

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

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

**Volume IV
2009-2010**

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Preface

This document contains Volume IV of the series of compilations of United Nations human rights bodies' jurisprudence pertaining to indigenous peoples and covers the years 2009 and 2010.¹ Among others, this jurisprudence reflects some degree of positive evolution in thinking about the rights of indigenous peoples in Africa, with three countries either adopting legislation that explicitly addresses indigenous peoples or ratifying ILO Convention No. 169. In the case of the Congo, the law was inspired by the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

During 2009-2010, the Committee on the Elimination of Racial Discrimination (CERD) continued to adopt detailed and responsive observations and recommendations, including under its follow up and early warning and urgent action procedures. CERD also clarified that indigenous peoples' rights, which are permanent rights, should not be confused with temporary 'special measures' – which are measures intended to remedy past discrimination or to correct contemporary inequalities – in a general comment on special measures (see Sec I.C.1 herein). In the case of Guatemala, CERD recommended that participation procedures and protections against relocation be adopted in accordance with ILO 169 and the UNDRIP. It also urged that states increase their efforts to implement the UNDRIP (see, for example, Japan).

The Committee on Elimination of Discrimination Against Women has continued to explicitly acknowledge “the multiple forms” of discrimination faced by indigenous women, as has CERD (see especially Canada, including in the Human Rights Council). The former has also begun, in some cases, to include specific sections in its concluding observations entitled 'Indigenous and other minority women'. The Committee on the Rights of the Child adopted an important and extensive general comment on the rights of the indigenous child and made references to the UNDRIP in its examination of state reports (see Cameroon, for instance). The Committee against Torture also adopted concluding observations that address indigenous peoples in its reviews of five countries.

The Human Rights Committee continues to invoke the right to self-determination in relation to indigenous peoples, particularly Article 1(2) (the right to freely dispose of natural wealth and the right to be secure in the means of subsistence) (see Sweden and Mexico, for example). The Committee also decided an important case in 2009 that recognises that indigenous peoples have a right to consent under certain circumstances: *Ángela Poma Poma v. Peru* (see Sec. II.B.1, para. 7.6, herein). The Committee on Economic, Social and Cultural Rights has also made reference to Article 1 in relation to land and resource rights (see Brazil, Cambodia and Democratic Republic of Congo, for example). It also adopted an important general comment on non-discrimination in relation to economic, social and cultural rights that is very

¹ Volume I (1993-2004) and Volume II (2005-2006) and Volume III are available at: http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_sept05_eng.pdf; http://www.forestpeoples.org/documents/law_hr/un_jurisprudence_comp_vol2_06_eng.pdf; and <http://www.forestpeoples.org/sites/fpp/files/publication/2010/08/unjurisprudencecompvol30708eng.pdf>.

relevant to indigenous peoples. The results of the Human Rights Council's Universal Peer Review, however, continue to be mostly disappointing.

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 volume 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 2011

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I. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

A. Concluding Observations

1. Congo, CERD/C/COG/CO/9, 23 MARCH 2009

7. The Committee notes with interest that a National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009-2013) has been prepared and adopted with the participation of civil society and United Nations agencies.

8. The Committee takes note with interest of the bill on the promotion and protection of the human rights of indigenous peoples, which was inspired by the United Nations Declaration on the Rights of Indigenous Peoples.

9. The Committee notes with satisfaction the activities carried out by the State party in observance of the International Day of the World's Indigenous Peoples and the holding of the International Forum for Indigenous People of Central Africa (FIPAC) on the initiative of the State party.

10. The Committee notes that the information transmitted by the State party on the ethnic and linguistic make-up of its population, including indigenous peoples, refugees and asylum-seekers, is incomplete. The Committee recalls that information on demographic composition enables both the Committee and the State party to better assess the implementation of the Convention at the national level.

The Committee:

(a) Recommends that the State party conduct a census and transmit in its next report the disaggregated statistical data obtained therefrom. It also recommends that the State party ensure that the census questionnaire contains relevant questions that will make it possible to obtain a clearer picture of the ethnic and linguistic make-up of the population, including indigenous peoples; [...]

13. The Committee notes with concern the reports of violence, abuse of power and cruel, inhuman and degrading treatment by the “eco-guards” of the project for the management of the ecosystems adjacent to the Ndoki National Park (PROGEPP) directed at the indigenous peoples of the Congo’s northern region. It regrets that these allegations did not give rise to judicial proceedings.

The Committee urges the State party to conduct thorough official investigations into any allegation of violence, abuse of power and cruel, inhuman or degrading treatment directed at indigenous peoples in particular, and to bring any perpetrators to justice and ensure that they are punished. The Committee would like to have information on this subject in the State party’s next periodic report (arts. 4 and 5 (b)).

14. The Committee notes with concern that the rights of indigenous peoples, and of the Pygmies in particular, to own, develop, control and exploit their lands, their resources and their communal territories are not guaranteed and that concessions are granted in respect of indigenous peoples’ lands and territories without prior consultation.

The Committee recommends that the State party take urgent and adequate measures to protect the rights of indigenous peoples, and especially of the Pygmies to land, and, in particular, to:

- (a) Establish the forest rights of indigenous peoples in domestic legislation;
- (b) Record Pygmy ancestral lands in the property register, in consultation with the indigenous peoples concerned;
- (c) Ensure that the interests of the Pygmies as well as environmental protection needs are taken into account in land use and ensure that the Pygmies are consulted before any concessions are granted;
- (d) Provide for domestic remedies in the event of violations of indigenous peoples' rights; and
- (e) Redouble their efforts to consult with indigenous peoples in the administration of their lands, waters and forests. To this end, the Committee invites the State party to take into account its general recommendation No. 23 (1997) on the rights of indigenous peoples (art. 5).

15. The Committee is concerned by the marginalization and discrimination to which the Pygmies are subjected in terms of access to justice and the enjoyment of their economic, social and cultural rights, in particular access to education, health and the labour market. The Committee is especially concerned by reports of domination, discrimination and exploitation to which the Pygmies are subjected, at times including modern forms of slavery.

The Committee:

- (a) Encourages the State party to redouble its efforts to ensure the full enjoyment by indigenous peoples of their economic, social and cultural rights and, in particular, invites it to take steps to guarantee their rights to education, health, employment and equitable working conditions, inter alia through the establishment of a labour inspection mechanism;
- (b) Urges the State party to intensify its efforts to make indigenous peoples aware of their rights under the Convention;
- (c) Strongly recommends that the State party accelerate the adoption of the bill on the promotion and protection of the rights of indigenous peoples; and
- (d) Invites the State party to provide it with information on the implementation of the National Plan of Action to Improve the Quality of Life of the Indigenous Peoples (2009-2013) in its next periodic report (art. 5).

16. The Committee takes note with concern of the low representation of indigenous peoples in political life owing to their low educational level. The Committee regrets that, to date, no indigenous person has ever been elected to political office.

The Committee recommends that the State party endeavour to ensure the full participation of indigenous peoples in public affairs at all levels. It invites it to review its electoral legislation with a view to encouraging political parties to involve indigenous peoples more fully in political activities (art. 5 (c)).

17. The Committee notes with concern that the level of registration of births among indigenous people is low and that some indigenous people lack identity documents.

The Committee recommends that the State party redouble its efforts to ensure that all births among indigenous peoples are registered and that such registered individuals are provided with personal identity documents. The Committee encourages the State party to bring civil status registration centres closer to the communities where indigenous people live (art. 5 (d)).

29. Pursuant to article 9, paragraph 1, of the Convention and article 65 of its amended rules of procedure, the Committee requests the State party to inform it of the action it has taken to follow up the recommendations contained in paragraphs 12, 13, 14 and 15 (c) during the year following the adoption of the present concluding observations.

2. FINLAND: CERD/C/FIN/CO/19, 5 MARCH 2009

13. The Committee takes note of the explanations given in paragraphs 74 and 75 of the State party's report and its replies to the lists of issues (p. 10 of the written replies) according to which an amendment to the Act on the Sami Parliament is not warranted at present and that the Sami Parliament considers that the definition of "Sami" should be discussed at the Nordic level in order to find a common definition. The Committee reiterates its opinion, however, that the State party's approach to the definition of who may be considered a Sami and thus fall under the relevant legislation established in favour of the Sami, as defined by the Act on the Sami Parliament and the specific interpretation provided thereon by the Supreme Administrative Court, is too restrictive.

The Committee reiterates its recommendation that the State party give more adequate weight to self-identification by individuals concerned, as indicated in the Committee's General Recommendation No.8 (1990).

14. While appreciating the State party's acknowledgement that the prevailing legal uncertainty surrounding the question of Sami land rights is potentially harmful to inter-ethnic relations in the areas concerned, the Committee reiterates its concern about the limited progress achieved in resolving Sami rights issues and the State party's failure to adhere to the International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. (arts. 5(d)(v), 5(e) (vi), and 6)

The Committee draws once again the State party's attention to General Recommendation No. 23 (1997) on the rights of indigenous peoples which, *inter alia*, calls upon States parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources. The Committee renews its appeal to the State party to find an adequate settlement of the land dispute together with the Sami people and its recommendations that it adheres to ILO Convention No. 169 as soon as possible. It recommends that the State party take effective measures to ensure that the so-called study on land rights in Upper Lapland result in concrete action, including the adoption of new legislation, in consultation with the communities affected. The State party is also encouraged to continue negotiations with relevant Ministries and the Sami Parliament on the establishment of a new preparatory body in charge of reaching a solution for the land use right issue in the Sami Homeland.

3. SURINAME: CERD/C/SUR/CO/12, 3 MARCH 2009

4. The Committee welcomes the support of the State Party in favour of the United Nations Declaration on the Rights of Indigenous Peoples in September 2007.

8. The Committee welcomes and encourages continuing dialogue and collaboration with the Special Rapporteur on the rights and fundamental freedoms of indigenous peoples, especially regarding technical support for a draft framework law on indigenous peoples' rights.

9. The Committee welcomes the information concerning the establishment of the Presidential Commission on Land Rights and the completion of its final report.

12. Recognizing the fact that the State Party's national economy heavily depends on the natural resource extraction industry- namely mining and logging- including in ancestral lands and traditional settlements of indigenous and tribal peoples, the Committee remains concerned about the protection of the rights to land, territories and communal resources of the indigenous and tribal peoples living in the interior of the country. Similarly, the Committee is concerned at the nonexistence of specific legislative framework to guarantee the realization of the collective rights of indigenous and tribal peoples (Art. 2 & 5).

The Committee urges the State Party to ensure legal acknowledgement of the collective rights of indigenous and tribal peoples –known locally as Maroons and Bush Negroes- to own, develop, control and use their lands, resources and communal territories according to customary laws and traditional land tenure system and to participate in the exploitation, management and conservation of the associated natural resources.

13. While noting with interest the final report by the Presidential Commission on Land Rights presented for analysis to the President of Suriname, the Committee is concerned about the lack of an effective natural resources management regime. (Art. 2)

The Committee encourages the State to intensify its consideration of the final report in view to setting the principles for a comprehensive national land rights regime and appropriate relevant legislation with the full participation of the freely chosen representatives of indigenous and tribal peoples, as per the Commission's mandate. In the Committee's opinion the State Party's consideration of the report of the Presidential Commission should not be in detriment of its full compliance with the orders of the Inter-American Court of Human Rights in the Saramaka People case.

14. The Committee is concerned that the draft Mining Act 2004 is still in Parliament and, according to information before the Committee, that mining licences continue to be granted by the Ministry of Natural Resources to enterprises without prior consultations with or providing information to indigenous and tribal peoples. (Art. 2 & 5)

The Committee invites the State Party to update and approve the draft Mining Act in conformity with the Committee's previous recommendations (2004 and 2005). While noting that the District Commissioners are involved with and consult the indigenous and tribal communities concerned before granting concessions, the Committee recommends that when taking legislative or

administrative decisions which may affect the rights and interests of indigenous and tribal peoples, the State Party endeavours to consult and obtain their informed consent.

15. The Committee reiterates its concern with regard to repeated information highlighting that children from indigenous or tribal groups continue to experience discrimination in, *inter alia*, access to education, health and public services. The Committee notes that this discrimination relates to indigenous and tribal communities living in the interior as well as to those in assimilated suburban settings. However, it regrets that in the absence of disaggregated statistical information, the Committee finds it difficult to assess the extent of equal enjoyment of the rights guaranteed in the Convention. (Art.5)

The Committee recommends that the State Party provide relevant statistical information, on including budgetary allocations in subsequent reports and emphasizes that such data is necessary to ensure the application of adequate legislation to ensure equal enjoyment of economic, social and cultural rights by Surinamese citizens.

16. The Committee expresses concern that no special measures are taken to preserve the native languages of the country's indigenous and tribal people, and that this is reflected in the area of education. Of particular concern are the illiteracy rates that are almost double the national average for indigenous and tribal peoples. (Art. 5)

The Committee, appreciating the value of multilingual education, reiterates its recommendation that the State Party take steps to give adequate recognition to native languages and encourages the State Party to seek strategies with a view to introducing bilingual education.

17. While welcoming the information shared by the State Party on its existing policies to encourage job opportunities and training for people living in the interior, and while noting with interest that the State Party is considering ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, the Committee remains concerned that the State Party has not yet adopted special measures to ensure the effective protection with regard to recruitment and conditions of employment of workers belonging to indigenous and tribal peoples. (Art. 5)

The Committee calls on the State Party to:

- a) include in its next report information on the research, consultations, and discussions carried out by different ministries and special measures adopted in this respect and
- b) publicize and increase awareness-raising efforts to disseminate the contents of the United Nations Declaration on the Rights of Indigenous Peoples.

18. While recognizing that the State Party publicly declared it has implemented the judgements of the Inter-American Court of Human Rights in the *Saramaka People* case and the *Moiwana Village* case, and welcoming the information provided by the delegation on the measures taken up to date, the Committee is concerned at the ongoing delays in compliance of the most crucial aspects of the court judgements, in particular, concerning the recognition of communal and self-determination rights of the *Saramaka* People and the investigation and punishment of the perpetrators of the *Moiwana* Village massacre in 1986. The Committee also notes with concern that, although efforts have been made regarding consultation with indigenous peoples so

that they may participate in decisions which affect them with a view to securing their agreement, there are still situations in which consultation and participation do not occur. (Art. 6)

The Committee recommends that the State Party initiate consultations with the indigenous and Maroon communities concerned. The Committee further invites the State party to find ways and means to facilitate such participation and wishes to receive more detailed information on results of such consultations. The Committee also reiterates its recommendation, with urgency, that the State Party initiate steps towards the full implementation of the Court's orders according to the set implementation timeline. Further information would be appreciated in the next report on progress made on the implementation of the peace agreements of 1992.

19. The Committee notes with concern the recent trend of a growing flow of petitions regarding internal matters which have been addressed at international courts and bodies. This trend highlights the need to fortify national courts and create a legislative framework that adequately responds to domestic matters. While noting the State Party's view that the remedies provided under Surinamese law are sufficient to assert and seek protection of rights, the Committee stresses the analysis by the Inter-American Commission of Human Rights and the judgements by the Inter-American Court of Human Rights, which found the domestic legal system does not provide adequate effective remedies to collective rights. (Art. 6)

The Committee invites the State Party to reconsider its position and to identify practical methods to strengthen judicial procedures, including through use of customary law practices, where appropriate, for effective protection and remedies against acts of discrimination affecting indigenous and tribal peoples.

25. 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 11, 17b, and 18 within one year from the adoption of the present concluding observations.

4. TUNISIA: CERD/C/TUN/CO/19, 23 MARCH 2009

10. The Committee again takes note of the discrepancy between the State party's view that Tunisian society is homogeneous, and information provided by the State party itself on various groups living in the country, such as the Berber-speaking and sub-Saharan African populations.

In light of the absence of specific statistical data on the ethnic composition of Tunisian society, the Committee recommends that the State party should provide an estimate of the ethnic composition of the population in subsequent reports, as recommended in paragraphs 10 and 12 of the guidelines for the CERD-specific document (CERD/C/2007/1), and draws the attention of the State party to its general recommendation VIII (1990) concerning the self-identification of members of racial and ethnic groups.

11. The Committee takes note of the information provided by the State party to the effect that Tunisia's Amazigh population, which reportedly makes up no more than 1 per cent of the total population, is fully integrated into the plural entity that is Tunisia and suffers no discrimination of any kind.

The Committee calls on the State party to take account of the way in which the Amazigh perceive and define themselves. It urges the State party to review the situation of the Amazigh in the light of international agreements on human rights, with a view to guaranteeing the members of that community the enjoyment of the rights they claim, notably the right to their own culture and the use of their mother tongue and the preservation and development of their identity.

14. The Committee regrets that information provided on the implementation of article 5 of the Convention, relating to the obligation of States parties to guarantee the enjoyment of civil, political, economic, social and cultural rights and fundamental freedoms without racial distinction, is incomplete.

The Committee recommends that the State party should focus more precisely on the issue of non-discrimination when reporting on the enjoyment of the rights under article 5 of the Convention, and provide practical information on the enjoyment of these rights by migrants from sub-Saharan Africa and by Amazigh within the jurisdiction of the State party.

16. While taking note of the information provided by the State party, the Committee remains concerned at reports of administrative practices whereby Amazigh given names may not be entered in the civil register.

The Committee recommends that the State party should take all appropriate measures to do away with this practice throughout its territory.

17. The Committee takes note of the State party's position but is concerned at information to the effect that the Amazigh do not have the right to form social or cultural associations.

The Committee urges the State party to take account of the recommendations made by the Human Rights Committee in its concluding observations on Tunisia (CCPR/C/TUN/CO/5, para. 21), to the effect that it should ensure that organizations are registered, and that they should be provided with effective and prompt recourse against any rejection of their applications.

18. The Committee notes that, according to some reports, the Amazigh are prevented from preserving and expressing their cultural and linguistic identity in Tunisia.

The Committee stresses the State party's obligation under article 5 of the Convention to respect the right of the Amazigh to enjoy their own culture and to use their own language, in private and in public, freely and without discrimination. The Committee recommends that Tunisia should consider the possibility of allowing Tamazight, the Amazigh language, to be used by Berber speakers in their dealings with the various administrative and judicial authorities. It invites the State party to enhance its protection and promotion of Amazigh culture as a living culture and to take measures, especially in the field of education, in order to promote knowledge of the history, language and culture of the Amazigh. It recommends that Tunisia should consider the possibility of broadcasting programmes in Tamazight in the State media.

5. COLOMBIA: CERD/C/COL/CO/14, 28 AUGUST 2009

6. The Committee notes the commitments pledged by the State party to promote equal rights of Afro-Colombians and indigenous peoples during the process of

Universal Periodic Review of the Human Rights Council and encourages the State party to fulfil these commitments.

7. The Committee welcomes the human rights provisions in the Constitution which enshrine the principles of non-discrimination, recognise ethnic and cultural diversity and provide that the State should undertake measures in favour of discriminated or marginalised groups in order to achieve equality in practice. The Committee furthermore notes the extensive legal framework adopted to promote the rights of Afro-Colombians and indigenous peoples.

9. The Committee notes the successive national development plans (*CONPES*) which contain provisions on differentiated measures in favour of disadvantaged ethnic groups and communities and recognition of their specific needs.

10. The Committee welcomes the policy of affirmative action in favour of ethnic groups reflected in the specific constituencies for their representation in the two chambers of parliament, as well as the election of members of these groups at the regional and local level.

12. The Committee takes note of the armed conflict and situation of violence by armed groups, whose main victims are civilian populations, in particular Afro-Colombians and indigenous peoples.

13. While noting that the State party recognises the persistence of racial discrimination and its historical causes which has resulted in marginalisation, poverty and vulnerability of Afro-Colombians and indigenous peoples, the Committee is concerned that there is no general provision forbidding discrimination on grounds of race. Furthermore, the Committee is concerned that legislation to incriminate acts of racial discrimination is not in full conformity with article 4 of the Convention. The Committee regrets to learn that draft anti-discrimination legislation has recently failed to gain the necessary political support in Congress.

The Committee recommends that the State party enact legislation in order to give full effect to the provisions in the Constitution on non-discrimination expressly forbidding discrimination on grounds of race and to ensure that effective remedies are available to enforce such legislation. Furthermore, the Committee reiterates its recommendation that State party should enact specific penal legislation in accordance with article 4 of the Convention.

14. The Committee is particularly concerned over the continuation of acts of serious violations of human rights against Afro-Colombians and indigenous peoples, including killings, extra-judicial executions, forced recruitment and enforced disappearances in the context of the armed conflict. The Committee notes that while illegal armed groups bear significant responsibility for violations, reports continue to indicate the direct involvement or collusion of State agents in such acts and that members of the armed forces have publicly stigmatised Afro-Colombian and indigenous communities.

The Committee urges the State party to intensify its efforts to protect Afro-Colombian and indigenous communities against serious human rights

violations and take all possible measures to prevent such violations in the context of the armed conflict. The Committee recommends that the State party ensure that members of the armed forces comply with the Permanent Directive of the Armed Forces No. 800-07 of 2003, avoid stigmatisation of Afro-Colombian and indigenous communities, guarantee the effective and strict compliance with adopted policies and regulations and ensure that any acts of violations of human rights are promptly investigated and, when necessary, punished.

15. While the Committee is aware of efforts taken by the State party to prevent violations, such as the establishment of the Early Alert System (SAT) and the adoption of different protection programmes, the Committee remains concerned over threats against and killings of Afro-Colombian and indigenous leaders. The Committee is furthermore concerned over the absence of civilian authorities in order to protect and assist the local population in areas taken up by the military.

The Committee recommends that the State party strengthen the Early Alert System (SAT) by ensuring proper allocation of material, human and financial resources and implementing on a timely basis their alerts and ensure that civilian authorities, including at departmental and municipal level, are involved in the coordination of preventive measures. The Committee urges the State party to intensify measures to protect the security of Afro-Colombian and indigenous leaders and in this regard pay particular attention to the precautionary and provisional protection measures (*medidas cautelares y medidas provisionales*) ordered by the Inter-American Human Rights System. Given their valuable role in preventing violations, the Committee recommends that the State party increase resource allocations for the community defenders of the Human Rights Ombudsman's Office (*defensores comunitarios de la Defensoría del Pueblo*) and expand the programme in order to cover the most vulnerable Afro-Colombian and indigenous communities.

16. The Committee is concerned over information provided by the State party indicating continued large numbers of massive and individual displacements and the disproportionately high and increasing numbers of Afro-Colombians and indigenous peoples among the displaced and over reports that assistance may be denied due to restrictive interpretations of the applicable standards. The Committee is especially concerned that humanitarian assistance and protection measures for the displaced remain inadequate and that compliance with the Constitutional Court decision T-025 of 2004 has been insufficient and unduly delayed. The Committee is concerned that women and children of Afro-Colombian and indigenous communities are particularly vulnerable among the displaced population and lack effective and differentiated assistance and protection.

The Committee recommends that the State party, as a matter of priority, allocate additional human and financial resources in order to comply with the Constitutional Court decision T-025 of 2004 and the follow-up orders (*Auto 092 of 2008, Autos 004 and 005 of 2009*). While recognising efforts by the State party, such as the adoption of a National Plan of Assistance for the Displaced (*Decreto 250 de 2005*) with differentiated assistance measures, the Committee recommends that the State party intensify these efforts to ensure

the practical implementation of the Plan, and that it pay particular attention to the rights of Afro-Colombian and indigenous women and children. The Committee recommends that the State party focus on ensuring that national policies are sufficiently funded and carried out at departmental and municipal level and that safe return for the displaced to their original lands is facilitated.

17. The Committee notes that Law 975 of 2005 and Decree 1290 of 2008 provide for reparations for victims who have suffered violations by armed groups. While welcoming the State party's recognition of victims' right to reparations, the Committee regrets that insufficient information is available on how this right has been implemented in relation to Afro-Colombian and indigenous victims.

The Committee recommends that the State party ensure the effective implementation of reparations, including restitution of lands, in the framework of Law 975 of 2005 and Decree 1290 of 2008 with due regard to Afro-Colombian and indigenous victims and that special attention be paid to women and children. The Committee notes that, regardless of the perpetrator, reparations should be implemented without discrimination.

18. The Committee is concerned that, despite national policies on special measures, in practice Afro-Colombians and indigenous peoples continue to face serious challenges to the enjoyment of their rights and remain victims of *de facto* racial discrimination, marginalisation and continue to be particularly vulnerable to human rights violations. The Committee is concerned over structural causes which perpetuate discrimination and exclusion from access to socio-economic rights and development, including in the areas of employment, housing and education. In particular, the Committee is concerned that policies on special measures are not accompanied by adequate resource allocations, including at the departmental and municipal level, and that their implementation is not effectively monitored.

The Committee recommends that the State party combat discrimination and effectively implement special measures in order to ensure that Afro-Colombians and indigenous peoples are guaranteed full and equal enjoyment of human rights. The Committee, while noting the existence of various national policies on special measures in a number of areas, is concerned that these policies give inadequate attention to the structural causes which have resulted in the exclusion from access to socio-economic rights and development. The Committee recommends that the State party increase to the extent possible resource allocations for policy implementation, including at the departmental and municipal level, and ensure that they are monitored in an effective and transparent manner. Furthermore, while noting efforts such as the creation of the *Comisión Intersectorial para el Avance de la Población Afrocolombiana, Palenquera y Raizal* in 2007, the Committee underlines the importance of consultation with relevant communities in the elaboration of relevant development plans and affirmative action policies.

19. While noting as positive that the State party recognises collective land ownership for Afro-Colombian and indigenous communities, the Committee is concerned over the significant obstacles they face in exercising their rights to land, including violence against their leaders and forced displacement. The Committee

furthermore notes that the formal process for claiming collective land titles is unduly bureaucratic and that numerous cases are still pending a final decision. The Committee is concerned over reports indicating the fraudulent acquisition by other persons and the occupation of their territories by armed groups with lucrative interests to cultivate illicit crops and monocultures, in particular palm plantations, which damage the soil and threaten the food security of the affected communities. The Committee is concerned that the case of the Curvaradó and Jiguamiandó communities is paradigmatic in this regard and regrets that the State party has not complied with the related decisions of the Inter-American Court of Human Rights and the recommendations of the Committee of Experts on the Application of Conventions and Recommendations of the International Labour Organisation (CEACR).

The Committee recommends that the State party ensure that collective land ownership of Afro-Colombian communities and indigenous peoples is recognised, respected and can be exercised in practice by reducing bureaucratic claims procedures and by taking effective measures to protect communities from violation when attempting to exercise their rights. The State party is also recommended to pay particular attention to the restitution of land titles to displaced Afro-Colombian and indigenous communities and urged to comply with the decisions of the Inter-American Court of Human Rights and the recommendations of the CEACR of the ILO in relation to the communities of Curvaradó and Jiguamiandó and ensure non-repetition of similar cases.

20. The Committee, while noting efforts of the State party to conduct consultations with affected communities, is nevertheless concerned that the right to prior consultations and consent is frequently violated in conjunction with megaprojects relating to infrastructure and natural resource exploitation, such as mining, oil exploration or monocultivation.

The Committee recommends that the State party adopt and implement in a concerted manner legislation which regulates the rights to prior consultation in accordance with ILO Convention No. 169 and relevant recommendations of the CEACR of the ILO, in order to ensure that all prior consultations are undertaken in a manner which respects the free and informed consent of the affected communities. The Committee recommends that the State party seek technical advice from the OHCHR and the ILO for this purpose.

21. While noting as positive that the State party recognises the jurisdiction of indigenous justice systems, the Committee is concerned that the administration of criminal justice does not take adequate measures to protect the rights of Afro-Colombians and indigenous peoples and that perpetrators commonly enjoy impunity. The Committee is concerned that the Office of the Prosecutor General (*Fiscalía General de la Nación*) does not manage comprehensive data on the ethnicity of victims and the outcome of investigations of related cases. Furthermore, the Committee is concerned that legal advice is insufficient and not always provided in indigenous languages.

The Committee draws the States party's attention to its General Recommendation 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. In particular, the

Committee recommends that the State party ensure that the Office of the Prosecutor General (*Fiscalía General de la Nación*) document and manage comprehensive data on the ethnicity of victims and perpetrators. The State party is encouraged to reinforce the provision of legal advice and ensure that adequate interpretation in court proceedings is provided in indigenous languages. The Committee recommends that the State party pay particular attention to the conditions of detention of Afro-Colombian and indigenous persons, who are in prison in large numbers. Furthermore, the Committee urges the State party to guarantee that remedies are effective, independent and impartial and that victims receive just and adequate reparation.

22. While recognising efforts by the State party to provide culturally sensitive health care coverage for indigenous peoples, the Committee is concerned that life expectancy and health indicators are considerably lower for Afro-Colombians and indigenous peoples, while maternal and infant mortality as well as chronic malnutrition rates are significantly higher, compared to the mestizo population. The Committee is concerned over the lack of adequate and accessible health services among these communities and over insufficient data on health indicators and on related policy measures to improve them.

