Act has not been implemented to date.

Furthermore, the 1998 Implementing Rules and Regulations, revised in 2002 and 2006, have allegedly reduced the rights granted to indigenous peoples by the Indigenous Peoples Rights Act.

Furthermore, according to information before the Committee, the National Commission of Indigenous Peoples has so far failed to register the Certificate of Ancestral Domain Title of the Subanon, although the Subanon have attempted to have their land rights recognized since 1987. In addition, the National Commission on Indigenous Peoples allegedly facilitated the creation of a body with no status in indigenous structure and not deemed representative by the Subanon, the Siocon Council of Elders, which concluded an agreement with a Canadian mining company (TVI Pacific) in order to authorize mining activities on Mount Canatuan, a sacred site of the Subanon.

Finally, the Committee notes with concern allegations according to which members of the Subanon community are exposed to acts of violence and attacks on their property, sacred sites and institutions, and regarding the existence of a pattern of escalating racial hatred and violence against the Subanon community. The Committee is particularly concerned about information that paramilitary forces deployed by TVI Pacific are accused of human rights violations and that mining activities on Mount Canatuan continue and are being expanded.

The Committee would welcome the initiation of a constructive dialogue with the State party on these issues and, in accordance with article 9, paragraph 1, of the Convention and rule 65 of its Rules of Procedure, wishes to receive detailed responses and comments to the questions below:

1. Please explain the reasons why the National Commission on Indigenous Peoples has failed to register the Certificate of Ancestral Domain Title of the Subanon.
2. Please comment on reports that the mining concession granted to TVI Pacific was issued without the prior consent of the Subanon community, or its duly authorized representatives, in violation of the Indigenous Peoples Rights Act of 1997. Please provide information on how the Siocon Council of Elders was granted representative status for the Subanon community.
3. Please comment on the information according to which amendments introduced in 2002 and 2006 to the 1998 Implementing Rules and Regulations impose restrictions in relation to the time-frame and process required to obtain the free and prior informed consent the phrase again of indigenous communities which are not in conformity with the customs, laws and traditional practices of these communities.
4. Please provide information on the measures adopted by the State party to protect members of the Subanon community against acts of hatred and violence. Please also provide information on the number of complaints about such acts, the measures taken to investigate such complaints, and the number and nature of sentences, if any, imposed on perpetrators, as well as the assistance provided to the victims.

The Committee requests the State party to send its response and comments **no later than 31 December 2007**, so that they can be examined by the Committee at its 72nd session, to be held in Geneva from 18 February to 7 March 2008. In the absence of a response by the set deadline, the Committee will consider adopting a decision under its early warning and urgent action procedure at its 72nd session.

The Committee further reminds the State party that its fifteenth to nineteenth periodic reports are overdue since 1998. It therefore strongly encourages the State party to submit its overdue reports, in a single document, by 30 June 2008. In case of non-receipt of the

overdue report by 30 June 2008, concluding observations will be adopted in the absence of a report and in light of information received from other sources, including from non-governmental organisations, at its 73rd session, to be held from **28 July to 15 August 2008**.

Allow me, Excellency, to reiterate the importance for the Committee to engage in a constructive dialogue with your Government, and to underline that the Committee's request for information is being made with a view to assisting your Government in the effective implementation of the Convention.

23. PHILIPPINES, 07 MARCH 2008 URGENT ACTION (LETTER)

I write to thank you for the responses received on 4 January 2008 to the letter sent by the Committee on the Elimination of Racial Discrimination on 24 August 2007, which were reviewed at its seventy-second session, held from 18 February to 7 March 2008.

In view of new information at its disposal, however, the Committee remains preoccupied by the situation of the community of the Subanon of Mount Canatuan. It notes with concern that the situation has not improved and, in accordance with article 9 (1) of the Convention and article 65 of its rules of procedure, it requests from the State party further clarification and additional information in relation to the following issues already raised in August 2007:

- the granting of a concession to a Canadian mining company (TVI Pacific) authorizing mining activities on Mount Canatuan, a sacred site of the Subanon, without having obtained their free, prior and informed consent in line with their traditional forms of decision-making;
- the continuing recognition of the 'Siocon Council of Elders' as the representative body of the Subanon community by the NCIP and the government despite the repudiation of this body by the community concerned;
- the measures taken by the State party to protect the members of the community from acts of violence and attacks on their property, sacred sites and institutions, bearing in mind in particular that paramilitary forces deployed by TVI Pacific are accused of human rights violations, allegedly with the cooperation of the armed forces;
- whether the amendments introduced in 2002 and 2006 to the 1998 Implementing Rules and Regulations impose restrictions in relation to the timeframe and process required to obtain the free and prior informed consent of indigenous communities; and
- the failure to process all complaints and legal actions brought by the community.

Furthermore, the Committee is concerned about information suggesting that the situation of the community of the Subanon of the Mount Canatuan is not an isolated case, but that it is rather indicative of similar situations faced by other indigenous communities in the State party. In this context, the Committee wishes to recall that the free, prior and informed consent of indigenous communities for any development projects on their ancestral lands is required under the State party's 1997 Indigenous Peoples Rights Act.

The Committee wishes to receive the requested information **no later than 30 June 2008**. It further reminds the State party that in its letter of 24 August 2007, the committee indicated that in case of non-receipt by 30 June 2008 of the State party's fifteenth to nineteenth periodic reports, it would proceed with the full review of the implementation of the Convention in the Philippines and adopt concluding observations in the absence of a report, in light of information received from other sources, including non-governmental organizations, at its 73rd session, to be held from 28 July to 15 August 2008. The State party may wish, therefore, to include the

requested information in its overdue report, which, in addition, should be drafted in compliance with the revised reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) attached herewith.

Rest assured, Excellency, that the Committee looks forward to engaging in a constructive dialogue with the Government of the Philippines, with a view to providing it with assistance in its efforts to ensure the effective implementation of the Convention.

24. PHILIPPINES, 15 AUGUST 2008 URGENT ACTION (LETTER)

The Committee wishes to express its gratitude to the Permanent Mission of the Philippines in Geneva for the briefing it received at its seventy-third session, held from 28 July to 15 August 2008, concerning the community of the Subanon of Mount Canatuan, Siocon, Zambonga del Norte, and their land claims.

The briefing has helped to add to the Committee's understanding of the facts of the situation, bearing in mind also that the State party's periodic report submitted in June 2008, though addressing indigenous issues in general terms, does not specifically comment on the situation of the Community of the Subanon.

However, in light of the fact that contradictory information has been received on this issue from different sources, the Committee would appreciate receiving a written note of the points made during the briefing in addition to any further information which the State party may wish to provide.

Allow me Excellency, to reiterate the wish of the Committee to pursue a constructive dialogue with your Government, and to underline that the Committee's observations and request for further information are made with a view to assisting your Government in the effective implementation of the Convention.

25. UNITED STATES OF AMERICA, 9 MARCH 2007 URGENT ACTION (LETTER)

I wish to acknowledge receipt of your letter dated 20 February 2007, in which you informed me that the United States of America anticipates submitting in March or April 2007, in a single document, its fourth and periodic reports combined, due on 20 November 2003, and its sixth periodic report, due on 20 November 2005.

The Committee took note with interest that information in this report would include a direct response to the concluding observations of the Committee in relation to the situation of the Western Shoshone peoples (A/56/18, para. 400, adopted on 13 August 2001), as well as to issues raised in Decision 1 (68) on the United States of America, adopted on 8 March 2006.

Pending receipt and examination of the overdue periodic reports of the United States of America, provisionally scheduled for the 72nd session of the Committee to take place in Spring 2008, the Committee respectfully insists that due consideration be paid to the recommendations set forth in its Decision 1 (68).

26. REVISED GUIDELINES FOR THE USE OF THE EARLY WARNING AND URGENT ACTION PROCEDURE, AUGUST 2007 (FOOTNOTES OMITTED)

A. INTRODUCTION

1. In 1993, the Committee on the Elimination of Racial Discrimination (CERD) adopted a working paper on the prevention of racial discrimination, including early warning and urgent procedures (A/48/18, Annex III). Since 1993, the Committee has adopted numerous decisions under these procedures and made recommendations to States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) as well as, through the Secretary General, to the Security Council for action to prevent serious violations of the Convention, in particular those that could lead to ethnic conflict and violence.

2. CERD adopted its working paper in 1993 at the time of the development of preventive action identified and proposed by the UN Secretary General, M. Boutros Boutros-Ghali in his report "An agenda for peace". The General Assembly, in its resolution 47/120 of 18 December 1992, emphasized the need for all organs and bodies of the UN to intensify their efforts to strengthen the Organization's role in preventive diplomacy and to continue the discussion of the Secretary-General's report with a view to taking adequate action. In 1992/1993, this idea was discussed in various treaty bodies, as reflected in the following consideration taken from the Fourth meeting of Chairpersons of Human Rights treaty bodies:

"... the treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations of all kinds arising within the jurisdiction of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible."

3. The current working paper aims at revising the 1993 paper in the light of the practice of the Committee since 1993 and of the current needs and recent developments.

B. NEED FOR EARLY WARNING AND URGENT ACTION CAPACITY IN THE CURRENT WORLD CONTEXT

4. At the Stockholm Conference held in 2004, the Secretary General of the United Nations, Mr Kofi Annan, exhorted that there can be no more important issue and no more binding obligation than the prevention of genocide. In the declaration adopted at the end of the Conference, participants declared that they were committed to using and developing practical tools and mechanisms to identify as early as possible and to monitor and report on genocidal threats to human life and society in order to prevent the recurrence of genocide, mass murder and ethnic cleansing.

5. In his 2005 report entitled "in larger freedom: towards development, security and human rights for all" (A/59/2005), the Secretary-General of the United Nations noted once again that "no task is more fundamental for the United Nations than the prevention and resolution of deadly conflict" and that "prevention must be central to all our efforts ... through, inter alia, promoting democracy and the rule of law".

6. In her plan of action adopted in May 2005 (A/59/2005/add.3), the United Nations High Commissioner for Human Rights also recalled the importance of prevention.

7. Since 1993, the Committee has considered a large number of situations and adopted decisions under its early warning and urgent action procedures. It has addressed the presence of serious, massive, or persistent patterns of racial discrimination, in some cases with genocidal dimensions. These have included acts of extreme violence such as bombing of villages, use of chemical weapons and landmines, extrajudicial killings, rape, and torture committed against minorities and indigenous peoples. Furthermore, the Committee adopted decisions concerning situations of, inter alia, large-scale internal displacement and refugee flows linked to racial discrimination and addressed cases of encroachment on the lands of indigenous communities, in particular exploitation of natural resources and infrastructure projects posing threats of irreparable harm to indigenous and tribal peoples. Other decisions of the Committee have addressed patterns of escalating racial hatred and violence, racial discrimination as evidenced in social and economic indicators, ethnic tensions, racist propaganda or appeals to racial intolerance, as well as the lack of an adequate legislative basis for the definition and criminalization of all forms of racial discrimination.

8. The decisions taken by the Committee have included specific requests for action : not only the submission of overdue reports by the State party concerned but also the urgent provision of specific information on the situation under consideration and on the measures taken by the State party to remedy the situation in full compliance with the Convention. Some decisions have also made reference, where relevant, to measures adopted by the Security Council on the situation concerned. Many decisions have included detailed recommendations to States parties to halt further human rights violations, to initiate a dialogue with victims of racial discrimination, and to seek technical assistance and advisory services from the Office of the High Commissioner for Human Rights (OHCHR). In some instances, the Committee has also offered its good offices and technical assistance, and on two occasions, field missions were conducted by Committee members. In other cases, the Committee has requested the UN Secretary-General to draw the attention of the competent organs, including the Security Council, and appealed for an international presence as well as regional cooperation to prevent further deterioration of the situation and to increase assistance to the victims. The Committee has also recommended the competent UN organs to provide humanitarian assistance. It has frequently reminded States parties as well as the international community of their obligation to prosecute and punish perpetrators of international crimes and provide reparations to victims.

9. Since its sixty-fifth session, the work of the Committee has been facilitated by a five-member working group on early warning and urgent action procedures.

10. In March 2005 at its sixty-sixth session, the Committee held a thematic discussion on the prevention of genocide, and adopted a Declaration on the Prevention of Genocide (CERD/C/66/1) for the consideration of the States parties, the Special Adviser to the Secretary General on the Prevention of Genocide, the Secretary General, and the Security Council. Furthermore, at its sixty-seventh session, the Committee adopted a decision on follow-up to the declaration identifying indicators of patterns of systematic and massive racial discrimination (CERD/C/67/1).

11. At its seventieth session, the Committee decided to request the working group to prepare a draft paper which would include terms of reference for its activities and provide an update of the 1993 paper on the early warning and urgent action procedure, on the basis of the practice of the Committee since 1993.

C. INDICATORS FOR THE EARLY WARNING AND URGENT ACTION PROCEDURE

12. The Committee shall act under its early warning and urgent action procedure when it deems it necessary to address serious violations of the Convention in an urgent manner. The Committee shall be guided by the indicators set out below which replace the criteria in the 1993 working paper. As these indicators may be present in situations not requiring immediate attention to prevent and limit serious violations of the Convention, the Committee shall assess their significance in light of the gravity and scale of the situation, including the escalation of violence or irreparable harm that may be caused to victims of discrimination on the grounds of race, colour, descent or national or ethnic origin.

- a. Presence of a significant and persistent pattern of racial discrimination, as evidenced in social and economic indicators;
- b. Presence of a pattern of escalating racial hatred and violence, or racist propaganda or appeals to racial intolerance by persons, groups or organizations, notably by elected or other State officials;
- c. Adoption of new discriminatory legislation;
- d. Segregation policies or de facto exclusion of members of a group from political, economic, social and cultural life;
- e. Lack of an adequate legislative framework defining and criminalizing all forms of racial discrimination or lack of effective mechanisms, including lack of recourse procedures;
- f. Policies or practice of impunity regarding: (a) Violence targeting members of a group identified on the basis of race, colour, descent or national by State officials or private actors; (b) Grave statements by political leaders/prominent people that condone or justify violence against a group identified on the ground of race, colour, descent, national or ethnic origin; (c) Development and organization of militia groups and/or extreme political groups based on a racist platform;
- g. Significant flows of refugees or displaced persons especially when those concerned belong to specific ethnic groups;
- h. Encroachment on the traditional lands of indigenous peoples or forced removal of these peoples from their lands, in particular for the purpose of exploitation of natural resources,
- i. Polluting or hazardous activities that reflect a pattern of racial discrimination with substantial harm to specific groups.

D. POSSIBLE MEASURES TO BE TAKEN UNDER THE EARLY WARNING AND URGENT ACTION PROCEDURE

13. The Committee shall decide to consider a specific situation under its early warning and urgent action procedure on the basis of the information made available to it by, inter alia, United Nations agencies and human rights bodies, special procedures of the Human Rights Council, regional human rights mechanisms, and national human rights institutions and non-governmental organisations, that reflect serious violations of the Convention according to the above indicators.

14. The measures to be taken by the Committee under the early warning and urgent action procedure may include:

- a. Request the State party concerned for the urgent submission of information on the situation considered under the early warning and urgent action procedure.
- b. Request the Secretariat to collect information from field presences of the Office of the High Commissioner of Human Rights and specialized agencies of the United Nations, national human rights institutions, and non-governmental organizations on the situation under consideration.
- c. Adoption of a decision including the expression of specific concerns, along with recommendations for action, addressed to:
 - (i) The State party concerned;
 - (ii) The Special Rapporteur on contemporary forms of racism, racial discrimination and xenophobia and related intolerance, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, or the Independent Expert on minority issues;
 - (iii) Other relevant human rights bodies or special procedures of the Human Rights Council;
 - (iv) Regional inter-governmental organizations and human rights mechanisms.
 - (v) The Human Rights Council.
 - (vi) The Special Adviser of the Secretary General on the prevention of genocide;
 - (vii) The United Nations Secretary General through the High Commissioner for Human Rights together with a recommendation that the matter be brought to the attention of the Security Council.
- d. Offer to send to the State party concerned one or more of the members of the Committee in order to facilitate the implementation of international standards or the technical assistance to establish a human rights institutional infrastructure
- e. Recommendation to the State party concerned to avail itself of the advisory services and technical assistance of the Office of the High Commissioner for Human Rights;

E. TERMS OF REFERENCE OF WORKING GROUP ON EARLY WARNING AND URGENT ACTION

Establishment of a working group

15. The Committee shall, in accordance with rule 61 of its rules of procedure¹, set up a Working Group to meet during its sessions, or at any other convenient time to be decided by the Committee in consultation with the Secretary-General, for the purpose of making recommendations to the Committee under its early warning and urgent action procedure and assisting the Committee in any manner which the Committee may decide.

16. The Working Group shall not comprise more than five members of the Committee, to be elected for a renewable term of two years, respecting the principle of equitable geographical representation.

17. The Working Group shall elect its own officers, including the member to act as coordinator of the group, develop its own working methods, and apply as far as possible the rules of procedure of the Committee to its meetings.

18. The coordinator shall (a) convene meetings of the working group; (b) preside at meetings of the working group; (c) report on meetings of the working group to the Committee; (d) fulfil other responsibilities which might be required for the proper functioning of the Working Group in consultation with the members of the Working Group.

Meetings

19. Meetings of the Committee or its Working Group during which situations under the early warning and urgent action procedure will be examined shall be closed. Meetings during which the Committee may consider general issues under the early warning and urgent action procedure may be public if the Committee so decides.

20. The working group shall operate in close cooperation and consultation in particular with the chairperson of the Committee, the rapporteur of the Committee, other members of the Bureau, the Follow-up Coordinator and his or her Alternate.

21. The working group is mandated to analyze and assess in a preliminary way information received on situations that may require urgent action; it shall make recommendations to the Committee as well as draft decisions of the Committee and letters addressed to States parties.

22. The working group may recommend to the Committee the adoption of any of the measures referred to in section D of the working paper.

23. The Committee may adopt in a private meeting any decision or action to be taken under the early warning and urgent action procedure.

II. HUMAN RIGHTS COMMITTEE

A. Concluding Observations

1. CHILE, CCPR/C/CHL/CO/5, 18 MAY 2007

7. The Committee is concerned about the definition of terrorism contained in the Counter-Terrorism Act No. 18.314, which may be excessively broad. It is also concerned that this definition has allowed charges of terrorism to be brought against members of the Mapuche community in connection with protests or demands for protection of their land rights. The Committee also notes that the procedural guarantees set out in article 14 of the Covenant have been restricted by the application of this Act (articles 2, 14 and 27 of the Covenant).

The State party should adopt a narrower definition of crimes of terrorism, so as to ensure that it is not applied to individuals for political, religious or ideological reasons. Such a definition should be limited to offences which can justifiably be equated with terrorism and its serious consequences, and must ensure that the procedural guarantees established in the Covenant are upheld.

19. While it notes the intention expressed by the State party to give constitutional recognition to indigenous peoples, the Committee is concerned about the variety of reports consistently indicating that some claims by indigenous peoples, the Mapuche in particular, have not been met, and about the slow progress made in demarcating indigenous lands, which has caused social tensions. It is dismayed to learn that “ancestral lands” are still threatened by forestry expansion and megaprojects in infrastructure and energy (arts. 1 and 27).

The State party should:

- (a) Make every possible effort to ensure that its negotiations with indigenous communities lead to a solution that respects the land rights of these communities in accordance with article 1, paragraph 2, and article 27, of the Covenant. The State party should expedite procedures to recognize such ancestral lands;
- (b) Amend Act No. 18.314 to bring it into line with article 27 of the Covenant, and revise any sectoral legislation that may contravene the rights spelled out in the Covenant;
- (c) Consult indigenous communities before granting licences for the economic exploitation of disputed lands, and guarantee that in no case will exploitation violate the rights recognized in the Covenant.

2. COSTA RICA, CCPR/C/CRI/CO/5, 16 NOVEMBER 2007

5. The Committee welcomes the establishment of the prosecutor’s office of the Supreme Court of Justice specializing in indigenous affairs, the creation of a team of indigenous-language court translators and the guideline issued to judges regarding the need to consult indigenous peoples when handling disputes that have a bearing on their interests.

14. The Committee sets 1 November 2012 as the date for the submission of the sixth periodic report of Costa Rica. It requests that the State party’s fifth report and the present concluding observations be published and widely disseminated to the general public as well as among the judicial, legislative and administrative authorities. Printed copies of these documents should be distributed to universities, public libraries, the parliamentary library and other relevant locations. The Committee also requests that the fifth periodic report and these concluding observations be made available to civil society and to non-governmental organizations operating in the country. It would be appropriate to distribute a summary of the report and the concluding observations to indigenous communities in their languages.

3. PANAMA, CCPR/C/PAN/CO/3, 17 APRIL 2008

21. The Committee expressed its concern at the information included in the State party's report and received from non-governmental sources on the existence among the general population of racial prejudices against indigenous people and also on the many problems that affect indigenous communities, including serious shortcomings in health and education services; the lack of an institutional presence in their territories; the absence of a process of consultation to seek the prior, free and informed consent of communities to the exploitation of natural resources in their territories; the ill-treatment, threats and harassment to which members of the communities have reportedly been subjected on the occasion of protests against hydroelectric infrastructure construction projects, mining operations or tourism facilities on their territory; and the non-recognition of the special status of indigenous communities that are not within a *comarca* (articles 1, 26 and 27 of the Covenant).

The State party should:

- (a) Effectively guarantee the right to education of indigenous people and ensure that the education is appropriate to their specific needs;
- (b) Ensure the access of all indigenous people to adequate health services;
- (c) Carry out a process of consultation with the indigenous communities before granting licences for the economic exploitation of the lands in which they live, and to ensure that in no case shall such exploitation violate the rights recognized in the Covenant;
- (d) Recognize the rights of indigenous communities that live outside the *comarcas*, including the right to collective use of their ancestral lands.

4. BOTSWANA, CCPR/C/BWA/CO/1, 24 APRIL 2008

23. While taking account of the policy which aims at settling the population in order to provide it with essential public services, and while welcoming the State party's intention to engage in negotiations with those persons who were relocated from the Central Kalahari Game Reserve (CKGR), the Committee notes with concern reports that not all relocated persons will benefit from the High Court decision in *Roy Sesana et al vs Attorney-General*, and that the practical enjoyment of the right to return is conditional on providing identity documents prior to entering the CKGR, obtaining Special Game Licences to hunt and that the State party will not provide access to groundwater for such persons (arts. 12 and 27).

The State party should ensure that all persons who were relocated are granted the right to return to the Central Kalahari Game Reserve, consistent with the reasoning of the High Court decision, and that all necessary measures are taken to facilitate the enjoyment of Covenant rights by these persons upon their return.

24. The Committee is concerned that, despite recent amendments, the current rules regarding appointments to the Ntlo ya Dikgosi do not make provision for fair representation of all tribes. It also notes that the Bogosi Bill, which will repeal and replace the Chieftainship Act, has not been the subject of a full consultation with all interested parties (arts. 25, 26 and 27).

The State party should ensure that it repeals any discriminatory element in the appointment and representation of tribes in the Ntlo ya Dikgosi, to ensure fair representation of all tribes. It should also ensure that consultations are held in relation to the adoption of the Bogosi Bill.

5. DENMARK, CCPR/C/DNK/CO/5, 29 OCTOBER 2008

13. The Committee notes with concern that in its decision of 28 November 2003, the Supreme Court did not recognise the Thule Tribe of Greenland as a separate group capable of vindicating its traditional rights, despite the tribe's own perception to the contrary. (Articles 2, 26 and 27)

The State party should pay particular attention to self-identification of the individuals concerned in the determination of their status as persons belonging to minorities or indigenous peoples.

6. JAPAN, CCPR/C/JPN/CO/5, 30 OCTOBER 2008

32. The Committee notes with concern that the State party has not officially recognized the Ainu and the Ryukyu/Okinawa as indigenous peoples entitled to special rights and protection. (art. 27)

The State party should expressly recognize the Ainu and Ryukyu/Okinawa as indigenous peoples in domestic legislation, adopt special measures to protect, preserve and promote their cultural heritage and traditional way of life, and recognize their land rights. It should also provide adequate opportunities for Ainu and Ryukyu/Okinawa children to receive instruction in or of their language and about their culture, and include education on Ainu and Ryukyu/Okinawa culture and history in the regular curriculum.

7. NICARAGUA, CCPR/C/NIC/CO/3, 12 DECEMBER 2008

20. While the Committee notes that the State party has partly complied with the ruling by the Inter-American Court of Human Rights in the YATAMA case, it regrets that it has not undertaken the necessary legislative reform to introduce a simple legal remedy ensuring that indigenous and ethnic communities in the autonomous regions can take effective part in elections with due regard for their traditions, conventions and customs (arts. 25 and 27).

The State party should meet the targets laid down in the Inter-American Court's ruling and, in particular, take steps to bring about the necessary reforms in the Elections Act as recommended by the Court and introduce a simple legal remedy against decisions by the Supreme Electoral Board.