The Committee recommends that the State party, in close consultation with the affected communities, devise a comprehensive strategy to guarantee that Afro-Colombians and indigenous peoples are provided with quality health care. The implementation of such a strategy should be ensured by adequate resource allocations, active participation of departmental and municipal authorities, collection of indicators and transparent progress monitoring. Particular attention should be paid to improving access to health care for Afro-Colombian women and children. The Committee underlines the importance that targeted measures to improve the standard of living, including improved access to clean water and sewage systems, be linked to health indicators.

23. The Committee, while noting efforts to provide a culturally sensitive education policy (*etnoeducación*) for Afro-Colombian and indigenous children, remains concerned that the State party does still not provide free primary education and that illiteracy rates remain significantly higher among Afro-Colombian and indigenous children.

The Committee reiterates the recommendations of the Committee on the Rights of the Child of 2006 (CRC/C/COL/CO/3, paras. 77 and 95) and recommends that the State party strengthen its education policy (*etnoeducación*) and guarantee both in law and practice that Afro-Colombian and indigenous children are provided with free primary education. Strategies should be devised in close consultation with the affected communities, receive adequate resource allocations and involve departmental and municipal authorities. Gender perspectives should be duly considered in such educational policies.

24. The Committee notes that the State party has increased efforts to compile relevant data on the situation of ethnic groups and indigenous peoples. The Committee however notes the considerable variance in the information available on

the percentage of the population that identifies itself as Afro-Colombian and notes that the results from the census of 2005 differ from other population surveys.

The Committee recommends that the State further improve its compilation of information on the situation of ethnic groups in the economic, social and cultural fields. The Committee also recommends that the State party ensure that future census questions are formulated in a manner that permits and encourages self-identification of persons belonging to ethnic or indigenous groups. The State party is recommended to consult with relevant communities on measures to improve data collection and also during the elaboration and realisation of the next census.

25. The Committee is concerned over reports that certain indigenous peoples, especially in the Colombian Amazon, are on the brink of extinction as a result of the armed conflict and related consequences.

The Committee urges the State party to find political and legal solutions to protect the existence of these peoples and the exercise of their human rights.

26. The Committee is concerned about reports over cases of discrimination regarding access of members of ethnic groups to places open to the general public.

The Committee recommends that the State party adopt and enforce legislation to give full effect to article 5(f) of the Convention in the public as well as in the private sphere.

6. PHILIPPINES, CERD/C/PHL/CO/20, 28 AUGUST 2009

5. The Committee welcomes the State party's continued engagement with the United Nations on issues pertaining to human rights, including the rights of indigenous peoples, its participation in the Durban Review Conference and its work on fostering inter-faith dialogue.

6. The Committee welcomes the coming into force of the 1997 Indigenous Peoples Rights Act (IPRA) and the establishment of the National Commission on Indigenous Peoples (NCIP), since the last periodic report.

7. The Committee welcomes the recognition and the protection by the State Party of traditional indigenous justice and conflict resolutions mechanisms.

12. The Committee notes that the Study on lessons learned and challenges to achieve the implementation on the right of indigenous peoples to education (A/HRC/EMRIP/2009/2) elaborated by the United Nations Expert Mechanism on the Rights of Indigenous Peoples cites a number of examples from the Philippines. The Committee appreciates the information received on the development and pilot testing of the Indigenous Peoples Core Curriculum and Instructional Materials for Alternative Learning System as well as on other educational initiatives including in the area of higher education and the educational assistance program.

17. The Committee regrets the lack of disaggregated statistical data regarding the *de facto* enjoyment by members of indigenous peoples, ethnic minorities and non-

citizens, of the rights protected under the Convention, as without such data, it is difficult to assess the socio-economic situation of different groups in the State party. The Committee notes, however, that in the context of the 2010 national population census it is intended to include ethnicity as a variable. The Committee also notes the efforts undertaken within the framework of the Metagora Project to measure the level of awareness and fulfilment of Indigenous People's rights to their ancestral domains and lands.

Recalling the importance of gathering accurate and up-to-date data on the socio-economic situation of the population, the Committee encourages the State party to use the census in 2010 to include indicators disaggregated by ethnicity and gender on the basis of voluntary self-identification, and to provide the data obtained in its next periodic report. In this regard, the Committee draws the State party's attention to paragraphs 10 to 12 of its guidelines on the form and content of reports (CERD/C/2007/1). The Committee also recommends that the State party consult with relevant communities in the preparatory process leading up to the census and encourages initiatives such as the Metagora project.

18. The Committee appreciates the information provided by the State party that peace-processes in the different regions of armed conflict are resuming and takes note of the many initiatives taken to protect indigenous peoples including children in conflict zones. It welcomes the intention to establish a monitoring and reporting mechanism on the situation of children and the establishment of other committees monitoring different peace processes. The Committee is, however, concerned over reports of persisting human rights violations against indigenous peoples, who continue to be disproportionately affected by armed conflict. The Committee is concerned that leaders of these communities continue to be victims of extrajudicial executions as well as of disappearances and detention and over reports indicating occupation of indigenous territories by the armed forces and armed groups.

The Committee urges the State party to continue efforts to restore peace in the regions affected by armed conflict, to protect vulnerable groups from human rights violations, notably indigenous peoples and children of ethnic groups and to ensure that independent and impartial investigations are conducted into all allegations of human rights violations. The Committee, recalling a recommendation from July 2008 by the CRC under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, recommends the enforcement of the 1997 Indigenous Peoples Rights Act (IPRA) to ensure that indigenous children and children from other ethnic groups are not recruited by armed forces or armed groups (CRC/C/OPAC/PHL/CO/1, paragraph 19). The Committee seeks further information on the follow-up to the reports of the United Nations Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (A/HRC/8/3/Add.2) and of the United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (E/CN.4/2003/90/Add.3).

19. The Committee is concerned about the effects of internal displacement as a consequence of armed conflict especially on indigenous peoples in relation to their livelihoods, health and education.

In light of the Guiding Principles on Internal Displacement (E/CN.4/1998/53/Add.2), the Committee recommends that the State party adopts adequate measures in order to ensure the enjoyment by internally displaced persons of their rights under article 5 of the Convention, especially their right to security and their economic, social and cultural rights.

22. The Committee notes that IPRA is an impressive piece of legislature containing a welcome definition of Indigenous Peoples accounting both for self-definition and ascription by others. The Committee is concerned that the Regalian doctrine as applied to indigenous property seems to run counter to the notion of inherent rights under the IPRA. The Committee is also concerned by information that the IPRA is significantly undermined by the Republic Act 942 (Mining Act of 1995).

The Committee recommends that the State party conduct an independent review, in consultation with indigenous peoples, of the legislative framework in relation to indigenous property, with particular regard to the question of consistency between the IPRA, its implementing guidelines, the Regalian doctrine and other related doctrines, as well as the Mining Act of 1995. The Committee, recalling a recommendation of CESCR from December 2008 (E/C.12/PHL/CO/4, paragraph 16), urges the State party to fully implement the IPRA, in particular by securing the effective enjoyment by indigenous peoples of their rights to ancestral domains, lands and natural resources, and ensuring that economic activities, especially mining, carried out on indigenous territories do not adversely affect the protection of the rights recognised to indigenous peoples under the aforementioned Act.

23. The Committee is concerned that the formal process for claiming collective land titles seems unduly burdensome, and is concerned over the fact that the indigenous communities bear the burden of proof when submitting applications.

The Committee seeks further clarification on the time frames for obtaining Ancestral Domains/Lands certificates and the number of applications filed and certificates issued for claiming collective land titles. The Committee recommends that the State party streamline the process for obtaining land rights certificates and take effective measures to protect communities from retaliations and violations when attempting to exercise their rights.

24. The Committee, while noting the increasing efforts of the National Commission for Indigenous Peoples (NCIP) to implement IPRA, is nevertheless concerned that consultation processes are not always adequately implemented when securing the Free, Prior and Informed Consent of indigenous peoples (FPIC) with regard to infrastructure and natural resource exploitation projects.

The Committee recommends that the State party verify that the current structures and guidelines/procedures established to conduct FPIC are in accordance with the spirit and letter of the IPRA and set realistic time frames

for consultation processes with indigenous peoples. It recommends that the State party verify that the apparent lack of formal protests is not the result of a lack of effective remedies, the victims' lack of awareness of their rights, fear of reprisals, or a lack of confidence in the NCIP.

25. The Committee welcome the State Party's statements that it wishes to respect the customary practices and rights of the Subanon people of Canatuan within their ancestral territory and to address the community divisions associated with the *Subanon Mt Canatuan case*, which concerns mining operations at Mount Canatuan, a sacred site of the Subanon people, undertaken without prior consent by the Subanon people. The case was considered by the Committee under its early warning and urgent action procedure. The Committee remains concerned that contradictory information continues to be presented to it with regard to the status of actions taken to address the violations of the Subanon people's rights and destruction of their sacred mountain.

The Committee urges the State Party to consult with all concerned parties in order to address the issues over Mt. Canatuan in a manner that respects customary laws and practices of the Subanon people and welcomes information from the State party in relation to further developments.

26. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the ILO International Convention on Indigenous and Tribal Peoples (No. 169).

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 18, 23 and 25 above.

7. Chile, CERD/C/CHL/CO/15-18, 7 September 2009

4. The Committee welcomes the State party's ratification in 2008 of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) and, in 2005, of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

5. The Committee welcomes the establishment of various institutions to promote and coordinate public policies on indigenous matters, including the National Indigenous Development Corporation (CONADI), the Ministerial Council for Indigenous Affairs and the indigenous units in ministries and regional administrations.

6. The Committee notes with interest the action plan entitled "Re-Conocer: a social pact for multiculturalism", which sets out the main thrust of the State party's policy on indigenous matters for the coming years.

7. The Committee notes with satisfaction the measures taken to integrate the traditional medicine of indigenous peoples in the State party's health-care system.

9. The Committee notes with satisfaction the efforts made by the State party, particularly since 2003, to reduce the gap in average income and socio-economic conditions between indigenous and non-indigenous people.

15. The Committee notes with concern that the Counter-Terrorism Act (No. 18.314) has been mainly applied to members of the Mapuche people for acts that took place in the context of social demands relating to the defence of their rights to their ancestral lands (art. 2).

The Committee recommends that the State party should: (a) reform the Counter-Terrorism Act (No. 18.314) to ensure that it is applied only to terrorist offences that deserve to be treated as such; (b) ensure that the Counter-Terrorism Act is not applied to members of the Mapuche community for acts of protest or social demands; and (c) put into practice the recommendations made in this regard by the Human Rights Committee in 2007 and by the special rapporteurs on the situation of human rights and fundamental freedoms of indigenous people, following their visits to Chile in 2003 and 2009. The Committee draws the State party's attention to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system (sect. B, para. 5 (e)).

16. While noting the efforts made by the State party to undertake constitutional reform in the area of the rights of indigenous peoples, such as the consultations held with indigenous people, the Committee is concerned at the slow pace of this process and the fact that not all indigenous peoples have been adequately consulted on decisions related to issues that affect their rights (arts. 2 and 5).

The Committee recommends that the State party should: (a) step up its efforts to speed up the process of granting constitutional recognition to the rights of indigenous peoples and, to this end, conduct effective consultations with all the indigenous peoples, in accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and ILO Convention No. 169; (b) take the necessary measures to establish a climate of trust conducive to dialogue with indigenous peoples; and (c) take effective measures to involve indigenous peoples in the work on a human rights action plan and in all areas, including legislative proposals, that might affect their rights.

18. The Committee notes with concern that, as pointed out by the State party, in recent years Chile has seen incidents of discrimination against and violent attacks on indigenous people and migrants, among others, by totalitarian groups. The Committee is concerned that racism, discrimination and xenophobia are not classed as criminal offences in Chilean law (art. 4).

The Committee recommends that the State party should: (a) speed up the adoption of the anti-discrimination bill that would make discriminatory acts punishable by law; (b) step up its efforts to prevent and combat xenophobia and racial prejudice among the various groups in society, and also to promote tolerance among all ethnic groups; and (c) present in its next periodic report further information on investigations, indictments and sentences related to

racially-motivated offences, as well as on compensation obtained by the victims of such acts.

19. The Committee notes with concern the accusations of ill-treatment and abuse of members of the Mapuche people by the police during police raids and other operations. The Committee notes with dismay the death of a young Mapuche man, José Facundo Mendoza Collio, on 12 August 2009, as a result of police gunfire (art. 5 (b)).

The Committee recommends that: (a) the State party should investigate accusations of ill-treatment and abuse of indigenous people by some members of the armed forces; and (b) those responsible for such acts should be tried and punished and compensation granted to the victims or their families. The Committee also urges the State party to take prompt steps to prevent such acts, and in that regard recommends that it should boost training for its armed forces in human rights, including the provisions of the Convention.

20. The Committee notes with concern the low level of participation in political life by the indigenous peoples and the poor representation of indigenous peoples in parliament (art. 5 (c)).

In the light of its general recommendation No. 23 (1997), section 4 (d), the Committee recommends that the State party should redouble its efforts to ensure full participation by indigenous people, 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.

21. The Committee notes the measures taken by the State party to transfer ancestral lands to indigenous peoples, but it is concerned about the slow progress made in demarcating lands and the lack of a specific mechanism for recognizing the right of indigenous peoples to the land and to their natural resources (art. 5 (d) (v)).

The Committee recommends that the State party should take the necessary measures to speed up the restitution of ancestral lands to indigenous peoples and that it should establish a specific mechanism for recognizing the rights of indigenous peoples to lands and natural resources, in accordance with the Convention and the other relevant international standards. Specifically, the State party should ensure that land-purchasing policies conform fully with ILO Convention No. 169 and should consider increasing the budget of CONADI so that it is able to carry out its work properly.

22. While noting the measures taken by the State party to regulate investment in indigenous lands and indigenous development areas, the Committee notes with concern that indigenous peoples are affected by the exploitation of subsoil resources in their traditional lands and that in practice the right of indigenous peoples to be consulted before the natural resources of their lands are exploited is not fully respected.

The Committee urges the State party to hold effective consultations with indigenous peoples on all projects related to their ancestral lands and to obtain their consent prior to implementation of projects for the extraction of natural

resources, in accordance with international standards. The Committee draws the State party's attention to its general recommendation No. 23.

23. The Committee reiterates its concern about the situation of the Mapuche communities in the Araucanía region affected by activities that are harmful to the environment, health and their traditional ways of life, including the establishment of waste dumps and plans to set up sewage-treatment plants there (art. 5).

The Committee urges the State party to spare no effort to develop a specific policy, in line with international standards, to deal with the environmental impacts affecting indigenous peoples. To this end, the Committee recommends that scientific assessments should be carried out regularly. The Committee further recommends that the State party should amend its legislation on land, water, mining and other sectors so that it does not conflict with the Indigenous Peoples Act (No. 19.253) and ensure that the protection of the rights of indigenous peoples prevails over commercial and economic interests. The Committee urges the State party to take immediate steps to resolve the issue of the waste dumps established in Mapuche communities without their prior consent.

24. The Committee notes the efforts made by the State party to combat poverty. However, it is concerned that indigenous peoples, in particular the Mapuche, are among the poorest and most marginalized groups (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.

27. While noting the programmes implemented by the Department of Diversity and Non-Discrimination, the Committee is concerned about the persistence in the State party of prejudices and negative stereotypes that affect, inter alia, indigenous peoples and members of minorities, as revealed by surveys carried out by the University of Chile (art. 7).

The Committee recommends that the State party should take appropriate steps to combat racial prejudice, which may lead to racial discrimination. In the area of information, the State party should foster understanding, tolerance and friendship among the various racial groups in the State party. The Committee further recommends that the State party should reinforce information campaigns and educational programmes on the Convention and its provisions, as well as strengthen its training activities for police and those working within the criminal justice system on the mechanisms and procedures provided for in national legislation in the field of racial discrimination.

33. Pursuant to 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 its follow-up to the Committee's recommendations contained

in paragraphs 14, 19, 22 and 23 above, within one year of the adoption of the present conclusions.

8. Peru, CERD/C/PER/CO/14-17, 3 September 2009

4. The Committee notes with satisfaction the establishment of the National Institute for the Development of the Andean, Amazonian and Afro-Peruvian Peoples (INDEPA) on 16 April 2005 as a decentralized public body enjoying financial, operational, administrative and organizational independence. It notes that INDEPA is responsible for promoting and monitoring compliance with national policies and coordinating with regional governments in carrying out projects and programmes to promote, defend, investigate and assert the rights of the Andean, Amazonian and Afro-Peruvian peoples and their “development with identity”. It further notes that INDEPA is a specialized public body recognized as a leader in promoting, protecting, defending and coordinating the cultural, economic and social development of the Andean, Amazonian and Afro-Peruvian peoples, thereby strengthening their cultural identity.

8. The Committee welcomes the action taken by the State party in electoral matters, such as introducing participation quotas for indigenous peoples and laws governing municipal and regional elections that require quotas for persons of indigenous origin on party lists of candidates for the posts of mayors and municipal councillors and for seats on regional councils.

9. The Committee welcomes the bill on the consultation and participation of indigenous peoples in environmental matters, which aims to ensure that any infrastructure projects or works that might affect the rights of indigenous peoples have the prior, free and informed consent of these peoples and that national legislation is adapted in order to provide for the right of indigenous peoples - recognized in the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) - to prior, free and informed consultation.

10. Bearing in mind that the 1993 Constitution recognizes and protects the ethnic and cultural diversity of the Peruvian nation, the Committee remains concerned that a high proportion of persons among the indigenous peoples and Afro-Peruvian communities continue to suffer in practice from racism and structural racial discrimination in the State party.

The Committee recommends that the State party combat racial discrimination by drawing up a comprehensive national policy against 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-Peruvian communities of the rights guaranteed in the draft Constitution, disaggregated by urban or rural population, age and sex.

11. The Committee takes account of the fact that the State party promotes and guarantees the protection of the individual and collective rights of indigenous peoples established as campesino communities in the Andes or as native communities in the Amazon region. The Committee notes furthermore that for the purposes of implementing the rights enshrined in ILO Convention No. 169 and the United Nations

Declaration on the Rights of Indigenous Peoples, the authorities in the State party consider the categories “campesino communities” and “native communities” as belonging to the category “indigenous peoples” as it is currently used in international human rights law and which the indigenous peoples want to appear in the Constitution. In addition, the Committee expresses concern for the situation and rights of the indigenous peoples and Afro-Peruvian communities not yet established as campesino or native communities. The Committee takes note of the efforts of the State party to adopt a framework law on indigenous peoples.

The Committee recommends that the State party continue to promote the urgent adoption of a framework law on the indigenous peoples of Peru covering all communities, while endeavouring to equate and harmonize terminology in order to ensure the effective protection and promotion of the rights of all indigenous peoples and Afro-Peruvian communities.

12. The Committee notes the State party’s proposal to replace the 1994 ethnolinguistic map with a new one that was submitted to Congress on 9 February 2009. In addition, the Committee notes with satisfaction that the updated information contained in this map will enable the State party to develop public policies reflecting the needs of the various ethnic and linguistic population groups of Peru. While the Committee welcomes the statistical data on the ethnic make-up of the State party contained in the periodic report, it has noted limitations in the preparation of the 2007 national census. It therefore requests additional information on the characteristics and specific situation of the various ethnic groups, and emphasizes the need for information on the use of native languages and the situation of Afro-Peruvian communities.

The Committee recommends that the State party continue to improve its census methodology to reflect the ethnic complexity of Peruvian society, bearing in mind the principle of self-identification, in keeping with the Committee’s general recommendation No. 8 and with paragraphs 10-12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). In this context, the Committee requests the State party to include in its next periodic report disaggregated statistics on the composition of the population. The Committee further recommends that special emphasis be placed on obtaining updated information on the Afro-Peruvian community and on the use of the native languages of Peru.

13. The Committee notes with concern the gradual decline in the use of native indigenous languages occurring in Peru, as reflected in the 2007 national census. It considers that the bilingual education initiatives taken by the State party should be an opportunity to consolidate the use of two languages rather than lose the native language in favour of Spanish.

The Committee recommends that the State party find out why the use of indigenous languages has declined, in order to develop an appropriate response. It recommends the speedy adoption of the bill on the preservation and use of the native languages of Peru, since it has already been approved by the Committee on Andean, Amazonian and Afro-Peruvian Peoples, the Environment and Ecology. The Committee also recommends the urgent

adoption of the bill on the translation and dissemination of legislation in the official languages, since all legislation adopted by the State party will affect the entire population of Peru.

14. While noting the positive steps taken by the State party in this area, the Committee reiterates its concern at the considerable tension, even leading to violence, generated in the country by the exploitation of the subsoil resources of the traditional territories of the indigenous peoples. The Committee also notes that in some cases the right of indigenous peoples to be consulted and to give their informed consent prior to the exploitation of natural resources in their territories is not fully respected in practice. It further expresses concern at the negative impact on health and the environment of companies' extractive activities conducted at the expense of the exercise of the right to land and the cultural rights of the indigenous peoples concerned.

The Committee urges the State party to adopt the bill on the consultation and participation of indigenous peoples in environmental matters, taking into account the Committee's general recommendation No. 23 (para. 4 (d)), in which it urges States parties, to ensure with reference to indigenous peoples "that no decisions directly relating to their rights and interests are taken without their informed consent". In the light of that general recommendation, the Committee urges the State party to consult the communities of the indigenous peoples concerned at each step of the process and to obtain their consent before plans to extract natural resources are implemented.

15. The Committee expresses deep concern at the violence triggered by conflicts between projects aimed at the exploitation of natural resources and the rights of indigenous peoples, such as that which occurred in Bagua on 5 and 6 June 2009. The Committee notes the positive steps taken by the Government of Peru to alleviate the violence related to events in Bagua, such as repealing decrees Nos. 1081 and 1094 and launching an investigation into the facts. The Committee welcomes the visit to Peru from 17 to 19 June 2009 by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, and his ensuing recommendations.

The Committee urges the State party to follow the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. James Anaya, following his visit to Peru, and to take urgent steps to set up an independent commission that includes indigenous representatives to carry out a thorough, objective and impartial investigation. It also recommends that the commission's findings should feed into the State party's discussions concerning the bill on the consultation and participation of indigenous peoples in environmental matters and the relevant regulations for the mining and oil sectors submitted by the Ministry of Energy and Mines. The Committee looks forward to receiving information on the proceedings, establishment, findings, conclusions and recommendations of the commission. Likewise, it supports the Special Rapporteur's appeal to the indigenous persons and peoples concerned to make their demands and hold their demonstrations in a peaceful manner, respecting the human rights of others.

16. The Committee expresses concern at the limited enjoyment of economic, social and cultural rights by indigenous peoples and Afro-Peruvian communities, in particular with regard to housing, education, health and employment, despite the economic growth in the State party.

The Committee recommends that the State party take the necessary steps to achieve effective protection from discrimination against the indigenous peoples and Afro-Peruvian communities in various domains, in particular, employment, housing, health and education. The Committee also requests that the State party include information in its next report on the impact of programmes aimed at giving effect to the economic, social and cultural rights of the indigenous population, as well as statistical data on progress in this regard.

18. While the Committee takes note of the progress made recently in efforts to combat illiteracy within the indigenous and Afro-Peruvian population, it continues to be concerned at the illiteracy rate among the indigenous peoples and Afro-Peruvian communities. Furthermore, while the Committee welcomes efforts to establish a bilingual educational system, it is concerned at the shortcomings in applying the intercultural bilingual system in practice.

The Committee encourages the State party to take action in the short and medium term to implement effective measures that will reduce illiteracy among indigenous people and Afro-Peruvians. Also, the next report of the State party should include specific data on the percentage of indigenous people and Afro-Peruvians who have access to primary, secondary and university education.

19. The Committee is concerned at the racial discrimination directed against indigenous peoples and Afro-Peruvian communities in the media, including stereotyped and demeaning portrayals of those peoples and communities in television programmes and in the press. The Committee is also concerned at the evidence of racial discrimination in everyday life and at information it has received on acts of racial discrimination committed by government officials.

The Committee recommends that the State party take appropriate steps to combat the racial prejudice, that leads to racial discrimination in the media, both in public and private channels and in the press, as well as in everyday life. The Committee also recommends that, in the area of information, the State party foster understanding, tolerance and friendship among the various racial groups in the State party, including through the adoption of a media code of ethics that would commit the media to showing respect for the identity and culture of the indigenous peoples and Afro-Peruvian communities.

20. The Committee stresses that the sustainable management of natural resources is a complex task and takes note of the State party's efforts to improve its legislation and practice in this area, particularly in relation to water resources. In this context, the Committee welcomes the information provided by the State party on the construction of four new wells in the community of Ancomarca, a case that was considered under

the early warning procedure. However, the Committee expresses concern at the impact that the management of catchment basins may have on the wetland areas of Peru and on the way of life of indigenous peoples.

The Committee recommends that the State party's water management policy should take into account the needs and wishes of the communities likely to be affected by the policy. The Committee also reiterates its appeal to the State party to guarantee the use and enjoyment of water by the residents of the community of Ancomarca and to provide compensation for the damage and harm suffered by this community.

21. The Committee takes note of the information provided by the State party on the implementation of the Dorissa Agreement concerning the Achuar people affected by oil-drilling in the Río Corrientes area.

The Committee encourages the State party to make every possible effort to ensure that the Dorissa Agreement is implemented without delay and to prevent similar cases from occurring in future oil-drilling projects.

22. The Committee notes the importance of ensuring that INDEPA has the necessary financial and human resources to perform its valuable work.

The Committee recommends that INDEPA be strengthened by providing it with the necessary financial and human resources to perform its valuable work.

23. The Committee expresses its concern at the conflicts that may arise as a result of the lack of consensus with regard to national policy on the part of Peruvian society as a whole, in all its multicultural and multi-ethnic diversity, in particular in the areas of education, development projects and environmental protection.

The Committee recommends that the State party conduct a participative, inclusive process aimed at determining which vision of the Nation best represents the ethnic and cultural diversity of a country as rich as Peru, since a shared and inclusive vision can guide the State party in drawing up public policies and development plans.

29. The Committee recommends that the reports of the State party be made available and accessible to the public at the time of their submission, and that the concluding observations of the Committee concerning these reports also be published in the official language of the country and in other commonly used languages, as appropriate.

31. In accordance with article 9, paragraph 1, of the Convention and with rule No. 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on the implementation of the recommendations included in paragraphs 12, 17 and 20 above.

9. Argentina, CERD/C/ARG/CO/19-20, 29 March 2010

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

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

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

18. The Committee notes with satisfaction that the State party is about to conduct a new population census in 2010, which will include self-identification questions, particularly for the indigenous population and persons of African descent. As in its concluding observations of 2004, the Committee would remind the State party that such information is needed in order to assess the implementation of the Convention and to monitor policies benefiting minorities and indigenous peoples.

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

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

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

20. The Committee takes note of Act No. 26160 of November 2006, under which a four year state of emergency was declared in order to halt the eviction of indigenous peoples and to permit implementation of a territorial reorganization process and the regularization of their communal property, and of the work of the National Registry of Indigenous Communities (RENACI) in promoting the registration of indigenous

communities and assisting them to complete the necessary formalities. While the Committee also notes that the law's application has been extended for another four years, it is seriously concerned by the fact that six of the State party's provinces have not agreed to apply this national law (Salta, Formosa, Jujuy, Tucumán, Chaco and Neuquén).

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

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

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

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

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

23. The Committee notes that INAI is currently in the process of creating and consolidating effective mechanisms enabling the participation of indigenous peoples in the development, implementation and monitoring of public policies that affect them, through the establishment of the Council on Indigenous Participation, pursuant to INAI Decision No. 152 of 6 August 2004 and Amendment No. 301/04, and, at a second stage, of the Coordinating Council, whose establishment is provided for in Act No. 23302. The Committee is concerned, however, by information it has received

indicating that, notwithstanding the mechanisms that are in place, the final decision regarding the representation of indigenous peoples lies in the hands of the State rather than in those of the indigenous groups in question.

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

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

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

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

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

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

In light of its general recommendation No. 23 (1997), paragraph 4 (d), on the rights of indigenous peoples, the Committee recommends that the State party

redouble its efforts to ensure full participation by indigenous peoples, especially women, in public life, and that it take effective steps to ensure that all indigenous peoples participate in the administration at all levels.

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

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

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

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

35. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the Committee's recommendations in paragraphs 21, 26 and 29 above within one year of the adoption of the present concluding observations.