21. The Committee voices concern regarding the existence among the general public of racial prejudice against indigenous peoples, especially in the Autonomous Regions of the Atlantic coast, and the many problems affecting indigenous peoples, including serious shortcomings in health and education services, the fact that institutions have few or no branches in their areas, and the absence of a consultation process to secure free, informed prior consent to the exploitation of natural resources on indigenous communities' lands. The Committee also notes that more than six years after the ruling handed down by the Inter-American Court in the *Awas Tingni* case, the community still has no title of ownership, while the Awas Tingni region continues to be prey to illegal activity by outside settlers and loggers (arts. 26 and 27).

The State party should:

- (a) Effectively guarantee indigenous peoples' right to education, tailored to their specific needs;
- (b) Guarantee access by all indigenous peoples, especially those in the Autonomous Regions of the Atlantic coast, to adequate health services;
- (c) Conduct consultations with indigenous peoples before granting licences for the economic exploitation of the lands where they live, and ensure that such exploitation in no circumstances infringes the rights acknowledged in the Covenant;

(d) Continue and complete the process of delimiting, demarcating and granting title to the lands of the Awas Tingni community, prevent and check illegal activity by outsiders on those lands, and investigate and punish those responsible for such activity.

III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Concluding Observations

1. EL SALVADOR, E/C.12/SLV/CO/2, 27 JUNE 2001

18. The Committee is concerned that, despite the constitutional recognition of indigenous peoples, their economic, social and cultural rights are not guaranteed in practice. It is particularly concerned that, since 1930 the State party has not carried out a census of indigenous peoples, and that the lack of statistics makes it difficult to evaluate these peoples' effective exercise of the rights established by the Covenant.

19. The Committee notes with concern the adverse effects of the implementation of the Free Trade Agreement, which entered into force in El Salvador on 1 March 2006, on the exercise of the rights established in the Covenant by the most vulnerable sectors of the population

37. The Committee encourages the State party to conduct a census of the indigenous population, which will make it possible to ascertain the current situation with regard to the effective exercise of economic, social and cultural rights by indigenous peoples, and to provide, in its next periodic report, information on progress made in this area.

38. The Committee strongly recommends that the State party, in its negotiations and bilateral agreements, take account of all its obligations under the Covenant, and that such negotiations and agreements do not impinge on the enjoyment of economic, social and cultural rights. The Committee recommends that the State party assess the impact of the Free Trade Agreement, which entered into force on 1 March 2006, on the enjoyment of economic, social and cultural rights by its population, particularly the most vulnerable sectors, and adopt remedial measures, as required. The Committee also recommends that the State party consider the possibility of re-establishing the Forum for Economic and Social Consultation, bearing in mind its inspiring principles. The Committee requests the State party, in its third periodic report, to provide precise and detailed information on this subject

2. FINLAND, E/C.12/CO/FIN/5, 16 JANUARY 2008

11. The Committee is concerned that in spite of the efforts made by the State party to solve the question of the ownership and use of land in the Sámi Homeland, the prevailing legal uncertainty surrounding this issue negatively affects the right of the Sámi to maintain and develop their traditional culture and way of life, in particular reindeer herding. The Committee also notes that failure to resolve the issue of land rights in the Sámi Homeland has so far prevented Finland from ratifying the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

20. The Committee urges the State party to adopt all necessary measures to ensure that logging and other activities carried out currently by private actors in the Sámi Homeland do not negatively affect the right of the Sámi to maintain and develop their traditional culture and way of life, in particular reindeer herding, and the enjoyment of their economic, social and cultural rights. The Committee also urges the State party to find an adequate solution to the question of the ownership and use of land in the Sámi Homeland in close consultation with all parties concerned, including the Sámi Parliament, and then to ratify the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries as a matter of priority.

3. NEPAL, E/C.12/NPL/CO/2, 16 JANUARY 2008

9. The Committee welcomes the ratification in 2002 by the State party, of the ILO Conventions No. 29 (Forced Labour Convention) and No. 182 (Convention against the Worst Forms of Child Labour) and the endorsement, on 28 August 2006, by the House of Representatives, of a resolution directing the Government of Nepal to ratify the ILO Convention No. 169 (Indigenous and Tribal Peoples Convention).

28. The Committee regrets the lack of clarification about the criteria used by the National Foundation for Development of Indigenous Nationalities to recognize officially, indigenous nationalities and about the implications of official recognition.

30. The Committee requests the State party in its next periodic report, to provide detailed, updated information including disaggregated data on a comparative basis, on the effective measures undertaken to implement its treaty obligations. The Committee urges the State party to ensure that, in the Constitutional process currently underway, all sectors of society, including disadvantaged and marginalized groups, in particular the Dalit, the Madhesi and indigenous communities, and especially women within these groups, are represented in decision-making bodies at all levels. It recommends that concrete and active efforts be made to promote the participation of these groups in the Constituent Assembly, which, following the election of its members in 2007, will embark on the drafting of a new Constitution.

37. The Committee recommends that the State party strengthen its efforts to promote labour-intensive industries and increase productivity in the agricultural sectors. The Committee also recommends that special programmes for ex-Kamaiyas and ex-Haliyas, Dalits, indigenous persons and groups, and particularly women belonging to these groups, be expanded in the rural areas as a matter of priority.

4. COSTA RICA, E/C.12/CRI/CO/4, 4 JANUARY 2008

6. The Committee welcomes achievements of the Costa Rican Electrical Institute (ICE) regarding the extent and quality of electrical and telecommunications coverage throughout the country, with 98 per cent of electrical energy coming from renewable resources. It also welcomes the measures undertaken by the State party to preserve its natural heritage and to address increasing threats to the country's biodiversity, mainly deforestation, agricultural overexploitation of land and pollution of waters, in order to guarantee an adequate standard of living.

7. The Committee notes with satisfaction the State party's efforts to promote further the cultural development for the indigenous population, including the creation of the Department of Indigenous Education in the Ministry of Education, which has contributed to the revival of indigenous languages, as well as the reflection of indigenous culture in school curricula and the adoption of programmes to promote bilingual education in the indigenous language and Spanish.

9. The Committee welcomes the high literacy rate (97 per cent of the population), as well as the sustained legislative, policy and institutional measures adopted by the State party to improve access to and the quality of education, particularly of indigenous communities.

10. The Committee welcomes the establishment of the National Commission on Indigenous Affairs (CONAI).

14. The Committee notes with concern that CONAI does not fully represent the interests of all indigenous populations.

15. The Committee regrets that indigenous communities and Afro-descendants suffer from higher levels of poverty and unemployment than the national average. Additionally, indigenous communities suffer from high illiteracy rates, limited access to water, housing, health and education.

16. The Committee further regrets that indigenous communities are not represented at high-level positions in the public service.

26. The Committee is concerned that, despite the State party's efforts to address housing shortage, a high percentage of dwellings, especially those inhabited by indigenous peoples, Afro-descendants and migrants, is in poor condition, often without access to drinking water and adequate sanitation, and that many of these communities still live in slums and squats, sometimes on river banks and in other high-risk areas. The Committee is also concerned about the lack of disaggregated data on the number of forced evictions in the State party.

27. The Committee notes with concern the potential impact of the entry into force of the Central American Free Trade Agreement (CAFTA) on the State party's obligations under the Covenant and, in particular, on traditional agriculture, labour rights, access to health, social security and the intellectual property regimes protecting, inter alia, access to generic medicines, biodiversity, water and the right of indigenous communities associated to these resources.

29. The Committee notes with concern that illiteracy rates among indigenous communities remain significantly higher than the national average, despite of the fact that the State party's adoption of legislation, policies and programmes to make education accessible to those communities.

34. The Committee recommends that the State party ensure that the interests of all indigenous communities be fully represented on the board of the National Commission on Indigenous Affairs and that this institution receives sufficient financial and institutional State support necessary for its functioning.

35. The Committee urges the State party to take all appropriate measures to ensure that the levels of poverty, illiteracy and unemployment of indigenous communities and Afro-descendants be reduced and that the indigenous communities have proper access to water, housing, health and education.

39. The Committee urges the State party to intensify its efforts to reduce unemployment among marginalized and disadvantaged groups and individuals through specifically targeted measures, including by ensuring the strict application of anti-discrimination legislation by the judiciary, local governments and labour offices; introducing and effectively enforcing legal provisions requiring an ethnically balanced workforce in the public and private sectors; and enhancing professional training and sustainable employment opportunities in the remote areas where the indigenous population resides.

47. The Committee requests the State party to allocate sufficient funds to improving the infrastructure and to increase the availability of social housing, in line with the Committee's General Comment No. 4 (1991) on the right to adequate housing. It also urges the State party to ensure that the rights of individuals and groups subject to forced evictions are safeguarded and that adequate alternative housing is provided, in accordance with the Committee's general comment No. 7 (1997) on forced evictions, and to include disaggregated data on the number of forced evictions and arrangements for alternative housing in its next periodic report.

48. The Committee recommends that the State party undertake the measures necessary to assess the potential adverse impact of its commitments under CAFTA on economic, social and cultural rights and to ensure that Covenant rights, in particular labour rights, access to health, social security and generic medicines and the intellectual property regimes are not adversely affected.

49. The Committee recommends that the provision of health-care facilities, goods and services in remote and rural areas be improved and that disaggregated annual data in this respect be provided in its next periodic report.

50. The Committee encourages the State party to continue to improve the effective implementation of currently existing legislation, policies and programmes to eliminate illiteracy among indigenous communities.

5. PARAGUAY, E/C.12/PRY/CO/3, 4 JANUARY 2008

7. The Committee welcomes the progress made by the State party in extending the coverage of civil status registration to include the entire population and especially indigenous communities.

12. The Committee regrets that most of its 1996 recommendations have not been fully implemented, and that the State party has not addressed in a more effective manner the following principal subjects of concern, related to its initial report, which are still relevant:

(a) The persistence of striking disparities in the enjoyment of economic, social and cultural rights in Paraguayan society. The Committee is also concerned that, despite the State party's economic growth over recent years, the number of persons living in extreme poverty has increased;

(b) The slow pace of agrarian reform. While noting that the Rural Welfare Institute has become the National Institute of Rural and Land Development (INDERT), the Committee reiterates its concern over the situation of farmers and the indigenous population, who do not have access to their traditional and ancestral lands. The Committee notes with concern the concentration of land ownership in the hands of a very small proportion of the population; (...)

16. The Committee notes with concern that the expansion of soybean cultivation has fostered the indiscriminate use of toxic agro-chemicals, leading to deaths and illnesses among children and adults, contamination of the water supply and the disappearance of ecosystems, while it has jeopardized the traditional food resources of the affected communities.

17. The Committee notes with deep concern the large number of forced evictions of peasant and indigenous families, particularly in the communities of Tetaguá Guaraní, Primero de Marzo, María Antonia and Tekojoja, who had been occupying the land, and the reports received that the National Police used excessive force in carrying out those evictions, by burning and destroying housing, crops, property and animals.

18. The Committee notes with concern that some 45 per cent of indigenous people do not hold legal title to their ancestral lands and are thus exposed to forced eviction.

20. The Committee is concerned that the high level of malnutrition affecting mainly rural populations and indigenous people is on the rise, and regrets that it has not received sufficient information from the State party in that regard.

23. The Committee calls upon the State party to address the specific subjects of concern already expressed with respect to its initial report, and reiterates that the State party should implement the Committee's suggestions and recommendations in this regard. In particular:

(a) The Committee calls upon the State party to take all necessary measures to reduce extreme poverty and to improve its social development strategies, including coordination measures among the various institutions, as well as evaluations to assess the impact of plans and identify their shortcomings. The State party should also adopt additional fiscal measures aimed at improving the distribution of wealth throughout the population in both rural and urban areas. In this respect, the Committee invites the State party to take into consideration its statement on "Poverty and the International Covenant on Economic, Social and Cultural Rights", adopted on 4 May 2001 (*Official Records of the Economic and Social Council, 2002, Supplement No. 2 [E/2002/22-E/C.12/2001/17]*, annex VII). The Committee requests that the State party, in its next report, include disaggregated and comparative data, and indicators, on the number of persons living in poverty and extreme poverty, as well as on progress made in efforts to combat poverty and extreme poverty;

(b) The Committee recommends that the State party increase its efforts to speed up the demarcation of ancestral lands and territories and their return to the indigenous peoples, following up the distribution of land to farmers with measures such as technical assistance, inputs, tools, microcredit, training and infrastructure, as well as irrigation and electricity systems. The State party must ensure that the budget allocated to agrarian reform is not diverted; (...)

27. The Committee urges the State party to adopt urgent measures to ensure that soybean cultivation does not undermine the ability of the population to exercise the rights recognized by the Covenant. Apart from ensuring compliance with the law on toxic agro-chemicals, the State party should establish an effective legal framework for protection against the use of toxic agro-chemicals and carry out effective and frequent inspections.

28. The Committee urges the State party to take the necessary measures, including legislative measures, to: (a) prevent the eviction of peasant and indigenous families who are occupying the land; (b) address the claims made by peasant and indigenous families and ensure that they are not repressed; (c) follow up on complaints filed with the Office of the Public Prosecutor; (d) ensure that the judicial authorities take the provisions of the Covenant into account when handing down their decisions; and (e) investigate, bring to trial and punish those responsible for forced evictions and violations related to the rights recognized by the Covenant.

29. The Committee urges the State party to take all the necessary measures to guarantee that indigenous people hold legal title to their indigenous lands.

34. The Committee recommends that the State party give due consideration in its land restitution programme to the right of indigenous peoples to their ancestral lands, which are essential to the expression of their cultural identity and to their very survival.

6. INDIA, E/C.12/IND/CO/5, 10 MAY 2008

12. The Committee is deeply concerned about reports that human rights defenders, including those assisting individuals and communities in asserting their economic, social and cultural rights, are threatened, harassed and subjected to violence by state officials and law enforcement officers. In this connection, the Committee notes with concern the existence of national security legislation which grants impunity to state officials who violate human rights, including economic, social and cultural rights.

13. The Committee is deeply concerned that in spite of the Constitutional guarantee of non-discrimination as well as the criminal law provisions punishing acts of discrimination, widespread and often socially accepted discrimination, harassment and/or violence persist against members of certain disadvantaged and marginalized groups, including women, scheduled castes and scheduled tribes, indigenous peoples, the urban poor, informal sector workers, internally displaced persons, religious minorities such as the Muslim population, persons with disabilities and persons living with HIV/AIDS. The Committee is also concerned about the obstacles faced by the victims in accessing justice, including the high costs of litigation, the long-delays in court proceedings and the non-implementation of court decisions by government authorities.

14. The Committee notes with concern the lack of progress achieved by the State party in combating the persistent *de facto* caste-based discrimination that continues to prevail in spite of the legal prohibitions in place, most notably the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Committee is particularly concerned by the low rate of prosecution of crimes against persons belonging to scheduled castes and scheduled tribes, and that discriminatory attitudes and prejudices in the enforcement of the law, especially by the police, is a serious obstacle in the victims' access to justice.

28. The Committee is deeply concerned that, despite the rapid economic growth achieved under the Ninth Plan (1997-2002) and the Tenth Plan (2002-07), high levels of poverty as well as serious food insecurity and shortages persist in the country, disproportionately affecting the population living in the poorer states and in rural areas, and the disadvantaged and marginalised groups. The Committee is also concerned that the State party, in its pursuit of economic growth, and in its definition of the poverty threshold exclusively in terms of consumption, has overlooked its obligations to fully integrate human rights, particularly economic, social and cultural rights, in its poverty-reduction strategies. The Committee is also concerned by reports of corruption, inefficiency and discrimination in distribution that hamper access to food, particularly by the disadvantaged and marginalised groups of society who have been excluded from the benefits of the State party's economic growth.

31. The Committee, while noting that the draft Resettlement and Rehabilitation Bill is currently before Parliament, remains deeply concerned about the reports of displacement and forced evictions in the context of land acquisition by private and state actors for the purposes of development projects, including constructions of dams and mining, and that the members of disadvantaged and marginalised groups, in particular, the scheduled castes and scheduled tribes, are adversely affected by such displacement from their homes, lands and their sources of livelihood. The Committee is also concerned that urban renewal projects, sporting events, infrastructure expansion, environmental projects and more recently, the designation of large areas as tax-free Special Economic Zones, have resulted in the displacement of millions of families, most of who have not received adequate compensation and rehabilitation. Furthermore, the Committee is concerned about the lack of effective consultations and legal redress for

persons affected by displacement and by forced evictions, and the inadequate measures to provide sufficient compensation or alternative housing to those who have been removed from their homes and/or their ancestral lands.

40. The Committee is concerned that, despite the efforts made by the State party to achieve universal primary education, including the adoption of the Constitution (86th Amendment) Act in 2002 which makes the right to primary education a fundamental right, and the “Sarva Shiksha Abhiyan” (Education for All) programme, aimed at achieving 100% primary enrolment, the wide disparity in enrolment and drop out rates in primary schools continue to persist, negatively affecting, in particular, girls, Muslim children and children belonging to scheduled castes and scheduled tribes.

44. The Committee notes with concern that some of the development measures and projects that have been carried out have not sufficiently taken into account the way of life and specific forms of livelihood of numerous communities in India, in particular the scheduled tribes in the northeast, thus affecting their right of everyone to take part in cultural life.

46. The Committee recommends the State party to review all aspects of its negotiations with trade agreements, including those with the EU and the EFTA, in light of its obligations under the Covenant to ensure that economic, social and cultural rights, particularly of the most disadvantaged and marginalized groups, are not undermined.

50. The Committee urges the State party to take all necessary measures for the protection of human rights defenders against any violence, threats, retaliation, pressure or any arbitrary action as a consequence of their activities. The Committee recommends that the State party improve its human rights training for law enforcement officials especially police officers, and ensure that all allegations of human rights violations are promptly and thoroughly investigated by an independent body capable of prosecuting perpetrators. The Committee also recommends the State party to consider repealing the Armed Forces Special Powers Act.

53. The Committee stresses the need for a determined enforcement of the criminal justice system, and recommends that the State party strengthen procedures for prompt and impartial investigations and effective prosecutions of all allegations of violations under the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The Committee also recommends that the State party improve awareness-raising and training programmes regarding the treatment of caste-based and other crimes related to discriminatory attitudes and prejudices, for professionals engaged in the administration of justice including judges, public prosecutors, lawyers and law enforcement officials, in particular members of the police, and remove any other existing obstacles faced by victims in accessing justice. The Committee further encourages the State party to expand throughout the State, preventive programmes to curb violence against persons belonging to scheduled castes and scheduled tribes, especially women.

71. The Committee recommends that the State party take immediate measures to effectively enforce laws and regulations prohibiting displacement and forced evictions, and ensure that persons evicted from their homes and lands be provided with adequate compensation and/or offered alternative accommodation, in accordance with the guidelines adopted by the Committee in its General Comment No. 7 on forced evictions (1997). The Committee also recommends that, prior to implementing development and urban renewal projects, sporting events and other similar activities, the State party should undertake open, participatory and meaningful consultations with affected residents and communities. In this connection, the Committee draws the attention of the State party to its General Comment No. 4 on the right to adequate housing

(1991) and further requests the State party to provide information in its next periodic report on progress achieved in this regard, including disaggregated statistics relating to forced evictions.

80. The Committee urges the State party to continue to make determined efforts to achieve universal primary education, compulsory and free of charge, by *inter alia*, taking further initiatives to eliminate child marriages, child labour especially of school-aged children, and targeting disadvantaged and marginalised groups in particular.

84. The Committee recommends the State party to consider going beyond the creation of museums and hosting of exhibitions as a way of preserving and promoting culture, and to ensure that no development initiative is carried out without effective consultation with the local communities, and that any potential negative impact on their right of everyone to take part in cultural life be taken into serious consideration when conducting social audits.

7. BOLIVIA, E/C.12/IND/CO/5, 08 AUGUST 2008

8. The Committee welcomes the fact that Bolivia has elevated the United Nations Declaration on the Rights of Indigenous Peoples to the status of law by means of Act No. 3760 of 5 November 2007.

14. The Committee is concerned that the majority of its recommendations from 2001 in connection with Bolivia's initial report were not followed up and that the State party has not addressed more effectively the following areas of concern, which remain valid: [...]

(d) The persistence of the exploitation of children in employment, especially indigenous children, particularly through the use of "*criaditos*"; [...]

(g) The limited access of vulnerable and marginalized groups, particularly indigenous peoples, to education and the high rate of illiteracy among the adult population. The Committee notes with concern that this situation mainly affects girls and women;

(h) The widespread housing shortage, the incidence of forced evictions of farmers and indigenous populations to make way for mining and timber concessions, especially in the Chaco region, and the lack of effective measures to provide social housing for low-income, vulnerable and marginalized groups.

15. While noting the efforts made by the State party since 2006, the Committee continues to be concerned at the marginalization of indigenous peoples in the country and the discrimination that they suffer, particularly with regard to the right to education, to adequate housing, to food and to health services.

19. The Committee notes with concern the persistence of infant malnutrition and the fact that the right to food is not guaranteed to vulnerable groups in the State party. The Committee also notes with concern the large quantity of arable land devoted to the production of biofuels, a situation which affects the availability of food for human consumption and leads to price increases.

23. The Committee expresses its concern that the right to land, in particular ancestral lands, is not duly guaranteed to indigenous peoples. It notes with concern that nearly 70 per cent of all land is owned by only 7 per cent of the population.

24. The Committee notes with concern that the collective rights of indigenous peoples, in particular the right to receive the profits derived from the products they create, including traditional medicine, are not duly protected in Bolivia.

27. The Committee urges the State party to address the specific areas of concern that it identified in connection with its initial report (E/C.12/1/Add.60) and reiterates that the State party should implement the suggestions and recommendations made by the Committee at that time, in particular: [...]

(h) The Committee urges the State party to take the necessary measures, including legislative measures, to: (i) prevent the forced eviction of rural families who are occupying land peacefully; (ii) ensure that the judicial authorities take the provisions of the Covenant into account when handing down their decisions; (iii) investigate and punish those responsible for forced evictions and violations related to the rights recognized in the Covenant; and (iv) implement and expand the Social Housing and Solidarity Programme, allocating sufficient budgetary resources to ensure the implementation of comprehensive housing policies, especially for low-income groups and marginalized individuals and groups.

28. The Committee recommends that the State party should continue its efforts to guarantee respect for and the equality of all the rights recognized in the Covenant in respect of indigenous people, especially the right to education, to adequate housing, to food and to health services.

36. The Committee encourages the State party to increase its efforts to speed up the demarcation of ancestral lands and territories and their return to the indigenous peoples. The Community Renewal Act, the National Plan for the Distribution of Government Lands and the National Human Settlements Plan should be made operational as soon as possible to ensure continued progress in the titling of indigenous lands.

37. The Committee recommends that the State party should develop a special intellectual property regime that protects the collective rights of the indigenous peoples, including their scientific products and traditional knowledge and traditional medicine. To this end the Committee recommends that a registry of intellectual property rights of indigenous peoples should be opened and that the State party should ensure that the profits derived therefrom benefit them directly.

8. PHILIPPINES, E/C.12/PHL/CO/4, 1 DECEMBER 2008

6. The Committee also notes with satisfaction the various legislative, administrative and policy measures adopted by the State party to recognize, protect and promote the individual and collective rights of the indigenous peoples living in the territory of the State party, including

- (a) The Indigenous Peoples Rights Act of 1997 (Republic Act No. 8371);
- (b) The Free and Prior Informed Consent Guidelines, adopted by the National Commission on Indigenous Peoples in 2002, which emphasise the right of indigenous peoples to participate in decisions affecting them; and
- (c) Executive Order 270-A, which aims at safeguarding the ecological integrity of indigenous lands and resources from the negative impact of mining operations.

15. The Committee remains concerned about reports that forced disappearances and extrajudicial killings of trade union activists, indigenous leaders, peasant activists advocating for the implementation of the agrarian reform and human rights defenders engaged in defending the economic, social and cultural rights of their communities continue to occur, despite the measures adopted by the State party - including the creation of the Task Force Against Political Violence - to tackle these phenomena. The Committee is particularly concerned about the limited progress made by the State party in investigating cases of forced disappearances and extra-judicial killings and in prosecuting the perpetrators of these crimes.

The Committee urges the State party to take all necessary measures for the protection of trade union activists, indigenous leaders, peasant activists and human rights defenders engaged in defending the economic, social and cultural rights of their communities against any intimidation, threat and violence, whether perpetrated by State security forces and agents or non-State actors. It also calls on the State party to ensure that all alleged cases of forced disappearances and extrajudicial killings are promptly and thoroughly investigated, and that alleged perpetrators are prosecuted and appropriately punished, if found guilty. The Committee requests the State party to provide, in its next periodic report, detailed information on the progress made in preventing and punishing forced disappearances and extra-judicial killings.

16. The Committee notes with concern the adverse effects that economic activities connected with the exploitation of natural resources, especially mining operations, carried out in indigenous territories continue to have on the right of indigenous peoples to their ancestral domains, lands and natural resources, as recognized in the 1997 Indigenous Peoples Rights Act (IPRA). The Committee is concerned about the conflict of laws between the 1995 Mining Act and IPRA, and notes in particular that section 56 of the IPRA, which provides for the protection of property rights already existing within the ancestral domains, de facto risks to undermine the protection of the rights recognized to indigenous peoples under the Act. (arts. 1, 11, 12 and 15)

The Committee urges the State party to fully implement the 1997 Indigenous Peoples Rights Act (IPRA), in particular by ensuring the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and avoiding that economic activities, especially mining, carried out on indigenous territories adversely affect the protection of the rights recognized to indigenous peoples under the Act.