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

10. Cambodia, CERD/C/KHM/CO/8-13, 1 April 2010

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

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

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

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

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

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

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

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

20. While noting the State party's efforts to implement its National Education Programme "Education for All", the Committee is concerned over the discrepancy on the access to education, especially in remote areas. It is particularly concerned about education for children in areas such as Mondulkiri and Ratanakiri provinces, which are mostly inhabited by indigenous peoples and minorities. The Committee is

concerned that the admission and enrolment rates are below the national level and the repetition and drop out rates are higher than the average national level (arts. 2 and 5).

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

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

11. Cameroon, CERD/ C/CMR/CO/15-18, 30 March 2010

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

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

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

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

The Committee strongly recommends that the State party complete the adoption of the bill on the rights of indigenous people and seek technical assistance and cooperation to that end from the Office of the United Nations High Commissioner for Human Rights and the International Labour Organization. In particular, the Committee recommends that the State party,

bearing in mind its general recommendation No. 23 (1997) on the rights of indigenous peoples, include in the aforementioned bill the definition of indigenous peoples as contained in the United Nations Declaration on the Rights of Indigenous Peoples. It also recommends that the State party refrain from using the term “marginal population groups”, which is contrary to the spirit of the Convention, as it stigmatizes the minorities referred to and prevents the special characteristics of indigenous people from being taken into consideration. Finally, the Committee recommends that the State party ensure the participation of indigenous people and their representatives in the process of drafting the bill.

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

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

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

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

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

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

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

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

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

- (b) Establishing official services for interpretation into the languages of indigenous people in national courts, including customary courts;
- (c) Ensuring that judges versed in indigenous customs preside effectively in the customary courts.

18. While taking note of the steps taken by the State party on behalf of indigenous forest-dwelling groups, the Committee is concerned by the attacks on indigenous people's land rights. It regrets that the land ownership legislation in force does not take into account the traditions, customs and land tenure systems of indigenous peoples, or their way of life. The Committee is particularly concerned by the abuse and assaults suffered by indigenous people at the hands of civil servants and employees of the national parks and protected areas. Furthermore, the Committee notes with concern that the course of the Chad-Cameroon pipeline has made indigenous populations more vulnerable and that only a small fraction of the Bagyeli indigenous population has benefited from the compensation plan (art. 5 (b) and (d)).

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

- (a) Establish in domestic legislation the right of indigenous peoples to own, use, develop and control their lands, territories and resources;
- (b) Consult the indigenous people concerned and cooperate with them through their own representative institutions, in order to obtain their free and informed consent, before approving any project that affects their lands, territories or other resources, in particular with regard to the development, use or exploitation of mineral, water or other resources;
- (c) Guarantee indigenous people just and fair compensation for lands, territories and resources that they traditionally own or otherwise occupy and use, and which have been confiscated, taken, occupied, used or damaged without their free, prior and informed consent;
- (d) Ensure that the legal land registry procedure in force duly respects the customs, traditions and land tenure systems of the indigenous peoples concerned, without discrimination;
- (e) Protect indigenous people against any attacks on their physical and mental integrity and prosecute the perpetrators of acts of violence and assaults against them.

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

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

12. Guatemala, CERD/C/GTM/CO/12-13, 19 May 2010

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

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

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

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

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

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

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

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

The Committee recommends that the State party redouble its efforts to adopt a law which specifically classifies the various manifestations of racial

discrimination as punishable acts in accordance with article 4 of the Convention and that it introduce the legislative amendments required in order to align domestic laws with the Convention.

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

In the light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party in its national legal system to recognize the indigenous legal system and to ensure respect for, and recognition of, the traditional systems of justice of indigenous peoples, in conformity with international human rights law. The Committee also recommends that the State party guarantee the right of indigenous peoples to an appropriate system of legal interpreters and of bilingual counsel and court officials in judicial proceedings. The Committee encourages the State party to continue to work with the OHCHR office in Guatemala in order to comply with the recommendations set forth in the study entitled "*Acceso de los pueblos indígenas a la justicia desde el enfoque de derechos humanos: perspectivas en el derecho indígena y el sistema de justicia oficial*" (Access for indigenous peoples to justice from human rights perspective: views on indigenous law and the official justice system). The Committee also encourages the State party and the Institutional Training Unit of the Judiciary (UCI), in particular, to continue to offer courses for judges and staff of the justice system that are designed to help ensure that the indigenous population has effective and equal access to justice. The Committee urges the Public Prosecutor's Office to develop awareness-raising and training courses for attorneys and other staff of that Office on criminal prosecution of the offence of discrimination and on the rights of indigenous peoples.

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

The Committee recommends that the State party investigate these murders and punish those responsible. The Committee also calls upon the State party to adopt legislation that specifically guarantees protection for human rights defenders and to take appropriate steps to prevent such acts, taking into consideration the Declaration on The Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. The Committee recommends that steps be taken to expedite the entry into effect of the draft governmental agreement which provides for a programme of preventive measures and protection for human rights defenders and other vulnerable groups, as

advocated by the Presidential Human Rights Commission. It also recommends that the State party comply with the recommendations made during the follow-up visit by the Special Representative of the Secretary-General on the situation of human rights defenders in 2008.

10. While taking note of the State party's repeated expressions of its commitment to ensuring participation by indigenous peoples in political processes, in particular in representative institutions and the parliament, the Committee reiterates its concern at the still insufficient number and range of government posts occupied by indigenous persons in particular indigenous women (art. 5 (c)).

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

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

The Committee recommends that the State party:

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

- (b) Amend the laws governing the exploitation of natural resources so as to establish procedures for the prior consultation of relevant population groups regarding the impact of such projects on their communities;
- (c) Expedite the adoption of the Indigenous Peoples Consultation Act proposed by indigenous peoples and the amendment of the Mining Act to include a chapter on consultations prior to the issuance of mining permits;
- (d) Ensure the effective application of the alternative methods for the settlement of disputes, such as mediation, negotiation, conciliation and arbitration, established by the Office of the Secretary for Agrarian Affairs. The State party should also ensure that these procedures are in line with international standards relating to human rights and indigenous peoples' rights and specifically with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples;
- (e) Strengthen the implementation of round-table dialogues at which representatives of the Office of the Secretary for Agrarian Affairs take an active part in a range of forums and ensure that those dialogues give rise to specific, viable and verifiable agreements that are effectively implemented;
- (f) In the exceptional cases in which the relocation of indigenous peoples is considered necessary, ensure the observance of article 16 paragraph 2, of ILO Convention No. 169 and article 10 of the United Nations Declaration on the Rights of Indigenous Peoples, which require free and informed consent and fair and equitable compensation, and provide relocation sites equipped with basic utilities, such as drinking water, electricity, and washing and hygiene facilities, and with appropriate services, including schools, health-care centres and means of transportation.

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

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

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

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

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

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

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

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

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

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

22. In accordance with article 9, paragraph 1, of the Convention and rule 65 of the Committee's amended rules of procedure, the Committee requests the State party to provide information on the implementation of the recommendations made by the Committee in paragraphs 7, 9 and 14, above, within one year of the adoption of the present concluding observations.

13. Japan, CERD/C/JPN/CO/3-6, 6 April 2010

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

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

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

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

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

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

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

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

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

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

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

[...] The Committee encourages the State party to consider providing adequate opportunities for minority groups to receive instruction in or of their language and invites the State party to consider acceding to the UNESCO Convention against Discrimination in Education.

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

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

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

14. Panama, CERD//C/PAN/CO/15-20, 19 May 2010

7. The Committee welcomes the information that the State party intends to carry out in 2010 a population census which will include questions relating to self-identification for indigenous peoples and Afro-Panamanians.

8. The Committee welcomes Act No. 72 of 2008 on Communal Lands, which makes provision for land ownership by indigenous communities who do not live in an indigenous region.

9. The Committee notes with concern the persistence of racial discrimination and its historical roots, which have led to the marginalization, impoverishment and vulnerability of Afro-Panamanians and indigenous peoples. It is also concerned by the absence of any general provision prohibiting discrimination on grounds of race and classifying acts of racial discrimination as offences punishable by law, in conformity with article 4 of the Convention.

The Committee recommends that the State party adopt legislation to make fully effective the provisions of the Constitution relating to non-discrimination and expressly prohibiting discrimination on grounds of race and to guarantee the availability of effective remedies to ensure implementation of such legislation. The Committee also reiterates its recommendation to the State party that it adopt specific criminal legislation in conformity with article 4 of the Convention.

10. The Committee is concerned by the lack of statistical data in the State party's report on the demographic composition of the population, and in particular on Afro-Panamanians, and notes with concern that the most recent population census was held in 2000. The Committee points out that this information is required in order to evaluate the implementation of the Convention and to monitor policies benefiting minorities, indigenous peoples and Afro-Panamanians.

The Committee requests the State party to publish the results of the forthcoming 2010 population census and that the census gather, among other data, information on indigenous peoples and Afro-Panamanians. The Committee draws attention, in particular, to the importance of including in the census a question on self-identification to obtain a true picture of the ethnic dimension of the State party. In addition, in the light of paragraph 8 of the reporting guidelines and general recommendation No. 4 concerning the submission of reports by States parties (article 1 of the Convention) and general recommendation No. 24 concerning article 1 of the Convention, the Committee recommends that the State party include in its next periodic report information on the demographic composition of the population, in particular on indigenous peoples and Afro-Panamanians.

11. The Committee expresses its concern at the fact that, in spite of the adoption of policies and the creation of national institutions, in practice Afro-Panamanians and indigenous peoples still encounter considerable difficulties in exercising their rights and are the victims of de facto racial discrimination and marginalization and that they are particularly vulnerable to violations of human rights. The Committee is also concerned by the structural causes which perpetuate discrimination and denial of access to social and economic rights and development, in particular in the areas of employment, housing and education. The Committee expresses its concern about the information that most indigenous peoples and Afro-Panamanians do not have effective access to basic services such as water supply, electricity, sanitation, education, public housing programmes and microcredit.

The Committee recommends that the State party combat discrimination and effectively implement special measures to ensure that Afro-Panamanians and indigenous peoples are able fully to exercise human rights on equal terms. While the Committee takes note of the existence of various national policies relating to special measures in a number of areas, it is concerned that those policies do not sufficiently address the structural causes responsible for the denial of access to social and economic rights and to development. The Committee recommends that the State party increase, insofar as possible, the resources allocated for policy implementation, in particular at the departmental and municipal levels, and ensure that they are efficiently and transparently monitored. The Committee again underscores the importance of organizing consultations with the indigenous peoples and Afro-Panamanians concerned in order to draw up the relevant development plans and special measures, taking into account general recommendation No. 32.

12. The Committee expresses its serious concern about the information received that, despite the existence of the indigenous region as an entity, with provision for self-government and communal ownership of land by indigenous peoples, there are some indigenous communities that have not obtained a region or entity of similar status; this is illustrated by the exclusion of some Ngobe and Emberá communities and the fact that the Bri Bri and Naso communities have been denied such an entity. The Committee also draws attention to the failure to register children born in the indigenous regions. The Committee further wishes to express its concern at the very low standard of living in the indigenous regions, such as the area of Darién where there is poor access to basic services and to governmental poverty-elimination policies.

The Committee recommends that the State party finalize the procedures still pending to ensure that all Panamanian indigenous communities secure a region or entity of similar status. It also urges the State party to do its utmost to ensure that its governmental poverty-elimination policies are effective throughout the country, and in particular in the indigenous regions.

13. The Committee expresses its serious concern about the information received concerning expulsions and displacements affecting indigenous communities, in connection with energy projects, exploitation of natural resources and tourism. The Committee ventures to mention, as examples, the incidents on the coast of Bocas del Toro and in the communities of San San and San San Druy, in which the Naso community's cultural centre was even destroyed. The Committee is concerned in particular by the information on violence during these incidents and the use of the

police and/or security forces. The situation is even more serious when violence is used during expulsions.

The Committee recommends that the State party adopt the necessary effective measures to ensure the prohibition of forced removals throughout the country. The Committee urges the State party to assume its role as mediator in such conflicts by protecting citizens, including indigenous and Afro-Panamanian citizens, and that it collaborate in seeking a solution to conflicts over land to allow development projects to be harmonized with the indigenous world view.

14. The Committee notes with concern that on several occasions consultations concerning projects for the exploitation of resources, construction and tourism have been left in the hands of the private firms carrying out such projects. The Committee also notes with concern that the agreements reached through such consultations are partial and not in conformity with the international standards that should govern such agreements. It notes with serious concern that the balance of power in the negotiations and agreements weighs heavily against the indigenous communities. The Committee would like to cite as an example the case of the Chan 75 hydroelectric project. The Committee expresses its serious concern at the lack of effective mechanisms for consultation with the indigenous peoples, and highlights in particular the need to obtain prior, informed and voluntary consent for development projects, resource exploitation and tourism affecting their way of life.

The Committee recommends that the State party institute appropriate mechanisms, in conformity with international standards, and in particular article 5 of the International Labour Organization Indigenous and Tribal Populations Convention, 1957 (No. 107), which the State party has ratified, to conduct consultations with communities potentially affected by development projects and the exploitation of natural resources so as to obtain their prior, informed and voluntary consent. The Committee also recommends that the State party should not delegate its responsibility in the process of consultation, negotiation and compensation in such situations to the third party concerned, the private enterprise.

15. The Committee expresses its concern that the victims of displacements are not being provided with adequate redress and compensation. The Committee notes with concern that agreements are being reached with only a few members of the family and community and that inadequate amounts are being paid, and that redress and compensation are left in the hands of firms.

The Committee recommends that effective redress and compensation be provided for persons facing displacement owing to economic projects. It also recommends that, if a displacement is shown to be necessary, the State party should ensure that the persons displaced from their properties receive proper compensation, and provide for their relocation places that are equipped with basic services such as water supply, electricity, washing facilities and sanitation and proper facilities such as schools, health centres and transport.

16. The Committee takes note that in the cases of the Naso community in San San and in San San Druy, and of the community in Charco La Pava, the Inter-American Commission on Human Rights has ordered provisional and unembargoed precautionary measures which have not been complied with by the State party. It also further notes with serious concern that in the case of Charco La Pava, in August 2008

the Committee sent a letter under its early-warning procedure and that this case is before the Inter-American Court of Human Rights and was the object of a visit by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people in January 2009.

The Committee urges the State party to pay careful attention to the statements and decisions of regional and international bodies on the issue, in order to prevent situations that violate the human rights of its indigenous communities. The Committee urges the State party to reconsider its position and to heed the requests by the Inter-American Commission on Human Rights, and the recommendations of the Special Rapporteur, and also to heed the calls made by this Committee and suspend construction of the dam on the Changuinola river and to endeavour to ensure that the human rights of its indigenous communities continue to be protected. It also recommends that a careful examination be made of the agreements reached on this matter to ascertain whether or not they comply with the State party's international obligations in respect of human rights. If that is not the case, the Committee recommends that the State party seek mechanisms in order to negotiate appropriate agreements for those communities.

17. The Committee expresses its serious concern at the refugee recognition process under way in the State party, and in particular at the situation of the refugees from the Emberá population fleeing from their place of origin in Choco (Colombia).

The Committee recommends that the State party ensure that its asylum application mechanisms conform to the relevant international standards. It urges the State party in particular to respond to the specific situation of refugees belonging to the Emberá population.

18. The Committee expresses its concern at the existence of negative stereotypes and perceptions of minorities propagated by the media and history books. It notes with particular concern the statements by Government officials against persons of foreign origin, especially Colombians and persons from outside the American continent.

The Committee recommends that the State party urgently carry out campaigns to raise awareness of racial discrimination and to combat existing stereotypes. It also recommends that it provide its Government officials with education and training in that sphere.

19. The Committee notes with concern the levels of HIV/AIDS infection among the Kuna indigenous community and, in this respect, also notes with concern the limited access to sexual and reproductive health services for indigenous peoples and Afro-Panamanians.

The Committee urges the State party to ensure that sexual and reproductive health services are available for and accessible to the whole population, and in particular the Kuna community. It also urges it to carry out a campaign to raise awareness of sexually transmitted diseases.

20. The Committee is concerned by the information received about the intimidation and persecution of indigenous leaders and communities for militancy in protecting indigenous rights, and in particular in connection with major economic projects in the fields of hydroelectricity, mining and major works or tourist projects.

The Committee urges the State party to step up measures to ensure the safety of indigenous leaders and communities, and in this respect to pay particular attention to the precautionary measures ordered by the Inter-American human rights system. In view of the valuable role the Ombudsman's Office plays in preventing violations, the Committee recommends that the State party increase the funds assigned to the Office.

21. The Committee expresses its concern at the fact that the administration of justice has not adopted suitable measures to protect the rights of Afro-Panamanians and indigenous peoples and that the perpetrators of violations are as a rule unpunished. The Committee is also concerned that legal advice is inadequate and not always available in the indigenous languages.

The Committee draws the attention of the State party to its general recommendation No. 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system. It encourages the State party to strengthen the provision of legal advice and to ensure that proper interpretation into indigenous languages is provided during trials. The Committee recommends that the State party pay particular attention to the conditions of imprisonment of the large number of Afro-Panamanians deprived of their liberty. In addition, the Committee urges the State party to ensure that remedies are effective, independent and impartial and that victims receive fair and proper compensation. The Committee urges the State party to investigate and punish the practice of racial profiling used by the police against the population of African descent.

22. Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified; in particular it urges it to consider ratifying the ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169).

28. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 13 and 14 above.

29. The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 9, 11, 15 and 18 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

15. Australia, CERD/C/AUS/CO/15-17, 13 September 2010

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

4. The Committee notes with satisfaction the national apology for past negative Government policies, issued by the State party on 13 February 2008 to indigenous peoples and in particular the Stolen Generations, as a first step towards genuine

reconciliation and reparations to be made in recognition of the history of gross violations of human rights.

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

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

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

In the light of the Committee’s general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts by Australian corporations which negatively impact on the enjoyment of rights of indigenous peoples domestically and overseas and to regulate the extra-territorial activities of Australian corporations abroad. The Committee also encourages the State party to fulfil its commitments under the different international initiatives it supports to advance responsible corporate citizenship.

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

Drawing the attention of the State party to the Committee’s general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee reiterates its recommendation that the State party increase efforts to ensure a meaningful reconciliation with indigenous peoples and that any measures to amend the Australian Constitution include the recognition of Aboriginal and Torres Strait Islanders as First Nations Peoples. In this regard, the Committee recommends that the State party consider the negotiation of a treaty agreement to build a constructive and sustained relationship with indigenous peoples. The Committee also recommends that the State party

provide the National Congress of Australia's First Peoples with the adequate resources to become fully operational by January 2011 and support its development.

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

The Committee urges the State party to guarantee that all special measures in Australian law, in particular those regarding the NTER, are in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures. It encourages the State party to strengthen its efforts to implement the NTER Review Board recommendations, namely that: it continue to address the unacceptably high level of disadvantage and social dislocation being experienced by Aboriginal Australians living in remote communities throughout the Northern Territory; that it reset the relationship with Aboriginal people based on genuine consultation, engagement and partnership; and that Government actions affecting the Aboriginal communities respect Australia's human rights obligations and conform with the Racial Discrimination Act.

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

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

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

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

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

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

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

Taking into account the Committee’s general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party dedicate sufficient resources to address the social and economic factors underpinning indigenous contact with the criminal justice system. It encourages the State party to adopt a justice reinvestment strategy, continuing and increasing the use of indigenous courts and conciliation mechanisms, diversionary and prevention programmes and restorative justice strategies, and recommends that, in consultation with indigenous communities, the State party take immediate steps to review the recommendations of the Royal Commission into Aboriginal Deaths in Custody, identifying those which remain relevant with a view to their implementation. The Committee also recommends that the State party implement the measures outlined in the National Indigenous Law and Justice Framework. The Committee encourages the State party to ensure the provision of adequate health care to prisoners.

21. The Committee welcomes the new national approach to preserve indigenous languages but is concerned that no additional financial resources have been committed by the State party nor received by the Maintenance of Indigenous Languages and Records programme for this new approach. The Committee is also

highly concerned by the recent abolition of bilingual education funding by the Northern Territory government in the light of the precarious condition of many indigenous languages, and the lack of adequate opportunities for children to receive instruction in or of their language (arts. 2 and 5).

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

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

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

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

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

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

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

32. In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present conclusions, on its follow-up to the recommendations contained in paragraphs 11, 16 and 23 above.

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

16. Denmark, CERD/C/DNK/CO/18-19, 20 September 2010

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

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

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

The Committee reiterates that, pursuant to its general recommendation No. 8 (1990) and other United Nations instruments, the State party is urged to pay particular attention to self-identification as a critical factor in the identification and conceptualization of a people as indigenous. The Committee therefore recommends that, notwithstanding the decision of the Supreme Court, the State party adopt measures to ensure that self-identification is the primary means for determining whether a people are indigenous or not. In this regard, the Committee recommends that the State party adopt concrete measures to ensure that the status of the Thule Tribe reflects established international norms on indigenous peoples' identification.

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

17. El Salvador, CERD/C/SLV/CO/15, 14 September 2010

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

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

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

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

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

The Committee recommends that the State party improve its census methodology, in close cooperation with the United Nations, the indigenous

peoples, and people of African descent, so that it reflects the ethnic complexity of Salvadoran society, taking into account the principle of self-identification. It also recommends that the State party take note of the Committee's general recommendation No. 8 (1990) and of paragraphs 10-12 of the guidelines for the Committee-specific report to be submitted by States parties under article 9, paragraph 1, of the Convention (CERD/C/2007/1). The Committee recommends that the State party consider taking confidence-building measures in order to create a climate of trust with regard to the indigenous peoples and people of African descent prior to the census. The Committee requests the State party to include disaggregated statistics on the composition of the population and data on the census to be taken in 2012 in its next periodic report.

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

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

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

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

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

The Committee recommends that the State party step up its efforts to improve the enjoyment by indigenous peoples of economic, social and cultural rights, including access to safe drinking water and guarantee their rights to land and resources traditionally owned and used, and invites it to take into account its

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

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

The Committee recommends that programmes for the revitalization of the Nahuat-Pipil indigenous language be expanded to other indigenous languages.. It requests the State party to provide updated information on any such new initiatives, in addition to Casas Temáticas, and programmes, including with regard to the Lenca, Kakawira (Cacaopera), Mayan and any other indigenous languages of El Salvador The Committee also recommends that the State.

18. Morocco, CERD/C/MAR/CO/18, 13 September 2010

7. The Committee notes the explanations given by the delegation for the State party's refusal to identify ethnic groups or make distinctions between citizens on ethnic, linguistic or religious grounds. It is, however, concerned by the lack of statistical data in the State party's report relating to the ethnic composition of the population.

In the light of general recommendation No. 08 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4, of the Convention and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide information on the composition of its population, on the use of mother tongues, on languages commonly spoken, and on any other indicator of ethnic diversity. The Committee also recommends that it be provided with any other information drawn from targeted socio-economic research in which participation was voluntary and the privacy and anonymity of the persons concerned were fully respected, that might assist it in evaluating the economic, social and cultural situation of the Moroccan population.

11. The Committee notes the information that the State party has provided about steps taken to promote the Amazigh language and culture, particularly in education, and to strengthen the resources of the Royal Institute for Amazigh Culture. The Committee is nonetheless concerned that the Amazigh language is not consistently recognized as an official language in the State party's Constitution, and that some Amazighs continue to suffer racial discrimination in accessing employment and health services, as well as in other areas, especially if they do not speak Arabic (art. 5).

The Committee recommends that the State party step up its efforts to promote the Amazigh language and culture, particularly through the teaching of this language and culture, and take additional steps to ensure that Amazighs are not subject to racial discrimination, in particular as regards access to employment and health services. It also encourages the State party to consider making the Amazigh language an official language under the Moroccan Constitution, and to provide literacy training for the Amazigh in their own language. Lastly, the Committee recommends that the State party give special attention to the development of regions inhabited by the Amazigh in the context of the work of the Consultative Committee on Regionalization.

12. The Committee is unclear as to the meaning and scope of the concept “Moroccan name” referred to in article 21 of Act No. 37-99 of 2002 on civil status, the application of which continues to prevent civil registrars from registering certain names, including Amazigh names in particular (art. 5).

The Committee recommends that the State party clarify the meaning and scope of the concept “Moroccan name” as used in its legislation. It also recommends that the State party ensure that its civil registrars adhere fully to the provisions of the Ministry of Internal Affairs Circular of March 2010 on choice of given names, which stipulates that all citizens shall have the right to register the names of their choice, including Amazigh names.

19. The Committee is concerned that vulnerable segments of the population who do not speak Arabic, particularly the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers, continue to encounter communication difficulties in contacts with the judiciary at every stage of the legal process – a situation likely to result in violations of their right to equal treatment, protection and effective redress before the courts (arts. 5 and 6).

The Committee recommends that the State party ensure full application of articles 21, 73, 74 and 120 of the Code of Criminal Procedure, guarantee the availability of interpretation services by training a greater number of sworn interpreters, and ensure that litigants from vulnerable population groups who do not speak Arabic, in particular the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum seekers, may benefit from proper administration of justice.

20. The Committee notes the measures and initiatives adopted by the State party to guarantee human rights training and raise awareness, including, in particular, the national plan of action to promote a culture of human rights launched in 2006. However, the Committee is concerned that racist stereotypes persist and that the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers continue to be viewed in a negative light by the rest of the Moroccan population (art. 7).

The Committee recommends that the State party step up its efforts to provide human rights training, placing a particular focus on the fight against racial discrimination, as well as its efforts to raise awareness of the need for tolerance, interracial or interethnic understanding and intercultural relations

among law enforcement officials — specifically, police officers and gendarmes, members of the judiciary, prison officers and lawyers — and also among teachers. It also recommends that the State party continue its efforts to raise public awareness and knowledge of the importance of cultural diversity, understanding and tolerance, especially in respect of vulnerable population groups and the Amazigh, Sahraouis, Blacks, non-nationals, refugees and asylum-seekers in particular.

B. Early Warning/Urgent Action and Follow Up Procedures

1. Australia, 13/03/2009 (Urgent Action)

The Committee on the Elimination of All Forms of Racial Discrimination appreciated the open and constructive discussion which took place on Wednesday 25 February 2009 between representatives of the Australian Mission and the Working Group on Early Warning and Urgent Action Procedure on the issues raised before the Committee in relation to the Northern Territory Emergency Response. The Committee also acknowledges the written information received from the Australian Mission in this respect.

The Committee's attention has been drawn to reports according to which measures being implemented to achieve the objectives contained in the Northern Territory Emergency Response (NTER) have allegedly led to serious discrimination against Aboriginal persons in certain communities of the Northern Territory. The Committee notes with concern that the Racial Discrimination Act was suspended as a necessity to enact the measures contained in the NTER.

However, the Committee, taking into account information received from the State party, observes that the current government, in consultation with indigenous communities affected by the NTER, is in the process of redesigning key NTER measures in order to guarantee their consistency with the Racial Discrimination Act. In the regard, the Committee recalls article 2.2 of the Convention according to which, "States parties shall, when the circumstances so warrant, take [...] special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."

In light of the above, and in order to continue a constructive dialogue with your Government, the Committee requests the State party to submit further details and information on the following issues no later than 31 July 2009:

- Progress on the drafting of the redesigned measures, in direct consultation with the communities and individuals affected by the NTER, bearing in mind their proposed introduction to the Parliament in September 2009.
- Progress on the lifting of the suspension of the Racial Discrimination Act.

The Committee welcomes the government's commitment to building a new relationship with Indigenous Australians based on mutual respect, mutual resolve and responsibility.

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

2. Canada, 13/03/2009 (Urgent Action)

The Committee on the Elimination of All Forms of Racial Discrimination appreciated the open discussion which took place on Tuesday 3 March 2009 between representatives of the Canadian Permanent Mission to the United Nations in Geneva and the Working Group on Early Warning and Urgent Action Procedure on the issues raised before the Committee.

At the outset, the Committee wishes to clarify the question of its competence to request further information from State Parties. According to article 9.1 (b) of the Convention on the Elimination of All Forms of Racial Discrimination, the States Parties undertake to submit a report on legislative, judicial, administrative or other measures "(...) whenever the Committee so requests." Regarding the competence of the Committee to act under its early warning and urgent action procedure, the five-member working group, established in accordance with rule 61 of its rules of procedure, has the competence to analyse and assess in a preliminary way information received on situations that may require urgent action. The guidelines for the early warning and urgent action procedure (A/62/18, annex III), which further elaborate guiding principles for the prevention of racial discrimination set out in a working paper adopted in 1993 (A/48/18, annex III), list a series of Indicators for the application of that procedure, inter alia, in the case of "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".