33. Committee encourages the State party to consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

9. KENYA, E/C.12/KEN/CO/1, 1 DECEMBER 2008

12. The Committee is concerned that disparities in the enjoyment of economic, social and cultural rights, including access to land, have led to inter-ethnic tensions and post-election violence during which at least 1,500 persons were killed early in 2008. It is also concerned that perpetrators of such violence have still not been brought to justice. (art. 2, para. 2)

The Committee recommends that the State party address disparities in the enjoyment of economic, social and cultural rights, including in access to land, which particularly affect poor people in urban areas and minority and indigenous communities in rural areas, e.g. by adopting the Draft National Land Policy, establishing land inspectorates to monitor discriminatory allocation of land, and implementing the recommendations of the Ndung'u Commission of Inquiry into Illegal/Irregular Allocation of Public Land. It also recommends that the State party establish a tribunal on post-election violence to bring perpetrators to justice, as well as a Truth, Justice and Reconciliation Commission to address broader historical injustices, and that it foster dialogue and promote comprehensive reconciliation among its different ethnic groups.

31. The Committee is concerned about the demolition of dwellings and forced evictions of pastoralist communities in the Rift Valley, forest dwellers such as the Mau Forest Ogiek, and persons living in informal settlements and on road reserves, reportedly without prior notice and provision of adequate alternative housing or compensation. (art. 11).

The Committee recommends that the State party consider including a provision in its new draft Constitution to ensure that evictions are only used as a last resort, adopt legislation or

guidelines strictly defining the circumstances and safeguards under which evictions must take place, in accordance with the Committee's general comment No. 7 (1997) on forced evictions, and ensure that each victim of forced evictions is provided with adequate alternative housing or compensation and that he or she has access to an effective remedy.

35. The Committee notes that the Nubians and the Ogiek are not recognized as distinct ethnic communities and that they are referred to as "others" by the State party. (art. 15)

The Committee recommends that the State party recognize the Nubians and the Ogiek as distinct ethnic communities, as well as their right to the preservation, protection and development of their cultural heritage and identity.

40. The Committee recommends that the State party consider ratifying ILO Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

10. NICARAGUA, E/C.12/NIC/CO/4, 28 NOVEMBER 2008

6. The Committee welcomes the establishment of an Office of Secretary for Indigenous and Afro-descendant Affairs, who has the rank of Deputy Minister and whose main function is to coordinate all matters relating to indigenous peoples.

11. The Committee expresses its concern at the existence of racial prejudice against indigenous people, especially in the Atlantic Autonomous Regions and in particular against indigenous and Afro-descendant women. The Committee also regrets the many problems affecting indigenous peoples, including serious shortcomings in the health and education services; and the lack of an institutional presence in their territories; and the absence of a consultation process to seek communities' free, prior and informed consent to the exploitation of natural resources in their territories. In this regard, the Committee notes that, more than six years after the Inter-American Court's judgement in the *Awas Tingni* case, that community still does not have title to its property. Furthermore, the territory of Awas Tingni is still exposed to unlawful acts by settlers and loggers (art. 2, para. 2).

The Committee recommends that the State party should:

- (a) Effectively guarantee indigenous people's right to education and ensure that it is adapted to their specific needs;
- (b) Guarantee access to adequate health services for all indigenous people, especially those living in the Atlantic Autonomous Regions;
- (c) Conduct a process of consultations with indigenous peoples before granting concessions for the economic exploitation of the lands where they live, and guarantee that in no case does such exploitation violate the rights recognized in the Covenant;
- (d) Continue and finalize the process of delimiting, demarcating and granting title to lands of the Awas Tingni community, prevent and halt unlawful activities by third parties in that territory, and investigate and punish those responsible for such acts.

30. The Committee is concerned at the high illiteracy rate among indigenous peoples and communities of African descent in particular, and especially in the North Atlantic Autonomous Region, despite the launch of the Plan for an Autonomous Regional Education System for 2003-2013 in the framework of the new General Education Act (art. 13).

The Committee encourages the State party to take short- and medium-term action to implement measures to reduce illiteracy, especially in the North Atlantic Autonomous Region.

35. The Committee recommends that the State party should speed up the process of acceding to the ILO Indigenous and Tribal Peoples Convention, 1989 (No. 169). It also encourages the State party to continue with its efforts to promote and implement the principles of the United Nations Declaration on the Rights of Indigenous Peoples.

11. SWEDEN, E/C.12/SWE/CO/5, 1 DECEMBER 2008

15. The Committee, while welcoming the initiative of a Nordic Sami Convention, reiterates its concern that the Sami land rights have not yet been resolved and that this fact negatively affects their right to maintain and develop their traditional culture and way of life, particularly reindeer herding. The Committee also reiterates its regret that the State party has not yet ratified ILO Convention No. 169 concerning Indigenous and Tribal People. (arts. 1, 2.2, and 15)

The Committee urges the State party to ensure the adoption of the Nordic Sami Convention and consider ratifying ILO Convention No. 169. It also recommends the expeditious resolution of the Sami land and resource rights issues by introducing appropriate legislation, in cooperation with the Sami communities.

B. General Comments

1. GENERAL COMMENT NO. 19, THE RIGHT TO SOCIAL SECURITY (ART. 9). E/C.12/GC/19, 4 FEBRUARY 2008

28. The right to social security plays an important role in supporting the realization of many of the rights in the Covenant, but other measures are necessary to complement the right to social security. For example, States parties should provide social services for rehabilitation of the injured and persons with disabilities in accordance with article 6 of the Covenant, provide child care and welfare, advice and assistance with family planning and the provision of special facilities for persons with disabilities and older persons (article 10); take measures to combat poverty and social exclusion and provide supporting social services (article 11); and adopt measures to prevent disease and improve health facilities, goods and services (article 12).¹¹ States parties should also consider schemes that provide social protection to individuals belonging to disadvantaged and marginalized groups, for example crop or natural disaster insurance for small farmers²² or livelihood protection for self-employed persons in the informal economy. However, the adoption of measures to realize other rights in the Covenant will not in itself act as a substitute for the creation of social security schemes.

35. States parties should take particular care that indigenous peoples and ethnic and linguistic minorities are not excluded from social security systems through direct or indirect discrimination, particularly through the imposition of unreasonable eligibility conditions or lack of adequate access to information.

49. The obligation to promote obliges the State party to take steps to ensure that there is appropriate education and public awareness concerning access to social security schemes, particularly in rural and deprived urban areas, or amongst linguistic and other minorities.

69. The formulation and implementation of national social security strategies and plans of action should respect, inter alia, the principles of non-discrimination, gender equality and people's participation. The right of individuals and groups to participate in decision-making processes that may affect their exercise of the right to social security should be an integral part of any policy, programme or strategy concerning social security.

83. The international financial institutions, notably the International Monetary Fund and the World Bank, should take into account the right to social security in their lending policies, credit agreements, structural adjustment programmes and similar projects,⁴⁶ so that the enjoyment of the right to social security, particularly by disadvantaged and marginalized individuals and groups, is promoted and not compromised.

2. DRAFT GENERAL COMMENT NO. 20. NON-DISCRIMINATION AND ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ART. 2, PARA. 2) E/C.12/GC/20/CRP.2, 9 SEPTEMBER 2008

5. The obligation to guarantee non-discrimination in Article 2(2) is applicable to all rights listed in the Covenant. The definition of discrimination can be drawn from recent international human rights treaties.⁵ Accordingly, discrimination under the Covenant constitutes any distinction, exclusion, restriction or preference based on prohibited grounds of discrimination which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.[]

6. De jure and de facto discrimination. This definition makes it clear that discrimination must be eliminated both formally and substantively, making non discrimination the corollary of the principle of equality⁷. Accordingly, States parties must eliminate *de jure* or *formal* discrimination, which includes ensuring that their constitution, laws and policies do not discriminate. Equally, States parties must take steps to eliminate *de facto* discrimination. This obligation of substantive equality means ensuring that laws, policies and practices seek to address the unequal enjoyment of economic, social and cultural rights which individuals face due to discrimination.

11. Specific legal obligations. The obligation in article 2(2) is an immediate obligation that can be divided into three categories. The obligation to *respect* requires States parties to ensure that all public authorities and public institutions shall refrain from discriminatory acts, for example, denying health care to persons of particular race, colour or descent. States must also take into account that discrimination, especially *de facto* discrimination, may take place in the private sphere and must address it accordingly. The obligation to *protect* therefore requires States parties to take steps to ensure that individuals and entities in their private capacity do not discriminate on prohibited grounds; for example, imposing penalties on employers who discriminate on the basis of sex, pregnancy, marital status or sexual orientation. In accordance with the obligation to *fulfil*, States parties must take steps to eliminate *de jure* and *de facto* inequality, as well as implement obligations related to non-discrimination (see further Part IV.)

15. Multiple discrimination. Some individuals face discrimination on more than one of the prohibited grounds and such *cumulative discrimination*, which impacts heavily on individuals, should be addressed in law, policy and programmes (for example women belonging to an ethnic or religious minority).

16. Race and colour. Racial discrimination constitutes differential treatment based on *race, colour, descent, national or ethnic origins*. The Committee rejects theories and practices which determine the existence of separate human races, and prefers the use of the term “racial discrimination” as opposed to defining “race” in order to underline that it does not accept such theories[]. The Committee has consistently raised concern over unequal realisation of Covenant rights for ethnic minorities, indigenous peoples, Roma and Travellers, amongst others. The Committee calls upon States parties to remove direct and indirect discriminatory obstacles and to take urgent steps to ensure the realisation of the Covenant rights of persons belonging to these groups.

35. Systemic discrimination. The Committee has regularly found that discrimination against some groups is pervasive and persistent. States parties should adopt a systematic approach to eliminating discrimination in practice. For example, in the area of the right to work, eradication of such discrimination may require strong incentives or penalties in order to encourage all employers to offer employment to groups facing systematic discrimination. In the area of residential segregation, measures such as ensuring equal rights to reside in a locality and developing incentives or penalties to ensure mixed housing could be adopted. Eliminating systemic discrimination will often require devoting greater resources to traditionally neglected groups.

3. THE WORLD FOOD CRISIS: STATEMENT. E/C.12/2008/1, 20 MAY 2008. ADOPTED BY THE COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS ON 16 MAY 2008 DURING ITS FORTIETH SESSION (25TH MEETING).

1. The Committee on Economic, Social and Cultural Rights is alarmed at the rapid worldwide rise in food prices and the soaring energy prices that have precipitated a global food crisis and are adversely affecting the right to adequate food and freedom from hunger as well as other human rights of more than 100 million people.

2. The world has lived for too many years with a chronic crisis of 854 million people suffering from food insecurity and two billion people suffering from malnutrition and undernutrition.

3. Prices of basic staple foods (including rice, maize, wheat etc) have risen by up to 60 per cent around the world. The poorest people in the world are the most severely affected as they already spend up to 60-80 per cent of their income on food, compared with 20 per cent in the developed world.

4. The food crisis underscores the interdependence of all human rights, as the enjoyment of the human right to adequate food and freedom from hunger is of paramount importance for the enjoyment of all other rights, including the right to life.

5. The Committee calls upon all States to revisit their obligations under article 25 of the Universal Declaration of Human Rights, and article 11 of the International Covenant on Economic, Social and Cultural Rights. Under article 11(1) of the Covenant, States parties recognize “the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions”.

6. In its general comment No. 12 (1999) on the right to adequate food, the Committee affirms that “the right to adequate food is indivisibly linked to the inherent dignity of the human person and is indispensable for the fulfillment of other human rights enshrined in the International Bill of Human Rights.[...]

7. All State parties are obliged to ensure for everyone within their jurisdiction physical and economic access to the minimum essential food, which is sufficient, nutritionally adequate and safe, to ensure freedom from hunger....

8. Under article 11(2) of the Covenant, States parties recognize the “fundamental right of everyone to be free from hunger”. In its general comment No. 12, the Committee underlines the fact that “States have a core obligation to take the necessary action to mitigate and alleviate

hunger as provided for in paragraph 2 of article 11, even in times of natural or other disasters”,[] and that the core content or the minimum essential levels of the right to adequate food and freedom from hunger implies “the availability of food in a quantity and quality sufficient to satisfy the dietary needs of individuals, free from adverse substances, and acceptable within a given culture, and the accessibility of food in ways that are sustainable and do not interfere with the enjoyment of other human rights”.[...]

9. The current food crisis represents a failure to meet the obligations to ensure an equitable distribution of world food supplies in relation to need. The food crisis also reflects failure of national and international policies to ensure physical and economic access to food for all.

10. The Committee calls upon all States to address the immediate causes of the food crisis, individually through national measures, as well as internationally through international cooperation and assistance to ensure the right to adequate food and freedom from hunger. The Committee notes that many of the measures undertaken to help States and persons affected by the crisis are of a humanitarian nature and supports their immediate implementation.

11. The Committee therefore urges States to take urgent action, including by:

- Taking immediate action, individually and through international assistance, to ensure freedom from hunger through, inter alia, the provision and distribution of emergency humanitarian aid without discrimination⁶. Humanitarian aid should be provided in cash resources wherever possible.
- Where food aid is provided, care should be taken to ensure that food is purchased locally wherever possible and that it does not become a disincentive for local production. Donor countries should prioritize assistance to States most affected by the food crisis;
- Limiting the rapid rise in food prices by, inter alia, encouraging production of local staple food products for local consumption instead of diverting prime arable land suitable for food crops for the production of agrofuels, as well as the use of food crops for the production of fuel, and introducing measures to combat speculation in food commodities;
- Establishing an international mechanism of coordination to oversee and coordinate responses to the food crisis and to ensure the equitable distribution of food supplies according to need, and that the policy measures adopted will respect, protect and fulfill the realization of the right to adequate food and freedom from hunger.

12. The Committee also calls upon States to pay attention to the longer-term structural causes of the crisis and to focus attention on the gravity of the underlying causes of food insecurity, malnutrition and undernutrition, that have persisted for so long.

13. The Committee urges States parties to address the structural causes at the national and international levels, including by:

- Revising the global trade regime under the WTO to ensure that global agricultural trade rules promote, rather than undermine, the right to adequate food and freedom from hunger, especially in developing and net food-importing countries;
- Implementing strategies to combat global climate change that do not negatively affect the right to adequate food and freedom from hunger, but rather promote sustainable agriculture, as required by article 2 of the United Nations Framework Convention on Climate Change;

- Investing in small-scale agriculture, small-scale irrigation and other appropriate technologies to promote the right to adequate food and freedom from hunger for all, including implementing the recommendations of the International Assessment of Agricultural Science and Technology for Development (IAASTD) of 2008.[]
- Introducing and applying human rights principles, especially those relating to the right to adequate food and freedom from hunger, by undertaking ex ante impact assessments of financial, trade and development policies at both the national and international levels, to ensure that their bilateral and multilateral financial, trade and development commitments do not conflict with their international human rights obligations, particularly under the Covenant.
- Applying and reinforcing the FAO's "Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security", in the light of the present food crisis.

14. In conclusion, the Committee emphasizes that the world food crisis severely affects the full realization of the human right to adequate food and to be free from hunger, and therefore calls upon all States to fulfill their basic human rights obligations under the Covenant.

IV. COMMITTEE ON THE RIGHTS OF THE CHILD:

A. Concluding Observations

1. CHILE: CRC/C/CHL/CO/3, 2 FEBRUARY 2007

16. The Committee welcomes the increased allocation for social expenditure, in particular in the areas of education and health, however remains concerned that unequal distribution of state funds continues to have a negative impact on the well-being of children, in particular affecting those from more vulnerable sectors of society, such as indigenous peoples and female headed households.

17. The Committee strongly recommends that the State party, in accordance with article 4 of the Convention, further increase budget allocations for the implementation of the rights recognised in the Convention, ensure a more balanced distribution of resources throughout the country. The Committee urges prioritisation of children's economic, social and cultural rights, especially for marginalised children, and adequate budget allocations with a view of alleviating disparities. The Committee encourages the State party to start budget tracking from a child right's perspective with a view to monitor budget allocations for children and seek technical assistance for this purpose from inter alia UNICEF.

29. The Committee recognises the policy measures undertaken to advance the implementation of the principle of non-discrimination, in particular in the area of health services, however remains concerned that certain vulnerable groups, including indigenous, migrant and refugee children, children with disabilities as well as children from disadvantaged socio-economic backgrounds and those living in rural areas, continue to be victims of discrimination, particularly in their reduced access to education. [...]

44. The Committee, while noting efforts to improve foster care and the slight reduction of children placed in institutions, is concerned that the number of children in institutions is still very high.

45. The Committee recommends that the State party continue to promote foster care as a form of alternative care and suggests that institutionalisation be used only as a measure of last resort, taking into account the best interests of the child. As regards indigenous children, the Committee supports the recommendation of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people that the State party increase coordination efforts to reduce the number of indigenous children in institutional care and provide support enabling them to stay with their families. Furthermore, the Committee recommends adequate resource allocation, functioning and monitoring of the care institutions, including those run by NGOs, and the promotion and support of foster care as well as a periodic review of placement in conformity with article 25 of the Convention while taking into account the recommendations issued after the General Day of Discussion on children without parental care in 2005.

53. The Committee welcomes the substantially increased budget allocations in the public expenditure for health through the AUGE system and the attempts that have been made to improve access for low-income families by providing guaranteed medical treatment for several conditions relating specifically to the health of children. The Committee also notes the advances made in reducing infant mortality and the high vaccination rates among children. The Committee however notes that further efforts need to be undertaken in order to ensure access to health service in practice among indigenous peoples, low-income and rural population. [...]

54. The Committee recommends that the State party continue and provide further resources for AUGE health system and enhance the access to medical services in rural areas, among low-income families and indigenous peoples. The Committee recommends that the State party increase and strengthen strategies to promote the use of indigenous traditional medicine. [...]

59. The Committee, while recognising the overall reduction of poverty, is concerned over the discrepancies in the standard of living and the number of children living in poverty or extreme poverty, as it presents serious obstacles to the enjoyment of the rights of the Convention. ... The Committee notes that poverty levels are disproportionately high among female-headed households and indigenous peoples.

61. The Committee welcomes the increase in the enrolment at all levels in the educational system, the considerable budget allocations for education and that free education during twelve years in school is enshrined as a constitutional right since 2003. The Committee also welcomes the priority given to education in the preschool years. The Committee recognises the measures taken to improve the quality of education in order to prepare children for their role in a productive and democratic society and notes the affirmative action undertaken to improve equal access to education, however is concerned that access for children belonging to vulnerable groups, such as indigenous, refugees and children living in poverty and rural areas is still inadequate.

62. The Committee recommends that the State party; ...

- c) ensure the expansion of the bilingual intercultural programme for indigenous peoples and maintain consultations with indigenous communities in order to evaluate the programme; ...

73. The Committee regrets that the Constitution still does not contain specific provisions recognising indigenous peoples and their rights. The Committee is concerned over the high level of correlation between poverty and indigenous origins and the *de facto* discrimination indigenous children continue to face, in particular in the areas of education and health. The Committee welcomes the positive steps taken to establish a bi-lingual education programme, however notes that the coverage and resources are limited and that drop-out rates remain high. The Committee is concerned over reports that indigenous youth have been victims of police brutality. Finally, the Committee regrets the lack of detailed information on indigenous children in the State party report.

74. The Committee recommends the State party;

- a) incorporate recognition of indigenous peoples and their rights in the Constitution;
- b) ratify the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries;
- c) take affirmative measures to ensure that indigenous children gain *de facto* enjoyment of their rights, in particular in the area of education and health;
- d) ensure that indigenous youth are not victims of police brutality and take both preventive and corrective action when abuse is suspected;
- e) take due account of the recommendations adopted by the Committee after its Day of General Discussion on the rights of indigenous children in September 2003 and pay particular attention to the recommendation presented in the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, 2003 mission report (E/CN.4/2004/80/Add.3);

f) provide further detailed information on the implementation of article 30 in the next periodic State party report.

2. HONDURAS: CRC/C/HND/CO/3, 2 FEBRUARY 2007

19. The Committee is concerned that the increase in the amount of funds available through, *inter alia*, the Poverty Reduction Strategies, debt reduction programs and the international cooperation, did not result in a proportionate strengthening of the mechanisms for the integral care and protection of children at national and/or at local level. Furthermore, the Committee is concerned that among the main causes of poverty in Honduras are the unequal distribution of the income and the misuse of resources which severely impact on the enjoyment by children of their rights.

20. The Committee recommends that the State party, in accordance with article 4 of the Convention: ...

b) ensure a more balanced distribution of the income throughout the country and prioritize budgetary allocations to ensure implementation of the economic, social and cultural rights of all children, including those belonging to disadvantaged groups, such as indigenous children, children with disabilities and children living in remote areas; ...

Data collection

21. The Committee welcomes the measures taken by the IHNFA to improve the system of data collection in Honduras, including the joint project between IHNFA and non-governmental organizations aimed at setting up a database to study the extent of commercial sexual exploitation of children. However, it is concerned that information on children are still insufficient especially with respect to vulnerable groups such as street children, children with disabilities, indigenous children etc., and that there is no centralized data management system to monitor progress of the implementation of the Convention.

22. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system of data collection on the implementation of the Convention covering all persons below the age of 18 years and disaggregated by those groups of children who are in need of special protection. The Committee also encourages the State party to continue its cooperation in this respect with UNICEF.

23. The Committee notes that – despite the chronic lack of resources – training courses were carried out for concerned professional groups and activities of dissemination of the Convention were organized, especially with UNICEF and civil society support. However, the Committee is concerned that level of awareness of the Convention is low, in particular among indigenous groups and in rural areas.

25. The Committee recommends that the State party strengthen its efforts to disseminate the Convention throughout the country and to raise public awareness about its principles and provisions, in particular among children themselves, parents, teachers and local authorities as well as among indigenous groups and in rural areas. The State party is encouraged to continue cooperating with UNICEF in this respect.

31. The Committee, while noting the State party's efforts aimed at combating all forms of discrimination, including the adoption of the Act for Equal Opportunity of Women in 2000 and the ratification of the International Convention on the Elimination of all Forms of Racial

Discrimination in 2002, is concerned that discrimination and stigmatization continue to exist towards certain vulnerable groups, such as indigenous children,...

39. The Committee appreciates the considerable efforts of the State party to establish a birth registration system that effectively covers all children throughout the country, including awareness raising campaigns, the adoption of Decree N° 62 of 2004 establishing the national registry system and the setting up of mobile registries in rural or remote areas. However, the Committee is concerned by significant discrepancies in birth registration rates between urban and rural areas partly due to the low level of awareness thereof and lack of adequate resources and qualified staff in the registration system.

40. The Committee reiterates its previous recommendation urging that the State party make a priority of the immediate registration of the births of all children, and to promote and facilitate the registration of those children who were not registered at birth, in light of article 7 of the Convention. The State party should also continue carrying out awareness campaigns, such as 'All Honduran children have a right to a name and a nationality', targeted to the rural and most remote areas and intensify its efforts to provide adequate human and financial resources to improve the effective functioning of the national registration system with special attention to civil registries located in rural and indigenous areas. [...]

66. The Committee notes that 2007 has been proclaimed 'year of education' in Honduras and welcomes the adoption of a Basic National Curriculum (CBS), as well as other programs and plans in the area of education. However, it is still concerned about:

- a) the low quality of education in the country;
- b) the considerable difference with respect to quality and accessibility of education, number of inscriptions, level of infrastructure and drop-out rates between urban and rural and remote areas; ...

67. The Committee recommends that the State party, taking into account its General Comment No. 1 on the Aims of Education (2001):

- a) increase its efforts to improve school conditions in remote and rural areas and eliminate discrepancies in access to education between urban and rural areas; ...
- d) increase educational opportunities for indigenous children, *inter alia* by continuing to provide bilingual education, where necessary; ...

83. The Committee notes with concern that indigenous communities continue to face serious difficulties in the enjoyment of the rights enshrined in article 30. In particular, the Committee is concerned that the enjoyment of the rights by children belonging to indigenous groups is negatively affected by:

- a) the high level of poverty, inadequate access to basic services, health and education and high rates of illiteracy;
- b) the systematic threats and abuses against indigenous communities and impunity of the perpetrators;
- c) the land usurpation from municipal corporations and destruction of natural resources.

84. The Committee recommends that the State party pursue measures to effectively address the gap in life opportunities of indigenous children, and take adequate measures in order to provide protection for the rights of indigenous children taking into due account the recommendations adopted by the Committee on its Day of General Discussion on the rights of indigenous children in September 2003.

3. KENYA: CRC/C/KEN/CO/2, 2 FEBRUARY 2007

24. While welcoming the information that the State party has reviewed certain discriminatory legislation to ensure that children's rights are not breached, the Committee expresses concern at the fact that discrimination against certain groups of children still exists in policy as well as in practice, particularly with regard to the girl child, children of certain minorities such as pastoralists and hunter gatherers, children with disabilities, refugee children and the children of asylum-seekers.

57. The Committee notes with appreciation the introduction of a policy of free primary education in 2003, which despite prevailing high rates of children unable to access education, has resulted in a significant increase of school enrolment. The Committee is concerned about the low enrolment in early childhood care and education institutions and the disparities in the access to quality education, which particularly disadvantages girls and pastoralist and hunter-gatherer children. [...]

58. The Committee further recommends that the State party, taking into account its General Comment No. 1 (CRC/GC/2001/1) on the Aims of Education: ...

e) undertake additional efforts to ensure access to informal education to vulnerable groups, including in particular pastoralist and hunter-gatherer children, as well as, street children, orphans, children with disabilities, child domestic workers, children living in conflict risk areas and refugee camps by, for example, introducing mobile schools, evening classes and eliminating indirect costs of school education; ...

69. The Committee acknowledges the efforts deployed by the Government to provide special treatment to children belonging to indigenous peoples, including pastoralist and hunter gatherer communities, as well as to other minority groups in Kenya. The Committee notes with concern the elevated poverty rates among these groups and the limited access of their children to basic health, sanitation and education. Despite the government's effort to ensure free universal primary education, enrolment and literacy rates among children from minority and indigenous peoples' communities continuously fare below the national average, especially in the case of girls. The Committee notes that in addition to cultural practices, such as early marriages and child labour, poverty and the lack of education adapted to the life style of these communities are major reasons for their low enrolment rates. The Committee also notes the low quality and lack of access to schools in remote pastoralist areas. Finally, the Committee is very concerned over the wide-spread continuation of harmful traditional practices and their impact on girls, despite the formally outlawing of some of these practices such as female genital mutilation.

70. In light of the recommendations adopted during its Day of General Discussion on the rights of indigenous children (CRC/C/133, paragraphs 624), the Committee recommends that the State Party:

- a) constitutionally recognize the rights of indigenous pastoralist and hunter gatherer and other marginalized communities to their lands and resources, effective political participation and cultural identity. Specific legislation should be enacted accordingly;
- b) consider ratifying the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries;
- c) put into place affirmative action measures and the corresponding resources to ensure the free universal primary education and the basic health care of children belonging to indigenous peoples and minorities' communities. These measures should further efforts to establish mobile schools, clinics and birth registration campaigns, as well as specific

incentives and training for health workers and teachers. Such measures should be developed in consultation and with the participation of the communities concerned.

d) implement culturally appropriate measures to eliminate harmful traditional practices and provide material and psychological support to children victims of these practices.

e) pay particular attention to the recommendations presented by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, based on his mission to Kenya in December 2006 (A/HRC/4/32/Add.3).

4. MALAYSIA : CRC/C/MYS/CO/1, 2 FEBRUARY 2007

23. The Committee commends the State party for its significant investment in social and health services, education and child protection but is regrets that the impact of budgetary allocations on the implementation of child rights has not been systematically assessed.

24. The Committee recommends that the State party continue to prioritize budgetary allocations for the realization of children's rights to the maximum extent of available resources for social and health services, education and child protection and to allocate more resources for the implementation of special protection measures for vulnerable groups of children (for example, the Orang Asli, children living in economic hardship, children of indigenous populations living in remote places, children of migrant workers and child victims of trafficking). [...]

25. The Committee takes note of the extensive statistical data provided in the report and particularly in the written replies to the list of issues. Nevertheless, it regrets the lack of a national data collection system in respect of all areas covered by the Convention, which limits the State party's capacity to adopt adequate policies and programmes, in particular with regard to under-served groups of children and under-served geographical areas (for example poverty studies on Orang Asli and indigenous populations in Sabah and Sarawak). [...]

26. The Committee recommends that the State party strengthen its mechanisms for data collection by establishing a national central database on children and developing indicators consistent with the Convention in order to ensure that data are collected on all areas covered by the Convention and that they are disaggregated, for example, by the age for all persons under 18 years, sex, urban and rural areas and by those groups of children who are in need of special protection (i.e. under-served groups of children and under-served geographical areas, including Orang Asli and children belonging to indigenous populations in Sabah and Sarawak, ...

27. The Committee welcomes the State party's efforts to promote awareness of the rights of the child, including the awareness-raising workshops organized by the Department of Social Welfare, and to disseminate the Convention in close collaboration with UNICEF, the Human Rights Commission of Malaysia (SUHAKAM) and non-governmental organizations. Nevertheless, the Committee considers that education for children and the public at large and training activities for professional groups on children's rights need ongoing attention.

28. The Committee recommends that the State party strengthen its efforts to disseminate the Convention to children, their parents and the broader public, including appropriate material specifically for children translated in the different languages spoken in Malaysia, including those spoken by migrant children, asylum-seeking and refugee children and indigenous children. [...]

31. While noting with appreciation the principle of non-discrimination in article 8 of the Federal Constitution as well as in the preamble of the Child Act 2001 (Act 611) and the special

measures taken to advance and protect the status and existence of indigenous peoples, the Committee is concerned that many children belonging to vulnerable groups, such as the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas,...

32. In light of article 2 and other related articles of the Convention, the Committee recommends that the State party carefully and regularly evaluate existing disparities in the enjoyment by children of their rights and undertake on the basis of that evaluation the necessary steps to prevent and combat discriminatory disparities against children belonging to vulnerable groups, such as such as the Orang Asli, indigenous and minority children living in Sabah and Sarawak and particularly in remote areas,...

71. The Committee commends the State party for its continuous and remarkably successful efforts to reduce poverty in Malaysia. It notes with appreciation the plans to implement the Ninth Malaysia Plan 2006-2010 as well as the estimate that the State party is able to reach the MDG target of halving poverty well before 2015. Despite the State party's considerable progress achieved in the poverty reduction, the Committee notes with concern that indigenous groups, especially indigenous communities in Sabah and Sarawak, and the Orang Asli in Peninsular Malaysia, are affected by poverty. [...]

72. The Committee recommends that the State party:

- (a) Continue to implement the Ninth Malaysia Plan 2006-2010 and to allocate resources for effective poverty reduction measures at all levels, particularly among the Orang Asli and in the indigenous communities of Sabah and Sarawak as well as in the rural and remote areas of the other less developed states; ...

74. The Committee notes with appreciation the State party's efforts to address the special educational needs of indigenous children and in particular the Orang Asli but it notes with deep concern their high drop-out rate.

75. In the light of articles 28 and 29 of the Convention, and taking into account the Committee's General Comment No. 1 (2001) on the aims of education (CRC/GC/2001/1), the Committee recommends that the State party continue to allocate adequate financial, human and technical resources in order to: ...

- (c) Strengthen its efforts to address the special educational needs of the Orang Asli and children from other indigenous groups, including by implementing "Stay with the School Programme"; ...

105. As regards the right of the child belonging to ethnic, religious or linguistic minorities or to indigenous peoples to enjoy his or her own culture, to profess and practice his or her own religion and to use his or her own language, in community with other members of his or her group, the Committee refers to the respective concluding observations above. It also draws the attention of the State party to the recommendations adopted on the Committee's Day of general discussion on the rights of indigenous children (2003) (CRC/C/133, paras.608-624).

5. SURINAME: CRC/C/SUR/CO/2, 18 JUNE 2007

5. The Committee notes with appreciation that the State party provided a systematic overview of the follow-up actions to the previous concluding observations in its report and updated in the written replies to the List of Issues. This overview shows that various follow-up measures have been taken but that quite a number of them, particularly in the area of legislation, remain

outstanding. This includes the discrimination of children belonging to vulnerable groups, the need for disaggregated data on children, the lack of budgetary resources dedicated to children, and mandatory reporting obligations of abuse of children.

6. The Committee urges the State party to take all necessary measures to address those recommendations from the concluding observations of the initial report that have not yet been implemented or sufficiently implemented and to provide adequate follow-up to the recommendations contained in the present concluding observations on the second periodic report.

18. The Committee welcomes the establishment of the Child Indicators Monitoring System (CIMS) and the yearly publication of its data. The Committee also notes with appreciation the development of the Children in Need of Special Protection (CNSP) monitoring system, which is a sub-system of CMIS, as well as other data or information collection systems. Nevertheless, the Committee notes that the data collected by the CMIS and the CNSP systems is not sufficiently disaggregated, particularly in terms of providing information on a wide range of vulnerable groups.

19. The Committee encourages the State party to continue to strengthen its data collection system as a basis for assessing progress achieved in the realization of child rights and to help design policies to implement the Convention. The State party should ensure that information collected, particularly through the CNSP, contains data on a wide-range of vulnerable groups including children belonging to minority or indigenous groups, children living in poverty, street children, etc. The Committee also recommends that the State party seek technical assistance from, inter alia, UNICEF.

26. The Committee is concerned at the fact that discrimination against certain groups of children still exists in practice, particularly with regard to girls in general, children with disabilities, children living in poverty, children affected by and/or infected with HIV/AIDS, and children belonging to ethnic minorities or indigenous peoples, recognising the particular vulnerability of girls in these categories.

27. The Committee urges the State party to take adequate measures, including expediting the establishment of the Equal Opportunity Commission, to ensure the practical application of the constitutional and legal provisions guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention, and to adopt a comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups.

28. The Committee requests that specific information be included in the next periodic report on the measures and programmes relevant to the Convention on the Rights of the Child undertaken by the State party to follow up on the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account general comment No.1 (CRC/GC/2001/1) on the aims of education.

51. The Committee notes with appreciation the introduction of the Integrated Management of Maternal and Child Health (IMMCH) strategy into the health system in Suriname. The Committee also notes with appreciation that primary healthcare clinics and healthcare centres in the interior of the country are free and welcomes actions taken by the State party in the areas of breastfeeding, nutrition and training of health workers. The Committee notes with regret that the State party's mental health plan has not yet been implemented due to lack of human resources. The Committee also notes that there has been some evidence of reduction of malaria incidence

but regrets that the full implementation of the action plan on malaria and the functioning of the Malaria institute are hampered by a lack of funds. The Committee also notes with concern that the majority of children hospitalised due to malnutrition are from ethnic minorities. Furthermore, the Committee remains concerned about planning and management, human and financial resources in the health care system. The Committee is also concerned about the attitude of health workers and the community vis-à-vis promoting the well-being of the child and the lack of preventive care aspects, particularly in health care systems in the interior.

52. The Committee recommends that the State party continue to conduct training for health workers, particularly in the rural and interior regions, that it continue to actively promote breastfeeding, that it address the problem of malnutrition, with a special emphasis on minority ethnic groups, that it take measures to ensure that children, in particular those under the age of five, sleep under mosquito nets impregnated with insecticide and that it ensure that its public health institutions, including the Malaria institute, receive adequate funding and resources to carry out their work. The Committee encourages the State party to consider seeking technical assistance from UNICEF and WHO, among others.

59. The Committee welcomes the fact that an adjustment of the maximum age for compulsory education has been incorporated into the draft amendment of the Law on primary education of 1960, creating a new maximum age of 14 years and eliminating the discrepancy with the minimum age to be legally employed. The Committee is encouraged by the finalisation of the Sector Plan for Education, noting, however, that progress to date has been very slow. The Committee also notes that a Law on Special Education has been drafted. The Committee notes with concern that significant disparities exist in the quality and delivery of education between the coastal areas and the interior of the country and that a large number of primary schools in the interior are managed by teachers with limited training. While the Committee notes with appreciation the increased enrolment and completion rates in primary schools, it is nevertheless concerned at the significantly low primary school attendance rates of children living in the interior of the country, almost all belonging to indigenous and minority groups, and at the lack of early childhood education. The Committee also notes with concern the high number of children (especially boys) dropping out of schools, the outdated school curricula, and structural inefficiencies in the training of teachers at all levels.

60. The Committee recommends that the State party, taking into account its general comment No. 1 (CRC/GC/2001/1) on the aims of education:

- (a) Reduce socio-economic and regional disparities in access to and full enjoyment of the right to education, and take specific measures to significantly reduce the high rates of dropouts;
- (b) Expand access to early childhood education, particularly in the interior;
- (c) Ensure that primary education is free of charge, and also of other (additional) costs, in order to guarantee that all children receive primary education;
- (d) Improve the quality of education through the increase of the number of well-trained and fully qualified teachers, particularly those recruited to teach in the interior, the modernisation of teaching and learning methods and reform of the curricula, inter alia, in order to better orient education to the competencies needed for social and economic participation in a developing society; ...

61. The Committee is concerned that despite laws prohibiting discrimination on the basis of race or ethnicity, children belonging to indigenous or minority groups such as Amerindians and Maroons, are subjected to discrimination in, inter alia, access to education, health and public services.

62. The Committee urges the State party to recognise and implement the rights of persons belonging to indigenous and minority groups, including the rights of children belonging to such groups and in that regard the Committee recommends that the State party undertake awareness-raising activities to address negative attitudes and prejudices towards children or people belonging to minority or indigenous groups. In particular, the Committee urges the State party to ensure that children belonging to indigenous or minority groups have equal treatment and access to education, health and other services.

65. While welcoming the ratification of the ILO Convention 182 and the intention to establish a multidisciplinary committee for the development of a plan of action, the Committee notes with concern the existence of child labour, particularly in its worst forms and that in addition, it has both an ethnic (Maroon children) and gender (boys) bias, particularly with regard to involvement in the worst forms of child labour. The Committee also regrets the lack of updated data on working children.

66. The Committee urges the State party to ensure that the multidisciplinary committee to address child labour is set up and develops as soon as possible the policy plan to eradicate the worst forms of child labour and that the necessary human and financial resources are provided for the effective implementation of this plan, including the provision of support to civil society. The Committee also urges the State party to ensure that any policies, plans and legislation to address child labour, particularly in its worst forms, also provide effective protection for girls and children belonging to minorities or indigenous peoples. [...]

67. The Committee is concerned that according to some recent studies a considerable number of children are victims of sexual exploitation. The Committee is also concerned over reports of rape of girls belonging to indigenous and tribal groups in regions where mining and forestry operations have been developed.

6. Venezuela, CRC/C/VEN/CO/2, 5 October 2007

20. The Committee notes the efforts and actions in the area of children's rights including by the National Council for the Rights of Children and Adolescents and the National Statistics Institute aimed at increasing visibility of children in national indicators and statistics. It also takes note of the delegation's acknowledgement of the need to improve the national statistical information system in relation to children and adolescents rights, both in the production of data as well as in public access. The Committee remains concerned, however, at the lack of disaggregated data and indicators which would allow for an efficient monitoring of plans and actions including monitoring of budgetary allocations and expenditures.

21. The Committee recommends that the State party continue and strengthen its efforts to develop a comprehensive system of collection of data on the implementation of the Convention. The data should cover all children's rights for all those below the age of 18 years. It should also be disaggregated by sex, age, ethnic group, indigenous children and children of afro descendants as well as those groups of children in need of special protection, such as children in detention, children requiring mental health assistance, children with disabilities, children in street situations, working children and refugee children. The Committee encourages the State party to further its cooperation with UNICEF and other agencies in this regard.

39. The Committee welcomes the various initiatives and achievements made in facilitating registration of children at birth, such as the National Plan for Identity "*Yo Soy*" which created

hospital birth units to ensure every child is registered immediately following birth. However, the Committee is concerned about the negative impact in this regard of Decree No. 2819 of 30 September 1998 providing that parents must be duly documented in order to register their children born within the territory of the State party.

40. The Committee encourages the State party, in partnership with UNICEF, to continue its efforts to ensure that all children within its territory are registered at birth, including children of undocumented foreigners and those belonging to indigenous groups and immigrant families.

41. The Committee notes that the normative framework guarantees the right to information but is concerned about the quality of the TV and radio programmes and their compatibility with a child rights approach. The Committee is also concerned that indigenous children and children of afro descendants do not receive sufficient information relevant to their needs.

42. The Committee encourages the State party to ensure public programs are consistent with the children's rights in all sectors of the population.

58. The Committee welcomes the variety of social programmes for the promotion of a healthy life and the health and integral development of children through increased investments in primary health care and the social missions, which have resulted, inter alia in declines in child mortality. Nevertheless, the Committee remains concerned at the high rates of neonatal and maternal mortality, and declining vaccination coverage. The Committee is also concerned about the parallel nature of the health missions.

59. The Committee recommends that the State party: ...

b. continue to address the problem of malnutrition and low vaccination rates, with special emphasis on rural and remote areas and among refugees and the indigenous populations;...

66. The Committee welcomes that children's education belongs to the top priorities of the government's policies and that progress with regard to children's enrolment and expanded provisions for disadvantaged children in school are evident. The Committee remains concerned however that: ...

(c) Enrolment rates of indigenous, afro descendants and children living in rural areas are low;...

67. The Committee recommends that the State party

a. strengthen efforts to increase enrolment in preschool care and education facilities and in the higher grades of primary schools as well as in secondary schools, in particular in the rural and remote border areas and with respect to indigenous children; ...

78. The Committee notes that the State party created a new Ministry to deal with indigenous issues but is concerned that despite efforts the situation has not improved sufficiently in the area of indigenous peoples' protection. The Committee regrets that the mortality rates due to preventable diseases continue to be high amongst the indigenous population and is concerned at reports of deaths due to malnutrition. The Committee is also concerned that girls are at a higher risk for sexual exploitation and that there is a tendency not to report complaints.

79. The Committee recommends the State party to enhance the situation of indigenous children by *inter alia*;

- a. Strengthening efforts to improve the living conditions in areas inhabited by indigenous peoples.
- b. Increasing its efforts in preventing health related diseases and particularly malnutrition amongst the indigenous children;

- c. Initiating programmes to lower the sexual vulnerability of the girls belonging to indigenous peoples;
- d. Increasing its efforts in the implementation of educational strategies adapted to indigenous children; and
- e. Create spaces for participation of indigenous children between themselves and with non-indigenous children.

B. Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict

1. GUATEMALA, CRC/C/OPAC/GTM/CO/1, 12 JUNE 2007

12. The Committee, while recognising certain efforts to train professionals, is nevertheless concerned that the State party's dissemination and training activities regarding the Optional Protocol are limited. Little information is given regarding initiatives specifically aimed at raising awareness of the Optional Protocol. In particular, information is lacking regarding its dissemination among certain professional categories, in particular among the armed forces, including forces for international peacekeeping operations, and medical professionals who treat refugee, asylum-seeking and migrant children as well as among children at large.

13. The Committee recommends that the State party develop systematic awareness raising, education and training on the provisions of the Optional Protocol for children through the educational curricula, and for all relevant professional groups working with asylum-seeking, refugee and migrant children from countries affected by armed conflict, such as teachers, medical professionals, lawyers, judges, immigration officials, police and military personnel. The Committee emphasises the need to train the armed forces, taking into account the extensive forced recruitment by the military and paramilitary groups of children, especially indigenous children, that took place during the armed conflict, between 1962 and 1996.

20. The Committee is concerned that the budget necessary for the implementation of reparations measures, in particular for rehabilitation, compensation, physical and psychological recovery and social reintegration of children who have been involved in hostilities, is inadequate. The Committee is concerned that the work of the National Commission for the Search for Disappeared Children and the National Reparations Programme has been slow and inefficient. The Committee regrets that the State party has allocated inadequate resources for full compliance with the sentences of the Inter-American Court of Human Rights relating to cases of children who were victims during the armed conflict.

21. The Committee recommends that the State party allocate appropriate financial and human resources for the full implementation of comprehensive reparations measures, including a gender perspective, and of the recommendations of the Commission for Historical Clarification, especially in the allocation of funding and human resources for the National Commission for the Search for Disappeared Children and the National Reparations Programme. Furthermore, the Committee encourages the State party to adopt pending legislation establishing an autonomous commission for investigating disappearances, including of children. Furthermore, the Committee urges the State party to comply fully with the sentences of the Inter-American Court of Human Rights relating to cases of children who were victims during the armed conflict.

2. PHILIPPINES, CRC/C/OPAC/PHL/CO/1, 15 JULY 2008

4. The Committee welcomes the information that several pieces of legislation contain provisions preventing children from being compulsorily recruited into armed forces or other armed groups

as well as from directly participating in hostilities. The Committee notes with appreciation, in particular: ...

- Republic Act 8371 (Indigenous Peoples Rights Act)

17. The Committee notes that the minimum age for voluntary recruitment is 18, except for training purposes. However, the Committee remains concerned that because of the difficulties in ensuring adequate birth registration in remote areas and among certain minority groups, including indigenous groups, children might be recruited under the age of 18.

18. In order to guarantee that the declaration made by the State party under article 3 of the Optional Protocol is effectively honoured, the Committee recommends that the State party establish and systematically implement safeguards to verify the age of volunteers, based on objective elements such as birth certificates, school diplomas and, in the absence of documents, medical examination to determine the exact age of the child.

19. The Committee further recommends that the State party enforce the provisions of the Indigenous Peoples Rights Act to ensure that indigenous children are not recruited by armed forces or armed groups, including vigilantes groups.

C. Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography

1. GUATEMALA, CRC/C/OPSC/GTM/CO/1, 6 JULY 2007

12. The Committee notes with great concern the high numbers of children affected by commercial sexual exploitation, estimated by the State party at 15,000 victims, and regrets the lack of documentation and reliable data, disaggregated by age, sex, geographic region, indigenous and minority group, and research on the prevalence of sale, trafficking, child prostitution and child pornography.

13. The Committee recommends that the State party undertake relevant situation analyses and ensure that data relating to areas covered by the Protocol, disaggregated inter alia by age, sex, geographic region, minority and indigenous group, are systematically collected and analysed as they provide essential tools for measuring policy implementation.

D. General Comments

1. GENERAL COMMENT NO. 10 (2007): CHILDREN'S RIGHTS IN JUVENILE JUSTICE, CRC/C/GC/10, 9 FEBRUARY 2007

4a. *Non-discrimination (art. 2)*. States Parties have to take all necessary measures to ensure that all children in conflict with the law are treated equally. Particular attention must be paid to de facto discrimination and disparities, which may be the result of a lack of a consistent policy and involve vulnerable groups of children, such as street children, children belonging to racial, ethnic, religious or linguistic minorities, children who are indigenous, girl children, children with disabilities and children who are repeatedly in conflict with the law (recidivists). In this regard, training of all professionals involved in the administration of juvenile justice is important (see below para. 33), as well as the establishment of rules, regulations or protocols which enhance equal treatment of child offenders and provide redress, remedies and compensation.

33. It is essential for the quality of the administration of juvenile justice that all the professionals involved, including in law enforcement and judiciary, receive appropriate training to inform them about the content and the meaning of the provisions of the CRC in general and those directly relevant for their daily practice in particular. The training should be organised in a systematic and ongoing manner and not be limited to information about the relevant national and international legal provisions. It should include information on inter alia the social and other causes of juvenile delinquency, the psychological and other aspects of the development of children with special attention to girls and children belonging to minorities or indigenous peoples, the culture and the trends in the world of young people, the dynamics of group activities, and the available measures to deal with children in conflict with the penal law, in particular measures without resorting to judicial proceedings (see above Section IV, Part B).

V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

A. Concluding Observations⁹

1. COLOMBIA : CEDAW/C/COL/CO/6, 2 FEBRUARY 2007

22. While noting the steps taken by the State party to enhance women's health, including sexual and reproductive health, such as the establishment of the Sexual and Reproductive Health Policy and decision C-355 of May 2006 of the Constitutional Court, which decriminalized abortion in cases where the pregnancy represents a risk to the life or health of the mother, in cases of serious malformation of the foetus or in cases of rape, the Committee expresses its concern about the high rate of maternal mortality, especially among poor, rural and indigenous and afrodescendent women.

23. (...) The Committee recommends that the State party give priority attention to the situation of adolescents and rural, indigenous and afrodescendent women, and that it provide appropriate sex education with special attention to the prevention of pregnancies and sexually transmitted diseases, including as part of the regular education curriculum.

26. While recognizing the efforts made to increase the representation of women in public administration at the national and local levels, including through the Quota Act, the Committee is concerned about the under representation of women, including indigenous and afrodescendent women, in elected bodies at all levels, and in particular about the recent decline in women's representation in Parliament and in the Judiciary.

27. The Committee calls upon the State party to expand its efforts towards achieving women's full and equal participation in all areas, and in particular in elected bodies and in the Judiciary. In this regard, the Committee encourages further use of temporary special measures to accelerate the advancement of women, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendations 25 and 23. Particular efforts should be made to increase the number of indigenous and afrodescendent women in political and public life and in decision-making positions in all fields. It encourages the State party to enhance efforts to provide leadership training programmes for women, including indigenous and afrodescendent women, in order to strengthen their roles in leadership and decision-making positions in society. It encourages the State party to monitor progress made and results achieved.

2. INDIA : CEDAW/C/IND/CO/3, 2 FEBRUARY 2007

14. The Committee regrets that the report does not provide sufficient statistical data, disaggregated by sex, caste, minority status and ethnicity, on the practical realization of equality between women and men in all areas covered by the Convention and does not provide information on the impact of, and results achieved by, various legal and policy measures described in the report.