The following issues have recently been brought to the attention of the Committee: (1) increased development in indigenous territories in British Columbia without the informed consent of Indigenous Peoples and (2) the privatization of traditional lands for the benefit of mining and energy companies with informed consent of the citizens of Kitchenuhmanykoosib Inninuwug:

- (1) Concerning the developments in indigenous territories in British Columbia, the Committee has been made aware of the following situations:
 - According to information submitted, "Sun Peaks Ski Resort Real Estate Market Area", in connection with the 2010 Winter Olympics, wishes, to enlarge ski resorts in British Columbia on Aboriginal land and build a large number of houses and apartments. According to the reports, this is taking place without the informed consent of Indigenous Peoples and indigenous people participating in protests have been arrested;
 - According to information submitted, the British Columbia Treaty Commission is engaged in a process of negotiation with Indigenous Peoples which would result in the modification of aboriginal land rights and their conversion into fee simple titles, e.g. for Xaxli's First Nation, Lhedili Tènnèh and Tsawwassen. Questions have been raised as to

whether the negotiation processes meet the standards of fairness and transparency.

- (2) Concerning the privatization of traditional lands, the Committee has been made aware of the Kitchenuhmanykoosib Inninuwug case, whereby it is claimed that the State party and the province of Ontario are intent on privatizing traditional lands and turning them over to mining and energy companies. The Committee was informed that these actions are being taken without the informed consent of the citizens of Kitchenuhmanykoosib Inninuwug. Furthermore, the sources report that several citizens of Kitchenuhmanykoosib Inninuwug were jailed for failure to remove themselves from their traditional territory.

In order to continue a constructive dialogue with your Government, the Committee requests the State party to submit information on the situations mentioned above, in particular on:

- The arrests of indigenous activists;
- The standards of fairness and transparency in negotiation process on the modification of Aboriginal titles, including allegations concerning financial inducements to conclude agreements;
- The voting that took place in the Lhedili Tènnèh and Tsawwassen processes, and in particular the reasons for initiating a second ratification vote in Lhedili Tènnèh despite the fact that the peoples had already voted against the final agreement.

Regarding the Lubicon Lake India Nation case (please refer to the Committee's letter dated 15 August 2008), the Committee was informed that the State party's interim response is almost completed. The Committee acknowledges this with appreciation.

The Committee kindly asks the State party to submit the information mentioned above in the interim-report within the context of the Follow-up procedure no later than 31 July 2009. 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 previous concluding observations and asks the State party to include these comments in the same document.

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.

3. El Salvador, 13/03/2009 (Urgent Action)

I have the honour to write to remind you that the Committee in its 68th session, held between the 20th of February and the 10th of March 2006, examined the 9th to 13th periodic reports from El Salvador, and has adopted respective concluding observations (CERD/C/SLV/CO/13).

In pursuance of Article 9, paragraph 1, of the Convention, and rule 65 of the Committee's internal rules of procedures, as amended, the Committee requested in paragraph 22 of its concluding observations that the State party provide information within one year regarding the implementation of the Committee's recommendations contained in paragraphs 10, 12 and 15 of its final observations. .

Until now, the Committee has not received any information from the State party in this regard. On the other hand, the Committee has received information according to which the State party allegedly could have undertaken “statistical genocide” in its latest census. According to the same source, the census results could have resulted in the denial of the existence of indigenous peoples in El Salvador caused by the lack of registration of indigenous peoples in the 2007 census and due to the same census being carried out without consultation with indigenous peoples and without appropriate information and explanation. 1 In the light of this information, the Committee would like to refer to paragraph 15 of its concluding observations, which mentions that ‘The Committee notes that, according to the State party, it is difficult to identify indigenous peoples, since they sometimes prefer not to identify themselves as such. It also notes that, according to some reports, this is due in large part to the events of 1982 and 1983, when large numbers of indigenous people were murdered. The Committee is seriously concerned that the persons responsible for those acts have not been identified, tried and punished. The Committee urges the State party to take account of the recommendations made by the Human Rights Committee in its concluding observations on El Salvador (2003), to the effect that the General Amnesty Act should be amended to make it compatible with international human rights instruments. The Committee also encourages the State party to put into effect the recommendations made by the Inter-American Commission on Human Rights and adopt a programme of reparation and where possible material compensation for the victims, thus creating a climate of trust that will enable the indigenous people to assume their identity without fear.’

In this regard and with a view to continuing a constructive dialogue with the State party, the Committee requests that the State party provides information on the implementation of the recommendations of the Committee mentioned in paragraphs 10, 12 and 15 of the concluding observations, in particular the recommendation mentioned in paragraph 15 related to the case mentioned above, before the 31st of July 2009.

4. India, 13/03/2009 (Urgent Action)

The Committee on the Elimination of Racial Discrimination hereby wishes to follow up its letter dated 15 August 2008. The Committee was expecting to be informed by March 2008 on the measures taken by your Government to follow up on the recommendations contained in paragraphs 12, 15, 19 and 26 of its concluding observations on India. The Committee notes with regret that to date, it has not received any information in this respect.

The construction of several dams in the region of Northeast India remains an issue of concern for the Committee with regard to the consequences for the indigenous communities of the region. Indeed, it has recently been brought to the attention of the Committee that the Indian government (Ministry of Environment and Forests) has issued an “environmental clearance permit” allowing for the construction of the Tipaimukh dam without meaningfully seeking to obtain prior consent of the affected indigenous peoples. The Committee therefore reiterates its request for the State Party to submit comments on the implementation of the recommendations contained in paragraph 19 of its concluding observations and in particular to provide detailed information on the compensation measures for the affected persons.

Also, with regard to the Armed Forces (Special Powers) Act of 1958, the Committee refers once again to paragraph 12 of its concluding observations and urges the State Party to follow its recommendation of repealing it. The Committee therefore reiterates its request for the State Party to submit comments on this matter and in particular on the recent extension of “disturbed area” declarations throughout the region of Northeast India.

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

5. Indonesia, 13/03/2009 (Urgent Action)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 71st session held from 30 July to 18 August 2007, considered the initial to third periodic reports of Indonesia and adopted concluding observations in relation thereto (CERD/C/IDN/CO/3).

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 31 of its concluding observations that your Government provide information on the way it has followed up on the recommendations contained in paragraphs 17, 20 and 25 within one year. The Committee notes with regret that, to date, it has not received any information from the State Party in this respect, despite its invitation to respect the deadlines set for the submission of reports.

The high number of conflicts arising each year throughout Indonesia between local communities and palm oil companies remains an issue of concern for the Committee, in particular with regard to the protection of indigenous peoples’ rights. Indeed, it has recently been brought to the attention of the Committee that oil palm plantations continue to be developed on indigenous peoples’ lands in the Kalimantan border region without any apparent attempt by the State to comply with the Committee’s recommendations or to otherwise secure and protect indigenous peoples’ rights.

In this regard, the Committee recalls paragraph 17 of its concluding observations, in which it recommended that the State party “secure the possession and ownership rights of local communities before proceeding further” with the Kalimantan Border Oil Palm Mega-project. The committee also recommended in paragraph 17 that “the State Party should ensure that meaningful consultations are undertaken with the concerned communities, with a view to obtaining their consent and participation in [the project].”

Moreover, the Committee has received information according to which Indonesia continues to lack any effective legal means to recognize, secure and protect indigenous peoples’ rights to their lands, territories and resources. For instance, it seems that Indonesia’s 2008 “Regulation on Implementation Procedures for Reducing Emissions for Deforestation and Forest Degradation” reiterates Law 41 of 1999 on Forestry that appears to deny any proprietary rights to indigenous peoples in forests.

In light of this information, the Committee would like to refer again to paragraph 17 of its concluding observations, in which it had urged the State Party to “review its laws [...] 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.”

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 paragraph 17 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 are threatened by projects such as the Kalimantan Border Oil Palm Mega-project. The Committee also reiterates its request for the State Party to provide comments with respect to the implementation of the recommendations contained in paragraphs 20 and 25 of its concluding observations. The Committee wishes to receive such comments no later than 31 July 2009.

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

6. Laos, 13/03/2009 (Urgent Action)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 66th session held from 21 February to 11 March 2005, considered the periodic report of the Lao People’s Democratic Republic and adopted concluding observations in relation thereto (CERD/C/LAO/CO/15). A follow-up report was received from your Government on 19 May 2006, to which the Committee responded by its letter of 18 August 2006, expressing inter alia continued concern about alleged acts of violence against members of the Hmong minority.

I wish to inform you that the Committee, at its 74th session held from 16 February to 6 March 2009, considered new information received on the situation of the Hmong indigenous people in Xaisomboune province under its early warning and urgent action procedure. The Committee is concerned about reports citing the use of military force against these people and action depriving them of access to traditional sources of food and livelihoods.

The Committee therefore requests to be informed about the situation of the Hmong indigenous people in this area, in particular with regard to allegations concerning the deployment of military operations against them. In addition, the Committee would appreciate receiving information on the general situation of the Hmong people in the Lao PDR (demographic, economic and socio-cultural data).

Also, given the ongoing repatriation of Lao Hmong refugees from the Huai Nam Khao camp in Thailand, scheduled to end in June this year, the Committee would like to receive information about the status, safety and well-being of returnees in the Lao PDR. The Committee urges the State Party to accept United Nations assistance to help manage the repatriation process.

In light of the above, and with a view to continuing a constructive dialogue with your Government, the Committee requests the State Party to provide comments no later than 31 July 2009. 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.

7. Nepal, 13/03/2009 (Urgent Action)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 64th session held from 23 February to 12 March 2004, considered the fifteenth and sixteenth periodic reports of Nepal and adopted concluding observations in relation thereto (CERD/C/64/CO/5). According to paragraph 25 of the Concluding Observations, the seventeenth, eighteenth and nineteenth periodic reports, combined in one document, fell due on 1 March 2008.

In the meantime, in connection with the recent political changes in Nepal and the decision to prepare a new Constitution, issues concerning the participation of indigenous peoples' freely chosen representatives in Nepal's constitutional preparation process have been brought to the attention of the Committee. According to information submitted to the Committee, Nepal's new Constitution is currently being drafted by a Constituent Assembly in which indigenous peoples may only formally participate if they were chosen by political parties and act in strict conformity with the manifestos of those parties.

I wish to inform you that the Committee, at its 74th session, held from 16 February to 6 March 2009, considered this matter under its early warning procedure with a view to avoid irreparable harm to indigenous peoples and assisting Nepal in ensuring that the rights guaranteed by the Convention are fully recognized and respected.

In light of the above, and in order to continue its constructive dialogue with your Government, the Committee requests information on measures taken to ensure the participation of indigenous peoples in the ongoing constitution-making process. The Committee requests that such information be provided together with the fifteenth and sixteenth periodic reports, to be submitted in one document, as soon as possible and in any event no later than 31 July 2009.

The Committee recommends that mechanisms be established to ensure indigenous peoples' free prior and informed consent in relation to the constitutional preparation process, and that an indigenous peoples' thematic committee be set up to guarantee the representation and participation of indigenous peoples in political life.

In this regard, the Committee wishes to recall its General Recommendation No. 23 on Indigenous Peoples (18/08/97). By paragraph 4 (d) of this General Recommendation, States parties are reminded to "ensure that members of indigenous peoples have equal rights in respect of effective participation in public life and that no decisions directly relating to their rights and interests are taken without their informed consent".

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

8. Peru, 13/03/2009 (Urgent Action)

I have the honour to address you to inform that in the course of the 74th session, the Committee continued the consideration of the situation of the Ancomarca

community of the Tacna Province under its Early Warning and Urgent Action procedure, in the light of the updated information presented by CAPAJ. Also, the Committee continued examining the current situation of the Achuar people and other indigenous peoples affected by the exploitation of hydrocarbons in the Corrientes River.

The Committee welcomes with satisfaction the presentation of the reports 14th to 18th as well as the answers to the questions posed by the Committee in its letter dated 15th of August 2008.

In reference to the case of the Ancomarca community of the Tacna province, the Committee has received information in relation to the last events occurred in the community of Ancomarca (Tacna-Peru) in December 2008. According to this information, the government of Peru has permitted that four more wells in the territory of the community denominated Ayro are in operation to extract underground water in the territories of Ancomarca, without notifying the affected people, causing drought in these lands and leaving the inhabitants without drinking water. According to the same source, the extraction of water is illegal in accordance to the Water legislation of Peru because to do so requires a Resolution of the Intendancy/Administration of Natural Resources (INRENA, Intendencia Nacional de Recursos Naturales), which does not exist.

In light of the above, the Committee urges the State party to take the necessary measures to guarantee the use and enjoyment of the waters to the inhabitants of the Community of Ancomarca and to proceed to the suspension of the extraction of the underground waters of this community. Furthermore, the committee encourages the State party to take measures to repair the damages caused to the community.

In reference to the case of the Pueblo Achuar and other affected indigenous peoples by the exploitation of hydrocarbons in the Corrientes River, the Committee is still worried by the alleged and continuous violations to the rights of the Achuar people and the slowness that characterizes the measures taken by the State party to remedy such situation. According to certain information, to this moment no action has been taken by the State party to implement the Dorissa Accord of October 2006 between the government, the oil company Pluspetro and the indigenous communities of the Corrientes river aimed to remedy the health problems of the inhabitants of the Achuar people and its environment. According to the same source, the government has not taken any type of action to reform the internal law that still does not comply to the rights of indigenous peoples to their lands, natural resources and to consultation and free, prior and informed consent. Such information indicates that the State also has not issued a moratorium at the start or continuation of the additional hydrocarbon activities in the lands of the Achuar concerning the lots 101, 102, 104, 106, 123, 127 and 143. In this regard, the Committee would thank to receive a response, information or clarification of the above-mentioned situation, before July 31st 2009.

9. Tanzania, 13/03/2009 (Urgent Action)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 67th session held from 2 August to 19 August 2005, considered the eighth to sixteenth periodic reports of the United Republic of Tanzania and adopted Concluding Observations in relation thereto (CERD/C/TZA/CO/16).

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 26 of its concluding observations that your Government provide information on the way it has followed up on the recommendations contained in paragraphs 13, 17 and 18 within one year. Moreover, the Committee recommended in paragraph 27 of its concluding observations that your Government submit its seventeenth and eighteenth periodic reports no later than 26 November 2007. The Committee notes with regret that, to date, it has not received any information in respect of the above.

The expropriation of the ancestral territories of certain ethnic groups, and their forced displacement and resettlement remains an issue of concern for the Committee. Indeed, it has recently been brought to the attention of the Committee that the pastoralist Maasai community of Soitsambu Village in Ngorongoro District of Arusha Region has forcibly been evicted from Sukenya Farm and therefore unilaterally dispossessed of the land it has traditionally occupied. Moreover, the Soitsambu villagers are allegedly being denied access to vital sources of water on the Sukenya Farm therefore threatening their survival and that of their livestock.

In this regard, the Committee recalls paragraph 14 of its Concluding Observations, in which it recommended that the State party "provide detailed information on the expropriation of the land of certain ethnic groups, on compensation granted and on their situation following their displacement." Furthermore, the Committee recommended in paragraph 16 of its Concluding Observations that the State Party "provide detailed information on the situation of nomadic and semi-nomadic ethnic groups and on any special measures taken with a view to ensuring the enjoyment of their rights under the Convention, notably their freedom of movement and their right to participate in decisions which affect them."

In light of the reports on recent events and developments in Sukenya Farm, the Committee now requests the Government of the United Republic of Tanzania to provide the aforementioned information, together with the information on its follow up to the Committee's recommendations contained in paragraphs 13, 17 and 18 as soon as possible and not later than 31 July 2009.

In addition, in light of its concern that the situation in Sukenya Farm may lead to further acts of discrimination against the Soitsambu villagers, the Committee, after considering the situation under its early warning and urgent action procedure, requests the Government of the United Republic of Tanzania to engage in a constructive dialogue with the Committee whereby the following interim measures are put in place until the government deliver its finding or the dispute is settled through national legal processes:

- Soitsambu villagers should be granted access to Sukenya Farm for the purpose of grazing and watering their livestock.
- Further commercial development of the disputed land, such as the construction of hotels, roads and houses, should be suspended while the relevant legal authorities deliberate over the disputed legal title to Sukenya Farm.
- The government should undertake to ensure the physical security of the Soitsambu villagers and investigate thoroughly all allegations of brutality and criminality by the police and the security guards of the company occupying the farm.

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

10. New Zealand, 13/03/2009 (Follow Up)

Paragraph 14 of the concluding observations: The Committee welcomes the information provided by the State party on the incorporation of references to the Treaty of Waitangi in domestic legislation and invites the State party to:

- Supply examples of legislation referring to the Treaty of Waitangi;
- Transpose the terms of the Treaty of Waitangi into the national legal framework;
- Supply examples of concrete cases in which courts have adjudicated on Treaty matters; and
- Provide examples of recommendations formulated by the Waitangi Tribunal, if any, that have been followed by the Crown in claim settlements with the Maori community.

Paragraph 19 of the concluding observations: The Committee appreciates the extensive information provided by the State party regarding the progress made in negotiations with the Maori with respect to the Foreshore and Seabed Act. The Committee reiterates that an ongoing dialogue with the Maori community is of utmost importance for a just and fair implementation of the Foreshore and Seabed Act. In this regard, the Committee invites the State party to provide information on:

- Recent progress made in ongoing negotiations;
- New negotiations with groups which have decided to collaborate with the Government;
- The status of the dialogue held with tribes who oppose the act;
- Land rights granted to tribes in accordance with the Foreshore and Seabed Act; and
- The realization of the right to access justice through a fair and equitable process, e.g. in the case of *Te Whanau a Apanui*.

Paragraph 20 of the concluding observations: The Committee notes with satisfaction the incorporation of references to the Treaty of Waitangi in the final *New Zealand Curriculum*, as well as the launch of the new education strategy for the Maori and encourages the State party to continue to take steps to promote and strengthen New Zealand's cultural diversity.

Paragraph 23 of the concluding observations: The Committee welcomes the interim measures taken by the State party to ensure that undocumented children, whose immigration status is being considered, still have access to education. The Committee asks the State party to make these measures permanent. Further, the Committee encourages the State party to allow access to education to all known children within its territory, regardless of whether a child's status is under consideration. The Committee also recommends that the State party adopt as quickly as possible the draft of the Immigration Bill, which would remove the problems in connection with access to education.

11. Australia, 28/09/2009 (Urgent Action)

The Committee on the Elimination of Racial Discrimination wishes to thank the Government of Australia for its timely reply of 30 July 2009 to the Committee's letter dated 13 March 2009.

The Committee appreciates the information provided on the progress in the drafting of redesigned Northern Territory Emergency Response measures and the lifting of the suspension of the *Racial Discrimination Act 1975*. The Committee notes that sincere efforts have been made to make adjustments to the Emergency Response measures with a view to addressing discriminatory aspects. At the same time, the Committee takes note of the assessment by the Special Rapporteur on the human rights of indigenous peoples following his recent visit to Australia that the Emergency Response, as currently configured and carried out is still incompatible with Australia's obligations under the International Convention on the Elimination of Racial Discrimination.

The Committee encourages the State party to give due consideration to the findings of the Special Rapporteur and continue its efforts to bring measures undertaken within the framework of the Emergency Response in full compliance with the provisions of the Convention. Noting that Australia's periodic report to the Committee is due on 30 October 2008, the Committee requests the State party to include information on these efforts in this report and to submit the report as soon as possible and in any event before the Committee's forthcoming session commencing on 15 February 2010.

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

12. Niger, 28/09/2009 (Urgent Action)

Recalling that the Republic of Niger ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 27 April 1967, I write to inform you that during its 75th session, the Committee on the Elimination of Racial Discrimination undertook a preliminary examination, under its early warning and urgent action procedure, of information relating to the situation of the Tuareg peoples.

According to information received by the Committee, uranium mining has been carried out on the traditional lands of the Tuareg peoples without any consultation with them, or provision of appropriate compensation. The Committee notes with concern information reporting that not only has the uranium mining affected the traditional lifestyle of the Tuareg peoples, but it has also reduced and degraded their pasture lands, producing radioactive waste which has contaminated the main water tables, resulting in cases of cancer, stillbirth and genetic deformity within the Tuareg peoples living in the region. The Committee has also noted that on 5 January 2009 the Government of Niger signed a new mining agreement with AREVA, a large French consortium, authorising them to operate in the mining region of Imourarem, in northern Niger.

In light of the above, the State Party is requested to furnish the Committee with the necessary information to enable it to gain a better understanding of the situation of the Tuareg peoples and of the uranium mining on their territory. In particular, the Committee would appreciate receipt of information on the environmental and social impact assessments carried out for the new agreement with

AREVA, as well as on the measures taken to conduct consultations with the affected communities in order to obtain their prior and informed consent to these mining activities.

Allow me, Excellency, to express the Committee's desire to engage in a constructive dialogue with your Government, and to emphasise that the observations and questions noted above are offered with a view to assisting your Government in the effective implementation of the Convention.

13. Indonesia, 28/09/2009 (Urgent Action)

You will recall that the committee on the elimination of Racial Discrimination, in a letter dated 13 March 2009, requested information on follow-up to its concluding observations on the report of Indonesia adopted in August 2007. In the same letter, the committee also raised several issues in connection with indigenous peoples' rights to their lands and resources, on which it requested information to be provided by 31 July.

In the letter, reference was made in particular to the "Regulation on Implementation Procedures for Reducing Emissions from Deforestation and Forest Degradation" (REDD), adopted within the framework of the United Nations Framework Convention for Climate Change. According to information received, the property rights of indigenous peoples over traditional lands were not appropriately taken into account in the formulation of the forest Carbon Partnership Facility without having secured the meaningful participation or consent of indigenous peoples. Thus, the Committee, after having preliminarily considered the matter under its early warning and early action procedure, expresses concern that indigenous peoples' rights to their lands, territories and resources may not be sufficiently recognized and protected in the process.

In the light of the above, the committee would like to request the State party to submit comments on the measures taken to safeguard the rights on indigenous communities whose territories are affected by this process and, more generally, to provide information in the implementation of the committee's concluding observations adopted at its 71st session in 2007 (CERD/C/IDN/CO/3). The committee requests to receive such information by 30 November 2009.

14. India, 28/09/2009 (Urgent Action)

With reference to its letter to the State party dated 13 March 2009, the Committee on the Elimination of racial Discrimination, the Committee wishes to recall that it expected to be informed on measures taken to follow up on the recommendations contained in paragraphs 12, 15, 19 and 26 of its concluding observations on the periodic report of India adopted at its 70th session in March 2007. In its letter, the committee had also expressed concern at the impact of several dam construction projects as well as the continued application of the Armed Forces (Special Powers) Act of 1958 in Northeast India on indigenous communities living in this area. The Committee regrets that to date it has not received such information.

The Committee wishes to reiterate its concern with regard to the impact of dam projects on the indigenous communities of that region, in particular in light of information that the Government has not issued an "environmental clearance permit"

allowing for the construction of the Tipaimukh dam without meaningful efforts to obtain proper informed consent of the affected communities. Also, with regard to the application of the Armed Forces Act (Special Powers), the Committee wishes to reiterate its call to repeal it. The Committee thus reiterates its request for comments from the State party on the issues that have been highlighted in the aforementioned letters.

At its 75th session, the Committee also considered on a preliminary basis, under its early warning and urgent action procedure, information concerning bauxite mining plans on the religious lands of the Dongria Kondh people, in the administrative districts of Rayagada and Kalahanki in the state of Orissa. It appears that the Dongria Kondh community has not been fully and clearly informed of the implication of the mine, that no provisions have been made to allow the community to access and continue to worship in their religious site, and that no compensation has been offered for its destruction. It is alleged that the mine not only affects the livelihoods of the Dongria Kondh, but also pollutes their environment, which situation has led to protests, the erection of roadblocks and violent clashes.

15. United States of America, 28/09/2009 (Follow Up)

Paragraph 19 of Concluding Observations: The Committee notes that the information provided does not fully respond to the issues addressed in decision 1(68) and expresses concern over the slow progress in the implementation of the decision as well as the disproportionate negative environmental impact suffered by the Western Shoshone people from resource extraction activities conducted on their lands. The Committee once again calls for the full implementation of decision 1(68) and requests that information in this regard be provided to the Committee. The Committee finally highlights the need for high-level officials to interact and consult with the affected communities on matters of concern.

16. Nepal, 28/09/2009 (Urgent Action)

You will recall that the Committee on the Elimination of Racial Discrimination, at its 64th session held from 23 February to 12 March 2004, considered the fifteenth and sixteenth periodic reports of Nepal and adopted concluding observations in relation thereto (CERD/C/64/CO/5). As noted in paragraph 25 of this document, the next periodic report was expected to be received by 1 March 2008. To date, the Committee has not received any information from your Government in this respect.

As stated in the Committee's letter transmitted to your Government on 6 March 2009, the Committee is also concerned over reports concerning the inadequate participation of indigenous peoples' representatives in the ongoing constitution-making process in Nepal. According to information submitted to the Committee, representatives of indigenous peoples may only formally participate if they are chosen by political parties and act in strict conformity with the manifestos of those parties. In this regard, the Committee wishes to assist Nepal in ensuring that the rights guaranteed by the Convention are fully recognized and respected and that irreparable harm to indigenous peoples is avoided.

You will recall that in its letter of 6 March, the Committee had called for the establishment of a thematic committee for indigenous peoples to guarantee their full representation and participation in political life. The Committee commends your Government's intention of addressing indigenous peoples' rights through the Committee to Protect the Rights of Minority and Marginalized Communities.

However, in light of reports concerning the problems faced by indigenous peoples in aiming to exercise their right to effective participation, the Committee is concerned that this mechanism may not be an effective alternative to a specific thematic committee on indigenous peoples, as proposed by the Committee.

In light of the above, the Committee reiterates that the establishment of such a thematic committee should be urgently considered and that effective indigenous representation should be guaranteed by allowing the participation of indigenous representatives who are freely chosen and identified by the peoples concerned according to their own processes.

In order to continue a constructive dialogue with your Government, the Committee requests that information regarding the above be provided by 30 November 2009. The Committee would also like to be informed on progress in the elaboration of the combined seventeenth to nineteenth periodic reports of Nepal, which fell due on 1 March 2008.

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

17. Brazil, 28/09/2009 (Urgent Action)

Recalling the previous letters of the Committee on the Elimination of Racial Discrimination, I write to inform you that in the course of its 75th session, the Committee received information on new developments concerning the situation of the Indigenous Land of Raposa Serra do Sol (RSS).

In this regard, the Committee welcomes the decision of the Federal Supreme Court on the demarcation of Raposa, which allows the Government to complete the removal of non-indigenous trespassers. The Committee would urge the State party to continue its positive steps and ensure careful implementation of this decision so as to avoid any negative repercussions.

The Committee would also appreciate to receive an update on this ongoing process to have a full understanding of the situation and its progression and would thus like to reiterate its request for detailed information contained in its letter of 7 March 2008.

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

18. Niger, 12/03/2010 (Urgent Action)

I write to thank you and to inform you that the Committee on the Elimination of Racial Discrimination has received and examined the responses contained in your letter of 17 December 2009 regarding the situation of the Tuareg peoples and the impact of radioactivity linked to uranium mining in your country's northern region. At its 76th session, the Committee on the Elimination of Racial Discrimination undertook to examine this issue under its early warning and urgent action procedure.

According to the information provided by Niger, public consultations took place to inform the peoples of the major negative impacts on the environment, as well as the measures taken to eliminate or mitigate them, in the cases of: Teguidda, Artois

(Somaïr), Afasto-West (Cominak), lixiviation in heap leaching (Somaïr), Imouaren (Imouaren S.A.), Tamgak-Taossa (Somaïr) and the Imouaren mining project (Areva). Your replies also indicate that the mining legislation includes provision for compensation mechanisms in the context of mining activity impacting on indigenous peoples and in cases of expropriation of land. Furthermore, the State has included a provision in its Mining Code to allow the peoples better access to the benefits accruing from mining sector activities. However, your replies do not specify whether, within the context of the various mining activities and projects noted above, the Tuareg peoples have been compensated and to what extent. The information provided to the Committee reports on systems put in place to avoid water table contamination and dismisses any impact on water, land and the environment attributable to mining activities. In addition, it indicates that a pilot epidemiological study was carried out at the request of Areva Niger to evaluate the health risks to the workforce and peoples living in the area around the two mines.

In light of the above, I request that you furnish the Committee with the supplementary information it requires to gain a complete understanding of the situation of the Tuareg peoples and the uranium mining activities on their territory. The Committee would appreciate the State Party's clarification of the extent to which the Tuareg peoples were consulted and of the extent to which their free and prior consent was explained and sought with regard to their approval of the planned mining activities. The Committee would also appreciate receipt of information indicating whether, within the context of the above-mentioned plans as well as with regard to mining activities, the Tuareg indigenous peoples have received any form of compensation as provided for in the State Party's mining legislation and if so, the extent of such compensation. With regard to the impacts on health and the environment, the Committee advises the State Party to conduct an independent study and, in particular, to use the services of an independent international institution. Finally, the Committee would appreciate receiving information from the State Party with regard to the submission of its overdue periodic reports.

Allow me, Excellency, to express the Committee's desire to engage in a constructive dialogue with your Government, and to emphasise that the observations and questions noted above are offered with a view to assisting your Government in the effective implementation of the Convention.

19. Australia, 31/05/2010 (Urgent Action)

I write to inform you that in the course of its 76th session, the Committee considered the situation of the Aboriginal peoples in Australia, in particular the access to legal aid available from the Aboriginal Legal Rights Movement (ALRM), under its early warning and urgent action procedure, in light of information submitted to it by the ALRM.

According to the information before the Committee, the funding of Aboriginal legal aid through the ALRM has been stagnant since 1996, resulting in a decrease in real terms by over 30 per cent, whereas State funding of mainstream legal aid during this period has increased by over 120%. The ALRM mentions that a denial of access by Aboriginal peoples to basic services and in particular services related to justice, evidenced in the lack of funding for these services, compounds their already precarious situation.

The Committee notes with concern the areas mentioned by ALRM that are impacted by a situation of under-funding of Aboriginal legal aid. Firstly, Aboriginal women, whilst making up 2% of the general female population, make up 32% of the women's prison population. Second, regarding programs for Aboriginal women who are victims of family violence, ALRM states that the Federal Government is only funding programs in regional and remote communities, impacting ALRM's ability to meet requests for assistance for compensation from members of the so-called Stolen Generations, following the Trevorrow Test Case.

20. Botswana, 12/02/2010 (Urgent Action)

The Committee on the Elimination of Racial Discrimination wishes to inform you that, during its 76th session, it considered on a preliminary basis, under its early warning and urgent action procedure, information received on the situation of San/Basarwa indigenous people reportedly forced out of their traditional lands in the Central Kalahari Game Reserve.

The Committee recalls that, in 2005, it was already concerned about the persistent allegations that residents of the Central Kalahari Game Reserve were forcibly removed through such measures as the termination of basic and essential services inside the Reserve, the dismantling of existing infrastructures, the confiscation of livestock, harassment and ill-treatment of some residents by police and wildlife officers, as well as the prohibition of hunting and restrictions on freedom of movement inside the Reserve. It then recommended the State party to pay particular attention to the close cultural ties that bind the San/Barsawa to their ancestral land; to protect the economic activities of San/Barsawa that are essential elements of their cultural life, such as hunting and gathering practices; to study all possible alternatives of their relocation; and to seek the free, prior, and informed consent of the persons and groups concerned CERD/C/BWA/CO/6, par. 12).

According to information received by the Committee, in 2002, San/Barsawa indigenous people challenged their eviction in the High Court of Law of Botswana. In 2006, the High Court of Law ruled that their eviction was unlawful and unconstitutional. Notwithstanding, the Government allegedly continued the discriminatory treatment of San/Barsawa through banning them from using their water borehole and hunting for food on their land. The Committee is concerned about the alleged lack of implementation the High Court of Law's decision.

In light of the above, the Committee would like to request the State party to submit information on the situation of the Bushmen indigenous people. In particular, it would appreciate to receive comprehensive information on measures taken to implement the decision of the High Court of Law and to allow San/Barsawa indigenous people to recover their traditional lands. Finally, the State party is requested to provide the Committee with information on measures taken to implement the recommendations made in the Committee's concluding observations referred above.

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

21. Brazil, 31/05/2010 (Urgent Action)

I would like to refer to the Committee's letters of 7 March 2008, 15 August 2008 and 28 September 2009, and note with regret that the Committee has received no reply, as of to date, addressing the issues raised in the letters. I write to inform you that in the course of its 76th session, the Committee considered further the situation of the indigenous peoples of Raposa Serra do Sol (RSS) in the state of Roraima, in light of information submitted by non-governmental organizations.

In view of the information at its disposal, the Committee remains preoccupied by the situation in the RSS. It wishes to urgently receive up-to-date information from the State party as to whether all non-indigenous occupants have been removed from the area, in line with the Governmental acts on the demarcation of the Raposa lands and on the removal of non-indigenous occupants from the area (Presidential Decree of 15 April 2005, ratifying Administrative Ruling 534/05), the constitutionality of which has been recognized and confirmed by the Federal Supreme Court's decision of 19 March 2009. The Committee also request information as to whether fines levied as a result of environmental impacts have been paid, and whether concrete measures have been adopted to prevent illegal re-occupation in the RSS.

The Committee also urges immediate action to stop and prevent violence against the indigenous peoples in RSS and other indigenous areas, such as Lago da Praia. It reminds the State party o the Committees earlier calls for independent investigations into the threats and incidents of violence against the indigenous peoples of Raposa. The Committee stresses the importance that such investigations are urgently carried out, that all perpetrators are brought to justice and that victims receive adequate redress and compensation.

The Committee wishes to further remind the State party of the importance of obtaining free, prior and informed consent of the indigenous peoples in the RSS with regard to any measure or project that might affect their livelihood. In this light, it requests information from the State party as to whether their consent has been sought regarding plans to build new dams along the Cotingo River (based on legislative decree No. 2540/2006), plans to build the Paredao hydroelectric facility on the Mucajai River in Roraima, and the establishment of Monte Roraima National Park.

In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit the information requested before **31 July 2010**.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Brazil, with a view to providing it with assistance in the effective implementation of the Convention.

22. India, 12/03/2010 (Urgent Action)

With reference to its letter to the State party dated 28 September 2009, under its early warning and urgent action procedure, the Committee on the Elimination of Racial Discrimination wishes to inform the State party about its continued concern related to information received on the situation of religious lands and natural resources of Dongria Kondh people in the administrative districts of Rayagada and Kalahandi. The Committee regrets that it has not yet received any response from the State party.

It appeared that the Dongria Kondh community has not been fully and clearly informed of the impacts of the future mining activities, that no provisions have been made to allow the community to access and continue to worship in their religious site.

It also appeared that roads built have led to illegal logging and widespread deforestation. It has been further alleged that the mine construction not only affects the livelihoods of the Dongria Kondh, but also pollutes their environment, which situation has led to protests, the erection of roadblocks and violent clashes. In addition, an update of prior information received by the Committee indicates that the rights of people affected were not respected and that the impact of the construction of the mine was not considered. It finally appears that Dongria Kondh people were not consulted about the mining plans by the Government or mining companies.

In this regard, the Committee reiterates its request to the State party to provide, in accordance with article 9(1) of the Convention on the Elimination of All Forms of Racial Discrimination and article 65 of its rules of procedure, information on the situation of the Dongria Kondh people and on natural resource exploitation projects in the area concerned. The Committee would similarly appreciate to be informed on whether environmental and social impact assessments have been carried out for the new bauxite mine, and which measures or mechanisms have been taken to consult the affected communities in order to seek and clearly and fully obtain their prior free and informed consent to these mining activities. In addition, the Committee would appreciate to be informed on measures taken to ensure adequate representation of the Dongria's views in legal proceedings, as well as plans to allow their continued access to their religious site.

23. Laos, 12/03/2010 (Urgent Action)

The Committee wishes to express its gratitude for the letter of 2 October 2009, providing information on the general situation of the Hmong people, in response to the Committee's letter of 13 March 2009. I write to inform you that during its 76th session, the Committee considered further the situation of the Hmong people under its early warning and urgent action procedure, in light of your government's letter as well as additional information submitted by non-governmental organizations since March 2009.

The Committee expresses its continued concern about the situation of the Hmong people, particularly in light of information received since its letter of 13 March 2009, concerning allegedly continuing military action against the Hmong people in the Phou Bia Mountain area. According to this information, from 15-17 March 2009, 60mm and 82mm shells were fired at the Hmong people in the area, including shells that exploded with green and blue smoke, causing dizziness, nausea and diarrhea among the civilians. Some 2,000 Lao and Vietnamese troops were reported to have surrounded the area. Also, on 10 June 2009, a military helicopter allegedly sprayed chemical substances onto the area, causing breathing difficulties, skin swelling, nausea, dizziness and vomiting among the people on the ground.

The Committee reiterates its previous request for urgent submission of specific information on the situation of the Hmong people in Haisomboune/ Phou Bia Mountain area. It also urges the State party to take the necessary steps to immediately stop any military operation and withdraw its military forces from the territories mentioned, allowing for the provision of humanitarian aid and medical assistance.

The Committee also wishes to draw the State party's attention to article 30 of the United Nations Declaration on the Rights of Indigenous Peoples (A/RES/61/295, 2

October 2007), which states that military activities shall not take place in the lands or territories of indigenous peoples.

The Committee also takes note of the State party's reference in its letter of 2 October 2009 that the Hmong people are not considered a minority or an indigenous community, as they have "never been colonized by the Lao ethnic group". The Committee wishes to clarify that the United Nations Declaration on the Rights of Indigenous Peoples uses the principle of self-identification in this regard. Article 33 of the Declaration states that indigenous peoples have the right to determine their own identity or membership in accordance with their customs and traditions. The issue of whether colonization has occurred is therefore not a qualifying factor in identifying an indigenous people.

In accordance with article 9(1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response before **31 July 2010**.

Allow me, Excellency, to flag that the Committee's 77th session is scheduled to be held in August 2010, and to avail myself of this opportunity to invite a representative of the Lao People's Democratic Republic to appear before the Committee during that session in order to engage in a constructive dialogue with it on matters raised in this letter, including with a view to provide assistance in the effective implementation of the Convention.

24. Paraguay, 31/05/2010 (Urgent Action)

I write to inform you that in the course of its 76th session, the Committee considered the situation of the indigenous peoples in Paraguay under its early warning and urgent action procedure, in light of information submitted by a non-governmental organization.

According to the information before the Committee, there is a continued violation of the rights of indigenous peoples in Paraguay to their traditional lands. Census figures published in 2002 revealed that 45 per cent of Paraguay's indigenous peoples did not enjoy definitive legal ownership of their land, and the report of the Paraguayan Truth and Justice Commission of August 2008 highlighted, inter alia, violations of the rights of indigenous peoples to land and self-determination and their impact on other rights.

The Committee notes that, in 2008, the UN Committee on Economic, Social and Cultural Rights expressed its deep concern over 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, and over reports that the National Police used excessive force in carrying out those evictions, by burning and destroying housing, crops, property and animals.

The Committee also notes that, in 2009, a mission led by the UN Permanent Forum on Indigenous Issues highlighted the dire socio-economic circumstances of indigenous communities in Paraguay, particularly in the Chaco, including high illiteracy rates, inadequate housing conditions, access to health care, serious health concerns, access to water and sanitation, and child labour.

The information submitted to the Committee flags the plight of two indigenous communities, the Sawhoyamaxa and Yakye Axa, to return to their traditional lands in the lower Chaco area of central Paraguay as emblematic of the wider issue. Rulings of the Inter-American Court of Human Rights ordering Paraguay to return these communities to their traditional lands within three years and, until this was achieved, to provide the communities with clean water, food, and health-care, have reportedly yet to be implemented (rulings No. 125 (2005) and On. 146 (2006)). The communities have reportedly been living in makeshift settlements next to the Pozo Colorado-Concepción highway, with inadequate shelter, food and water, health and education facilities.

The Committee expresses its deep concern regarding the information submitted to it and requests the State party to provide it with detailed information on steps taken to address these issues mentioned above. The Committee would be grateful to urgently receive information on steps taken regarding the Yakye Axa and Sawhoyamaxa communities to ensure their access to health care, food and water, until all formal procedures are completed for the communities to be able to return to their land.

In accordance with article 9 (1) of the Convention and article 65 of its Rules of Procedure, the Committee requests the State party to submit its response before **31 July 2010**. The Committee also avails itself of the opportunity to remind the State party that its initial report to the Committee, due in September 2004 is still to be submitted and looks forward to receiving the report.

Allow me, Excellency, to reiterate the wish of the Committee to continue to engage in a constructive dialogue with the Government of Paraguay, with a view to provide it with assistance in the effective implementation of the Convention.

25. Peru, 13/03/2010 (Urgent Action)

The Committee on the Elimination of Racial Discrimination wishes to thank the State party for its letter dated 4 January 2010 on the final report of the Special Commission to investigate events occurred in Bagua, and to inform the State party that, during its 76th session, it considered under its early warning and urgent action procedure, information received by the Committee on the situation of Achuar indigenous people. The Committee also wishes, to inform the State party that during its 76th session, it considered, under its early warning and urgent action procedure, on a preliminary basis, information received on the situation of Awajun and Wampis in relation to the mining activities in their traditional lands.

The Committee wishes, to recall that in its concluding observations adopted on 24 August 2009 (CERD/C/PER/CO/14-17; par. 21), it encouraged the State party to make every possible effort to ensure that the Dorissa Agreement concerning the Achuar people affected by oil-drilling in the Rio Corrientes area is implemented without delay and to prevent similar cases from occurring in future oil-drilling projects. The Committee wishes also to recall that in its concluding observations (par 14 and 15), it reiterated its concern about the considerable tension due to the exploitation of subsoil resources of the traditional territories of the indigenous peoples who, in some cases, have not been consulted or given their prior, free and informed consent to mining activities.

In particular, the Committee expressed its deep concern about the violence triggered by conflicts between projects of exploitation of natural resources and the rights of indigenous people, such as which occurred in Bagua on 5 and 6 June 2009. Finally, the Committee expressed its concern at the negative impact on health and the environment of extractive activities conducted at the expense of the right to land and the cultural rights of indigenous people concerned.

According to information received by the Committee, the Dorissa Agreement has yet not been implemented and the situation of Achuar indigenous people has worsened. In particular, the Committee is deeply concerned at reports about the persistent problematic environmental situation, the continuous contamination of rivers and streams used by Achuar indigenous people for fishing, hunting, bathing and drinking; the presence of toxic and dangerous chemicals in some sites, and the lack of adequate consultation of Achuar indigenous people to seeking their prior, free and informed consent to mining activities. In addition, it appears that the State party has refused to place a moratorium of additional mining activities in Achuar lands in lots 101, 102, 104, 106, 123, 127 and 146, as requested by local organizations until the health of Achuar people is restored, as well as until the prior, free and informed consent is given by the people.

According to information received on the situation of Awajun and Wampis indigenous people, the Committee is concerned at the fact that numerous mining concessions are approved without the prior, free and informed consent of indigenous people and without consultations held in conformity and with the legislative requirements. In addition it is reported that the government failed to comply with a prior good faith agreement already reached by local organizations aimed at protecting the biodiversity and the right to health of neighbouring communities. It appears that the ownership of surface land of indigenous people is denied by some mining companies, and that the real negative impacts on biodiversity and water, as well as on cultural and social life of indigenous people are ignored by the Environmental Impact Statements presented by one mining company. The Committee is finally concerned at the fact that the conflict between Government and indigenous communities has escalated at an alarming rate.

The Committee urges the State party to implement the recommendations adopted in its concluding observations in 2009 on the situation of Achuar indigenous people, in particular concerning the Dorissa Agreement and to inform the Committee on measures taken. It also urges the State party to take measures in order to ensure that the prior, free and informed consent of Achuar indigenous people is sought and given prior to all mining activities; that the Achuar indigenous people are fully informed on the negative impacts of mining activities on their health and the environment. The Committee requests the State party to take measures aimed at accepting the moratorium proposed by local organizations and to comply with international standards, as well as with its own legislation.

On the situation of Awajun and Wampis indigenous people, the Committee urges the State party to provide information on the measures taken to implement the recommendations contained in paragraph 15 of its concluding observations referred to above. The State party is also requested to provide the Committee on information on the implementation of the good faith agreement reached with local indigenous

organizations; and how it ensures that Environmental Impact Statements of mining companies comply with the existing legislation and international standards.

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

26. Togo, 12/03/2010 (Follow Up)

Paragraph 17 of Concluding Observations. The Committee expresses appreciation of the State party's initiatives to reform the land law, in the context of the Modernization of Justice Programme, but urges the State party to ensure that the protection of the rights of indigenous peoples is taken sufficiently into account throughout. The Committee takes note of the will of the State party to enhance the rights of indigenous people, and urges it to strengthen the rights of indigenous people and reiterates its recommendation to take account of the Committee's general recommendation No. 23 (1997) on the rights of indigenous peoples. The Committee encourages the State party to guarantee the participation of indigenous peoples and ensure the provision of domestic remedies in cases of violation of their rights.

27. Sweden, 12/03/2010 (Follow Up)

Paragraph 20 of Concluding Observations: The Committee wishes to thank the State party for the information provided and makes note of the decisions by the Swedish Courts and the European Court of Human Rights. The Committee urges the State party to continue to encourage negotiations based on recognition and reconciliation, in good faith, and that it examine ways and means to address problems arising out of land disputes between Sami and Non-Sami, including through the establishment of an institute to investigate and mediate disputes and land claims in the reindeer grazing area.

28. Canada, 12 March 2010 (Follow Up)

I wish to inform you that the Committee on the Elimination of All Forms of Racial Discrimination, in the course of its 76th session, considered the follow-up report submitted by the Government of Canada, pursuant to Rule 65(1) of the Rules of Procedure of the Committee.

In spite of the delay, the Committee welcomes the submission of the report, in response to its request to receive information within one year on the implementation of the recommendations contained in paragraphs 14, 21, 22 and 26 of the Concluding Observations (CERD/C/CAN/CO/18, May, 2007), adopted following the consideration of the State party's 17th and 18th periodic reports. The Committee thus appreciates the opportunity provided to continue the dialogue with the State party, and would like to draw the State party's attention to the observations mentioned below. The Committee would like to remind the State party of its recommendation to submit its 19th to 20th periodic reports in a single document by 15 November 2009 and requests that comments and responses on action taken by the State party on issues above be included therein.

...

Paragraph 21 of Concluding Observations. The Committee welcomes information on the extensive measures carried out by the State party for the progressive realization of the rights of Aboriginal peoples. It commends the State party for addressing

recommendations proposed in the final report of the Royal Commission on Aboriginal Peoples' and urges it to continue its implementation efforts. The Committee requests clarification from the State party on the conditions in which "the Government of Canada may take up or permit provinces, municipal or local authorities, or corporations to take up lands in a reserve for public purposes without consent of the band" (CERD/C/CAN/CO/18/Add.1, para. 40). With regard to Aboriginal title, the Committee also requests further clarification regarding courts' decisions that "an Aboriginal group could not use the land in a way that was irreconcilable with the nature of the group's attachment to the lands" (CERD/C/CAN/CO/18/Add.1, para 46).

Paragraph 22 of Concluding Observations. The Committee thanks the State party for the information provided and commends its efforts to make claims of Aboriginal Title more efficient and effective.

With regard to the Twassawwen Nation, the Committee reiterates its concern expressed in its communications of March 2009 that the Tsawwassen Final Agreement may have been subject to processes that did not meet standards for fair elections, in particular in light of allegations of financial inducements and other non-transparent processes used to influence election outcomes. The Committee recommends that increased efforts be taken to ensure fair and transparent voting procedures and monitoring of a future vote on an agreement. Regarding the Lheidli T'enneh Indian Band and the Xaxli First Nation, the Committee recommends that the State party take the necessary measures to ensure that loan funding is not used as a means to pressure the First Nations into acceding to terms of the negotiation. With regard to the Secwepemc Nation and the construction of the Sun Peaks Ski Resort, the Committee reiterates its concern over reports of incarceration of Aboriginal activists and request more information on this issue.

The Committee recommends to the State party that independent mediators be used between Aboriginal bands and the government of British Columbia with regard to land claims.

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

29. Niger, 27/08/2010 (Urgent Action)

I write to inform you that the Committee on the Elimination of Racial Discrimination has decided, in the absence of a reply on the part of Niger to its letter of 12 March 2010, to proceed with the examination, at its 77th session to be held from 2 to 27 August 2010, of the situation of the Tuareg peoples and the impact of radioactivity linked to uranium mining in your country's northern region, under the Committee's early warning and urgent action procedure.

Following its 76th session, the Committee wrote to you on 12 March 2010, requesting Niger to furnish the supplementary information required to gain a complete understanding of the situation of the Tuareg peoples and of the uranium mining activities on their territory. The Committee requested the State Party to clarify the extent to which the Tuareg peoples had been consulted and the extent to which their free and prior consent had been explained and sought with regard to their approval of the planned mining activities. The Committee also asked for information indicating

whether, within the context of the planned mining activities, the Tuareg indigenous peoples have received any form of compensation as provided for in the State Party's mining legislation and if so, the extent of such compensation. With regard to the impacts on health and the environment, the Committee had advised the State Party to conduct an independent study and, in particular, to use the services of an independent international institution. Finally, the Committee had sought information from the State Party regarding the submission of its overdue periodic reports.

At its 77th session, the Committee received information reporting the high levels of radioactivity in the towns of Arlit and Akokan in the Agadez region, and the risk of contamination of the land due to a concentration of uranium and other radioactive material one hundred times higher than the normal levels recorded in the region, as a result of Areva's activities.

Further to its letter of 12 March 2010, and in accordance with Article 9(1) of the Convention and Article 65 of its Rules of Procedure, the Committee reiterates its request of the State Party to submit information on the above-mentioned situation before **31 January 2011**.

Allow me, Excellency, to express the Committee's desire to engage in a constructive dialogue with your Government, and to emphasise that the observations and questions noted above are offered with a view to assisting your Government in the effective implementation of the Convention.

30. Chile, 27/08/2010 (Follow Up)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination, in its 77th session held between the 2nd and 27th of August 2010, considered the follow-up report submitted by Chile (CERD/C/CO/15-18/Add.1), according to paragraph 1, Article 9 of the Convention, and to the Article 65 of the rules amended by the Committee.

The Committee welcomes the information given by the State party, as well as the efforts taken to comply with the Committee's recommendations in paragraphs 14, 19, and 22 of the concluding observations (CERD/C/CHL/CO/15-18), adopted by the Committee during its 75th session following the study of the 15th to the 18th periodic reports of Chile, submitted in a single document.

The Committee appreciates the opportunity to maintain a dialogue with the State party, and it is in this spirit that it would like to highlight the observations mentioned below. The Committee requests that the State party include comments and answers relating to the application of these issues in its 19th to 21st periodic reports. ...

With regard to paragraph 19 of the concluding observations: the Committee thanks the State party for the information, and welcomes with satisfaction the efforts made in order to prevent and fight abuse and crimes carried out by the police. The Committee would be grateful for any updated information regarding the two draft laws pending in the National Congress, which aim to enable major reforms in the regulations that rule the military justice system. The Committee would also be grateful for any update on the draft law that would allow the establishment of a Ministry of Public Safety. The Committee is aware that James Anaya has received a

formal update. The Committee regrets that the State party does not mention initiatives for human rights training. It respectfully requests the State party to provide information regarding the articles of the Convention that relate to the armed forces and the police. In the same way, the Committee would be interested to receive information on actions to process and sanction accusations of ill treatment and abuse against members of the Mapuche people, which are not included in the follow up report.

With regard to paragraph 22 of the concluding observations: the Committee happily welcomes the information given by the State party on the legislative framework for the recognition of indigenous peoples right to natural resources within their lands and territories. However, the Committee notes that the State party makes no direct reference to the recommendation in paragraph 22 on effective consultation with indigenous peoples. The Committee reiterates that the State party should consider the Committee's general recommendation 23. Likewise, the Committee would be grateful to receive additional information on (i) efforts made by the State party to undertake affective consultation with indigenous peoples; (ii) obtaining prior, informed consent from the indigenous peoples when taking decisions directly related to their rights and interests before implementation of projects for the extraction of natural resources, in accordance with international standards. Finally, the Committee would appreciate it if the State party could include in its next report information relating to the regulatory framework for state investments and the exploitation of the subsoil resources on indigenous lands.

With regard to paragraph 23 of the concluding observations: the Committee thanks the State party for the information regarding the environmental impacts affecting the indigenous peoples, and for the recently established Ministry of Environment and the Environment Superintendency, which establish the procedures for the evaluation of the environmental impacts. The Committee notes with satisfaction that the studies commissioned by the State party with four universities reflect a willingness to better adjust the national legislation on land, water, mining and other sectors to the Indigenous Peoples Law (No. 19.253) and to guarantee that the protection of the rights of indigenous peoples prevails over commercial and economic interests.

The Committee regrets that the follow-up report does not include information with regard to consultation or consent from persons in affected communities. The Committee would appreciate updated information on new and various initiatives to enable consultation with indigenous peoples, in order to facilitate their participation in decision making-processes, obtain their consent, as well as new legislation and reports on the evaluations of environmental impacts and their findings. The Committee notes with concern that there are still situations where there is no consultation and participation, and recommends the State party find ways to facilitate this participation. Likewise, the Committee recommends that the State party take into account the participation of indigenous peoples and guarantees the provision of internal remedies in cases of violations of indigenous peoples' rights. Likewise, the Committee reiterates its urgent recommendation that Chile adopt immediate measures to resolve the problem of waste dumps established without the prior consent Mapuche communities about which the Committee has not obtained updated information.

31. Colombia, 27/08/2010 (Urgent Action)

I have the honour to inform you that the Committee on the Elimination of Racial Discrimination, in its 77th session, undertook a preliminary examination under its early warning and urgent action procedures of information received about the situation of the Emberá Katío people of the Upper Sinú River.

According to this information, the dam Urrá I was constructed in the year 2000 within the ancestral lands of the Emberá Katío people, and flooded 7,400 ha of their lands.

The Committee is concerned that the construction of this dam appears to have a negative impact in the Emberá people, their culture and livelihoods. The Committee also expresses concern regarding information received, according to which the concessions negotiated by the Emberá Katío people have been completely or partially breached; and that violence has occurred in the indigenous reservation between the paramilitary and exparamilitary groups resulting in deaths, threats and displacement of the indigenous peoples.

According to the information received, the State party made a commitment not to build the Urrá II dam. Nevertheless, the project was reactivated in 2008. It is claimed that the construction of this dam will flood 57,000 ha in the Upper Sinú basin, affecting the Emberá Katío population. In addition, according to information received, in 2009 the Ministry of Environment refused permission to carry out an environmental study of the construction of the Urrá II dam, although the Urrá Company has tried to appeal this decision.

The Committee is concerned about allegations that, since the reactivation of the Urrá II project, the indigenous reservation has been occupied by the army and the Colombian militias, despite the decisions of the Inter-American Court of Human Rights on the adoption of preventive measures to protect the fundamental rights of the Emberá Katío people.

In light of the above, the Committee urges the State party to provide information on the situation of the Emberá Katío people, and in particular on the proposed construction of the Urrá II dam within their ancestral lands. The committee also urges the State party to fully comply with the decisions of the Inter-American Court of Human Rights, which requires, in particular, preventive measures to protect the fundamental rights of the Emberá Katío people. Similarly, the Committee reminds the State party to consult with the Emberá Katío people prior to any project within their ancestral lands, and to protect them from being victims of violence, in accordance with the Concluding Observations adopted by the Committee at its 75th session in August 2009 (CERD/COL/CO/par. 19)

In accordance with Article 9 (1) of the Convention and Article 65 of its Internal Rules, the committee asks the State party to provide the information requested before the **31st of January 2011**.

32. Costa Rica 27/08/2010 (Urgent Action)

I have the honour to write to you to inform you that in the course of its 77th meeting, the Committee considered the situation of indigenous people of Térraba in Costa Rica, in the light of the information submitted by NGOs under the early warning and urgent action procedure.

According to information received by the Committee, the government of Costa Rica, through its electricity company, has the intention of building a hydroelectric dam (the dam Diquís) that will flood at least ten per cent (10%) of the Térraba's people registered land. These lands include places with a sacred, cultural and archeological character for the indigenous community. The Committee expresses its deep concern at the information received, according to which Térraba people has not been consulted or been allowed to participate in the decision making process. In addition, their requests to do so has been rejected by the State officials because they are believe to be premature , even though in the region the construction of roads , shops and houses has already been completed.

The Committee pays great attention to the allegations that the construction of this dam will be a serious interference that will affect at great scale the traditional land of the indigenous peoples, endangering their cultural and physical survival, given that they are a small group of people. It also ensures that the massive and illegal intrusion of traditional lands by outsiders will have a significant negative impact with regard to the multiple relationships that indigenous peoples have with their land. Also, the lost of traditional lands by the hydroelectric dam will increase the conditions of extreme poverty in which the Térraba people live.

In view of the above, the Committee wants to express its deep concern for the lack of guarantees for the Térraba people. This Committee reiterates, according to its final observations adopted in its 71 session in 2007 (CERD/C/CRI/CO/18, p.15), that the State Party should redouble its efforts to ensure the right of indigenous peoples to land tenure. Also, the State Party should take measures in order to carry out the ruling of the Constitutional Court (Vote N0. 3468-02) to delimit the lands of the Rey Curré, Térraba and Boruca communities, and to get back the indigenous lands wrongfully alienated.