15. The Committee requests the State party to set benchmarks and to include adequate, appropriate and comparative statistical data and analysis, disaggregated by sex, caste, minority

⁹ CEDAW's concluding observations on the following states with self-identifying indigenous peoples did not make any reference to indigenous women, directly or indirectly: Namibia, Vietnam, Indonesia, Kenya, Norway, Burundi, and Tanzania.

status and ethnicity, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention and trends over time in the practical realization of equality between women and men. In particular, it calls upon the State party to review and monitor the fulfilment of the provisions of the Convention in respect of scheduled caste, scheduled tribe, backward class and minority women in all sectors. [...]

18. While noting that poor women are entitled to receive free legal aid under the Legal Services Authority Act and that the National Legal Service Authority aims to enhance legal literacy for women and provide access to justice, the Committee is concerned about the quality and scope of the free legal services provided and the access of women in rural and tribal areas to such services.

19. The Committee urges the State party to provide free legal services to poor and marginalized women in rural and tribal areas in addition to urban areas and to monitor the quality and impact of such services in regard to ensuring women's access to justice. It requests the State party to provide information about access of women, including scheduled caste, scheduled tribe, backward class and minority women, to free legal services and the scope and effectiveness of such services in its next periodic report.

21. The Committee calls upon the State party to develop, in consultation with women's groups, a coordinated and comprehensive plan to combat all forms of violence against women taking a life cycle approach. It urges the State party to take steps in partnership with states and union territories to fully and consistently implement and enforce the Domestic Violence Act and to ensure that all women victims of domestic violence, including scheduled caste, scheduled tribe, backward class and minority women, are able to benefit from the legislative framework and support systems in place and that perpetrators are effectively prosecuted under the Penal Code and adequately punished. [...]

32. While appreciating the additional data provided by the State party during its dialogue with the Committee, which indicates improvements in enrolment rates of women in primary education, and while commending the State party's future plans of focusing efforts on education of marginalized sections of the population, the Committee is concerned about the continuing disparities in the educational status of scheduled caste, scheduled tribe and Muslim women and the limited access of these groups of women to higher education.

33. The Committee recommends that the State party provide, in its next periodic report, comparable data disaggregated by sex, caste, minority status and ethnicity, on the enrolment and retention rates of girls and women at all levels of education, and trends over time. Given the particularly disadvantaged situation of Muslim women and girls, the Committee requests the State party to provide information in its next periodic report about the action taken on the recommendations of the Sachar Committee with regard to the education of Muslim women and girls. It urges the State party to increase efforts to enable scheduled caste, scheduled tribe and Muslim women to access higher education. [...]

46. The Committee expresses grave concern about the displacement of tribal women owing to the implementation of megaprojects and the influence of global economic trends. While the Committee appreciates the need for economic growth, it is concerned that the human rights of vulnerable groups such as tribal populations may be adversely affected by large-scale economic projects.

47. The Committee urges the State party to study the impact of megaprojects on tribal and rural women and to institute safeguards against their displacement and violation of their human rights. It also urges the State party to ensure that surplus land given to displaced rural and tribal women is cultivable. Moreover, the Committee recommends that efforts be made to ensure that tribal and rural women have individual rights to inherit and own land and property.

3. NICARAGUA: CEDAW/C/NIC/CO/6, 2 FEBRUARY 2007

17. The Committee expresses its concern about the inadequate recognition and protection of the reproductive health and rights of women in the State party, especially among poor, rural, indigenous and Afro-descendent women. [...]

19. While noting steps taken to combat violence against women and girls and to enhance women's access to justice, the Committee remains concerned about the prevalence of all forms of violence against women and girls, and the lack of social awareness about and condemnation of such violence in the country. The Committee notes with concern the lack of enforcement of laws and prosecution and punishment of perpetrators, and women's lack of access to justice in cases of violence, especially women and girls from poor and rural areas, as well as indigenous and Afro-descendent women. [...]

20. (...) It urges the State party to ensure that all women victims of violence, including poor, rural, indigenous and Afro-descendent women, have access to immediate means of redress, protection, support and legal aid. [...]

31. The Committee is concerned about the situation of indigenous and Afrodescendent women and the multiple forms of discrimination they face, which limit their de facto enjoyment of their human rights and full participation in all spheres of life.

32. The Committee encourages the State party to adopt concrete, targeted measures to accelerate the improvement of conditions of indigenous women and women of African descent in all spheres of life. It calls upon the State party to ensure that indigenous women and women of African descent have full access to appropriate education and health services and can fully participate in decision making processes. It requests the State party to include information and data and trends over time on the situation of indigenous women and women of African descent and on the impact of measures taken to overcome multiple discrimination against them in its next periodic report.

4. PERU: CEDAW/C/PER/CO/6, 2 FEBRUARY 2007.

32. The Committee notes with concern the large number of women, particularly indigenous and rural women, who do not have any documentation registering their births and consequently cannot claim nationality and social benefits in the State party.

33. The Committee encourages the State party to expedite and facilitate the process of registration of women without documentation and issue birth certificates and identity documents. The Committee urges the State party to establish concrete goals and timetables for these women to be able to document their nationality, particularly in the rural areas, and provide information on the progress achieved in its next report.

36. The Committee is concerned about the situation of rural, indigenous and minority women which is characterized by precarious living conditions and lack of access to justice, health care,

education, credit facilities and community services. The Committee is concerned that widespread poverty and poor socio-economic conditions are among the causes of the violation of women's human rights and discrimination against rural, indigenous and minority women. The Committee is further concerned about racism and multiple forms of discrimination against Afro-Peruvian women.

37. The Committee urges the State party to pay special attention to the needs of rural, indigenous and minority women, ensuring that they participate in decision-making processes and have full access to justice, education, health services and credit facilities. The Committee invites the State party to place emphasis on women's human rights in all development cooperation programmes, including with international organizations and bilateral donors, so as to address the socio-economic causes of discrimination against rural, indigenous and minority women through all available sources of support. The Committee encourages the State party to take more effective measures to eliminate discrimination against Afro-Peruvian women and to strengthen its efforts to combat and eliminate racism against women and girls in Peru.

5. SURINAME: CEDAW/C/SUR/CO/3, 2 FEBRUARY 2007

25. While noting the increase in the representation of women in the National Assembly, from 17.6 per cent in 2000 to 25 per cent in 2005, the Committee is concerned about the continuing under representation of women in public and political life and in decision-making positions, including in the National Assembly, the Government, diplomatic services and regional and local/municipal bodies.

26. The Committee encourages the State party to take sustained measures, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendations 23 and 25 to accelerate women's full and equal participation in elected and appointed bodies, including at the international level. Such measures should extend to indigenous and other racial minority women and include: establishing benchmarks, numerical goals and timetables; conducting training programmes on leadership and negotiation skills for current and future women leaders; and regular monitoring of progress made and results achieved. It further urges the State party to undertake awareness-raising campaigns about the importance of women's participation in public and political life and at decision-making levels for society as a whole.

27. The Committee continues to be concerned about discrimination against women in the field of employment and, in particular, with regard to the non-availability of paid maternity leave in the private sector, especially for women working in small businesses. The Committee is also concerned about childcare facilities, which lack regulation of any sort. It is concerned about the occupational segregation between women and men in the labour market and the persistent wage gap, as well as the high level of unemployment among women.

28. The Committee reiterates its recommendation that the State party ensure that all women workers have working conditions equal to those of men, including freedom from sexual harassment and social security benefits and provision for paid maternity leave for all working women, including those working in small businesses. It also recommends that efforts be strengthened to ensure access by women, including indigenous and other racial minority women, to vocational training. [...]

31. The Committee reiterates its concern about the precarious situation of rural women and women in the interior, in particular indigenous Amerindian and Maroon women, who lack

access to adequate health services, education, clean water and sanitation services and to credit and other facilities and infrastructure.

32. The Committee reiterates its recommendation that the State party give full attention to the needs of rural women and women in the interior, particularly Amerindian and Maroon women, and ensure that they have access to health care, education, social security, clean water and sanitation services, fertile land, income-generating opportunities and participation in decision making processes. It requests the State party to provide, in its next report, a comprehensive picture of the de facto situation of rural women in all areas covered by the Convention and on the impact of measures taken and results achieved in the implementation of policies and programmes that are targeted to enhancing the situation of these women.

6. BRAZIL: CEDAW/C/BRA/CO/6, 10 AUGUST 2007

11. The Committee is concerned about the persistent gap between the de jure and de facto equality of women and men, particularly among the most vulnerable sectors of society, such as women of African descent and indigenous women, and other marginalized groups, which is exacerbated by regional, economic and social disparities.

12. The Committee encourages the State party to enhance its efforts to close the gap between de jure and de facto equality of women and men by ensuring full implementation of laws, plans and policies and through regular, effective monitoring and impact assessment, especially in regard to the most disadvantaged groups of women. It recommends that the State party ensure that those charged with responsibility for implementation of such laws and policies at all levels are fully aware of their obligations.

35. The Committee is concerned at the lack of sufficient data about women of African descent, indigenous women and other vulnerable and marginalized groups, who often suffer from multiple forms of discrimination. The Committee notes that this lack of sufficient information and statistics has prevented it from forming a comprehensive picture of the de facto situation of these women in all areas covered by the Convention and the impact of governmental policies and programmes aimed at eliminating discrimination against them.

36. The Committee requests the State party to enhance collection of data disaggregated by sex, race and age, where appropriate, in all areas covered by the Convention and to include adequate statistical data and analysis, disaggregated by sex, race and age, and by urban and rural areas, in its next report so as to provide a full picture of the implementation of all the provisions of the Convention. It also recommends that the State party regularly conduct impact assessments of its legislation, policies, plans and programmes to ensure that measures taken lead to the desired goals, and that it inform the Committee about the results achieved in the implementation of the Convention in its next report.

7. COOK ISLANDS: CEDAW/C/COK/CO/1, 10 AUGUST 2007

14. While noting efforts undertaken to raise awareness of the Convention throughout the Cook Islands, including in partnership with non-governmental organizations, the Committee is concerned about women's lack of knowledge of their rights and their lack of access to justice and ability to obtain redress in the courts, including because of costs and the availability of legal aid only for those unable to defend themselves in criminal prosecutions. The Committee notes that non-governmental organizations provide some free legal assistance to women.

15. The Committee encourages the Cook Islands to widely disseminate and raise awareness about the Convention and other legislation in both English and Cook Islands Maori, in particular the meaning and scope of direct and indirect discrimination, and formal and substantive equality of women. The Committee invites the Cook Islands to enhance women's awareness of their rights through legal literacy programmes and to expand legal assistance to women wishing to bring claims of discrimination or enforce their rights to equality. The Committee calls upon the Cook Islands to ensure that gender sensitivity and women's rights be made an integral part of the education and training of law enforcement and judicial officers, including judges, lawyers and prosecutors, so as to establish firmly in the country a legal culture supportive of women's equality and non-discrimination.

8. BELIZE: CEDAW/C/BLZ/CO/4, 10 AUGUST 2007

15. The Committee is concerned that the widespread poverty among women — the poverty rate stands at 33.5 per cent — is among the causes of the violation of women's rights and discrimination against them, particularly in the rural areas and among Mayan women. It is concerned that there has been no evaluation of several multimillion-dollar projects designed to combat poverty in the rural areas since 1996. The Committee is concerned at the large number of women who are heads of household and who are particularly vulnerable to poverty.

16. The Committee urges the State party to make the promotion of gender equality an explicit component of all its national development strategies, policies and programmes, in particular those aimed at poverty alleviation and sustainable development. The Committee also invites the State party to place emphasis on the promotion and protection of women's human rights in all development cooperation programmes with international organizations and bilateral donors so as to address the socio-economic causes of discrimination against women. The Committee recommends that the State party put in place evaluation and monitoring mechanisms to assess the impact of its poverty reduction strategies on women, including those in the rural areas, and provide information in its next report. It calls on the State party to pay special attention, and provide targeted support, to women heads of household in all its poverty-eradication efforts, including in the rural areas and among Mayan women.

9. HONDURAS: CEDAW/C/HON/CO/6, 10 AUGUST 2007

12. While appreciating the establishment of the Office of the Special Prosecutor for Women, the Committee is concerned that women's ability to bring cases of discrimination before the courts is limited by factors such as poverty, lack of assistance in pursuing their rights, lack of information about their rights and attitudes of law enforcement and judicial officials that create obstacles for women seeking access to justice.

13. The Committee recommends that sustained awareness-raising and legal literacy campaigns targeting women, including rural and indigenous women and women of African descent, on gender equality be undertaken to encourage and empower women to use available procedures and remedies relating to violations of their rights under the Convention. The Committee urges the State party to provide legal aid services for women, including rural and indigenous women and women of African descent, and to remove all impediments women may face in gaining access to justice, including costs related to filing and pursuing court cases and lengthy delays in legal proceedings. The Committee further urges the State party to make women aware of their right to file complaints against government officials who fail to apply the relevant laws for the benefit of women and to monitor the outcome of such complaints. The Committee encourages the State party to seek assistance from the international community in order to implement measures that will strengthen women's access to justice. The Committee requests the State party

to provide information about women's access to justice, including the legal aid provided, in its next periodic report.

31. The Committee calls upon the State party to include in its next report statistical data and analysis on the situation of women, disaggregated by sex, age, ethnicity and rural and urban areas, indicating the impact of measures taken and the results achieved in the practical realization of women's substantive equality.

10. NEW ZEALAND: CEDAW/C/NZL/CO/6, 10 AUGUST 2007

24. While appreciating the steps taken by the State party, such as the establishment of the Taskforce for Action on Violence within Families and the 2006 report on violence within families, the Committee is concerned about the continued prevalence of violence against women, particularly Maori, Pacific and minority women, and the low rates of prosecution and convictions for crimes of violence against women. The Committee also remains concerned that analysis on issues relating to violence against women remains inadequate for the purposes of identifying the causes of violence against women, monitoring trends and evaluating the appropriateness and impact of policy and law enforcement efforts. The Committee also expresses concern that the number of protective orders granted to women is declining.

25. The Committee calls upon the State party to consistently implement and enforce the Programme of Action on Violence within Families and to revise its Domestic Violence Act of 1995 in order to protect all women victims of violence, including Maori, Pacific, Asian, immigrant, migrant and refugee women, and women with disabilities. It calls upon the State party to ensure that all violence against women is effectively prosecuted and adequately punished in line with the Committee's general recommendation 19. The Committee recommends that training be enhanced for the judiciary, public officials, law enforcement personnel and health-service providers in order to ensure that they can adequately respond to it. It calls on the State party to ensure that adequate data is collected on all forms of violence against women and urges the State party to conduct research on the prevalence, causes and consequences of violence against all groups of women to serve as the basis for comprehensive and targeted intervention. In particular, it encourages the State party to study the reasons for the decline in the issuance of protective orders and to consider putting in place additional protective measures for women, such as enabling the police to issue protective orders. It invites the State party to include information on the results of such measures in its next periodic report.

30. While welcoming the recent ascension of women to the highest constitutional positions in New Zealand, the Committee is concerned that the number of women in local government and political decision-making positions is actually declining, and that women remain underrepresented in local government, district health boards, statutory boards and the judiciary. The Committee is also concerned that Maori, Pacific, Asian and other minority women are underrepresented at most levels of public and political life.

31. The Committee requests the State party to take concrete action and establish goals and time frames to increase the number of women in decision making positions at the local level, in civil service, political parties, district health boards, statutory boards and the judiciary. It also urges the State party to implement measures to increase the participation of Maori, Pacific and minority women in political decision-making positions at all levels, including temporary special measures in accordance with the Committee's general recommendation 25.

34. The Committee is concerned about the disadvantaged situation of women, including Maori, Pacific and minority women, and the discrimination faced by women in employment, especially in the private sector where fewer equality provisions apply. In particular, the Committee is concerned about the increasing wage gap between women and men, the high levels of occupational segregation, the concentration of women in low-wage occupations and the very low rate of women's participation in management and decision-making positions in the private sector.

35. The Committee requests the State party to take all appropriate measures, including temporary special measures and the strengthening of equality mechanisms, to address women's disadvantaged situation in the labour market, including the situation of Maori, Pacific and minority women. It recommends that efforts be intensified to eliminate occupational segregation, both horizontal and vertical, and to narrow and close the wage gap between women and men. It calls upon the State party to monitor the impact of measures taken and results achieved in both the public and private sectors and to report thereon in its next periodic report.

36. While the Committee welcomes the measures taken by the State party to support women's participation in the labour force, the Committee is concerned that the rates of participation for mothers of young children and single mothers remain below the average for States members of the Organization for Economic Cooperation and Development. The Committee also expresses concern that seasonal and temporary workers remain ineligible for paid parental leave. The Committee is also concerned about the low rate of participation of men in paid parental leave programmes and about the barriers to access to childcare and parental leave policies faced by rural women, as well as Maori, Pacific and other minority women.

37. The Committee requests that the State party act expeditiously to amend eligibility criteria to ensure that seasonal and temporary workers are eligible for paid parental leave. It also urges the State party to undertake further measures to increase the participation rate of mothers of young children and single mothers in the labour force by strengthening parental leave programmes for men and encouraging men to share child-rearing responsibilities with women. The Committee further requests that the State party analyse and assess the barriers that rural and Maori, Pacific and minority women face in accessing childcare and parental leave, and implement measures to reduce these barriers and increase their access to such services.

11. BOLIVIA: CEDAW/C/BOL/CO/4, 8 APRIL 2008

11. The Committee is concerned at the persistence of high levels of poverty and social exclusion among Bolivian women, particularly among women living in rural areas, indigenous women, older women and women with disabilities, and their insufficient access to land, housing and basic social services. The Committee notes that the free market economy without a social dimension, which has contributed to the increase in poverty, may have a greater impact on the poverty situation of women. The poverty conditions of women are reflected in their high illiteracy rates, low school enrolment and completion rates, poor access to health care, including sexual and reproductive health, leading to high rates of maternal mortality, and lack of access to land, housing, income-generating training opportunities and basic social services.

13. The Committee urges the State party to ensure that all poverty eradication policies and programmes integrate a gender perspective and explicitly address the structural nature and various dimensions of poverty faced by women, in particular women living in rural areas, indigenous women, older women and women with disabilities. It recommends that the State party strengthen its efforts to implement nationwide effective educational programmes in the

areas of functional literacy, skills and income-generating training, including the provision of microfinance schemes, as a means of poverty alleviation, and adopt measures to ensure women's equal access to land, housing, healthcare and basic social services.

18. While noting the State Party's efforts, the Committee is concerned that there is still a considerable number of women, particularly indigenous women in rural areas, older women and women with disabilities, who do not have identity documents and can therefore have neither access to public institutions nor to the relevant social services and benefits.

19. The Committee calls on the State party to continue to expedite and facilitate the process of registration of women, particularly indigenous women in rural areas, older women and women with disabilities, and issue birth certificates and the relevant identity documents. The Committee urges the State party to establish concrete goals and timetables for this process and provide information on the progress achieved in its next report.

22. While congratulating the State party for its recognition of cultural diversity and the differences and specificities of indigenous communities in legislation, the Committee is concerned that the emphasis placed on such specificities might detract from compliance with the provisions of the Convention relating to non-discrimination and formal and substantive equality between men and women. The Committee is particularly concerned that, while the recognition of community justice by the State party might make it easier for the indigenous and rural people to have access to justice, it might operate to perpetuate stereotypes and prejudices that discriminate against women and violate the human rights enshrined in the Convention.

23. The Committee urges the State party to ensure that indigenous concepts and practices are in conformity with the legal framework of the Convention and to create the conditions for a wide intercultural dialogue that would respect diversity while guaranteeing full compliance with the principles, values and international norms for the protection of human rights, including women's rights.

32. While noting the State party's efforts to reduce illiteracy and improve boys' and girls' access to education and ensure that they remain in school, for example, through the "Juancito Pinto" scholarship or the "Yo sí puedo" ("Yes I Can") Literacy Programme, the Committee is concerned at the low level of education of rural and indigenous women and girls, who continue to be at a serious disadvantage in terms of access to and quality of education, as well as the number of years they attend school, basically owing to the lack of infrastructure, distance, the risk of violence, the cost of transport and language.

33. The Committee urges the State party to adopt all necessary measures, including temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25 on temporary special measures, with a view to reducing girls' illiteracy and school dropout rates, particularly in rural and indigenous areas, and to provide an education, whether formal or informal, and in the relevant languages, to these women and girls.

43. The Committee recommends that the State party integrate a gender perspective into its national health policy in line with general recommendation 24 and improve access to health services to the most vulnerable groups of women, in particular rural and indigenous women.
[...]

12. SWEDEN: CEDAW/C/SWE/CO/7, 8 APRIL 2008

38. While noting the measures taken with the aim of enhancing integration of immigrant, refugee and minority women into the Swedish society and of including the women in the labour market, the Committee continues to be concerned about their human rights situation and the fact that they continue to suffer from multiple forms of discrimination. The Committee notes that the 2007 action plan on violence recognizes women of immigrant or foreign origin as a particularly vulnerable group requiring special protection, but remains concerned at the violence and discrimination on the grounds of sex that they face in their own communities. The Committee is also concerned about a 2007 regulation demanding that a foreign national be accompanied by a close relative when obtaining identification documents, which may negatively affect abused foreign women, but notes the statement by the delegation that this regulation will be reviewed. While noting the appointment of a Delegation for Roma Issues, the Committee continues to be concerned at the remaining forms of discrimination experienced by Saami and Roma women in various contexts.

39. The Committee urges the State party to intensify its efforts to eliminate discrimination against immigrant, refugee and minority women. It encourages the State party to be proactive in its measures to prevent discrimination against those women, both within their communities and in society at large, to combat violence against them, and to increase their awareness of the availability of social services and legal remedies as well as to familiarize them with their rights to gender equality and non-discrimination. The Committee also urges the State party to take effective measures to integrate them into the Swedish labour market. The Committee further urges the State party to review the 2007 regulation on identification documents. In addition, the Committee calls upon the State party to conduct regular and comprehensive studies on discrimination against immigrant, refugee and minority women, to collect statistics on their situation in employment, education and health and on all forms of violence that they may experience, and to submit such information in its next periodic report.

13. FINLAND: CEDAW/C/FIN/CO/6, 18 JULY 2008

Sami women

33. While acknowledging the increased supportive measures for Sami women regarding social and health services and the implementation programme drawn up by municipalities together with the Sami council, the Committee is concerned that Sami women continue to face multiple discrimination, including difficulty in accessing adequate health care due to lack of doctors in the Northern part of Finland. The Committee notes in particular the absence of gender perspective in Sami politics and the inadequate political representation of Sami women both in their communities and at the national level.

34. The Committee calls upon the State party to ensure that Sami women are provided with adequate social and health services, including reproductive health services. The Committee requests the State party to ensure that gender perspectives are mainstreamed in all policies and programmes regarding Sami people. It encourages the State party to develop measures to eliminate all forms of discrimination and violence against Sami women, including engaging proactively with the Sami community and drawing up plans to increase women's representation in both their communities and in Finnish society at large.

14. CANADA: CEDAW/C/CAN/CO/7, 7 NOVEMBER 2008

13. The Committee notes that federal funds to support social assistance are provided to provinces and territories through the Canada Social Transfer (CST) and welcomes information indicating that the CST budget increased in the past year and will continue to increase in future. Nevertheless, the Committee is concerned at the fact that decisions on expenditure of funds from the CST are completely at the discretion of the provinces and territories and that there is no federal accountability mechanism to ensure minimum standards across the country for the provision of funding to social assistance programmes for women. The Committee is also concerned at reports of cuts in social assistance schemes in many provinces and at the resulting negative impact on the rights of vulnerable groups of women, such as single mothers, aboriginal women, Afro-Canadian women, immigrant women, elderly women and disabled women, who rely on social assistance for an adequate standard of living.

14. The Committee calls upon the State party to establish minimum standards for the provision of funding to social assistance programmes, applicable at the federal, provincial and territorial levels, and a monitoring mechanism to ensure the accountability of provincial and territorial governments for the use of such funds so as to ensure that funding decisions meet the needs of the most vulnerable groups of women and do not result in discrimination against women. The Committee also calls upon the State party to carry out an impact assessment of social programmes related to women's rights.

Discriminatory legislation

17. The Committee is concerned that the Convention has not been fully incorporated into domestic law and that discriminatory legislation still exists. In particular, the Committee is concerned at the fact that the Indian Act continues to discriminate between descendants of Indian women who married non-Indian men and descendants of Indian men who married non-Indian women with respect to their equal right to transmit Indian status to their children and grandchildren. It is also concerned that section 67 of the Canadian Human Rights Act, although repealed, still provides clauses stating that the Indian Act should be applied in a manner that gives due regard to First Nations legal traditions and customary laws, balancing individual rights and collective rights.

18. The Committee recommends that the State party ensure the full incorporation of all substantive provisions of the Convention into domestic law. The Committee recommends that the State party take immediate action to amend the Indian Act to eliminate the continuing discrimination against women with respect to the transmission of Indian status, and in particular to ensure that aboriginal women enjoy the same rights as men to transmit status to children and grandchildren, regardless of whether they have married out or of the sex of their aboriginal ancestors. It also recommends that the State party find measures to ensure that section 67 of the Canadian Human Rights Act is interpreted and applied in a way that provides full protection for aboriginal women against discrimination and full redress for any human rights violations.