The committee requests that the State party provide information on the measures taken to ensure the effective participation of the Térraba people and the other indigenous peoples whose decisions regarding all aspects and stages of the dam Diquís plan has been affected, and to obtain the free, prior and informed consent in relation to this project. In this regard, the Committee requests the State party to provide additional and updated information on efforts taken to implement the concluding observations in regard to the Térraba people.

According to article 9 (1) of the Convention and Article 65 of the internal rules, the Committee requests the State party to respond by **January 31, 2011**. In case that you haven't heard from de State party, please notice that the Committee will consider the adoption of a decision during the 78th session in March 2011.

Your Excellency, allow me to reiterate the wish of the Committee to continue to participate in a constructive dialogue with the government of Costa Rica, in order to assist in the effective application of the Convention.

C. General Recommendations

1. GENERAL RECOMMENDATION NO. 32. THE MEANING AND SCOPE OF SPECIAL MEASURES IN THE INTERNATIONAL CONVENTION ON THE ELIMINATION OF RACIAL DISCRIMINATION

14. The obligation to take special measures is distinct from the general positive obligation of States parties to the Convention to secure human rights and fundamental freedoms on a non-discriminatory basis to persons and groups subject to their jurisdiction; this is a general obligation flowing from the provisions of the Convention as a whole and integral to all parts of the Convention.

15. Special measures should not be confused with specific rights pertaining to certain categories of person or community, such as, for example the rights of persons belonging to minorities to enjoy their own culture, profess and practise their own religion and use their own language, the rights of indigenous peoples, including rights to lands traditionally occupied by them, and rights of women to non-identical treatment with men, such as the provision of maternity leave, on account of biological differences from men.[] Such rights are permanent rights, recognised as such in human rights instruments, including those adopted in the context of the United Nations and its agencies. States parties should carefully observe distinctions between special measures and permanent human rights in their law and practice. The distinction between special measures and permanent rights implies that those entitled to permanent rights may also enjoy the benefits of special measures. []

18. States parties should ensure that special measures are designed and implemented on the basis of prior consultation with affected communities and the active participation of such communities.

26. Article 1, paragraph 4 provides for limitations on the employment of special measures by States parties. The first limitation is that the measures ‘**should not lead to the maintenance of separate rights for different racial groups**’. This provision is narrowly drawn to refer to ‘racial groups’ and calls to mind the practice of Apartheid referred to in Article 3 of the Convention which was imposed by the authorities of the State, and to practices of segregation referred to in that article and in the preamble to the Convention. The notion of inadmissible ‘separate rights’ must be distinguished from rights accepted and recognised by the international community to secure the existence and identity of groups such as minorities, indigenous peoples and other categories of person whose rights are similarly accepted and recognised within the framework of universal human rights.

2. GENERAL RECOMMENDATION NO. 33: FOLLOW-UP TO THE DURBAN REVIEW CONFERENCE, AUGUST 2009

[...]

- I. Recommends that the States parties to the International Convention on the Elimination of Racial Discrimination:

[...] f) Be mindful that their response to the current financial and economic crisis should not lead to a situation which would increase poverty and underdevelopment and, potentially, a rise in racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants, indigenous peoples, persons belonging to minorities and other particularly vulnerable groups all over the world. [...]

II. HUMAN RIGHTS COMMITTEE

A. Concluding Observations

1. Australia, CCPR/C/AUS/CO/5, 2 April 2009

6. The Committee welcomes the parliamentary apology to indigenous peoples' victims of the Stolen Generations policies, issued on 13 February 2008.

13. While acknowledging the consultation process initiated by the State party to establish a national indigenous representative body to replace the Aboriginal and Torres Islander Commission abolished in 2004, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights. (art.2, 25, 26 and 27)

The State party should increase its efforts for an effective consultation with indigenous peoples in decision-making in all areas having an impact on their rights and establish an adequately resourced national indigenous representative body.

14. The Committee notes with concern that certain of the Northern Territory Emergency Response (NTER) measures adopted by the State party to respond to the findings of the report of the Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse in the Northern Territory ("Little Children are Sacred" of 2007) are inconsistent with the State party's obligations under the Covenant. It is particularly concerned at the negative impact of the NTER measures on the enjoyment of the rights of indigenous peoples and at the fact that they suspend the operation of the Racial Discrimination Act 1975 and were adopted without adequate consultation with the indigenous peoples. (art. 2, 24, 26 and 27)

The State party should redesign NTER measures in direct consultation with the indigenous peoples concerned, in order to ensure that they are consistent with the Racial Discrimination Act 1995 and the Covenant.

15. While taking note with satisfaction that the State party has implemented some of the recommendations of the Human Rights and Equal Opportunity Commission's "Bringing Them Home" report, the Committee regrets that it has not granted reparation, including compensation, to the victims of the Stolen Generation policies. (art.2, 24, 26 and 27)

The State party should adopt a comprehensive national mechanism to ensure that adequate reparation, including compensation, is provided to the victims of the Stolen Generations policies.

16. The Committee, while welcoming recent reforms, notes with concern the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act. It regrets the lack of sufficient steps taken by the State party to implement the Committee's recommendations adopted in 2000. (Art.2 and 27)

The State party should continue its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander Peoples.

17. The Committee notes with concern that, despite the efforts recently undertaken by the State party to address violence against women, including its zero tolerance approach and its intention to conduct a National Survey on Community Attitudes to Violence against Women in 2009, disturbing levels of domestic violence persist in Australia. The Committee is particularly concerned at the higher number of reports of violence against indigenous women in proportion to reports of violence against non-indigenous women. (Articles 2, 3, 7 and 26)

The State party should strengthen its efforts towards the elimination of violence against women, especially perpetrated against indigenous women. The State party is encouraged to promptly implement its National Plan of Action to Reduce Violence against Women and their Children, as well as the recommendations of the 2008 Family Violence and Homeless report.

18. The Committee is concerned at the situation of homeless persons, in particular indigenous people, who as a result of that condition are not able to fully exercise the rights enshrined in the Covenant. (art. 2, 26 and 27)

The State party should increase its efforts in order to ensure that social, economic and other conditions do not deprive homeless persons of the full enjoyment of the rights enshrined in the Covenant.

21. The Committee expresses concern at reports of excessive use of force by law enforcement officials against groups, such as indigenous people, racial minorities, persons with disabilities, as well as young people; and regrets that the investigations of allegations of police misconduct are carried out by the police itself. The Committee is concerned by reports of the excessive use of the electro-muscular disruption devices (EMDs) "TASERS" by police forces in certain Australian states and territories. (articles 6 and 7)

The State party should take firm measures to eradicate all forms of excessive use of force by law enforcement officials. It should in particular: a) establish a mechanism to carry out independent investigations of complaints concerning excessive use of force by law enforcement officials; b) initiate proceedings against alleged perpetrators; c) increase its efforts to provide training to law enforcement officers with regard to excessive use of force, as well as on the principle of proportionality when using force; d) ensure that restraint devices, including TASERS, are only used in situations where greater or lethal force would otherwise have been justified; e) bring its legislative provisions and policies for the use of force into line with the United Nations Basic Principles on

the Use of Force and Firearms by Law Enforcement Officials; and e) provide adequate reparation to the victims.

25. The Committee notes with concern the lack of adequate access to justice for marginalized and disadvantaged groups, including indigenous peoples and aliens. (art.2 and 14)

The State party should take effective measures to ensure equality in access to justice, by providing adequate services to assist marginalized and disadvantaged people, including indigenous people and aliens. The State party should provide adequate funding for Aboriginal and Torres Strait Islander legal aid, including interpreter services.

2. Rwanda, CCPR/C/RWA/CO/3, 31 March 2009

22. Notwithstanding the information provided by the State party, the Committee is concerned about the non-recognition of the existence of minorities and indigenous peoples in the country, as well as reports that members of the Batwa community are victims of marginalization and discrimination (art. 27 of the Covenant).

The State party should take steps to ensure that members of the Batwa community are protected against discrimination in every field, that they are provided with effective remedies in that regard and that they take part in public affairs.

3. Sweden, CCPR/C/SWE/CO/6, 2 April 2009

20. While noting that the State party has delegated some responsibilities for reindeer husbandry to the Sami Parliament, the Committee remains concerned at the limited extent to which the Sami Parliament may participate in the decision-making process on issues affecting land and traditional activities of the Sami people. Furthermore, while noting the State party's intention to address recommendations concerning Sami land and resource rights through a bill to be submitted to Parliament in March 2010, the Committee notes the limited progress achieved so far in respecting Sami rights as well as the restrictive terms of reference of the Boundary Commission and other inquiries tasked with the study of Sami rights (articles 1, 25, and 27 of the Covenant).

The State party should take further steps to involve the Sami in the decisions concerning the natural environment and necessary means of subsistence for the Sami people. The State party should ensure the fair and expeditious resolution of claims concerning land and resources made by the Sami people, by introducing appropriate legislation in consultation with the Sami communities.

21. The Committee is concerned about de facto discrimination against the Sami in legal disputes, since the burden of proof for land ownership has been placed wholly on Sami claimants. The Committee also notes that, although legal aid may be granted to individuals who are parties in civil disputes, no such possibility exists for Sami villages, which are the only legal entities empowered to act as litigants in land

disputes in respect of Sami lands and grazing rights (articles 1, 2, 14, 26 and 27 of the Covenant).

The State party should grant adequate legal aid to Sami villages in court disputes concerning land and grazing rights and introduce legislation providing for a flexible burden of proof in cases regarding Sami land and grazing rights, especially where other parties possess relevant information. The State party is also encouraged to consider other means of settling land disputes, such as mediation.

4. Tanzania, CCPR/C/TZA/CO/4, 6 August 2009

26. The Committee recalls its general comment No. 23 (1994) on the rights of minorities and is concerned that the State party does not recognize the existence of indigenous peoples and minorities in its territory and regrets the lack of information about certain vulnerable ethnic groups. It also notes with concern reports that the traditional way of life of indigenous communities has been negatively affected by the establishment of game reserves and other projects. (arts. 26 and 27).

The State party should, as a matter of urgency, carry out a study regarding minorities and indigenous communities in the State party, and adopt specific legislation and special measures to protect, preserve and promote their cultural heritage and traditional way of life. The State party should also consult indigenous communities before establishing game reserves, granting licences for hunting, or other projects on “ancestral” or disputed lands.

5. Russian Federation, CCPR/C/RES/CO/6, 24 November 2009

28. While welcoming decree No. 132 of 4 February 2009 on the sustainable development of indigenous peoples in the North, Siberia and the Far East, and the corresponding action plan for 2009-2011, the Committee expresses concern about the alleged adverse impact upon indigenous peoples of: (a) the 2004 amendment to article 4 of the Federal Law on Guarantees of the Rights of Numerically Small Indigenous Peoples; (b) the process of consolidation of the constituent territories of the Russian Federation through absorption of national autonomous areas; and (c) the exploitation of lands, fishing grounds and natural resources traditionally belonging to indigenous peoples through granting of licenses to private companies for development projects such as the construction of pipelines and hydroelectric dams. (art.27)

The State party should provide, in its next periodic report, detailed information on the impact of these measures upon the traditional habitat, way of life and economic activities of indigenous peoples in the State party, as well as on their enjoyment of rights guaranteed under article 27 of the Covenant.

6. Ecuador, CCPR/C/ECU/CO/5, 24 November 2009

19. While noting that the specific rights of indigenous peoples are enshrined in chapter IV of the current Constitution, the Committee remains concerned that indigenous peoples and Afro-Ecuadorians continue in practice to be the victims of racial discrimination. It is also concerned that Title II, article 11.2 of the Constitution

does not establish racial non-discrimination as a principle for the exercise of rights (art. 26).

The State party should take appropriate measures to ensure the practical implementation of the Constitutional and legal provisions that guarantee the principle of non-discrimination against indigenous peoples and full compliance with articles 26 and 27 of the Covenant.

20. The Committee requests that the State party's fifth periodic report and these concluding observations be published and widely disseminated to the general public, the judicial, legislative and administrative authorities and non-governmental organizations. Printed copies of these documents should be distributed to universities, public libraries, the Parliamentary library and other relevant places. It would also be desirable to distribute a summary of the report and the concluding observations to the indigenous communities in their own languages.

7. Mexico, CCPR/C/MEX/CO/5, 17 May 2010

22. While acknowledging the measures adopted by the State party, such as the Programme for the development of indigenous peoples 2009–2010 and the 2001 constitutional reforms aimed at guaranteeing indigenous rights, the Committee remains concerned that indigenous peoples are not sufficiently consulted in the decision-making process with respect to issues affecting their rights, such as during the constitutional reform discussions in 2001 (articles 2 and 25 to 27 of the Covenant).

The State party should consider reviewing the relevant provisions of the Constitution reformed in 2001, in consultation with indigenous peoples. It should also take all necessary steps to ensure the effective consultation of indigenous peoples for decision-making in all areas that have an impact on their rights, in accordance with article 1, paragraph 2, and article 27 of the Covenant.

8. Argentina, CCPR/C/ARG/CO/4, 31 March 2010

25. The Committee is concerned by information that it has received which indicates that indigenous groups have been the target of violence and have been forcibly evicted from their ancestral lands in a number of provinces for reasons having to do with control over natural resources (articles 26 and 27 of the Covenant).

The State party should adopt such measures as are necessary to put an end to evictions and safeguard the communal property of indigenous peoples as appropriate. In this connection, the State party should redouble its efforts to implement the programme providing for a legal cadastral survey of indigenous community property. The State party should also investigate and punish those responsible for the abovementioned acts of violence.

9. New Zealand, CCPR/C/NZL/CO/5, 7 April 2010

12. While noting the delegation's acknowledgement, the Committee notes with concern the disproportionately high incarceration rate of Māori, in particular Māori women. It is also concerned that the proportion of Māori among persons accused of a

crime as well as among victims of a crime is substantially higher than their proportion within the general population, which points to underlying social causes and raises concerns regarding the possibility of discrimination in the administration of justice. (arts. 2, 10 and 14)

The State party should strengthen its efforts to reduce the over-representation of Māori, in particular Māori women, in prisons and continue addressing the root causes of this phenomenon. The State party should also increase its efforts to prevent discrimination against Māori in the administration of justice. Law enforcement officials and the judiciary should receive adequate human rights training, in particular on the principle of equality and non-discrimination.

14. While acknowledging the delegation's explanations, the Committee regrets the lack of information concerning the proceedings with regard to so-called Operation 8 (antiterrorism raids carried out on 15 October 2007), which allegedly involved excessive use of force against Māori communities. It also notes with concern that the trials of the suspects arrested during this operation will only begin in 2011. (arts. 2, 7, 14 and 26)

The State party should ensure that the Terrorism Suppression Amendment Act is not applied in a discriminatory manner and does not lead to excessive use of force against suspects, in light of the need to balance the preservation of public security and the enjoyment of individual rights. It should also provide the Committee in its next periodic report with detailed information on the results of any investigation, prosecution and disciplinary measures taken vis-à-vis law enforcement officials in connection with the alleged human rights violations perpetrated, in particular cases of excessive use of force, in the context of Operation 8. Furthermore, the State party should ensure that the trials of those arrested in the context of Operation 8 are held within a reasonable timeframe.

19. While acknowledging the negotiation process initiated with regard to a review or possible repeal of the Foreshore and Seabed Act 2004, the Committee is concerned that the Act discriminates against the Māori, and extinguishes their customary title over the foreshore and seabed. (arts. 2, 26 and 27)

The State party should increase its efforts for effective consultation of representatives of all Māori groups with regard to the current review of the Foreshore and Seabed Act 2004, with a view to amending or repealing it. In particular, the public consultation period should be sufficiently long so as to enable all Māori groups to have their views heard. Furthermore, in light of the Committee's general comment No. 23 (1994) on article 27 (the rights of minorities), special attention should be paid to the cultural and religious significance of access to the foreshore and seabed for the Māori.

20. The Committee welcomes the initiative of the State party for constitutional reform which also aims at giving greater effect to the Treaty of Waitangi. It notes, however, that the Treaty is currently not a formal part of domestic law, which makes it difficult for Māori to invoke it before the courts. The Committee also welcomes the efforts of the State party to settle historical Treaty claims, but is concerned at reports that in one particular case, the State party put an end to consultations despite the claim of some Māori groups that the settlements did not adequately reflect original tribal ownership. (arts. 2, 26 and 27)

The State party should continue its efforts to review the status of the Treaty of Waitangi within the domestic legal system, including the desirability to incorporate it into domestic law, in consultation with all Māori groups. Furthermore, the State party should ensure that the views expressed by different Māori groups during consultations in the context of the historical Treaty claims settlement process are duly taken into account.

22. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party should provide, within one year, relevant information on its implementation of the Committee's recommendations made in paragraphs 12, 14 and 19.

10. Colombia, CCPR/C/COL/CO/6, 4 August 2010

20. The Committee is concerned about the high incidence of arbitrary arrests and, in particular, the use of preventive administrative detention by the police and mass arrests by the police and the army. The Committee notes that arrest warrants are frequently insufficiently substantiated by evidence and that arrests are used as a means of stigmatizing certain groups, such as community leaders, youth, indigenous people, Afro-Colombians and campesinos (arts. 9, 24 and 26).

The Committee recommends that the State party take steps to eradicate preventive administrative detention and mass arrest and to act on the recommendations made by the Working Group on Arbitrary Detention following its mission to Colombia in 2008 (A/HRC/10/21/Add.3).

23. The Committee is concerned at the very high incidence of forced displacement (over 3.3 million persons by the end of 2009 according to the State party) and at the lack of effective measures for prevention and care. The Committee notes with concern that attention to the needs of the displaced population remains inadequate and is marked by an insufficient allocation of resources and the lack of comprehensive measures for providing differentiated care for women, children, Afro-Colombians and indigenous people (arts. 12, 24, 26 and 27).

The State party should ensure the development and implementation of a comprehensive policy for the displaced population that should provide for differentiated care, with the emphasis on women, children, Afro-Colombians and indigenous people. The State party should strengthen mechanisms for ensuring that the land of displaced persons can be restituted. The State should evaluate the progress being made on a regular basis in consultation with the beneficiary population. The State party must also implement the recommendations made by the Representative of the Secretary-General on the human rights of internally displaced persons following his visit to Colombia in 2006 (A/HRC/4/38/Add.3).

25. The Committee is concerned that the Afro-Colombian and indigenous population groups continue to be discriminated against and to be particularly exposed to the violence of armed conflict. Despite legal recognition of their right to collective land ownership, in practice those population groups face enormous obstacles in exercising control over their lands and territories. The Committee also regrets that no progress

has been made on the adoption of legislation to criminalize racial discrimination or on the adoption of legislation for holding prior consultations and guaranteeing the free, prior and informed consent of the members of the relevant community (arts. 2, 26 and 27).

The State party must strengthen special measures in favour of Afro-Colombian and indigenous people in order to guarantee the enjoyment of their rights and, in particular, to ensure that they exercise control over their land and that it is restituted to them, as appropriate. The State party should adopt legislation criminalizing racial discrimination and adopt the pertinent legislation for holding prior consultations with a view to guaranteeing the free, prior and informed consent of community members.

11. El Salvador, CCPR/C/SLV/CO/6, 27 October 2010

18. The Committee is concerned about the situation of marginalization in which different indigenous peoples have been living in the State party, the lack of full recognition of these indigenous peoples, the lack of their statistic acknowledgment in the 2007 census, the absence of special measures to promote the realization of their rights as indigenous peoples, and the lack of measures to protect indigenous languages.

The State party must promote the full recognition of all the indigenous peoples and consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples. With the free, prior and informed consent of indigenous peoples and through prior consultation, the State party should include questions in the next census that allow the identification of such peoples, design and implement public policies to effectively achieve their rights, and take special measures to overcome the marginalization that they have experienced. In the same way, the State must, with the prior consent of all indigenous peoples, adopt measures for the revitalization of their languages and cultures.

B. Jurisprudence under Optional Protocol I

1. Ángela Poma Poma v. Peru, CCPR/C/95/D/1457/2006, 24 April 2009

VIEWS

Communication No. 1457/2006

Submitted by: Ángela Poma Poma (represented by counsel, Tomás Alarcón)

<i>Alleged victim:</i>	The author
<i>State party:</i>	Peru
<i>Date of the communication:</i>	28 December 2004 (initial submission)
<i>Document references:</i>	Special Rapporteur's rule 97 decision, transmitted to the State party on 28 February 2006 (not issued in document form)
<i>Date of adoption of Views:</i>	27 March 2009
<i>Subject matter:</i>	Withdrawal of water from indigenous land

<i>Procedural issues:</i>	Examination under another procedure of international investigation or settlement; insufficient substantiation of the complaint
<i>Substantive issues:</i>	Right to an effective remedy, right to equality before the courts, right to privacy and family life, right of minorities to enjoy their own culture
<i>Articles of the Covenant:</i>	1, paragraph 2; 2, paragraph 3; 17; and 27
<i>Articles of the Optional Protocol:</i>	2 and article 5, paragraph 2 (a)

On 27 March 2009 the Human Rights Committee adopted the annexed draft as the Committee's Views under article 5, paragraph 4, of the Optional Protocol in respect of communication No. 1457/2006.

Annex
VIEWS OF THE HUMAN RIGHTS COMMITTEE UNDER ARTICLE 5, PARAGRAPH 4, OF THE OPTIONAL PROTOCOL TO THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS
Ninety-fifth session concerning

Communication No. 1457/2006**

<i>Submitted by:</i>	Ángela Poma Poma (represented by counsel, Tomás Alarcón)
<i>Alleged victim:</i>	The author
<i>State party:</i>	Peru
<i>Date of the communication:</i>	28 December 2004 (initial submission)

The Human Rights Committee, established under article 28 of the International Covenant on Civil and Political Rights,

Meeting on 27 March 2009,

Having concluded its consideration of communication No. 1457/2006, submitted on behalf of Ángela Poma Poma under the Optional Protocol to the International Covenant on Civil and Political Rights,

Having taken into account all written information made available to it by the author of the communication and the State party,

Adopts the following:

Views under article 5, paragraph 4, of the Optional Protocol

1. The author of the communication, dated 28 December 2004, is Ángela Poma Poma, a Peruvian citizen born in 1950. She claims to be a victim of a violation by Peru of article 1, paragraph 2; article 2, paragraph 3 (a); article 14, paragraph 1; and article 17 of the Covenant. The Optional Protocol entered into force for the State party on 3 January 1981. The author is represented by counsel, Tomás Alarcón.

Factual background

2.1 The author and her children are the owners of the “Parco-Viluyo” alpaca farm, situated in the district of Palca, in the province and region of Tacna. They raise alpacas, llamas and other smaller animals, and this activity is their only means of subsistence. The farm is situated on the Andean altiplano at 4,000 metres above sea level, where there are only grasslands for grazing and underground springs that bring water to the highland wetlands. The farm covers over 350 hectares of pasture land, and part of it is a wetland area that runs along the former course of the river Uchusuma, which supports more than eight families.

2.2 In the 1950s, the Government of Peru diverted the course of the river Uchusuma, a measure which deprived the wetlands situated on the author’s farm of the surface water that sustained the pastures where her animals grazed. Nevertheless, the wetlands continued to receive groundwater that came from the Patajpujo area, which is upstream of the farm. However, in the 1970s the Government drilled wells (known as the Ayro wells) to draw groundwater in Patajpujo, which considerably reduced the water supply to the pastures and to areas where water was drawn for human and animal consumption. The author claims that this caused the gradual drying out of the wetlands where llama-raising is practised in accordance with the traditional customs of the affected families, who are descendants of the Aymara people, and which has been part of their way of life for thousands of years.

2.3 In the 1980s, the State party continued its project to divert water from the Andes to the Pacific coast in order to provide water for the city of Tacna. In the early 1990s, the Government approved a new project entitled the Special Tacna Project (Proyecto Especial Tacna (PET)), under the supervision of the National Institute for Development (INADE). This project involved the construction of 12 new wells in the Ayro region, and a plan to build a further 50 wells subsequently. The author observes that this measure accelerated the drainage and degradation of 10,000 hectares of the Aymaras’ pastures and caused the death of large quantities of livestock. The work was carried out despite the fact that no decision had been taken to approve an environmental impact assessment, which is required under article 5 of the Code on the Environment and Natural Resources. In addition, the wells were not registered in the Water Resources Register kept by the National Institute of Natural Resources (INRENA).

2.4 In 1994 various members of the Aymara community held demonstrations in the Ayro region, which were broken up by the police and armed forces. The author contends that the leader of the community, Juan Cruz Quispe, who prevented the construction of the 50 wells planned under PET, was murdered in the Palca district and that his death was never investigated.

2.5 According to the author, following a series of protests by the indigenous community, including a collective complaint addressed to the Government on 14 December 1997, 6 of the 12 wells built in Ayro were closed down, including well No. 6, which was believed to be Empresa Prestadora de Servicios de Saneamiento de Tacna, or EPS Tacna, part of the municipal administration.

2.6 The case file contains a copy of a letter from INADE dated 31 May 1999 addressed to INRENA, which is part of the Ministry of Agriculture, as a result of an enquiry from a member of Congress. It indicates that EPS Tacna, in agreement with the former ONERN (now INRENA), had carried out an environmental impact study which had concluded that the foreseeable overall environmental impact was moderate, and that the quantity of underground water resources to be withdrawn would be less than the calculated renewable reserves as established in hydrogeological studies.

2.7 Also in the file is a copy of a letter from INRENA dated April 2000, pointing out that INRENA had not received any environmental impact study from PET and that consequently no authorization had been given for the drilling of the wells.

2.8 The author also sent the Committee a copy of a report prepared by the Ombudsman in 2000 recommending that the Executive Director of PET should submit the environmental impact study and the reports on PET activities to INRENA so that it could issue the necessary evaluation.

2.9 In 2002, the company reopened well No. 6 in order to obtain more water, whereupon the author filed a criminal complaint with Tacna Prosecutor's Office No. 1 against the manager of EPS Tacna for an environmental offence, unlawful appropriation and damages; the complaint was dismissed by the prosecutor. On 17 September 2003, the author appealed to the Senior Prosecutor, who ordered that the wells should be inspected by the prosecutor and the police. After the inspection, Tacna Prosecutor's Office No. 1 concluded that there was evidence of an offence and instituted criminal charges in Tacna Criminal Court No. 1 against the manager of EPS Tacna for the environmental offence of damage to the natural, rural or urban landscape, as provided for in the Criminal Code.

2.10 Approximately one year after the complaint had been filed, the judge of Criminal Court No. 1 recused himself from the case because he was married to the company's legal adviser, and the case was referred to Tacna Criminal Court No. 2. On 13 July 2004, the court declared that the trial would not open because of failure to fulfil a procedural requirement – the submission of a report from the competent State authority, INRENA. This legal requirement provides that before the opening of a trial the competent authority must submit a report on the allegation of an environmental offence. The author maintains that although the prosecutor insisted that the preliminary investigation should go ahead, claiming that the case file contained a report from INRENA, the judge shelved the case.

2.11 On 10 January 2005 the prosecutor filed additional charges with Criminal Court No. 2, for the offence of unlawful appropriation of water under article 203 of the Criminal Code. The prosecutor claimed that the surface waters and groundwater of the Ayro area had been used peacefully in accordance with customs and usages and that by taking the water without consultation or authorization by the relevant agency, PET had diverted the waters from their normal course, adversely affecting the author. That charge was dismissed. The prosecutor lodged an application for reconsideration and an appeal against that decision, which were dismissed. He subsequently instituted complaint proceedings, which were declared to be without merit on 24 June 2005, since the prosecutor had not appealed against the decision of 13 July 2004 and the addition of charges was improper.

2.12 The author also submitted a complaint to the National Development Institute (INADE), which replied that officials of the PET project were under investigation for irregularities, after it had been observed that they had been negotiating to share the underground water along the Tacna coast with Chile. The author thus realized that surplus quantities of water were to be found underground along the Tacna coast and that it was unnecessary for the Ayro wells to continue operating. On 11 November 2004, INADE informed her that it was not possible to launch an investigation. This left the author without any means of throwing light on the facts. Three years previously the facts had also been drawn to the attention of CONAPA, the Peruvian Government agency responsible for indigenous affairs, which did nothing.

2.13 The author submits that she has exhausted all available domestic remedies without her case being brought to trial. She adds that the Code of Constitutional Procedure allows for amparo and habeas corpus proceedings against judges only for denial of justice, which is not applicable in the present case.

The complaint

3.1 The author alleges that the State party violated article 1, paragraph 2, because the diversion of groundwater from her land has destroyed the ecosystem of the altiplano and caused the degradation of the land and the drying out of the wetlands. As a result, thousands of head of livestock have died and the community's only means of survival - grazing and raising llamas and alpacas - has collapsed, leaving them in poverty. The community has therefore been deprived of its livelihood.

3.2 The author also claims that she was deprived of the right to an effective remedy, in violation of article 2, paragraph 3 (a), of the Covenant. By requiring the submission of an official report before the judge can open proceedings, the State becomes both judge and party and expresses a view on whether or not an offence has been committed before the court itself does so. She also complains that the Criminal Code contains no provision for the offence of dispossession of waters used by indigenous people for their traditional activities, and states that she has exhausted domestic remedies.

3.3 The author alleges that the facts described constitute interference in the life and activities of her family, in violation of article 17 of the Covenant. The lack of water has seriously affected their only means of subsistence, that is, alpaca- and llama-grazing and raising. The State party cannot oblige them to change their way of family life or to engage in an activity that is not their own, or interfere with their desire to continue to live on their traditional lands. Their private and family life consists of their customs, social relations, the Aymara language and methods of grazing and caring for animals. This has all been affected by the diversion of water.

3.4 She maintains that the political and judicial authorities did not take into account the arguments put forward by the community and its representatives because they are indigenous people, thereby violating their right to equality before the courts under article 14, paragraph 1.

State party's observations on admissibility and on the merits

4.1 On 26 May 2006, the State party challenged the admissibility and merits of the complaint. It maintains that the author's daughter referred a case to the United Nations Commission on Human Rights under the 1503 procedure, containing the same allegations, and that the complaint should therefore be declared inadmissible under article 5, paragraph 2 (a), of the Optional Protocol.

4.2 With regard to the merits, the State party observes that the withdrawal of water by EPS Tacna is not subject to approval of an environmental impact study, but is carried out in accordance with a scale of priorities established in the General Water Act. This Act lays down an order of preference in water use, setting drinking water supply to the public as a priority use. In addition, most of the wells were sunk before the entry into force of the Code on the Environment and Natural Resources, Legislative Decree No. 613, promulgated in September 1990, which established the requirement for an environmental impact assessment before any work may commence.

4.3 As a result of the recommendations made by the Ombudsman, PET entrusted INRENA with the task of carrying out an environmental impact assessment, and the recommendations and technical measures it contains have been applied by PET since 1997. Moreover, it was updated in December 2000 and passed to INRENA for evaluation. Meanwhile, a report from the Tacna Regional Agricultural Department dated 12 July 2001 confirmed that although the drawing of groundwater by EPS Tacna was illegal, the way it was done did not affect the natural reserves, and that the water resources in question were an essential source for meeting the domestic and agricultural water requirements of the Tacna valley, so that the drawing of water should continue. By a letter dated 20 February 2006, the Office of the Ombudsman informed the author of the steps taken and the measures adopted by PET to comply with the environmental impact assessment. By a further letter dated 20 March 2006, the Office of the Ombudsman informed the author that the case was closed.

4.4 The State party points out that the wells are being operated by PET in accordance with the Constitution and legislation in force in Peru, and with the Covenant. It stresses that the Office of the Ombudsman pointed out, after the construction of the wells, that the State had passed legislation on the need to carry out environmental impact assessments, and therefore considered that it had concluded its work without finding any infringement of fundamental rights by the State. In cases where the State had considered that harm had been caused as a result of the activities carried out by PET, the reports and complaints had been dealt with.

4.5 The State party adds that the alleged damage caused to the ecosystem has not been technically or legally substantiated, and that the violation of the rights of the author, her family and other members of the Ancomarca community has not been established.

4.6 In relation to the alleged violation of article 2 of the Covenant, the State party considers that the author's complaint was dismissed because it was not technically substantiated. The State party considers that the imposition of the above-mentioned technical requirement is not a violation of the author's right to an effective remedy but

is a procedural requirement that is related to the nature of the offence and is provided for by law. The requirement is based on the need for technical information which will enable the Public Prosecutor to make a proper assessment of the situation.

Author's comments

5.1 In her comments of 12 July 2006 the author reiterates that, despite the charges brought by the Public Prosecutor's Office, the Tacna Criminal Court ordered that the trial should not be opened on the basis of a procedural requirement, holding that it cannot initiate criminal proceedings in cases of environmental offences which have not been previously categorized as such by the competent authority, namely INRENA. INRENA is an administrative State body, and in this case is playing the dual role of "judge and party". She points out that the investigating judge ensured impunity by not allowing the case against the manager of the company to proceed, so that the author was left without any possibility of judicial remedy. She adds that the reason for this refusal was that the State itself and the public agencies of the regional and municipal authorities were chiefly responsible for the environmental offences.

5.2 The author submits that legislation relating to the environment is the only means the indigenous communities have to safeguard their land and natural resources. She maintains that the State party has violated International Labour Organization (ILO) Convention No. 169, given that there is no national law to protect the Peruvian indigenous communities who are adversely affected by development projects.

5.3 The author forwarded to the Committee a report prepared privately at the request of the community in 2006 by a Swiss geologist, entitled "Environmental impact of the Vilavilani project - some geological and hydrological aspects". The report states, *inter alia*, that the diversion of water considerably intensifies the processes of erosion and transport of sediments, affecting not only the infrastructure for withdrawal, irrigation and drinking water, but also exacerbating the serious problems of desertification and morphodynamic stability facing the area, producing a major negative impact on the ecosystem of the entire region.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Human Rights Committee must, in accordance with rule 93 of its rules of procedure, decide whether or not the communication is admissible under the Optional Protocol to the Covenant.

6.2 As far as the examination of the matter by another procedure of international investigation or settlement is concerned, the Committee takes note of the State party's claim that the case was referred to the Commission on Human Rights under the procedure established by Economic and Social Council resolution 1503 (XLVIII) of 27 May 1970. However, the Committee points out that this does not constitute a procedure of international investigation or settlement within the meaning of article 5, paragraph 2 (a), of the Optional Protocol,² since the 1503 procedure is very different

² See the decisions adopted by the Committee on communications Nos. 1/1976,

in nature from the one provided for under the Optional Protocol and does not allow for an examination of the individual case resulting in a decision on the merits.

6.3 The Committee takes note of the author's complaint that the diversion of water caused the drying out and degradation of her community's land, some of which belonged to her, and the death of livestock, which violated her right not to be deprived of her livelihood under article 1, paragraph 2, and her right to privacy and family life under article 17 of the Covenant. The Committee recalls its jurisprudence whereby the Optional Protocol provides a procedure under which individuals can claim that their individual rights have been violated, but that these rights do not include those set out in article 1 of the Covenant.³ Concerning the author's reference to article 17, the Committee considers that the facts as presented by the author raise issues that are related to article 27.⁴ In this regard it points out that the State party's observations are general in nature and do not refer to the violation of a specific article of the Covenant.

6.4 As for the author's complaint that she was deprived of her right to an effective remedy, the Committee notes that this has been sufficiently substantiated for the purposes of admissibility insofar as it raises issues under article 2, paragraph 3 (a) taken together with article 27, of the Covenant. In contrast, the allegation of a violation of article 14, paragraph 1, in that the authorities did not take into account the complaints because they were made by members of an indigenous community, has not been sufficiently substantiated for the purposes of admissibility, and must be declared inadmissible under article 2 of the Optional Protocol.

6.5 Therefore, the Committee declares the communication admissible in respect of the complaints under article 27, taken alone and read in conjunction with article 2, paragraph 3 (a), of the Covenant.

Consideration of the merits

7.1 The Committee has considered this communication in the light of all the information made available to it by the parties, as required by article 5, paragraph 1, of the Optional Protocol. The issue it must clarify is whether the water diversion operations which caused degradation of the author's land violated her rights under article 27 of the Covenant.

7.2 The Committee recalls its general comment No. 23, according to which article 27 establishes and recognizes a right which is conferred on individuals belonging to minority groups and which is distinct from, and additional to, the other rights which all persons are entitled to enjoy under the Covenant. Certain of the aspects of the rights of individuals protected under that article - for example, to enjoy a particular culture - may consist in a way of life which is closely associated with territory and use of its resources. This might particularly apply in the case of the members of

A. et al. v. Uruguay, adopted on 26 January 1978, and 910/2000, *Randolph v. Togo*, adopted on 27 October 2003, para. 8.4.

³ See, among others, the Committee's Views in communications Nos. 167/1984, *Lubicon Lake Band v. Canada*, 26 March 1990, para. 32.1; 547/1993, *Mahuika et al. v. New Zealand*, 27 October 2000, para. 9.2; and 932/2000, *Gillot v. France*, adopted on 15 July 2002, para. 13.4.

⁴ See communication No. 167/1984, *op. cit.*, para. 32.2.

indigenous communities which constitute a minority. This general comment also points out, with regard to the exercise of the cultural rights protected under article 27, that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of protection and measures to ensure the effective participation of members of minority communities in decisions which affect them. The protection of these rights is directed to ensure the survival and continued development of cultural identity, thus enriching the fabric of society as a whole.

7.3 In previous cases, the Committee has recognized that the rights protected by article 27 include the right of persons, in community with others, to engage in economic and social activities which are part of the culture of the community to which they belong.⁵ In the present case, it is undisputed that the author is a member of an ethnic minority and that raising llamas is an essential element of the culture of the Aymara community, since it is a form of subsistence and an ancestral tradition handed down from parent to child. The author herself is engaged in this activity.

7.4 The Committee recognizes that a State may legitimately take steps to promote its economic development. Nevertheless, it recalls that economic development may not undermine the rights protected by article 27. Thus the leeway the State has in this area should be commensurate with the obligations it must assume under article 27. The Committee also points out that measures whose impact amounts to a denial of the right of a community to enjoy its own culture are incompatible with article 27, whereas measures with only a limited impact on the way of life and livelihood of persons belonging to that community would not necessarily amount to a denial of the rights under article 27.⁶

7.5 In the present case, the question is whether the consequences of the water diversion authorized by the State party as far as llama-raising is concerned are such as to have a substantive negative impact on the author's enjoyment of her right to enjoy the cultural life of the community to which she belongs. In this connection the Committee takes note of the author's allegations that thousands of head of livestock died because of the degradation of 10,000 hectares of Aymara pasture land - degradation caused as a direct result of the implementation of the Special Tacna Project during the 1990s - and that it has ruined her way of life and the economy of the community, forcing its members to abandon their land and their traditional economic activity. The Committee observes that those statements have not been challenged by the State party, which has done no more than justify the alleged legality of the construction of the Special Tacna Project wells.

7.6 In the Committee's view, the admissibility of measures which substantially compromise or interfere with the culturally significant economic activities of a minority or indigenous community depends on whether the members of the community in question have had the opportunity to participate in the decision-making

⁵ *Lubicon Lake Band v. Canada*, op. cit., para. 32.2.

⁶ Communications Nos. 511/1992 and 1023/2001, *Länsman v. Finland*, Views adopted on 26 October 1994 and 15 April 2005 respectively.

process in relation to these measures and whether they will continue to benefit from their traditional economy. The Committee considers that participation in the decision-making process must be effective, which requires not mere consultation but the free, prior and informed consent of the members of the community. In addition, the measures must respect the principle of proportionality so as not to endanger the very survival of the community and its members.

7.7 In the present case, the Committee observes that neither the author nor the community to which she belongs was consulted at any time by the State party concerning the construction of the wells. Moreover, the State did not require studies to be undertaken by a competent independent body in order to determine the impact that the construction of the wells would have on traditional economic activity, nor did it take measures to minimize the negative consequences and repair the harm done. The Committee also observes that the author has been unable to continue benefiting from her traditional economic activity owing to the drying out of the land and loss of her livestock. The Committee therefore considers that the State's action has substantively compromised the way of life and culture of the author, as a member of her community. The Committee concludes that the activities carried out by the State party violate the right of the author to enjoy her own culture together with the other members of her group, in accordance with article 27 of the Covenant.

7.8 With regard to the author's allegations relating to article 2, paragraph 3 (a), the Committee takes note of the case referred by the author to the Tacna Prosecutor No. 1 and the Senior Prosecutor. It observes that, although the author filed a complaint against the EPS Tacna company, the competent criminal court did not allow the case to open because of a procedural error, namely the alleged lack of a report that the authorities themselves were supposed to submit. In the particular circumstances, the Committee considers that the State party has denied the author the right to an effective remedy for the violation of her rights recognized in the Covenant, as provided for in article 2, paragraph 3 (a), read in conjunction with article 27.

7.9 In light of the above findings, the Committee does not consider it necessary to deal with the author's complaint of a violation of article 17.

8. In light of the above, the Committee, acting under article 5, paragraph 4, of the Optional Protocol to the International Covenant on Civil and Political Rights, is of the view that the facts before it disclose a violation of article 27 and article 2, paragraph 3 (a), read in conjunction with article 27.

9. In accordance with article 2, paragraph 3 (a), of the Covenant, the State party is required to provide the author an effective remedy and reparation measures that are commensurate with the harm sustained. The State party has an obligation to take the necessary measures to ensure that similar violations do not occur in future.

10. By becoming a party to the Optional Protocol, Peru recognized the competence of the Committee to determine whether there has been a violation of the Covenant. Pursuant to article 2 of the Covenant, the State party has undertaken to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the Covenant and to furnish them with an effective and applicable remedy should it be proved that a violation has occurred. The Committee wishes to

receive from the State party, within 180 days, information about the measures taken to give effect to its Views. The State party is requested to publish the Committee's Views.

[Adopted in English, French and Spanish, the Spanish text being the original version. Subsequently to be issued also in Arabic, Chinese and Russian as part of the Committee's annual report to the General Assembly.]

III. COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. Concluding Observations

1. Australia: E/C.12/AUS/CO/4, 22 May 2009

4. The Committee welcomes the parliamentary apology to the indigenous peoples, victims of the “Stolen Generation” policies, issued on 13 February 2008, and acknowledges the State party’s commitment to build a sustained and constructive partnership with indigenous peoples, and to close the gap in the enjoyment of the Covenant rights between indigenous and non-indigenous Australians.

8. The Committee welcomes the ratification by the State Party of the UN Convention on Persons with Disabilities, and the Optional Protocol to the Convention on the Elimination of Discrimination against Women, in 2008, as well as its formal support to the UN Declaration on the Rights of Indigenous Peoples.

15. The Committee remains concerned that some of the Northern Territory Intervention measures adopted by the State party in response to the 2007 *Little Children are Sacred* report, are inconsistent with the Covenant rights, in particular with the principle of non-discrimination, and have a negative impact on the realisation of the rights of indigenous peoples. The Committee notes with regret that the Northern Territory Intervention measures were adopted without sufficient and adequate consultation with the indigenous peoples concerned. (art.2.2)

The Committee recommends that the State party: a) address the human rights violations identified in the 2007 *Little Children are sacred* report bearing in mind the recommendations of the 2008 report of the Northern Territory Intervention Response Review board in this regard; b) conduct formal consultations with the indigenous peoples concerned regarding the operation and impact of the Northern Territory Intervention; c) establish a national indigenous representative body with adequate resources; and d) ratify ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (1989).

18. The Committee notes with concern the high unemployment rates among indigenous people, asylum seekers, migrants and people with disabilities, and the significant difficulties they face to enjoy their right to work equally. (art.2.2 and 6)

The Committee recommends that special programmes and measures be designed to address the significant barriers to the enjoyment of the right to work faced by many indigenous people, asylum seekers, migrants and people with disabilities, including measures to protect them from exploitation.

20. The Committee is concerned that the social security system in the State party does not ensure universal coverage and that the insufficient amount of certain benefits does not provide an effective income support system. The Committee is concerned

that existing conditionalities for the payment of benefits have a negative impact on disadvantaged and marginalized individuals and groups.(art.9)

The Committee recommends that the State party take additional measures, legislative or otherwise, to ensure universal coverage of the social security system so as to include asylum seekers, newly arrived immigrants and indigenous peoples. The Committee also recommends that social security benefits, including unemployment benefits, old age pensions and youth allowance enable recipients to enjoy an adequate standard of living. The Committee strongly recommends that the State party review conditionalities such as “mutual obligations” in the welfare to work programme and the “quarantining” of welfare payments under the Northern Territory Intervention that may have a punitive effect on disadvantaged and marginalized families, women and children. The Committee further recommends that the State party consider ratifying ILO Convention No. 102 on minimum social security standards.

24. The Committee notes with concern that, despite the State party’s economic prosperity, 12 per cent of the Australian population lives in poverty, and poverty rates remain very high among disadvantaged and marginalized individuals and groups such as indigenous peoples, asylum seekers, migrants and persons with disabilities. It regrets that the State party has not yet adopted a comprehensive strategy to combat poverty and social exclusion, and that no steps have been taken to adopt an official poverty line, despite the Committee’s recommendations adopted in 2000. The Committee recalls that this criterion is needed to determine the progress achieved over time by the State party to reduce poverty.(art.11)

The Committee urges the State party to take all necessary measures to combat poverty and social exclusion, and to develop a comprehensive poverty reduction and social inclusion strategy which should integrate the economic, social and cultural rights, in line with the Committee’s statement on Poverty and the International Covenant on Economic, Social and Cultural Rights (E/2002/22-E.12/2001/17, annex VII). The Committee recommends that the State party adopt evaluation measures to assess the impact of its poverty and social reduction strategies and identify its weaknesses, and requests that the State party include, in its next report, comparative data disaggregated by gender, age, rural and urban populations, as well as indicators on the number of persons living in extreme poverty, and on the progress made in its efforts to combat poverty.

25. The Committee notes with concern that the incidence of homelessness has increased in the State party over the last decade, mainly affecting indigenous peoples, in spite of the measures undertaken by the State party to address homelessness in Australia, including its National Housing Strategy, as well as its commitment to halve homelessness by 2020 and to improve housing affordability for vulnerable individuals.(art.11)

The Committee recommends that the State party take effective measures, in line with the Committee's general comment No.4 (1991) on the right to

adequate housing (art. 11, para. 1, of the Covenant), to address homelessness in its territory. The State party should implement the recommendations of the Special Rapporteur on the Right to Adequate Housing contained in the report of his mission to Australia (A/HRC/4/18/Add.2). The Committee requests the State party to provide, in its next periodic report, disaggregated data and information which will allow the Committee to assess the progress made by the State party in improving the housing situation in its territory, in particular with respect to indigenous peoples.

27. The Committee is concerned at the negative impact of climate change on the right to an adequate standard of living, including on the right to food and the right to water, affecting in particular indigenous peoples, in spite of the State party's recognition of the challenges imposed by climate change.(art.11)

The Committee recommends that the State party take all the necessary and adequate measures to ensure the enjoyment of the right to food and of the right to affordable drinking water and sanitation in particular by indigenous peoples, using a human-rights based approach, in line with the Committee's general comments No. 15 on the right to water (2002), No.14 on the right to health (2000) and No. 12 on the right to food (1999). It also recommends that the State party intensify its efforts to address issues of climate change, including through carbon reduction schemes. The State party is encouraged to reduce its greenhouse gas emissions and to take all the necessary and adequate measures to mitigate the adverse consequences of climate change, impacting the right to food and the right to water for indigenous peoples, and put in place effective mechanisms to guarantee consultation of affected Aboriginal and Torres Strait-Islander peoples, so to enable them to exercise their rights to an informed decision as well as to harness the potential of their traditional knowledge and culture (in land management and conservation).

28. In spite of the State party's commitment to "close the gap" in key health indicators between indigenous and non-indigenous people, the Committee notes with concern the continuing high levels of ill health among indigenous people, in particular women and children.(art.2.2 and 12)

The Committee calls on the State party to take immediate steps to improve the health situation of indigenous people, in particular women and children, including by implementing a human rights framework that ensures access to the social determinants of health such as housing, safe drinking water, electricity and effective sanitation systems. Further, the Committee invites the State party to identify disaggregated health indicators and appropriate national benchmarks in relation to the right to health, in line with the Committee's General Comment No.14 (2000), and to include information on the process of identifying such indicators and benchmarks in its next periodic report.

30. The Committee notes with concern the insufficient support for persons with mental health problems, as well as the difficult access to mental health services, in particular for indigenous peoples, prisoners and asylum seekers in detention. (art.2.2 and 12)

The Committee recommends that the State party take effective measures to ensure the equal enjoyment of the right to the highest attainable standard of mental health, including by: a) allocating adequate resources for mental health services and other support measures for person with mental health problems in line with the United Nations Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care; b) implementing the recommendations of the Australian Medical Association's 2008 report on indigenous health; c) reducing the high rate of incarceration of people with mental diseases; and d) ensuring that all prisoners receive an adequate and appropriate mental health treatment when needed.

31. The Committee notes with concern the persistence in the State party of disparities in access to the educational system for indigenous peoples, including those living in remote areas, compared with the rest of the population, as well as the deficient quality of education provided to persons living in remote areas, in particular indigenous peoples. It regrets that access to pre-school education is not equally guaranteed throughout the State party. (art.2.2 and 13)

The Committee recommends that the State party produce accurate national data on indigenous school-age children in remote areas to assess whether the existing education infrastructure and services meet the needs of indigenous peoples living in remote areas. The Committee also recommends that wherever the school provision does not meet the populations' needs, the State party develop an adequate national plan to improve the educational system for indigenous peoples, including in remote areas.

32. The Committee notes with concern that, despite the reforms to the native title system, the high cost, complexity and strict rules of evidence applying to claims under the Native Title Act, have a negative impact on the recognition and protection of the right of indigenous peoples to their ancestral lands. (art.15)

The Committee recommends that the State party increase its efforts to improve the operation of the Native Title system, in consultation with Aboriginal and Torres Strait Islander Peoples, and remove all obstacles to the realization of the right to land of indigenous peoples.

33. The Committee notes with concern that according to the National Indigenous Languages Survey, only about 145 of the original estimated 250 indigenous languages exist today in the State party, and most of them are critically endangered. The Committee is also concerned that, despite the national programmes, including the National Arts and Crafts Industry Support Program, the indigenous cultural and intellectual property are not adequately protected in the State party. (art.15)

The Committee recommends that: a) the State party strengthen its efforts to guarantee the indigenous peoples' rights under articles 1 and 15 to enjoy their identity and culture, including through the preservation of their traditional languages; b) consider improving the Maintenance of Indigenous Languages and Records Program; c) preserve and promote bilingual education at schools; d) reform the Copyright Act 1986 to extend its legal protection to indigenous people; and e) develop a special intellectual property regime that protects the

collective rights of indigenous peoples, including protection of their scientific products, traditional knowledge and medicine. The Committee also recommends that a registry of intellectual property rights of indigenous peoples be opened and that the State party ensure that the profits derived thereof benefit them directly.

2. Brazil: E/C.12/BRA/CO/2, 22 May 2009

3. The Committee welcomes the legislative and other measures adopted by the State party since the examination of its initial report, including the following...

(c) the introduction, in 2003, of the National Qualification Plan to coordinate public policies on employment for disadvantaged groups, including indigenous people, Afro-Brazilians and women;

5. The Committee welcomes the ratification by the State party of the following international instruments:

(a) ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (April 2004); ...

9. The Committee is concerned at the slow progress in the land reform process notwithstanding the Constitutional rights to property and self-determination, as well as the enactment of legislation to facilitate the demarcation of land belonging to the indigenous peoples, the State party's adoption of the UN Declaration on the Rights of Indigenous Peoples (2007) and its ratification of the ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries. (art. 1.1)

The Committee recalls the recommendation made in its concluding observations on the State party's initial report in this regard and recommends that the State party expeditiously complete the process of demarcation and allocation of indigenous land in accordance with the Constitution and existing laws.

16. The Committee notes with concern persisting racial inequalities in access to employment, particularly affecting Afro-Brazilians and indigenous people. Furthermore, the Committee is concerned at the disparity in working conditions based on gender and race, despite the State party's initiatives in this area. The Committee also notes with regret the absence of statistical data on the extent to which indigenous people living outside settlements enjoy access to employment. (arts 2.2 and 7)

The Committee recommends that the State party continue to strengthen its legal and institutional mechanisms aimed at combating discrimination in the field of employment and facilitating equal access to employment opportunities for women and for persons belonging to racial, ethnic and national minorities. The Committee requests the State party to provide, in its next periodic report, information on the extent to which access to employment is available to indigenous peoples living outside settlements.

20. The Committee is concerned that, despite its significant contribution to poverty reduction, the Family Grant Programme (*Bolsa Familia*) is subject to certain limitations. (art. 9) ...

(b) improve the efficacy of the programme by reviewing targeting mechanisms to ensure equal access for the poorest families, particularly indigenous families;

26. The Committee is deeply concerned that continued deforestation in the State party, albeit at a slower pace, impacts negatively the enjoyment of economic, social and cultural rights under the Covenant. (art. 11.2.(a))

The Committee recommends that the State party take the necessary measures to combat continued deforestation in order to ensure the effective enjoyment of economic, social and cultural rights, especially by indigenous and vulnerable groups of people.

28. The Committee is concerned that maternal mortality rates remain extremely high and that the risk of maternal death disproportionately affects marginalised communities, particularly Afro-Brazilians, indigenous women and women from rural areas . Furthermore, the Committee notes that these disparities are attributable, in part, to the inequitable distribution of emergency obstetric care facilities and to the fact that health-care funding fails to pay adequate attention to disadvantaged populations. The Committee is particularly concerned that the majority of maternal deaths are preventable with adequate medical care.(art. 12.1 and 12.2(d))

The Committee recommends that the State party, taking into account the Committee's General Comment No. 14(2000) on the Right to Health:

- a. strengthen measures to reduce maternal mortality rates;
- b. increase healthcare funding for disadvantaged populations;
- c. ensure that the people living in poverty have access to free primary health care;
- d. establish community-based maternal health-care systems and referral systems for obstetric emergencies;
- e. ensure the equitable availability of healthcare facilities, particularly obstetric facilities, among the economically disadvantaged populations;
- f. ensure that economically disadvantaged populations have equitable access, in particular, to sexual and reproductive healthcare, taking the necessary measures to provide obstetric services of a high quality; and
- g. provide, in its next periodic report, detailed and updated information, including disaggregated statistical data and indicators, in order to assess the level of progress achieved in that area.

32. The Committee is concerned that there remain significant disparities in access to higher education based on region, ethnic origin and gender. The Committee acknowledges the various initiatives taken by the State party to grant wider access to higher education, including the Programme for the Incorporation of Vocational Training into Secondary Education, in the form of Youth and Adult Education (*Proeja*) and the University for All Programme. (arts. 2.2 and 13.2 (c))

The Committee recommends that the State party design and implement strategies to improve access to higher education by disadvantaged groups and provide, in its next periodic report, information on the impact of measures taken in this regard.

3. Cambodia: E/C.12/KHM/CO/1, 22 May 2009

6. The Committee notes with satisfaction that, according to the report contained in the Mid-Term Review in 2008 on National Strategic Development Plan 2006-2010, a logging moratorium has been imposed on all existing logging concessions; 2,158 cases of forest crimes have been entered into the case tracking system; 606 offenders have been arrested and sent to courts; and that 215,521 hectares of forest land have been reclaimed from land-grabbing and encroachment.

7. The Committee welcomes the launching by the State party of a project for carbon credits for community forestry under the Clean Development Mechanism and the Reduced Emissions from Deforestation and Forest Degradation of the United Nations Framework Convention on Climate Change.

15. The Committee is deeply concerned about the most recent FAO global forest survey estimating that the State party has lost 29% of its primary tropical forest cover over the last five years, one of the most serious cases being the continuing destruction of the Prey Long forest in Northern Cambodia. The Committee is also concerned about the reports that the rapid increase in economic land concessions in the last several years even within the protected zones, is the major factor for the degradation of natural resources, adversely affecting the ecology and biodiversity, resulting in the displacement of indigenous peoples from their lands without just compensation and resettlement, and in the loss of livelihood for rural communities who depend on land and forest resources for their survival. (art. 1)

The Committee urges the State party to review its policy regarding the conversion of protected zones into economic concessions by conducting environmental and social impact assessments including consultations with relevant stakeholders and communities with due regard to their right to participate in informed decisions that affect their lives. The Committee strongly recommends that the granting of economic concessions take into account the need for sustainable development and for all Cambodians to share in the benefits of progress rather than for private gain alone. The Committee requests the State party in its next periodic report, detailed information on the progress made in the implementation of these policies.

16. The Committee notes with concern that the 2001 Land Law that provides for the titling of indigenous communities' communal lands has not been implemented effectively and that so far, no indigenous community has received any land title. The Committee also notes with concern, the adverse effects of the exploitation of natural resources, in particular mining operations and oil exploration that are being carried out in indigenous territories, contravening the right of indigenous peoples to their ancestral domains, lands and natural resources. (art. 1)

The Committee urges the State party to implement the 2001 Land Law without

further delay and to ensure that its policies on registration of communal lands do not contravene the spirit of this law. The Committee emphasizes the need for carrying out environmental and social impact assessments and consultations with affected communities with regard to economic activities including mining and oil explorations, with a view to ensuring that these activities do not deprive the indigenous peoples to the full enjoyment of their rights to their ancestral lands and natural resources. The Committee encourages the State party to consider ratifying ILO 169, the Convention on Indigenous and Tribal Peoples.