19. The Committee is concerned that the division of matrimonial property in case of divorce does not apply to aboriginal women living on reserves, owing to the application of the Indian Act, which does not address the issue of matrimonial property. The Committee regrets that Bill C-47, aimed at addressing property rights on reserves, is no longer under discussion following the dissolution of Parliament.

20. The Committee urges the State party to ensure the speedy passage through Parliament and entry into force of legislation addressing the discriminatory provisions of the matrimonial property rights of aboriginal women living on reserves.

25. Although noting the State party's indication that the restructuring of Status of Women Canada (SWC) involved only the closure of administrative offices and that funds had been reallocated to programmes for women, the Committee expresses concern that this has resulted in the closure of a number of the body's regional offices and has consequently made access to the services provided by SWC more difficult for women, in particular in remote and rural areas.

26. The Committee urges the State party to carry out an assessment as to whether or not the closure of SWC offices has had a negative impact on the implementation of the Convention and on access to services by women, in particular aboriginal and rural women. If that is the case, the Committee urges the State party to take all necessary measures to remedy the situation.

29. The Committee welcomes initiatives at the federal, provincial and territorial levels to address violence against women, in particular domestic violence, and initiatives such as the Sisters in Spirit Initiative and the Aboriginal People's Programme, which specifically address violence against aboriginal women, as well as the participation of men in the process of combating violence against women, as demonstrated by the White Ribbon Campaign. [...]

30. The Committee recommends that the State party continue to give priority attention to combating violence against women, in accordance with general recommendation 19, on violence against women. The Committee also recommends that the State party enact legislation specifically addressing domestic violence against women, making it a criminal offence and ensuring that women who are victims of domestic violence have access to immediate means of redress and protection and that perpetrators are prosecuted and adequately punished, and that it put in place "primary aggressor" policies. The Committee further recommends that adequate shelters and appropriate support services be provided in all jurisdictions for women and adolescent girls who are victims of violence, and that the shelter and services needs of aboriginal women, women with disabilities, immigrants, refugees and trafficked women and rural and northern women be addressed. The State party is also urged to implement legislation requiring that domestic violence convictions be taken into account in child custody or visitation decisions.

31. Although the Committee notes that a working group has been established to review the situation relating to missing and murdered women in the State party and those at risk in that context, it remains concerned that hundreds of cases involving aboriginal women who have gone missing or been murdered in the past two decades have neither been fully investigated nor attracted priority attention, with the perpetrators remaining unpunished.

32. The Committee urges the State party to examine the reasons for the failure to investigate the cases of missing or murdered aboriginal women and to take the necessary steps to remedy the deficiencies in the system. The Committee calls upon the State party to urgently carry out thorough investigations of the cases of aboriginal women who have gone missing or been murdered in recent decades. It also urges the State party to carry out an analysis of those cases in order to determine whether there is a racialized pattern to the disappearances and take measures to address the problem if that is the case.

35. While welcoming the high number of women judges on the Canadian Supreme Court and other levels of the judiciary at the federal, provincial and territorial levels, and noting that efforts

have been made at the federal, provincial and territorial levels to increase the number of women in public office, including through the provision of support to women who are underrepresented, such as immigrants, aboriginal women and seniors, the Committee notes with regret that the level of political participation by women remains low.

36. The Committee urges the State party to take sustained measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to accelerate an increase in the representation of women in elected and appointed bodies in all areas of public life, with a particular focus on high-level posts in the foreign civil service.

39. While the Committee notes that the minimum wage rate has increased in a number of provinces and territories, it remains gravely concerned at the fact that poverty is widespread among women, in particular aboriginal women, minority women and single mothers. While noting that the Government of Canada provides support for families through the Universal Child Care Plan, which includes the Universal Child Care Benefit and support for childcare spaces, the Committee remains concerned at lack of affordable quality childcare spaces. The Committee notes with interest the State party's indication that federal spending on housing has never been higher, but regrets the absence of a national housing strategy and expresses concern at the current severe housing shortage, in particular in aboriginal communities, and at the high costs of rent and the impact thereof on women. The Committee is particularly concerned at the impact of the lack of affordable childcare and affordable housing on low-income women with families.

40. The Committee urges the State party to step up its efforts to provide a sufficient number of affordable childcare spaces and affordable and adequate housing options, including in aboriginal communities, with priority being given to low-income women, who are particularly disadvantaged in those areas. The Committee also recommends that the State party carry out a cost-benefit analysis to assess the impact of current living standards, housing and childcare situations on the economic empowerment of women and present the findings in its next report to the Committee. Such an analysis should have a special focus on low-income women, taking into account the amount of social assistance they receive from the State compared with the actual cost of living, including housing and childcare.

41. The Committee welcomes the Women's Health Indicators initiative, aimed at promoting the inclusion of gender and diversity perspectives in health reporting, the 2005 federal initiative to address HIV/AIDS, the establishment of the Aboriginal Women's Health and Healing Research Group in 2003 and the First Nations and Inuit Home and Community Care Programme. The Committee is concerned, however, that the aboriginal population is particularly affected by HIV/AIDS, which has a greater impact on women. It is also concerned about the situation of elderly women, who are often disadvantaged with regard to care for age-specific health problems.

42. The Committee encourages the State party to carefully monitor the delivery of health services in order that it may respond in a gender-sensitive and age-sensitive manner to all health concerns of women, and in this regard it invites the State party to utilize the Committee's general recommendation 24 as a framework for action to ensure that a gender perspective is integrated into all health policies and programmes. The Committee also recommends that the State party include information in its next report to the Committee on any projects and activities undertaken under the Women's Health Indicators initiative.

Aboriginal and other minority women

43. The Committee is concerned at the fact that aboriginal women and women of various ethnic and minority communities continue to suffer from multiple forms of discrimination, particularly in terms of access to employment, housing, education and health care. The Committee notes the existence of a number of programmes, policies and activities aimed at addressing discriminatory treatment of aboriginal women. Nevertheless, it notes with regret that aboriginal women in Canada continue to live in impoverished conditions, which include high rates of poverty, poor health, inadequate housing, lack of access to clean water, low school-completion rates and high rates of violence. They are underrepresented in all areas of the labour market, in particular in senior or decision-making positions, have higher rates of unemployment and face a greater pay gap in terms of their hourly earnings compared with men. The Committee also notes with concern that women from ethnic and minority communities are also exposed to a high level of violence and are significantly underrepresented in political and public life.

44. Recalling its previous recommendations of 2003, the Committee encourages the State party to take measures, including temporary special measures in line with article 4, paragraph 1, of the Convention and the Committee's general recommendation 25, to eliminate de jure and de facto discrimination against aboriginal, ethnic and minority women, both in society at large and in their communities, in particular with respect to the remaining discriminatory legal provisions and equal enjoyment of their human rights to education, employment and physical and psychological well-being. It also recommends that the State party develop a specific and integrated plan for addressing the particular conditions affecting aboriginal women, both on and off reserves, and of ethnic and minority women, including poverty, poor health, inadequate housing, low school-completion rates, low employment rates, low income and high rates of violence, and that it take effective and proactive measures, including awareness-raising programmes, to sensitize aboriginal, ethnic and minority communities about women's human rights and to combat patriarchal attitudes and practices and the stereotyping of roles. The Committee also urges the State party to ensure that aboriginal, ethnic and minority women are empowered, through encouragement, mentoring opportunities and funding, to participate in the necessary governance and legislative processes that address issues impeding their legal and substantive equality.

45. While welcoming the efforts of child and family services to place greater emphasis on prevention services, the Committee remains concerned at the fact that a disproportionately high number of aboriginal children, including girls, are being taken into State custody.

46. The Committee recommends that the State party take all necessary measures to address the issue of the separation of aboriginal children from their parents. In this regard, the State party should give particular attention to contributing factors such as poverty, lack of housing, violence and drug abuse.

15. EL SALVADOR: CEDAW/C/SLV/CO/7, 7 NOVEMBER 2008

11. While noting with appreciation that according to Article 144 of the Constitution, international treaties concluded by El Salvador with other States or with international organizations constitute laws of the Republic on entry into force and can be directly invoked in national courts, the Committee is concerned at the limited awareness, including among legal professionals, of the provisions of the Convention, as shown by the limited case law where these have been used. The Committee is also concerned at the limited awareness of women of their rights, in particular vulnerable groups of women, namely rural and indigenous women, migrant women, domestic workers and women working in the "maquiladora" industry (assembly plants).

12. The Committee recommends that educational programmes on the Convention, including its Optional Protocol and case law, as well as programmes on women's rights be introduced, in particular for all legal professionals, including judges, lawyers, prosecutors and law enforcement personnel, and for the public at large. It further urges the State party to take special measures, including comprehensive legal literacy programmes to enhance women's awareness of their rights, aimed at vulnerable groups of women in particular, so that they may be able to exercise those rights.

17. The Committee regrets that the report did not provide sufficient statistical data on the situation of women in all areas covered by the Convention or information on the impact and results of measures taken to achieve equality between women and men.

18. The Committee calls upon the State party to put in place a comprehensive system of data collection, including measurable indicators to assess trends in the situation of women and progress towards women's de facto equality over time. It invites the State party to seek international assistance, as necessary, for the development of such data collection and analysis efforts. The Committee also requests the State party to include in its next report statistical data and analysis, disaggregated by sex and by rural and urban areas, indicating the impact of measures taken and the results achieved in order to illustrate more comprehensively the situation of women in several areas, in particular with respect to the issue of violence. The Committee invites the State party to give special attention to the collection of data in respect of the most vulnerable groups of women, including rural and indigenous women, migrant women, domestic workers and women working in the maquila industry.

37. While welcoming the State party's initiatives and social programmes aimed at empowering women living in extreme poverty, the Committee is concerned at the persistence of high levels of poverty and social exclusion of Salvadoran women, especially rural, indigenous and migrant women, as well as at obstacles in their access to basic social rights.

38. The Committee urges the State party to strengthen initiatives aimed at encouraging women's economic empowerment, such as the Solidarity Network Programme (Programa Red Solidaria), keeping in mind the specific situation of different groups of women. The Committee also encourages the State party to establish mechanisms to monitor regularly the impact of social and economic policies on women.

16. ECUADOR: CEDAW/C/ECU/CO/7, 7 NOVEMBER 2008

12. The Committee recognizes the important role played by CONAMU in advancing gender equality and women's rights in Ecuador. The Committee further welcomes efforts at creating institutional and legal equal opportunity mechanisms at local level and within some ministries. The Committee, however, remains concerned that the functional structure, composition, legal basis, powers and resources of CONAMU do not allow it to direct a genuine and cross-cutting integration of a gender perspective into the overall structure of the State and into public policies.

13. While noting with satisfaction that the new Constitution provides for the existence of a specific mechanism to promote gender equality — the Council for Equality — the Committee recommends that the Council be functionally integrated in the Government structure and be given the necessary mandate and legal authority, through specific secondary legislation, to mainstream gender and women's rights in all policies and structures of the State party. It also recommends that the Council be provided with an adequate budget to perform its activities in an

effective manner. In addition, the Committee recommends an adequate representation of indigenous women and of women of African descent in the Council.

18. The Committee is concerned about the persistence of high levels of poverty and social exclusion of Ecuadorean women, especially indigenous women and women of African descent, and about obstacles to their access to basic social rights. [...]

19. The Committee urges the State party to ensure that economic and social policies and public investment take into specific account the situation of women. It recommends that the nation's system of social indicators be strengthened and allow for disaggregated data on the situation of indigenous women and women of African descent, in particular in rural areas, and that this information in turn inform relevant policies. [...]

23. ... The Committee is equally concerned at reports according to which indigenous women and women of African descent may be particularly vulnerable to trafficking and sexual exploitation.

24. The Committee is concerned about the situation of indigenous women and women of African descent. It notes that the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (see A/HRC/4/32/Add.2) and the Committee on the Elimination of Racial Discrimination (CERD/C/ECU/CO/19) have concluded that indigenous women continue to experience double discrimination, based on their sex and ethnic origin, and violence, which constitute an obstacle to their de facto enjoyment of their human rights and full participation in all spheres of life. The Committee is concerned that indigenous women and women of African descent are disproportionately affected by poverty, have lower level of access to higher education, higher school drop-out rates, higher rates of maternal mortality and early pregnancies, higher rates of unemployment and underemployment, lower wages and a lower level of participation in public life than the rest of the population of Ecuador.

25. The Committee encourages the State party to adopt, in the context of its policies and programmes, concrete, targeted and time-bound measures, with evaluation criteria, to accelerate the improvement of conditions of indigenous women and women of African descent in all spheres of life. It calls upon the State party to ensure that indigenous women and women of African descent have full access to education and health services and can fully participate in decision-making processes. It requests the State party to include information and data, including trends over time, on the situation of indigenous women and women of African descent and on the impact of measures taken to overcome multiple discrimination against them in its next periodic report.

30. The Committee, while welcoming efforts by the Ministry of Education and Culture to eliminate illiteracy, including through programmes such as "Yes, I can", notes with concern the high level of illiteracy among rural women speaking indigenous languages. Notwithstanding the State party's efforts to achieve equality between men and women in formal education and the progress made in this direction, the Committee remains concerned about high drop-out rates among women and girls, especially indigenous girls, and discrepancies between men and women in access to higher education. The Committee also notes with concern that higher education choices continue to reflect stereotypical notions of appropriate fields of study for women.

31. The Committee encourages the State party to strengthen its efforts to eradicate illiteracy, in particular among rural women speaking indigenous languages. It also urges the State party to

take measures, including studies, to address the root causes of school dropouts, including poverty and factors related to gender discrimination and stereotypical gender roles, and to promote women's access to higher education, including through scholarship funds. The Committee further encourages the State party to strengthen efforts to promote the inclusion of women in non-traditional careers. The Committee requests the State party to provide, in its next report, information on budget allocations for public education compared with other sectors. It also requests information on levels of access to school, permanence and grade disaggregated by sex and ethnic group.

36. The Committee is concerned at cases of gender discrimination in the workplace, including dismissals related to maternity, and at discriminatory labour practices against women, especially indigenous and migrant women and those of African descent.

37. The Committee urges the State party to undertake legislative and administrative measures to prevent sex-based discrimination in the workplace including by making public all cases in which there were convictions. The Committee further urges the State party to take further measures to educate the general public about the value of women in the workplace. The Committee recommends that the State party ratify Convention No. 183 of the International Labour Organization concerning the revision of the Maternity Protection Convention (No. 103).

38. The Committee remains concerned at the high rate of pregnancy among teenage and young women, particularly in rural areas. The Committee is also concerned at the high incidence of maternal mortality. The Committee notes with concern that the second leading cause of maternal mortality is abortion and is concerned that the magnitude of unsafe abortion in the country and its effects on maternal mortality are under recorded and unknown. The Committee welcomes the enactment of the Free Maternity Care Act and the establishment of committees of users to monitor its implementation. However, the Committee is concerned at the lack of resources for the full implementation of the Act, especially in rural areas.

39. The Committee recommends that the State party strengthen measures to address teenage pregnancy, especially among indigenous girls and those of African descent, including the allocation of adequate and targeted resources to the Plan for the Prevention of Teenage Pregnancy and programmes to assist teenage boys and girls during pregnancy. [...]

40. The Committee is concerned at the increasing number of women contracting HIV/AIDS and at the lack of information on the incidence of HIV/AIDS among indigenous women and women of African descent. The Committee is also concerned at the low percentage of women screened for early detection of uterine, cervical or breast cancer.

41. The Committee recommends that the State party assess the incidence of HIV/AIDS in indigenous women and women of African descent, as well as migrants and refugee women. It further urges the State party to strengthen the preventive approach to HIV/AIDS and to uterine, cervical and breast cancer. The Committee further invites the State party to include in its next report further information, especially trends over time and addressing the life cycle of women, on women's general and reproductive health, including rates and causes of morbidity and mortality of women in comparison with men; contraceptive prevalence rates; spacing of children; diseases affecting women and girls, in particular various forms of cancer; and the efforts of the State to improve women's access to health-care services, including family planning and services directed towards cancer prevention and treatment. The Committee recommends that the State party strengthen the role of local governments and promote an intercultural perspective in the provision of health-care services.

42. The Committee welcomes the Political Participation Act and notes with appreciation that for the first time since its enactment it was fully implemented during the elections for the Constituent Assembly in 2007. The Committee further welcomes progress in the representation of women in all spheres of public life. However, the Committee remains concerned at the persistence of structural, political, cultural and socio-economic obstacles to the participation of women, especially indigenous women and women of African descent, in many spheres of public life.

43. The Committee urges the State party to ensure consistent application of legislation aimed at ensuring the participation of women in public life and to take other measures in this direction, especially targeting indigenous women and women of African descent. The Committee encourages the State party to take temporary special measures in line with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25. The Committee invites the State party to provide comprehensive data concerning the participation of women in all spheres of public life in the next periodic report.

17. MYANMAR, CEDAW/C/MMR/CO/3, 07 NOVEMBER 2008

2. ... [T]he Committee regrets that the information provided in the report in many aspects was too general and lacked the disaggregated data pertaining to, inter alia, the various ethnic groups, as requested in the previous concluding observations, necessary to permit the Committee to evaluate the specific situation of women. [...]

10. ... Furthermore, the Committee is concerned that legislation and customary laws that discriminate against women and are incompatible with the Convention remain in force in Myanmar, in particular with regard to discrimination on the grounds of ethnicity and within the ethnic groups.

24. The Committee expresses its deep concern at the high prevalence of sexual and other forms of violence, including rape, perpetrated by members of the armed forces against rural ethnic women, including Shan, Mon, Karen, Palaung and Chin women. The Committee is also concerned at the apparent impunity of the perpetrators of such violence — although a few cases have been prosecuted — and at reports of threats against and intimidation and punishment of the victims. The Committee regrets the lack of information on mechanisms and remedies available to victims of sexual violence as well as measures to bring perpetrators to justice.

25. The Committee urges the State party to take immediate steps to put an end to those violations, to prosecute and punish the perpetrators, including military personnel, and to carry out human rights education and gender sensitization training for all law-enforcement and military personnel. The Committee urges the State party to document cases of rape and sexual assault, including all complaints filed, investigations, prosecutions and convictions. Such information, especially when it involves military and senior officials, would facilitate a better understanding of the situation. The State party should take due account of Security Council resolutions 1325 (2000) on women and peace and security and 1820 (2008) on sexual violence in armed conflict and is encouraged to put in place an action plan for the full implementation of those resolutions, taking into account article 2, article 4, paragraph 1, articles 5, 7 and 8 of the Convention. The Committee requests the State party to include information on the steps taken to eliminate sexual violence, including the results achieved, in the next periodic report.

30. The Committee regrets the limited information provided on the entitlements to acquire Myanmar citizenship under the 1982 citizenship law, including with respect to women acquiring citizenship based on their marital status and passing citizenship to their children born outside the country, as well as children with non-national fathers.

31. The Committee calls upon the State party to review the 1982 citizenship law and repeal or amend it, as appropriate, in order to bring it fully into compliance with article 9 of the Convention. It also calls on the State party to provide more information on Myanmar citizenship rights, including on birth certificates of children born in Myanmar, in particular children of ethnic groups, in its next periodic report.

VI. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A. Concluding Observations

1. AUSTRALIA, CAT/C/AUS/CO/3, 22 MAY 2008

5. The Committee welcomes the Government's apology to the Aboriginal and Torres Strait Islander peoples for past policies and laws which resulted in the removal of children from their families and communities.

23. The Committee is concerned about the arrangements for the custody of persons deprived of their liberty. In particular, the Committee notes with concern: ...

(c) The disproportionately high numbers of indigenous Australians incarcerated, notably among them the increasingly high rates of children and women;

(d) The continued reports of indigenous deaths in custody due to causes that are not clearly determined.

In order to improve the arrangements for the custody of persons deprived of their liberty, the State party should ...

(c) Abolish mandatory sentencing due to its disproportionate and discriminatory impact on the indigenous population;

(d) Seek to prevent and investigate any deaths in custody promptly. Furthermore, the State party should continue implementation of pending recommendations from the Royal Commission into Aboriginal Deaths in Custody of 1991.

B. General Comments

1. GENERAL COMMENT NO. 2: IMPLEMENTATION OF ARTICLE 2 BY STATES PARTIES, CAT/C/GC/2, 24 JANUARY 2008

21. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. States parties must ensure that, insofar as the obligations arising under the Convention are concerned, their laws are in practice applied to all persons, regardless of race, colour, ethnicity, age, religious belief or affiliation, political or other opinion, national or social origin, gender, sexual orientation, transgender identity, mental or other disability, health status, economic or indigenous status, reason for which the person is detained, including persons accused of political offences or terrorist acts, asylum-seekers, refugees or others under international protection, or any other status or adverse distinction. States parties should, therefore, ensure the protection of members of groups especially at risk of being tortured, by fully prosecuting and punishing all acts of violence and abuse against these individuals and ensuring implementation of other positive measures of prevention and protection, including but not limited to those outlined above.

C. Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

1. REPORT ON THE VISIT OF THE SUB-COMMITTEE ON PREVENTION OF TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT TO SWEDEN. CAT/OP/SWE/1, 10 SEPTEMBER 2008

41. The [Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT)] wishes to indicate some guidelines concerning certain key features of [National Preventative Mechanisms¹⁰] and recommends that the government takes these features into account when re-examining its decision:

- (a) The mandate and powers of the NPM should be clearly and specifically established in national legislation as a constitutional or legislative text. The broad definition of places of deprivation of liberty as per OPCAT shall be reflected in that text;
- (b) The NPM should be developed by a public, inclusive and transparent process of establishment, including civil society and other actors involved in the prevention of torture; where an existing body is considered for designation as the NPM, the matter should be open for debate, involving civil society;
- (c) The independence of the NPM, both actual and perceived, should be fostered by a transparent process of selection and appointment of members who are independent and do not hold a position which could raise questions of conflict of interest;
- (d) Selection of members should be based on stated criteria relating to the experience and expertise required to carry out NPM work effectively and impartially;
- (e) NPM membership should be gender balanced and have adequate representation of ethnic, minority and indigenous groups;
- (f) The State shall take the necessary measures to ensure that the expert members of the NPM have the required capabilities and professional knowledge. Training should be provided to NPMs;
- (g) Adequate resources should be provided for the specific work of NPMs in accordance with Article 18, 3 of the OPCAT; these should be ring-fenced, in terms of both budget and human resources; ...

¹⁰ See OPCAT, Articles 2(4), and 11(b).

VII. Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families

A. Concluding Observations

1. BOLIVIA: CMW/C/BOL/CO/1, 29 APRIL 2008

37. The Committee notes the information provided by the State party according to which 60 per cent of its indigenous population has migrated abroad. The Committee is concerned about the effects of this mass migration, taking into account the often vulnerable situation of indigenous migrants.

38. The Committee invites the State party to contemplate measures for the protection of this group of migrants.

VIII. HUMAN RIGHTS COUNCIL, UNIVERSAL PEER REVIEW MECHANISM

1. ARGENTINA, A/HRC/8/34, 13 MAY 2008

Interactive dialogue and responses by the State under review

27. [...]. Taking into account that Argentina is a country with a large number of indigenous minorities, the Russian Federation also asked what kind of problems Argentina is faced with in ensuring the rights of these peoples and how to ensure their rights.

46. The United Kingdom of Great Britain and Northern Ireland ... Traditionally vulnerable groups including migrants, indigenous people and children were at risk from exclusion. ... The United Kingdom recommended that Argentina takes further steps to address discrimination against women and vulnerable groups, including children, minorities and indigenous peoples.

55. [...] Nigeria asked how Argentina will respond to the concern of CERD about complaints regarding acts of racial discrimination, violent racist attacks and acts of police personnel committed on racial grounds. By way of recommendations, it encouraged Argentina to ... (c) while welcoming the laudable initiative on the devolution of national and provincial land to indigenous communities, Nigeria encouraged the authorities to provide adequate protection to indigenous peoples to enable them to own and possess these lands.

57. Another subject that cannot be ignored is the issue of the right of indigenous peoples, mentioned by Mexico and other countries. Argentina noted that there is a delay in the implementation of the international and national framework in this regard, and indicated that it must openly recognize this. However, Argentina noted that it has made efforts in two fundamental areas, i.e. land and culture. The Emergency Act on possession and ownership has not yet resolved the matter, but it has opened a parenthesis on the important issue of the relationship between indigenous peoples and their land. At the same time, a census should be conducted, which is essential to guaranteeing the rights of indigenous peoples. In terms of culture, Argentina is opening bilingual schools, which are very important.

Conclusions and Recommendations

64. The recommendations formulated during the interactive dialogue have been examined by Argentina and the recommendations listed below enjoy the support of Argentina:

1. To pursue its efforts to counter discrimination in whatever form, in particular towards the most vulnerable sectors of the population in the follow-up to the Durban Conference and the recommendations of the Committee on the Elimination of Racial Discrimination. (Algeria, Republic of Korea, Nigeria, Mexico)

2. To take further steps to address all kinds of discrimination against women, children, minorities and indigenous peoples. (United Kingdom, Mexico)

15. To intensify measures to fully realize the rights of indigenous peoples, in particular their representation in civil service and public institutions. (Republic of Korea)

16. To provide adequate protection to indigenous peoples and ensure that their right to possess land is respected. (Nigeria)

65. All conclusions and/or recommendations contained in this report reflect the position of the submitting State(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

2. BRAZIL, A/HRC/8/27, 22 MAY 2008

Interactive dialogue and responses by the State under review

36. The Republic of Korea ... noted that a number of international human rights organizations have repeatedly drawn attention to human rights violations of indigenous people, to the lack of public security and poor detention conditions in Brazil. Thus, the Republic of Korea expected Brazil to give a more thorough consideration to these issues.

57. [Canada] ... Noting also the low level of participation of women, the population of Afro-Brazilian descent, and indigenous people, Canada requested information about measures taken to address these issues.

69. ... As a developing country, Bangladesh also realized that Brazil faces many challenges. It indicated concerns expressed by other delegations about domestic violence, disparities in accessing socio-economic opportunities, particularly by indigenous communities. [...]

78. In response to Mauritania and South Africa, Brazil noted that it has based its action for the promotion of racial equality on national statistics. Indicators demonstrate the root causes of this inequality. Regarding education, the State has prioritized the history of Africa and of the indigenous peoples with the aim of promoting the education on how Brazil was formed. As regards children of indigenous peoples, it was noted that Brazil is seeking to increase school attendance in higher education. There are currently 38 public universities in 22 states. Affirmative action in entrance is being adopted, including by providing scholarships.

Conclusions and Recommendations

83. The recommendations formulated during the interactive dialogue have been examined by Brazil and enjoy the support of Brazil:

3. While continuing its positive initiatives, invest more rigour in evaluating the outcomes of planned activities in many of these areas: prisons conditions, criminal justice system, juvenile justice system, violence and extrajudicial killings committed by state military police, torture, protection of human rights defenders, violence against women, indigenous communities, rural violence and land conflict, child and slave labour, impunity for those involved with human trafficking and corruption (United Kingdom);
5. Give a more thorough consideration to the issues of human rights violations of indigenous people, lack of public security and poor detention conditions (Republic of Korea);

84. All conclusions and/or recommendations contained in this report reflect the position of the submitting state(s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

3. ECUADOR, A/HRC/8/20, 13 MAY 2008

Interactive dialogue and responses by the State under review

12. The representative of Mexico asked the delegation of Ecuador to provide additional information on the vision of the Government of Ecuador with regard to the following four issues: ... (iii) on the question of bilingual intercultural education, and if it is mandatory in the national territory; and (iv) on how the indigenous traditional justice system interacts with regard to the national justice system.

13. The Russian Federation asked ... how far Ecuador was in regard to the introduction of bilingual education.

20. On the question of measures to address gender violence, the delegation of Ecuador noted that this is a priority policy. ... On the rights of indigenous peoples raised by a number of speakers, the delegation noted that progress has been made towards recognition of the practices of customary law, but emphasized that these must be consistent with due process and the general principles of human rights.

26. The Republic of Korea noted Ecuador's efforts to promote the rights of indigenous people, including by introducing bilingual education for them. Korea enquired how Ecuador is ensuring or plans to ensure the protection of the rights of indigenous people living in the regions where oil explorations are taking place. Ecuador was also requested to elaborate on the content of the Migration Law and the need for exit permits to leave the country. [...]

30. In response to the last questions, the delegation of Ecuador noted.... Regarding the rights of indigenous peoples, the delegation noted that the Constitution guarantees that the State is a multicultural and multi-ethnic society. Ecuador is not only a party to ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries but it has also been a co-sponsor of the United Nations Declaration on the Rights of Indigenous Peoples. The Government appreciated the recommendations by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and Ecuador has established, in February 2007, the Secretariat for Peoples Social Movement and People Participation. Within the Ministry of Interior, there is a department of education for indigenous peoples and intercultural bilingual system, and a health department for indigenous people in the Ministry of Health as well as a national department for indigenous people in the Office of the Ombudsman. The organic law on indigenous institutions recently approved by Congress guarantees the legal of the different indigenous institutions. [...]

34. Venezuela recognized the efforts made by Ecuador to promote and protect human rights, and congratulated the Government for the broad consultation process for the preparation of the report. It asked Ecuador to provide more information on economic and social rights, collective rights, civil and political rights, in particular in the process of the constitutional drafting process.

40. Bolivia referred to issues regarding equal opportunity for migrants and wished to receive additional information concerning the protection of the rights of indigenous peoples.

48. Ecuador noted its progress in relation to social and economic rights, and that their health and employment policies cover various groups such as indigenous peoples, afro-descendants, migrants and the elderly, in a gender perspective.

Conclusions and Recommendations

[NONE]

4. FINLAND, A/HRC/8/24, 23 MAY 2008

Interactive dialogue and responses by the State under review

20. The Russian Federation stated that ... Finland had unresolved issues which require extra efforts and further practical steps. In this connection, the Russian delegation raised three points and made three recommendations. Firstly, despite Finnish efforts to reinforce the legal and institutional basis of the campaign against racial discrimination and racism, experts of five treaty bodies continued to note alarming facts of discrimination and racism vis-à-vis vulnerable groups of the population: migrants and ethnic groups and ethnic minority groups, in particular the Sámi, as well as people of Russian origin living on the territory of Finland. [...]

22. Bolivia expressed its gratitude to the delegation of Finland for the presentation of the report and valued Finland's preparedness to achieve greater incorporation of international legislation on human rights into national legislation. As a member of the troika on Finland, Bolivia has been able to gain more knowledge about Finland, which is one of the major benefits arising from the UPR exercise. ... It asked Finland for supplementary information about the situation of the Sámi people and specific measures being implemented to enable them to enjoy fully civil, political, economic, social and cultural rights. It recommended that Finland consider ratifying the International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families (ICRMW) and ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries....

24. Among good practices, Brazil stressed the appointment of ombudsmen for equality, data protection, minorities and children, as well as advisory bodies for ethnic relations, for gender and for Sámi Affairs. [...]

26. The Head of Delegation stated that Finland was proud of the tradition of the Ombudsman system in Nordic countries and that Finland's preliminary thoughts were positive on the question of the establishment of a national human rights institution. The Finnish Government pursued actively the enhancement of the rights of the Sámi people. The objective of the present Government was to solve the issue of the land use question during the current term of the Government. The preparation of a Government bill was ongoing and there are active negotiations between the Ministry of Justice, the Ministry of Agriculture and Forestry and the Sámi Parliament, which is a necessary partner in such negotiations. The point of departure was to ensure the culture of the Sámi people and the right of Sámi to use the land they traditionally occupy or where they traditionally live. Another question related to the right of Sámi people to participate in decision-making on the use of the land in the Sámi homeland area. The aim of the Government was to find a solution that would include the prerequisites to ratify ILO Convention No. 169. Another ongoing project in Finland concerning the rights of Sámi is the establishment of a new Sámi cultural centre, which was to be built in the Laapland, in the Sámi homeland. This was a major financial project and the Government had reserved nearly 12 million euros for the project. The new premises will be used by the Sámi Parliament and also by various Sámi NGOs, etc.

30. Netherlands ... recommended that further efforts be made and measures be taken to promote the rights of ethnic minorities, such as Roma and Sámi. [...]

35. The Philippines stated that Finland was the first developed country to be subject to UPR and that it was a pleasure to participate in this historic occasion, hoping that this would lead to truly a constructive dialogue in the Human Rights Council and between developed and developing countries where both could learn from each other's experiences. ... The second question raised concerned indigenous people, in particular Finland's efforts towards a settlement agreement on the drafting of a Government bill. Since indigenous issues were also of interest and concern to the Philippines, the delegation asked if Finland could identify the critical issues that needed to be resolved to make a settlement or a legislative bill acceptable to all parties concerned.

36. The representative of the United Kingdom considered that the Government of Finland has played an active role in campaigning to make the Universal Periodic Review as open and rigorous as possible. ... The United Kingdom further welcomed Finland's plans outlined in its national report to combat discrimination against minority and indigenous peoples and the efforts to strengthen and preserve the rights, language and culture of Sámi, as an indigenous people, and the Roma. However, the delegate of the United Kingdom noted the recommendation made by the United Nations mechanisms that Finland should ratify ILO Convention No. 169, and it encouraged it to fulfil its intention to draft and ratify an agreement on the rights of the Sámi to their traditional lands. [...]

40. Ecuador.... On indigenous issues, Ecuador would like to know how Finland currently guarantees the right to consultation on collective property for the Sámi people in regard to their lands, and what the specific measures are that have been taken by the Government to bring in force regulations which would protect the rights of Sámi people. [...]

47.[Finland responds] Regarding the consultation procedure on collective property, the delegate of Finland explained that 90 per cent of the Sámi homeland area in Finland is owned by the State of Finland and this is why the consultation or participation of the Sámi people is a key question when the Government tries to solve or enhance the rights of the Sámi people on land use issues. The right of the Sámi people to participate in the decision-making on the use of land, water and natural resources in the Sámi homeland area is going to be an essential part of the Government bill, which is under preparation in Finland. As previously stated, the solution Finland is trying to find is going to be drafted on the basis of the use of land, water and natural resources and not as a land title question. The land title question or ownership issue is a private law issue as Finland sees it and is not going to be solved in this connection.

Conclusions and Recommendations

50. Finland considered the recommendations made during the interactive dialogue and listed below, and agrees to follow up on them:

1. To increase the focus, targeted efforts and effective measures regarding eliminating discrimination, and to make further efforts and measures to promote the rights of minorities, inter alia, ethnic minorities (Netherlands, Russian Federation).
5. To consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries (Bolivia).

5. GABON, A/HRC/8/35, 28 MAY 2008

Interactive dialogue and responses by the State under review

15. [The Democratic Republic of the Congo] ... Noting Gabon's good policy on protecting minorities, particularly the Pygmy population, it requested more information about their social integration and involvement in political life. [...]

20. France requested Gabon to provide more information on the issue of the discrimination of indigenous peoples – Pygmies - and on the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, considering that Gabon voted in favour of its adoption in the General Assembly. [...]

23. Congo asked how Gabon undertook the census of the Pygmy population given that this is a highly mobile population. [...]

31. The Russian Federation asked how the protection of the rights of Pygmies was ensured, and if this ethnic group was represented, particularly in national elections. [...]

36. Nigeria ... supports the steps taken by the Government to integrate the Pygmy population into the mainstream society and recommended Gabon to redouble its efforts in this important endeavour, particularly in the area of educational development and provision of other basic amenities.

41. ... While recognizing efforts of Gabon, Brazil noted the situation of minorities and indigenous peoples, especially the Bayoka, Babongo and Baka, which are considered amongst most vulnerable groups, suffering from discrimination and segregation. [...]

42. Sweden ... Secondly, in Gabon school is mandatory and free until the age of 16, however, the Committee on the Rights of the Child has expressed concern by the lack of access to education of Pygmy children. Sweden wished to know what measures the Gabonese government was taking to ensure the right to education to all children.

47. Cameroon stated that it shares common ethnic populations and an ecosystem with Gabon. As host of a sub-regional centre for the promotion and protection of human rights, Cameroon asked whether Gabon is satisfied with the services this centre is supposed to provide, and whether the centre helped Gabon in the preparation of its report. Cameroon asked what collaboration Gabon might seek from neighbouring countries to address the issue of Pygmies and the plight of trafficking. Cameroon acknowledged the ministry of human rights, which is the only one in the region and hoped that such a ministry would be given sufficient resources.

56. [Gabon responds] [r]egarding the issue of Pygmies, the representative noted that the Government has drawn up a plan of action to promote the rights of Pygmies, including a census and to ensure them birth certificates. Other measures taken were vaccination and education programmes, as well as the introduction of basic social services, with the support of UNICEF and UNESCO, whose efforts are relayed by national and international NGOs. The Government representative recognized that the steps taken were limited, but also highlighted the successes, such as identifying where Pygmies live, a difficult exercise because of their nomadic lifestyle, which also complicates the setting up of sanitary and educational structures. Another representative noted that Pygmies were part and parcel of the Gabonese society. While they are a minority, they live in harmony and are fully integrated: they are free to send their children to schools, free to marry with Bantu, have access to justice, can participate in elections and be

elected. As a people, however, they would like to live in their natural environment, which may create obstacles to the efforts made by the Government, because the measures taken may be considered as a violation of their rights and an attempt to make them live otherwise.

Conclusions and Recommendations

60. In the course of the discussion, the following recommendations were made to Gabon:

25. To redouble efforts to integrate the Pygmy population in the mainstream society, particularly in the area of educational development and provision of other basic amenities (Nigeria);

26. To put an end to the discrimination against the Pygmy minority and to grant them basic human rights, and to follow the provisions of articles 2 and 25 of ICCPR and articles 6, 12 and 13 of ICESCR (Slovenia);

61. The response of Gabon to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.

62. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

6. GUATEMALA, A/HRC/8/38, 29 MAY 2008

Interactive dialogue and responses by the State under review

25. Algeria ... further noted Guatemala's active role in promoting the rights of indigenous peoples. It noted that the Peace Agreements, including the Agreement on the Identity and Rights of Indigenous Peoples, have become binding on the State, and asked how the international community can assist Guatemala in implementing them. [...]

27. ... India also sought information on the Presidential Secretariat for Women and the Office for the Defence of Indigenous Women's Rights.

28. Slovenia stated, inter alia, that it appreciated the efforts made by Guatemala for national reconciliation and development following the long period of armed conflict, and that the socioeconomic situation was making these efforts all the more difficult. It referred to concerns expressed by CERD and UNHCR about indigenous peoples' rights including their lack of access to land, the lack of respect for their traditional lands, the concern of CERD about reports of obstructions to the use of traditional sacred sites by indigenous peoples and the concern expressed by CEDAW about the situation of indigenous women who are vulnerable to various forms of discrimination. Slovenia made four recommendations. Firstly, that Guatemala follows up on the relevant recommendations made by CERD and other human rights bodies and mechanisms towards enhancing de jure and de facto equal protection of indigenous peoples including the Maya, Xinca and Garifuna peoples. Secondly, that Guatemala follow up on the CEDAW recommendation to ensure that indigenous women have full access to bilingual education, health services and credit facilities and to fully participate in decision-making processes. [...]

32. Canada ... noted the situation of indigenous peoples, particularly women in Guatemala and recommended measures to ensure the full enjoyment of all human rights by members of indigenous communities. [...]

33. Luxembourg noted legislative reforms bringing the definition of trafficking in line with provisions of the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and against Smuggling of Migrants by Land, Sea and Air. It noted commercial adoption and sexual exploitation for commercial purposes, in particular of indigenous and “rural” women and children, and comments made by CEDAW, UNICEF and the Committee on the Rights of the Child that Guatemala remains a country of origin, transit and destination. [...]

36. Brazil praised Guatemala’s cooperation with international and regional human rights systems. It asked about the main steps taken in the fulfilment of the rights of the child, on access to justice for indigenous peoples and the implementation of Guatemala’s international commitments against torture.

37. Venezuela noted with interest the Presidential Commission against Discrimination and Racism Against Indigenous Peoples, the Institute for the Defence of Indigenous Women and the forthcoming creation of a department on human rights and indigenous rights within the Ministry for Foreign Affairs, and requested additional information on the functions of these as well as on other policies and plans with regard to the rights of indigenous peoples.

42. ... China referred to NGO and treaty body concerns with discrimination against indigenous peoples and requested information on the main challenges Guatemala faced in combating discrimination against indigenous women, including in employment, education and health services. [...]

46. Azerbaijan noted that Guatemala was still living with the consequences of internal armed conflict and commended the determination of the Government to heal the wounds, particularly through CICIG, on efforts to accelerate the democratization process, legal reforms on human trafficking and racial discrimination, and on the establishment of a special commission to search for those who disappeared during the conflict. It also commended the effectiveness of OHCHR in the country. Azerbaijan ... encouraged Guatemala to strengthen efforts to effectively secure the rights of indigenous peoples. Information was sought on: (i) practical implementation of the National Reparation Programme for victims of war; (ii) measures to address low school attendance in rural regions and among indigenous communities.... [...]

48. Regarding impunity, Peru asked about the ongoing measures taken to judge those responsible for past human rights violations. It also asked when the Government planned to accede to and ratify the Rome Statute. Noting that despite the law on quotas, women continue to be underrepresented in political life, in particular indigenous women, and requested information on how the legal framework is being translated into practice in this regard.

53. [Guatemala responds] Concerning racial and gender discrimination, Guatemala mentioned the coordination among State bodies to raise awareness on such issues. The Office for the Defence of Indigenous Women acts to protect indigenous women from discrimination and is also charged with promoting the defence of their human rights. The delegation highlighted the increasing number of indigenous women participating in Congress, as provincial governors and vice-ministers. The directorate for human rights and for indigenous affairs of the Ministry of

Foreign Affairs implements international policies in Guatemala in this area and promotes a proactive role of the country at the international level. [...]

58. South Africa ... asked what programmes were in place and about the high illiteracy rate of the indigenous population. It noted that Guatemala has some of the highest levels of inequality in Latin America and continued to face challenges in the eradication of poverty and the progressive realization of economic, social and cultural rights. South Africa recommended the acceleration of the poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous peoples and people of African descent. It also recommended that ... specific legislation be enacted to provide appropriate remedies for victims of racial discrimination, in particular, relating to the dissemination of ideas based on notions of racial superiority, racial hatred, incitement to racial discrimination and violent acts targeting indigenous peoples and people of African descent in Guatemala.

60. Denmark noted that Guatemala faced serious problems with social exclusion, extreme poverty, unreasonable work conditions and the high illiteracy rate. It also expressed concern on indigenous peoples' rights and the economic social and cultural conditions and discrimination affecting them worst. Denmark recommended that Guatemala look at further measures to ensure the protection of its citizens' economic, social and cultural rights. It also recommended that Guatemala pay particular attention to ensuring the protection of indigenous peoples' rights. In that context, the Government must ensure the right of indigenous peoples to be heard before their traditional lands are exploited.

61. Finland acknowledged Guatemala's commitments to protect and promote the rights of indigenous peoples. As CERD noted in March 2006, discrimination against indigenous people continued, inter alia, in access to justice, in the media's display of contemptuous attitudes and rejection. It asked about recent and concrete measures taken on indigenous peoples' rights and recommended that Guatemala strengthen its efforts to fully implement the concluding observations adopted by CERD, as well as other relevant concluding observations adopted by other treaty bodies.

62. Australia congratulated Guatemala, inter alia, on its promotion of indigenous peoples' rights internationally. [...]

64. Switzerland Noting that the situation of indigenous peoples, and in particular women and children, remains a source of concern and asking about measures envisaged to improve it, Switzerland recommended that Guatemala commit itself to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services and that Guatemala take all necessary measures to reduce illiteracy rates, in particular among women. It further recommended that a law be developed that would criminalize discrimination based on social origin, racial hatred and acts of violence against indigenous; that the national human rights commission commit itself fully to the improvement of indigenous rights; and that Guatemala take all necessary measures to fight against femicide and the lynching and killings of persons based on their sexual orientation. [...]

67. Tunisia ... welcomed reforms aimed at ... measures to improve the lives of indigenous peoples.

68. The United Kingdom of Great Britain and Northern Ireland welcomed Guatemala's commitment to strengthen its national human rights institutions and support the advancement of the rights of indigenous peoples. [...]

70. ... The Republic of Korea encouraged the Government to explore, together with the OHCHR and other entities, the best manner to promote and protect the rights of one of the most vulnerable sectors of the population, namely indigenous peoples, and welcomed the new Government's priorities in rural development, education and health, and indigenous peoples.

73. ... Bangladesh also cited CERD comments on the high illiteracy rate in the indigenous population and asked about measures to address this.

76. Jordan ... asked what steps the Government had taken to better implement the Framework Law, particularly the Agreement on Identity and Rights of Indigenous People. It recommended that the Government take the necessary measures to ensure the effective participation of indigenous peoples in public and political life, including through implementation of the relevant recommendations of human rights treaty bodies and special procedures.

77. ... Norway also referred to the recommendations of CERD regarding community radio stations reaching the largest possible number of indigenous communities. It recommended reform of the law on radio communication in order to guarantee the proper and free functioning of local radios.

79. [Guatemala responds] Concerning budgetary allocation in the field of human rights, Guatemala has increased the budget for the *Procuraduria* for Human Rights by 46.78 per cent and allocated other resources for the Presidential Commission for Human Rights, the Defenders Office for Indigenous Women, the National Compensation Programme, the National Institute for Forensic Science and for the Secretariat for Indigenous Affairs.

86. Concerning illiteracy and access to education of indigenous peoples, there is a programme of literacy at the national, municipal and community levels, for bilingual education and fellowships for children from rural areas. The Ministry of Education, in coordination with the Presidential Commission for Human Rights, is trying to make human rights education a mandatory subject. There also is a draft law aimed at guaranteeing better access for indigenous peoples and communities to the media, including community radios and television. A television channel on Mayan cultures is being introduced.

Conclusions and Recommendations

89. In the course of the discussion, the following recommendations were made to Guatemala:

3. Full commitment of the national human rights commission to the improvement of indigenous rights (Switzerland).

7. Strengthen its efforts to fully implement the concluding observations adopted by CERD, as well as other relevant concluding observations adopted by other treaty bodies (Finland) and follow up the CERD and other human rights bodies and mechanisms' relevant recommendations towards enhancing de jure and de facto equal protection of indigenous peoples, including the Maya, Xinca and Garifuna peoples (Slovenia).

8. Implement all the measures agreed in the 1996 Peace Accords to combat discrimination and promote inclusion (United Kingdom).
10. Enact specific legislation to provide appropriate remedies for victims of racial discrimination, in particular, relating to the dissemination of ideas based on notions of racial superiority, racial hatred, incitement to racial discrimination and violent acts targeting indigenous peoples and People of African Descent in Guatemala (South Africa).
11. Develop a law criminalizing discrimination based on social origin, racial hatred and acts of violence against indigenous (Switzerland).
12. Take measures to ensure the full enjoyment of all human rights by members of indigenous communities (Canada) and ensure the protection of indigenous peoples' rights and ensure the right of indigenous peoples to be heard before traditional indigenous land is being exploited (Denmark).
13. Commit to improving the situation of indigenous children, in particular as concerns ill-treatment, trafficking, child labour, illegal adoptions and difficulty in accessing schools and health-care services (Switzerland).
37. Take the necessary measures to ensure the effective participation of indigenous peoples in the public and political life, including through implementation of the relevant recommendations of human rights treaty bodies and special procedures (Jordan).
38. Reform the law on radio communication in order to guarantee the proper and free functioning of local radios (Norway).
39. Accelerate the poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous peoples and People of African Descent (South Africa).
41. Reduce illiteracy rates, in particular among women (Switzerland).
42. Consider as a good practice, to be continued and strengthened, the project conducted by the Ministry of Education, in the framework of the Peace Agreements, to promote a culture of peace in Guatemalan society, especially among young people (El Salvador).
90. The response of Guatemala to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.
91. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

7. INDIA, A/HRC/8/26, 23 MAY 2008

Interactive dialogue and responses by the State under review

25. While welcoming the fact that India is a party to a number of international human rights instruments, the United Kingdom of Great Britain and Northern Ireland ... asked for additional information on (a) reports of attacks against persons from religious or other minorities, in

particular in Orissa State; (b) steps to implement treaty body recommendations on the Armed Forces (Special Powers) Act....

27. Canada ... raised issues concerning the Armed Forces (Special Powers) Act (AFSPA), the situation of civil society and the situation of Dalits. Canada referred to reports of torture and abuse by and impunity of police and security forces acting under the AFSPA. Canada spoke about the commitment of the Prime Minister and the studies undertaken to reform the AFSPA and asked what measures had been taken to repeal or reform this Act. [...]

32. Malaysia congratulated India on putting in place an institutional, legislative and administrative framework aimed at improving the human rights situation of its people. It also noted the establishment of various institutions/national commissions which act as “watch dogs”, dealing with issues such as women rights, minorities, scheduled castes and tribes, backward classes and children rights. Additional information was requested on the implementation of their recommendations.

40. Germany asked India to provide complementary information on ... (b) what the position of the Government was regarding the recommendation of several treaty bodies to repeal the Armed Forces (Special Powers) Act of 1958....

44. France commended India’s commitment to human rights and pluralism. It raised a question.... It also asked what means were available to and what analysis might be drawn from the work of the National Human Rights Commission of India and the National Commissions dealing with Women, Minorities, Scheduled Castes and Scheduled Tribes. Lastly, regarding the most vulnerable communities and their integration, it wished to know what would be the results of any stock-taking of their integration.

47. [India responds] With regard to questions on the Armed Forces (Special Powers) Act, 1958, the delegation stated that even though India is a country which has had to confront with terrorism for well over two decades, its laws, including the special laws enacted in this context, have always had clear elements of administrative as well as judicial reviews. It is well settled in Indian jurisprudence that all legislation must conform to the basic structure of the Constitution and is subject to judicial review. The constitutionality of the Armed Forces (Special Powers) Act 1958 has been upheld by a Constitution Bench of the Supreme Court. Moreover, it is important to note that the Armed Forces of India are governed by provisions of their Acts, which also ensure that any violations are expeditiously dealt with. In so far as ensuring human rights even while being engaged in counter terrorism operations, special training and operating procedures are in place to guide the forces on the ground.

49. In relation to the communal disturbance that erupted in the tribal dominated district of Kandhamal, Orissa on 24 December 2007 between tribal Hindus (Kui) and Christians (Panas), the Indian delegation noted that the underlying cause appeared to be the long standing opposition by the tribal Hindus to the Christians’ demand to be categorised as a Scheduled Tribe. In the clashes, 3 persons died and 25 were injured. The clashes led to the damage of private and public property. The situation was brought under control. One hundred and twenty-five cases have been registered and 173 persons have been arrested. The state Government has also ordered judicial probe to inquire into the incident. Further, 284 Peace Committees have been formed which have held 350 meetings so far. The State government has announced a rehabilitation package to those whose houses have been damaged and ex gratia of Rs. 100,000 to the next kin of the three deceased. The Prime Minister assured Christian delegations that the Government would take all steps to provide full security and protect the religious freedom

guaranteed by the Constitution to all citizens and that it would not tolerate any efforts aimed at disturbing the communal harmony or secular fabric of the country.

50. The Republic of Korea welcomed efforts by India to promote and protect indigenous and tribal peoples' rights. It asked for further elaboration on plans to protect these rights in newly industrialized zones. [...]

53. Italy asked for additional information on (a) human rights education relating to traditional practices and customs and scheduled castes and tribes....

58. Azerbaijan asked India to elaborate on ... (b) what are the difficulties experienced by Scheduled Castes and Tribes in terms of their human rights.... [...]

73. India noted that Canada, as well as others, referred to the impunity for human rights violations under the Armed Forces Act which was incorrect. India stated that no forces, armed or police, function with impunity. Armed forces were under strict orders not to transgress human rights and the strictest action is taken, and incidents are swiftly adjudicated, including through courts-martial.

77. India noted that they do maintain statistics with regard to scheduled castes and scheduled tribes and that these statistics are in the public domain.

78. In relation to a question by the Republic of Korea on the displacement of tribal people from forest lands, India noted that based on a Supreme Court decision, no land can be diverted from forest use, without prior approval and there can be no displacement unless there is a comprehensive proposal to resettle the tribes as part of the project. This had been the position in regard to implementation of mining projects in Orissa as well.

Conclusions and Recommendations

86. In the course of the interactive dialogue the following recommendations were made:

5. Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);

8. Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);

87. These recommendations will be examined by India which will provide responses in due time. The response of India will be included in the outcome report to be adopted by the Human Rights Council at its eighth session.

88. All conclusions and/or recommendations contained in this report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

8. INDONESIA, A/HRC/8/23, 14 MAY 2008

Interactive dialogue and responses by the State under review

41. Germany ... further noted that according to several special procedures mandate holders, the human rights situation in Papua and the situation of those who raise issues of human rights

violations are issues of concern. It asked which measures Indonesia intends to take, including at the local level, to address the situation in Papua and to address also the underlying causes such as poverty and the high rate of unemployment. Germany also asked what measures can be taken by the authorities to protect human rights defenders who are threatened for their activities and if there are any plans to appoint a special contact person for human rights defenders at the provincial level.

46. Canada also noted that as is the case of all countries, additional efforts are needed to improve the human rights situation in Indonesia, especially in regions where recent or ongoing political tensions are manifest, such as Papua. It requested information on how Indonesia will ensure that labelling of individuals as separatists in these areas is not used to suppress legitimate democratic activity by civil society, including peaceful public protests and criticism. Canada referred to the need to raise awareness of the role of human rights defenders and of the responsibility of the security forces to protect them. In this regard, it recommended that Indonesia provide additional human rights training to security forces and encouraged it to take concrete steps to improve respect for the rule of law and to punish those responsible for abuses and violations. Canada also recommended that additional specific measures be taken to ensure that the rights of those belonging to minority groups are protected, including from abuses committed by non-State actors. It also enquired about the measures Indonesia plans to take to ensure that perpetrators of such abuses are brought to justice and on avenues of redress available to victims. While noting that Canada has provided concrete support to Indonesia's efforts to reform governance through decentralization, it asked what measures Indonesia plans to take to ensure that local authorities do not contravene national and international human rights law. Canada also noted that, as a troika member, they would like to underline the very constructive dialogue it had had with Indonesia in the context of the review.

49. In response to questions asked, Indonesia noted that a number of delegations made many valuable suggestions with regard to the protection of women, the protection of children, which they appreciate and will consider seriously as they continue to make progress in these areas. The suggestion for a bilateral dialogue is appreciated and welcomed. On the situation in Papua, it considers this question as one of support to Indonesia's efforts to improve the welfare of Papuans and the people of Indonesia. A member of the delegation, who is a representative of the local government of Papua and a Papuan himself, noted that the development process in Papua is centred around the Papuans themselves. Economic and health assistance were provided and efforts are made to combat poverty and promote employment, and achievements are made with the participation of the people. He noted that in addressing the human rights violence in Papua, many capacity-building and other programmes have been implemented throughout the region, including training for the communities to understand their rights.

50. The United Kingdom ... also welcomed the improvement in the human rights situation in Aceh since the 2005 Peace Agreement, as noted by the Special Representative of the Secretary-General on the situation of human rights defenders. However, many challenges remain, particularly in Papua.

52. The Netherlands ... asked how Indonesia will protect human rights defenders in Papua and on how it prevents discrimination against ethnic and other minorities.

54. The Republic of Korea ... also asked if the Government has any concrete plan to strengthen measures to better protect the human rights of indigenous people, in particular in the process of exploitation of natural resources.

69. France asked ... what measures Indonesia envisaged to promote and improve respect human rights in the provinces of Papua and West Papua.

Conclusions and Recommendations

77. These recommendations formulated during the interactive dialogue have been examined by Indonesia and the recommendations listed below enjoy the support of Indonesia:

3. Indonesia is commended for enabling a vibrant civil society, including with respect to those engaged in defending human rights, and is encouraged to support and protect their work, including at the provincial and local level as well as in regions with special autonomy.

79. All conclusions and/or recommendations contained in this report reflect the position of the submitting state(s) and/or the State under Review thereon. They should not be construed as endorsed by the working group as a whole.

Voluntary Commitments

80. The State under review will involve civil society and national human rights institutions in consultation and socialization of the Universal Periodic Review procedure until its next Universal Periodic Review.

9. JAPAN, A/HRC/8/44, 30 MAY 2008

Interactive dialogue and responses by the State under review

13. ... Algeria recommended that Japan review, inter alia, the land rights and other rights of the Ainu population and harmonize it with the United Nations Declaration on the Rights of Indigenous Peoples. [...]

40. ... With regard to the situation of indigenous peoples, Guatemala urged Japan to seek ways to initiating a dialogue with its indigenous peoples so that it can implement the United Nations Declaration on the Rights of Indigenous Peoples.

46. [Japan responds] The Government recognized as a historical fact that the Ainu people indigenously inhabited northern Japan, in particular Hokkaido, and that the Ainu is a minority as stipulated in article 27 of ICCPR. Japan promoted the Ainu culture and disseminated information about Ainu traditions based on the Ainu Cultural Promotion Law, and supported the enhancement of the lives of the Ainu people.

58. ... Peru attached particular importance to the rights of indigenous peoples and asked about measures being taken by Japan to disseminate the United Nations Declaration on the Rights of Indigenous Peoples and bring it to the wider attention of its people and about the measures adopted to ensure full respect of the human rights of the Ainu minority in Japan.

Conclusions and Recommendations

60. In the course of the discussion, the following recommendations were made to Japan:

19. Review, inter alia, the land rights and other rights of the Ainu population and harmonize them with the United Nations Declaration on the Rights of Indigenous Peoples.

(Algeria); Urge Japan to seek ways to initiating a dialogue with its indigenous peoples so that it can implement the United Nations Declaration on the Rights of Indigenous Peoples (Guatemala);

61. The response of Japan to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.

62. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

10. PERU, A/HRC/8/37, 28 MAY 2008

Interactive dialogue and responses by the State under review

14. Pakistan noted positive reforms introduced in the areas of the rights of women, indigenous people and disabled persons and of those affected by HIV/AIDS. [...]

15. ... Algeria asked Peru to indicate its role in improving the situation of indigenous peoples and recommended that Peru continue to improve the situation of indigenous peoples.

16. ... The Philippines noted the establishment of the Ombudsman's Office specializing in children's affairs, an action plan for children and adolescents, a national mental health and culture of peace strategy and the consistent advocacy for the rights of indigenous peoples. [...]

21. ... Turkey asked two questions, which may also be formulated as recommendations: (a) it enquired about measures employed by the National Plan to address the adverse effects of oil production, mining and other economic activities on the full enjoyment of economic and social rights experienced by communities in adjacent territories;

29. Peru reiterated its commitment to the issue of indigenous peoples, as it has one of the highest populations of indigenous peoples in Latin America. Peru took a leadership role during the negotiations on the United Nations Declaration on the Rights of Indigenous Peoples, and presented the second draft resolution in the history of the Human Rights Council to approve this text. Special impetus was given to the National Institute for the Development of the Andean, Amazonic and Afroperuvian Peoples (*known as INDEPA*), a public institution which focuses on the promotion, defence, research and affirmation of the rights and development of the identity of these peoples. There is a need to strengthen measures to ensure an adequate balance between key economic activities which generate important economic resources for the public and private sectors and the living conditions and rights of these groups as well as of the environment. In accordance with these principles, concrete measures were adopted regarding indigenous peoples and mining in their territories; Decree 0012/2008 provides for citizens' participation in carrying out activities in this field, and sets out the role of citizens and civil society in promoting standards and harmonious relations between populations, States and enterprises that exploit these resources. There are different ways to conduct popular consultations in mining projects.

37. Mexico noted the progress made regarding the participation of women in political life, the legal status of indigenous communities, the review of cases and the imprisonment of people judged by the military tribunals in the period of 1980-2000, and the reestablishment of the competency of the Inter-American Court for Human Rights. [...]

39. Azerbaijan welcomed the “A” accreditation of the Office of Ombudsman and the results of its activities dealing with discrimination against indigenous populations and on cases of torture.

46. Ecuador took note of efforts to overcome the criminal acts of the Shining Path and the steps towards the elimination of impunity. It also noted the Ombudsman’s Office and the Registry for Enforced Disappearances. It noted that Peru’s report indicated that 75 per cent of the victims of armed conflict belonged to indigenous communities and expressed their wish not to have these conflicts repeated among the Peruvian people. Ecuador requested further information on measures implemented and action taken, and on the results achieved in this regard.

Conclusions and Recommendations

52. In the course of the discussion, the following recommendations were made to Peru:

1. To continue paying attention to promoting and protecting the human rights of vulnerable groups (Philippines), especially improving the situation of indigenous peoples (Algeria);

15. To counter the adverse effects of economic activities such as oil production and mining on the full enjoyment of some economic and social rights of communities living in adjacent territories (Turkey);

53. The response of Peru to these recommendations will be included in the outcome report adopted by the Human Rights Council at its eighth session.

54. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and /or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

11. PHILIPPINES, A/HRC/8/28, 23 MAY 2008

Interactive dialogue and responses by the State under review

38. The Russian Federation ... also requested information on measures taken to protect the rights of indigenous peoples in the Philip pines and the cooperation with NGOs representing indigenous peoples.

39. Answering to some of the questions, the Philippines informed that ... On the issue of indigenous peoples, the Indigenous Peoples Rights Act (IPRA) adopted in 1997 has created the National Commission on Indigenous Peoples, which administrates programmes for indigenous peoples and indigenous cultural communities. Traditional legal system is culture sensitive, accessible, preserves the dynamics of indigenous knowledge systems and practices, promotes self-governance, expedites resolution of cases, encourages community participation, based on tradition and precedent, and respect for the elders, and provides premium on restitution not retribution. The Philippines committed to responding further in writing to the questions raised in due course.

Conclusions and Recommendations

58. In the course of the discussion, the following recommendations were made to the Philippines:

14. To step up efforts to continue to meet the basic needs of the poor and other vulnerable groups (Nigeria);

59. The response of the Philippines to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its eighth session.

Voluntary Commitments

60. During the first session of the Working Group, on 11 April 2008, the Philippines, taking into consideration the recommendations listed above, announced the following voluntary commitments: ...

(d) To continue and find additional measures to answer the basic needs of the poor and other vulnerable sectors

61. All conclusions and/or recommendations contained in this report reflect the position of the submitting State (s) and/or the State under review thereon. They should not be construed as endorsed by the Working Group as a whole.

12. BOTSWANA, A/HRC/WG.6/3/L.1, 3 DECEMBER 2008

Interactive dialogue and responses by the State under review

20. Regarding the December 2006 court ruling allowing the San (Basarwa) communities to return to their ancestral land in the Central Kalahari Game Reserve (CKGR), as well as the level of dialogue and progress that has been made since this ruling, the Government of Botswana stated that it has fully implemented the Court order.

21. Recognizing that the question of the Reserve is not just a legal issue, the Government opened dialogue with the people on it. The President of Botswana met with representatives of the CKGR on 12 of June 2008, and subsequently instructed the Inter-Ministerial Committee on the CKGR to continue the dialogue. The Committee met with representatives of the CKGR community on 26 November 2008 to map the way forward. They agreed to meet on 22 or 23 of January 2009 where each party will present a list of issues for discussion to bring this matter to an amicable conclusion.

32. Spain ... said it looked forward to a resolution of the dispute between the San of the Central reserve of Kalahari with the Government. [...]

35. ... Finland expressed concern regarding the relations between the diamond business and the indigenous peoples who have suffered from forced eviction or have been prevented from accessing their water boreholes or practicing their means of livelihood. It asked the Government what it intends to do to ensure respect for the rights of the indigenous people inhabiting the areas of interest to companies active in the business. It recommended that Botswana take immediate action in this regard.

39. ... Mexico underscored that the appeals of the indigenous peoples and the decision of the Supreme Court in favour of indigenous peoples must be respected. Mexico recommended that Botswana accept the visits of the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples and the Special Rapporteur on contemporary forms of racism. It recommended that favourable consideration be given to the ratification of the ILO Convention

169 on Indigenous and Tribal Peoples. Mexico recommended the adoption of all measures necessary to harmonise customary laws with international instruments signed by Botswana. [...]

43. As regards the San people, Botswana noted the opening of dialogue and consultation and expressed hope that they would be able to reach an amicable solution with the Basarwa people of the CKGR.

65. ... Concerned about the removal of communities residing in the CKGR, Canada recommended that Botswana take steps to promote a just and equitable solution through renewed negotiations with affected members of these communities. Canada also recommended that Botswana respect the economic, social and cultural rights of minorities living or formerly living on the Reserve. [...]

67. Maldives noted that Botswana faced complex challenges relating to the rights of indigenous peoples, especially the Basarwa;

70. Norway welcomed initiatives by the Government on the situation of indigenous peoples and minorities, but added that outstanding issues remained, relating to indigenous peoples' right to land, and education for children belonging to such groups. Norway requested Botswana's comments on this and recommended that Botswana agree to the request by the Special Rapporteur on the Rights of Indigenous Peoples to undertake a visit. [...]

72. ... The Holy See noted that the High Court declared the evictions of Basarwa from their ancestral territory as unlawful and unconstitutional and that the Basarwa are still struggling to return to their ancestral land because of limitations on their way of life by the authorities. It enquired about measures the Government could take to improve the situation.

73. ... On the displacement of the Basarwa tribe raised by CERD, [Japan] asked about the government's outlook on the situation and how it intends to move forward.

81. Denmark noted the High Court ruling concerning the traditional land of the CKGR. While appreciating the dialogue between the Government and the Basarwa, Denmark noted that dialogue is not sufficient and enquired about concrete steps to implement the High Court ruling. Denmark recommended that the Government of Botswana provide access and support for residents of the CKGR based on the right to their land, as specified in the United Nations Declaration on the Rights of Indigenous Peoples. [...]

82. Cameroon requested additional information on the importance of customary courts, and whether they weaken the application of normative rights and challenge the integration of international norms. It also asked what measures are taken to promote the rights of indigenous peoples, in particular those of the Kalahari Desert. [...]

84. The Government noted that all nationalities or ethnic groups in Botswana are entitled to all amenities and rights, including the Basarwa in the CKGR. Botswana noted that Basarwa were allowed to go back to their land and that the court order was fully implemented by the Government. The Government is also open to dialogue including on other issues and hoped this matter would be resolved amicably. Botswana also indicated that the Basarwa are represented in the traditional House of Chiefs.

Conclusions and Recommendations

91. In the course of the discussion, the following recommendations were made to Botswana:

1. Adhere to the International Covenant on Economic, Social and Cultural Rights (Algeria); Consider the ratification of the ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries (Mexico); Adopt measures necessary for harmonising customary laws with international instruments (Mexico);

4. Consider issuing a standing invitation to Special Procedures of the Human Rights Council (Latvia, Mexico, and Czech Republic); Agree to the request for visit by the Special Rapporteur on the Rights and Fundamental Freedoms of Indigenous Peoples (Mexico, Norway), and the Special Rapporteur on Contemporary Forms of Racism (Mexico);

17. Take more action for the consolidation of the endeavours in the area of minority rights groups (Tanzania); Take immediate action to ensure respect for the rights of the indigenous people living in the areas of interest to companies active in the diamond business (Finland); Take steps to promote a just and equitable solution through renewed negotiations with affected members of the Central Kalahari Game Reserve communities and respect the economic, social and cultural rights belonging to minorities living or formerly living on the Reserve (Canada); Engage with the ethnic groups, in an ongoing and systematic basis, to ensure their rights to equality and non-discrimination are guaranteed (Ireland); Provide access to land, and support for the residents of the Reserve, as specified in the United Nations declaration on the rights of indigenous peoples, and work with the land boards of the various districts to ensure equity in land allocation among all applicants for residential land, arable land, grazing land, water sources, and business sites (Denmark); Pursue a policy of mother tongue language education in conjunction with national languages of Setswana and English (Denmark); resolve the dispute between the San of the Reserve (Spain);...

92. The response of Botswana to these recommendations will be included in the outcome report adopted by the Human Rights Council at its tenth session.

13. COLOMBIA, A/HRC/WG.6/3/L.14, 15 DECEMBER 2008

Interactive dialogue and responses by the State under review

20. ... Spain also asked about policies adopted for protecting indigenous peoples, effectively providing for them and setting into place access to their land, conservation and preservation of their ancestral lands;... [...]

28. Guatemala recognized the efforts to promote and protect human rights and fundamental freedoms. It noted several initiatives regarding Afro-Colombian and indigenous peoples, and that the Government recognized remaining challenges. It asked about the strengthening of the process of recognizing, promoting and raising awareness of the rights of Afro-descendent and indigenous peoples, and for information on their representation in politics. It noted the Defence Ministry directives for the protection of the rights of indigenous peoples and Afro-descendants, and asked for more information.

30. Switzerland ... asked about measures to reduce the tremendous vulnerability of women in indigenous and Afro-Colombian communities and measures designed to reduce the re-emergence of the phenomenon of forced displacement.

33. Austria noted that, while recruitment of children by the armed forces is prohibited by law, the phenomenon still exists, in particular in rural communities, with indigenous children. Austria asked about reasons for the difficulties in implementing Government policies and about

measures designed to improve the situation, and for information on the work of the Intersectorial Commission. [...]

35. Denmark noted that the situation is highly complex and security concerns are significant. It expressed concerns about the security situation for indigenous peoples, given that an alarming percentage has been killed in recent years. Despite legislation on consultation with indigenous peoples concerning laws and distribution and use of indigenous land, in practice the consultation often does not take place. Denmark asked what the Government intends to do to ensure that such consultation takes place. ... Denmark recommended that Colombia (a) step up efforts to protect its indigenous peoples and install an effective system of consultations with indigenous peoples;...

41. Japan applauded the Government's efforts to improve public security, crucial to the protection of the right to life for all citizens. It requested more efforts to improve the country's human rights situation, including to prevent forced disappearances and kidnappings and to protect the human rights of indigenous peoples. [...]

43. Brazil ... recommended that Colombia (a) increase social and economic initiatives to reinforce the full enjoyment of human rights by the internally displaced, in particular minorities, such as indigenous peoples and Afrodescendants;...

45. ... Commending efforts to address the particular situations of women, children and indigenous groups, Canada noted that these groups continue to be the most affected by the conflict. It recommended that Colombia ... (g) follow up on the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in 2004. [...]

49. The United Kingdom of Great Britain and Northern Ireland welcomed the emphasis given by the Government to human rights issues and noted progress made. It recommended that the Government (a) deepen its engagement with and support for civil society actors, human rights defenders and minority groups, and ensure their safety, with specific mechanisms in place if necessary, including through supportive public statements on the important role they play in democracy; (b) increase its efforts to tackle poverty and give its attention to the most vulnerable groups in society, including indigenous groups;... [...]

50. The Republic of Korea ... requested information on national measures to protect human rights of Afro-Colombian and indigenous peoples, including ensuring economic, social and cultural rights.

52. South Africa noted that the illiteracy rate among indigenous and Afro-Colombian groups is high and asked how the Government intends to address the disparities between indigenous and mainstream societies. It recommended (a) the acceleration of poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous and Afro-Colombian groups. [...]

53. Jamaica ... noted particularly the attention given to the indigenous and Afro-Colombian groups, especially regarding their participation in the decision making process, and expected that this would be further enhanced.[...]

56. Romania requested further elaboration on the policies envisaged to ensure full implementation of the right to education and non-discrimination in access to education,

particularly regarding indigenous and Afro-Colombian groups, and on measures to fight against the phenomenon of children abandoning school. [...]

58. Bolivia ... asked about measures the State had taken to implement the recommendations made by the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples after his visit in 2004. It also recommended Colombia (a) invite the Special Rapporteur on the rights of indigenous peoples to return to the country for a follow-up visit as soon as possible; and (b) to take into account the United Nations Declaration on the Rights of Indigenous Peoples in the implementation of its public policies.

59. ... Considering the importance for the right to health to receive priority attention, and in the belief that access for the entire population to healthcare should be guaranteed, especially for Afro-Colombian and indigenous communities, [Panama] asked about recent measures and future expectations in this area.

61. The Russian Federation asked about the main obstacles encountered in combating poverty and about additional steps to ensure the right to dignified standards of living, particularly under the present conditions of the world financial crisis. It asked about measures for the effective defence of the rights of indigenous and Afro-Colombian communities and if the cooperation between the Government and non-governmental organizations representing indigenous peoples was established.

72. Without repeating the positive trends and the statistics and achievements, the [Colombian] delegation noted a decrease of homicides against indigenous peoples and against journalists and reiterated the Government's commitment in this area.

Conclusions and Recommendations

87. The recommendations formulated during the interactive dialogue have been examined by Colombia and the recommendations listed below enjoy the support of Colombia. Colombia has submitted its views on recommendations noted in the report in paragraphs 19(a), 19(b), 19(f), 20(a), 20(e), 21(a), 21(b), 22(a), 22(b), 23(c), 23(f), 25(b), 26(a), 27(a), 27(b), 27(c), 29(a), 30(c), 30(d), 30(e), 30(f), 32(b), 33(d), 34(a), 35(a), 35(d), 37(a), 37(b), 38(a), 40(a), 40(d), 40(g), 42(a), 42(b), 43(a), 43(b), 45(b), 45(c), 45(d), 45(e), 46(b), 46(d), 47(a), 49(a), 49(c), 49(d), 51(b), 54(a), 54(c), 54(d), 55(b), 55(c), 55(d), 56(b), 57(a), 57(b), 58(a), 60(b), 60(c), 60(d). These views are included in Addendum 1 to the Working Group Report (A/HRC/10/82/Add.1).

2. ... invite the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples to return to the country for a follow-up visit as soon as possible (Bolivia);

12. Intensify efforts to bring down the high number of enforced disappearances and kidnappings in the country, with particular attention to indigenous human rights defenders (Sweden);

38. Increase social and economic initiatives to reinforce the full enjoyment of human rights by the internally displaced, in particular minorities, such as indigenous peoples and Afro-descendants (Brazil);

39. Increase efforts to end impunity for those being responsible for the forced displacement as well as intensify security measures for the communities of internally displaced persons, in particular by protecting their property rights (Austria);

59. Step up its efforts to protect its indigenous peoples and install the effective system of consultations with indigenous peoples (Denmark);

60. Follow up on the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples in 2004 (Canada);
61. Take into account the United Nations Declaration on the Rights of Indigenous Peoples in the implementation of its public policies (Bolivia);
63. Increase efforts to tackle poverty and give its attention to the most vulnerable groups in society, including indigenous groups (United Kingdom);
64. Accelerate the poverty alleviation programmes with a view to addressing the uneven distribution of wealth, access to health and the high level of social exclusion of indigenous peoples and Afro-Colombian groups (South Africa);...

88. The recommendations noted in the report in paragraphs 19(d); 19(e); 22(c); 23(b); 23(d); 23(e); 35(c); 37(a); 37(c); 40(e); 60(a) above did not enjoy the support of Colombia. Colombia submitted its views on these recommendations. These views are included in Addendum 1 to the Working Group Report (A/HRC/10/82/Add.1).