30. The Committee is gravely concerned over reports that since the year 2000, over 100,000 people were evicted in Phnom Penh alone; that at least 150,000 Cambodians continue to live under threat of forced eviction; and that authorities of the State party are actively involved in land-grabbing. The Committee notes with deep concern that the rate of large-scale forced evictions has increased over the last 10 years due to increased public works, city beautification projects, private urban development, land speculation, and the granting of concessions over vast tracks of land to private companies. It is also concerned about the lack of effective consultation with, and legal redress for, persons affected by forced evictions, as well as the inadequate measures to provide sufficient compensation or adequate relocation sites to families who have been forcibly removed from their properties. It is also concerned over reports of violence during the evictions, in some cases carried out by the police. The Committee notes with serious concern the example highlighted on 6 May 2009, by the UN Special Rapporteur on Adequate Housing, over the possible imminent eviction of "Group 78" who have been involved in a legal battle over their land since 2004, as well as the forced eviction and threats of forced eviction in Sambok Chap in Tonle Bassac, Mittapheap in Sihanoukville, Boeung Kak Lake, Dey Krahorn and Borei Keila in Phnom Penh, among others. (art. 11)

The Committee urges the State party to implement a moratorium on all evictions until the proper legal framework is in place and the process of land titling is completed, in order to ensure the protection of human rights of all Cambodians, including indigenous peoples. The Committee recommends the State party to undertake urgent consultations with all stakeholders in order to reach a definition of "public interest" to complement the 2001 Land Law and develop clear guidelines for the possible evictions. The Committee also urges the State party clearly to identify the demarcation of State Public Land and State Private Land. The Committee strongly recommends that the State party, as a matter of priority undertake open, participatory and meaningful consultations with affected residents and communities prior to implementing development and urban renewal projects and to ensure that persons forcibly evicted from their properties be provided with adequate compensation and/or offered relocation that complies with the guidelines adopted by the Committee in its General Comment No. 7 (1997) on forced evictions and guarantee that relocation sites are provided with basic services including drinking water, electricity, washing and sanitation, as well as adequate facilities including schools, health care centres and transportation at the time the resettlement takes place. The Committee also draws the attention of the State party to the guidelines on Development-based Evictions and Displacements (UN Doc. No. A/HRC/4/18), prepared by the UN Special Rapporteur on Adequate Housing.

31. The Committee expresses its deep concern about the culture of violence and impunity prevalent in the State party and the repression of human rights activists defending economic, social and cultural rights, particularly those defending housing and land rights. The Committee is also concerned about reports that the court system has been used to legitimize forced evictions and falsely prosecute housing rights defenders. (art. 11)

The Committee urges the State party to take all necessary measures to combat the culture of violence and impunity prevalent in the State party, and for the protection of human rights defenders including indigenous leaders, peasant activists 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 repression and abuse 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 the repressions and abuses.

34. The Committee notes with concern that primary education is not compulsory in the State party although the primary education net enrollment ratio has increased over the last few years and has expanded to cover most parts of the country. The Committee notes that primary education continues to be a problem for the various ethnic minorities in the north and east of the country where there are 20 minority languages spoken by these groups as their mother tongue while the formal education curriculum has only used Khmer as the medium of instruction. The Committee also notes with concern that indigenous communities may lose their culture and language as a result of a lack of education and information in their own languages. (art. 13, 14 and 15)

The Committee recommends to the State party to extend the coverage of the Education Law to ensure the right to education to all Cambodian children whose first language is not Khmer.

4. Democratic Republic of Congo, E/C.12/COD/CO/4, 20 November 2009

The Committee acknowledges the persistent instability and recurrent armed conflicts in some of the State party's provinces which pose great challenges to the State's ability to fulfil its obligations under the Covenant. The Committee considers, however, that impunity for human rights violations and the illegal exploitation of the country's natural resources including by foreign companies constitute major obstacles to the enjoyment of economic, social and cultural rights in the State party. The Committee reiterates the primary responsibility of the State party for ensuring security in its territory and protecting its civilians with respect to the rule of law, human rights and international humanitarian law.

The Committee is concerned that, in spite of the adoption of a mining code in 2002 and a mining plan in 2004 as well as the current review of all mining contracts, the illegal exploitation and the mismanagement of the State party's natural resources continue with the involvement of foreign companies. The Committee also notes with great concern that in the resource-rich province of Katanga which is under effective government control, its extensive mining industry continues to be exploited to the detriment of the rights of people of this province who remain extremely poor and deprived of the basic social services and infrastructures. The Committee is further concerned about the lack of transparency surrounding the current revision of mining contracts and the granting of new contracts to foreign companies, such as the exclusive concession granted in the field of uranium extraction. (article 1.2)

The Committee urges the State party to take all appropriate measures to ensure that its natural resources are not subjected to illegal exploitation and mismanagement. to review without delay the mining contracts in a transparent and participatory way, repeal all contracts which are detrimental to the Congolese people and ensure that future contracts are concluded in a transparent and public way. The Committee also encourages the State party to implement the Extractive Industries Transparency Initiative (EITI) to which it is a candidate country since 2008, in particular as regard the regular disclosure of revenues received from oil, gas and mining to a wide audience in a publicly accessible, comprehensive and comprehensible manner. The State party should also adopt appropriate measures to control export of minerals and to impose drastic sanctions on those involved in illicit trade in natural resources. The Committee further calls upon the State party to ensure that revenues derived from the mining sector are allocated for the development of the province of Katanga and that its inhabitants are provided with basic social services and infrastructures so that their living conditions may be improved.

The Committee is concerned that despite the adoption of the Forestry code and a moratorium on concessions, illicit trade of wood and abusive exploitation of the country's forests continue to adversely affect the ecology and biodiversity and undermine the rights of indigenous populations, especially Pygmies, to live in their ancestral lands and manage their forests according to their traditional practices. The Committee also expresses concern that representatives of indigenous communities were not invited to take part in the second session of the interministerial commission in charge of reviewing illicit logging contracts although the session was devoted to the signature of contracts between local authorities and logging companies. (article 1.2)

The Committee urges the State party to enforce the moratorium on concessions until the mapping and zoning exercise is completed and to ensure that future forest concessions do not deprive the indigenous peoples of the full enjoyment of their rights to their ancestral lands and natural resources and that its benefits contribute to their poverty alleviation. The state party should ensure that forestry projects are centred on advancing the rights of forest-dependent peoples and conducted only after comprehensive studies are carried out, with the participation of the peoples concerned, to assess the social, spiritual, cultural and environmental impact on them of planned activities. The Committee encourages the State party to consider ratifying ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries.

The Committee is concerned that land-related disputes which were at the heart of the Ituri conflict and continue to be the source of conflicts in many provinces, remain unresolved and therefore may lead to new inter-ethnic confrontation. The Committee is especially concerned that the consultation process to revise the Land Law, although announced in the State party's report, has not yet formally begun and that no other initiative is foreseen to prevent future land dispute. The Committee expresses further concern at the numerous cases of peasants expelled from their land due to mining operations in Kijiba, Kaposhi, Ngaleshi, Kifunga and Chimanga (Katanga). (article 1.2)

The Committee calls upon the State party to urgently launch a consultation process with the view to revising the current Land Law and secure land tenure. Until such a law is adopted and implemented, the State party should take all the necessary measures in consultation with local and regional authorities to solve the actual land conflicts and prevent further disputes. As part of its efforts, the State party should envisage financially supporting the sensitization and mediation activities of the Land Commission established in February 2008 in the province of Ituri and creating community-based land commissions in the other provinces. The State party should also inquire into the expulsion of farmers in Katanga and provide them with compensation and alternative agriculture sites.

The Committee is concerned that while Pygmies continue to suffer extreme forms of societal marginalization in particular with regard to their access to identity document, education, health and labour and in spite of repeated calls by human rights bodies to address the situation, the State party has still not taken the necessary measures to end these human rights violations. The Committee also expresses deep concern that in war zones Pygmies have been and continue to be subjected to mass rapes, extermination and persecution which are committed in total impunity. (article 2.2)

The Committee urges the State party to ensure that racial discrimination is criminalized as a specific offence and that acts of racial discrimination and crimes against pygmies are brought to justice. The Committee also urges the State party to train public officials and organize campaigns to enhance public awareness in matters of discrimination against Pygmies.

The Committee is deeply concerned that the systematic and abusive exploitation of forest resources in the State party has negatively affected the lands and the way of life of numerous indigenous peoples, especially the pygmies living in the Province of Equateur, impeding the enjoyment of their rights as well as their material and spiritual relationship with nature and, ultimately, their own cultural identity.

The Committee recommends the State party to adopt legislation and measures to recognize the status of the pygmies and other indigenous peoples living in the State party, in order to protect their ancestral lands as well as their own cultural identity.

5. Algeria, E/C.12/DZA/CO/4, 21 May 2010

22. The Committee is concerned that the Amazigh language has not yet been recognized as an official language, despite its recognition in 2002 as a national language, and that the teaching of the Amazigh language is not generally available to all age-levels and in all regions. (article 15)

The Committee recommends that the State party recognize the Amazigh language as an official language, and further strengthen its current efforts to ensure the teaching of the Amazigh language and culture in all regions and at all education levels, including through increasing the number of qualified Amazigh language teachers. The Committee draws the attention of the State party to its General Comment No. 21 (2009) on the right of everyone to take part in cultural life.

6. Colombia, E/C.12/COL/CO/5, 21 May 2010

The Committee is concerned that infrastructure, development and mining mega-projects are being carried out in the State party without the free, prior and informed consent of the affected indigenous and afro-colombian communities. The Committee is also concerned that, according to the Constitutional Court, the legitimate representatives of the afro-colombian communities did not participate in the process of consultation and the authorities did not provide accurate information on the scope and the impact of the mining mega-project of Chocò and Antioquia. The Committee is further concerned that the Presidential Directive 001 aimed at establishing a general framework for prior consultation may not be sufficient and that indigenous and afro-colombian peoples were not consulted regarding the draft bill elaborated by the Working Party on Prior Consultation of the Ministry of the Interior that, therefore, does not create the adequate framework for the process of genuine consultation (art.1).

The Committee recommends that the State party take concrete measures to review the processes concerning infrastructure, development and mining projects and fully implement decisions of the Constitutional Court in this regard. The Committee also recommends that the State party review the Presidential Directive 001 and the draft bill elaborated by the Working Party on Prior Consultation of the Ministry of the Interior. The Committee further recommends that the State party adopt legislation in consultation with and the participation of indigenous and afro-colombian people, that clearly establishes the right to free, prior and informed consent in conformity with ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries, as well as the relevant decisions of the Constitutional Court.

The Committee is concerned that bilateral and multilateral trade agreements signed by the State party may affect the enjoyment of economic, social and cultural rights, in particular of disadvantaged and marginalized groups, such as indigenous and afro-colombian peoples and persons living in rural areas. The Committee is also concerned that the Free Trade Agreement (FTA) signed between the State party and the United States contains provisions on intellectual property that may result in increase of prices of medicines and negatively impact on the enjoyment of the right to health, in particular of those with low income (arts. 1, 12).

The Committee recommends that the State party take effective measures to ensure that economic, social and cultural rights are taken into account in all

free trade agreements and bilateral and multilateral trade agreements, and develop effective policies to protect the rights of the population, in particular of the marginalized and disadvantaged groups, against the negative impact of such agreements. In this regard, the Committee recommends that the State party consider revising the intellectual property provisions of the Free Trade Agreement signed with the United States, in order to ensure protection against the increase of the price of medicines, in particular for those with low income.

The Committee is concerned that unemployment remains high in the State party, in particular in rural areas and among young persons, women, indigenous and afro-colombian peoples. The Committee is also concerned that the creation of employment opportunities is taking place primarily in the informal economy (60%) with a negative impact on access to social security. The Committee is further concerned about the working conditions in the informal economy and rural areas where wages remain very low (arts. 6, 7).

The Committee recommends that the State party:

- (a) take effective measures to reduce the high rate of unemployment;
- (b) design specific policies and strategies aimed at creating employment opportunities for young persons, women, indigenous and afro-colombian peoples;
- (c) continue the vocational training programs for young persons, as well as incentives already adopted.

The Committee strongly recommends that the State party promote employment opportunities while improving the working conditions in the informal economy and rural areas, in particular with regard to low wages and social security benefits.

15. The Committee is deeply concerned at the large number of women and girls that continue to be raped and killed in the State party, and that violence against women and girls, in particular sexual violence is perpetrated by illegal armed groups and army forces, despite the legislative and policy measures taken by the State party to combat violence against women. The Committee remains concerned that perpetrators of such violence remain unpunished.. The Committee is particularly concerned about violence against women in situation of forced displacement due to the armed conflict (art. 10).

The Committee urges the State party to strengthen its efforts aimed at preventing and eliminating violence against women by effectively implementing its programs to provide integral assistance to protect and rehabilitate victims; facilitating access of women to justice; prosecuting perpetrators of such violence; and compensating the victims. The Committee also recommends that the State party take measures to prevent and protect women in situation of forced displacement due to the armed conflict from violence by:

- (a) adopting and implementing the program “Protection of the Rights of Indigenous Internally Displaced Women”; [...]

19. The Committee is concerned that about 20% of children born in the State Party are not registered, in particular in remote areas and among indigenous, afro-

colombian peoples and internally displaced persons. It is also concerned that the lack of registration results in difficulties in the access to and enjoyment of their rights under the Covenant (art.10).

The Committee recommends that the State party take immediate measures to ensure that all children born in the State party are registered, in particular in rural areas and among indigenous and afro-colombian peoples and internally displaced persons. The Committee also recommends that the State party complete the modernization of its Civil Registry, and provide sufficient resources to the National Registry's Office to facilitate the registration in rural areas and by internally displaced persons.

22. The Committee is concerned that the policy encouraging agro-exporting goods, such as agro-fuels, may deprive peasants from cultivating their lands. The Committee is also concerned about the unequal distribution of lands owned by a minority of the population, as well as about the absence of a genuine agrarian reform, as recommended in the previous concluding observations of the Committee (art. 11).

The Committee recommends that the State party develop agricultural policies which prioritize the production of food; implement programs that protect national food production with incentives for small producers; and ensure the restitution of lands taken from indigenous and afro-colombian peoples, as well as peasant communities.

24. The Committee is concerned about housing deficit in the State party in terms of quantity and quality, and that overcrowding in housing is widespread among disadvantaged and marginalized individuals and families. The Committee is also concerned that internally displaced persons are offered inadequate temporary housing. The Committee is further concerned that forced evictions are widespread in the State party, including in relation to internally displaced families (art.11).

In line with its General Comment 4, the Committee recommends that the State party adopt a national strategy to provide the population with sustainable solutions for housing; take immediate measures to ensure access to adequate housing, in particular for disadvantaged and marginalized individuals and families, including internally displaced persons, indigenous and afro-colombian peoples. The Committee urges the State to take concrete measures, including by adopting an adequate legal framework to ensure that persons forcibly evicted are provided with alternative accommodation or compensation, in accordance with the guidelines adopted by the Committee in its General Comment No.7. The Committee also urges the State party to provide detailed information in its next periodic report, about the extent of homelessness in the State party and the concrete measures taken to address this problem.

25. The Committee is concerned that maternal and infant mortality remain very high and persistent in the State party, in particular in rural areas and among indigenous peoples in Amazonas and Antioquia, and afro-colombian peoples in the Pacific and Atlantic coasts, due to difficulties in accessing health care services (art. 12).

The Committee recommends that the State party strengthen its public health policy, to ensure for all, in particular for the indigenous, afro-colombian peoples, and persons living in rural areas, universal access to health care services. The Committee also recommends that the State party take all necessary measures to ensure that health care services are accessible to those living in poverty.

B. General Comments

1. General Comment No. 20, Non-Discrimination in Economic, Social and Cultural Rights (art. 2, para. 2), E/C.12/GC/20, 10 June 2009

I. Introduction and basic premises

1. Discrimination undermines the fulfilment of economic, social and cultural rights for a significant proportion of the world's population. Economic growth has not, in itself, led to sustainable development and individuals and groups of individuals continue to face socio-economic inequality, often because of entrenched historical and contemporary forms of discrimination.

2. Non-discrimination and equality are fundamental components of international human rights law and essential to the exercise and enjoyment of economic, social and cultural rights. Article 2(2) of the International Covenant on Economic, Social and Cultural Rights ('Covenant') obliges each State Party "to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

3. The principles of non-discrimination and equality are recognised throughout the Covenant. The Preamble stresses the "equal and inalienable rights of all" and the Covenant expressly recognises the rights of "everyone" to the various Covenant rights such as, inter alia, the right to work, just and favourable conditions of work, trade union freedoms, social security, an adequate standard of living, health and education and participation in cultural life.

4. The Covenant also explicitly mentions the principles of non-discrimination and equality with respect to some individual rights. Article 3 requires States to undertake to ensure the equal right of men and women to enjoy the Covenant rights and Article 7 includes the "right to equal remuneration for work of equal value" and "equal opportunity for everyone to be promoted" in employment. Article 10 stipulates that, inter alia, mothers should be accorded special protection during a reasonable period before and after childbirth and that special measures of protection and assistance should be taken for children and young persons without discrimination. Article 13 recognizes that "primary education shall be compulsory and available free for all" and provides that "higher education shall be made equally accessible to all".

5. The preamble, Articles 1(3) and 55 of the UN Charter and Article 2(1) of the Universal Declaration of Human Rights prohibit discrimination in the enjoyment of economic, social and cultural rights. International treaties on racial discrimination, discrimination against women and the rights of refugees, stateless persons, children, migrant workers and members of their families and persons with disabilities include the exercise of economic, social and cultural rights,⁷ while other treaties require the elimination of discrimination in specific fields, such as employment and education.⁸ In addition to the common provision on equality and non-discrimination in both Covenants, ICESCR and the International Covenant on Civil and Political Rights, Article 26 of ICCPR contains an independent guarantee of equal and effective protection before and of the law.⁹

6. In previous General Comments, the Committee has considered the application of the principle of non-discrimination to specific Covenant rights relating to housing, food, education, health, water, author's rights, work and social security.¹⁰ Moreover, General Comment No. 16 focuses on State parties' obligations under Article 3 of the Covenant to ensure equal rights of men and women to the enjoyment of all Covenant rights, while General Comments Nos. 5 and 6 respectively concern the rights of persons with disabilities and older persons.¹¹ The present General Comment aims to clarify the Committee's understanding of the provisions of Article 2(2), including the scope of State obligations (Part II), the prohibited grounds of discrimination (Part III), and national implementation (Part IV).

II. SCOPE OF STATE OBLIGATIONS

7. Non-discrimination is an immediate and cross-cutting obligation in the Covenant. Article 2(2) requires States parties to guarantee non-discrimination in the exercise of each of the economic, social and cultural rights enshrined in the Covenant and can only be applied in conjunction with these rights. It is to be noted that discrimination constitutes any distinction, exclusion, restriction or preference or other differential treatment that is directly or indirectly based on the prohibited grounds of discrimination and which has the intention or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of Covenant rights.¹² Discrimination also includes incitement to discriminate and harassment.

8. In order for States parties to "guarantee" that the Covenant rights will be exercised without discrimination of any kind, discrimination must be eliminated both formally and substantively.¹³

⁷ See International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); Convention on Elimination of All Forms of Discrimination Against Women (CEDAW); Convention relating to the Status of Refugees; Convention relating to the Status of Stateless Persons; Convention on the Rights of the Child; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention on the Rights of Persons with Disabilities.

⁸ ILO Convention No. 111, Discrimination in Respect of Employment and Occupation; UNESCO Convention against Discrimination in Education.

⁹ See General Comment No. 18 of the Human Rights Committee.

¹⁰ See General Comments Nos. 4, 7, 12, 13, 14, 15, 17, 18 and 19 of CESCR.

¹¹ See General Comments Nos. 5 and 6 of CESCR.

¹² For a similar definition see Article 1, ICERD, Article 1, CEDAW and Article 2, Convention on the Rights of Persons with Disabilities. The Human Rights Committee comes to a similar interpretation in General Comment No. 18, paras. 6 and 7. The Committee has adopted a similar position in previous General Comments.

¹³ See General Comment No. 16

(a) Formal discrimination: Eliminating formal discrimination requires ensuring that a State's constitution, laws and policy documents do not discriminate on prohibited grounds; for example, laws should not deny equal social security benefits to women on the basis of their marital status.

(b) Substantive discrimination: Merely addressing formal discrimination will not ensure substantive equality as envisaged and defined by Article 2(2).¹⁴ The effective enjoyment of Covenant rights is often influenced by whether a person is a member of a group characterized by the prohibited grounds of discrimination. Eliminating discrimination in practice requires paying sufficient attention to groups of individuals which suffer historical or persistent prejudice instead of merely comparing the formal treatment of individuals in similar situations. States parties must therefore immediately adopt the necessary measures to prevent, diminish and eliminate the conditions and attitudes which cause or perpetuate substantive or *de facto* discrimination. For example, ensuring that all individuals have equal access to adequate housing, water and sanitation will help to overcome discrimination against women and girl children and persons living in informal settlements and rural areas.

9. In order to eliminate substantive discrimination, States parties may be, and in some cases are, under an obligation to adopt special measures to attenuate or suppress conditions that perpetuate discrimination. Such measures are legitimate to the extent that they represent reasonable, objective and proportional means to redress *de facto* discrimination and are discontinued when substantive equality has been sustainably achieved. Such positive measures may exceptionally, however, need to be of a permanent nature, such as interpretation services for linguistic minorities and reasonable accommodation of persons with sensory impairments in accessing health care facilities.

10. Both direct and indirect forms of differential treatment can amount to discrimination under Article 2(2) of the Covenant:

(a) Direct discrimination occurs when an individual is treated less favourably than another person in a similar situation for a reason related to a prohibited ground; e.g. where employment in educational or cultural institutions or membership of a trade union is based on the political opinions of applicants or employees. Direct discrimination also includes detrimental acts or omissions on the basis of prohibited grounds where there is no comparable similar situation (e.g. the case of a woman who is pregnant).

(b) Indirect discrimination refers to laws, policies or practices which appear neutral at face value, but have a disproportionate impact on the exercise of Covenant rights as distinguished by prohibited grounds of discrimination. For instance, requiring a birth registration certificate for school enrolment may discriminate against ethnic minorities or non-nationals who do not possess, or have been denied, such certificates.

¹⁴ See also General Comment No. 16.

11. Private sphere. Discrimination is frequently encountered in families, workplaces, and other sectors of society. For example, actors in the private housing sector (e.g. private landlords, credit providers and public housing providers) may directly or indirectly deny access to housing or mortgages on the basis of ethnicity, marital status, disability or sexual orientation while some families may refuse to send girl children to school. States parties must therefore adopt measures, which should include legislation, to ensure that individuals and entities in the private sphere do not discriminate on prohibited grounds.

12. Systemic discrimination. The Committee has regularly found that discrimination against some groups is pervasive and persistent and deeply entrenched in social behaviour and organisation, often involving unchallenged or indirect discrimination. Such systemic discrimination can be understood as legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups, and privileges for other groups.

13. Permissible scope of differential treatment. Differential treatment based on prohibited grounds will be viewed as discriminatory unless the justification for differentiation is reasonable and objective. This will include an assessment as to whether the aim and effects of the measures or omissions are legitimate, compatible with the nature of the Covenant rights and solely for the purpose of promoting the general welfare in a democratic society. In addition, there must be a clear and reasonable relationship of proportionality between the aim sought to be realised and the measures or omissions and their effects. A failure to remove differential treatment on the basis of a lack of available resources is not an objective and reasonable justification unless every effort has been made to use all resources that are at the State party's disposition in an effort to address and eliminate the discrimination, as a matter of priority.

14. Under international law, a failure to act in good faith to comply with the obligation in Article 2(2) to guarantee that the rights enunciated in the Covenant will be exercised without discrimination amounts to a violation. Covenant rights can be violated through the direct action or omission by States parties, including through their institutions or agencies at the national and local level. States parties should also ensure that they refrain from discriminatory practices in international cooperation and assistance and take steps to ensure that all actors under their jurisdiction do likewise.

III. PROHIBITED GROUNDS of DISCRIMINATION

15. Article 2(2) lists the prohibited grounds of discrimination as “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”. The inclusion of “other status” indicates that this list is not exhaustive and other grounds may be incorporated in this category. The express grounds and a number of implied grounds under “other status” are discussed below. The examples of differential treatment presented in this Section are merely illustrative and they are not intended to represent the full scope of possible discriminatory treatment under the relevant prohibited ground, nor a conclusive finding that such differential treatment will amount to discrimination in every situation.

16. Membership in a group. In determining whether a person is distinguished by one or more of the prohibited grounds, identification shall, if no justification exists to the contrary, be based upon *self-identification* by the individual concerned. Membership also includes *association* with a group characterised by one of the prohibited grounds (e.g. the parent of a child with a disability) or *perception* by others that an individual is part of such a group (e.g., a person has a similar skin colour or is a supporter of the rights of a particular group or a past member of a group).

17. Multiple discrimination.¹⁵ Some individuals or groups of individuals face discrimination on more than one of the prohibited grounds, for example women belonging to an ethnic or religious minority. Such *cumulative discrimination* has a unique and specific impact on individuals and merits particular consideration and remedying.

A. Express grounds

18. The Committee has consistently raised concern over *formal* and *substantive* discrimination across a wide range of Covenant rights against indigenous peoples and ethnic minorities amongst others.

19. ‘Race and colour’. Discrimination on the basis of ‘race and colour’, which includes an individual’s ethnic origin, is prohibited by the Covenant as well as by other treaties including the International Convention on the Elimination of Racial Discrimination. The use of the term ‘race’ in the Covenant or the present General Comment does not imply the acceptance of theories which attempt to determine the existence of separate human races.¹⁶

20. Sex. The Covenant guarantees the equal right of men and women to the enjoyment of economic, social and cultural rights.¹⁷ Since the adoption of the Covenant, the notion of the prohibited ground ‘sex’ has evolved considerably to cover not only *physiological* characteristics but also the social construction of *gender* stereotypes, prejudices and expected roles, which have created obstacles to the equal fulfilment of economic, social and cultural rights. Thus, the refusal to hire a woman, on the ground that she might become pregnant, or the allocation of low-level or part-time jobs to women based on the stereotypical assumption that, for example, they are unwilling to commit as much time to their work as men, constitutes discrimination. Refusal to grant paternity leave may also amount to discrimination against men.

21. Language. Discrimination on the basis of language or regional accent is often closely linked to unequal treatment on the basis of national or ethnic origin. Language barriers can hinder the enjoyment of many Covenant rights, including the right to participate in cultural life as guaranteed by Article 15 of the Covenant. Therefore, information about public services and goods, for example, should be available, as far as possible, also in languages spoken by minorities and States parties should ensure

¹⁵ See para. 27 below on intersectional discrimination.

¹⁶ Outcome Document Durban Review Conference, paragraph 6: “*Reaffirms* that all peoples and individuals constitute one human family, rich in diversity, and that all human beings are born free and equal in dignity and rights; and strongly rejects any doctrine of racial superiority along with theories which attempt to determine the existence of so-called distinct human races.”

¹⁷ See Article 3 of the Covenant and General Comment No. 16.

that any language requirements relating to employment and education are based on reasonable and objective criteria.

22. Religion. This prohibited ground of discrimination covers the profession of religion or belief of one's choice (including the non-profession of any religion or belief), that may be publicly or privately manifested in worship, observance, practice and teaching.¹⁸ For instance, discrimination arises when persons belonging to a religious minority are denied equal access to universities, employment, or health services on the basis of their religion.

23. Political or other opinion. Political and other opinions are often grounds for discriminatory treatment and include both holding and not-holding, as well as expression of views or membership within opinion-based associations, trade unions or political parties. Access to food assistance schemes, for example, must not be made conditional on an expression of allegiance to a particular political party.

24. National or social origin. 'National origin' refers to a person's State, nation, or place of origin. Due to such personal circumstances, individuals and groups of individuals may face systemic discrimination in both the public and private sphere in the exercise of their Covenant rights. 'Social origin' refers to a person's inherited social status, which is discussed more fully below in the context of 'property' status, *descent-based discrimination* under 'birth' and 'economic and social status'.¹⁹

25. Property. Property status, as a prohibited ground of discrimination, is a broad concept and includes real property (e.g., land ownership or tenure) and personal property (e.g., intellectual property, goods and chattels, and income), or the lack of it. The Committee has previously commented that Covenant rights, such as access to water services and protection from forced eviction, should not be made conditional on a person's land tenure status, such as living in an informal settlement.²⁰

26. Birth. Discrimination based on birth is prohibited and Article 10(3) specifically states, for example, that special measures should be taken on behalf of children and young persons "without any discrimination for reasons of parentage". Distinctions must therefore not be made against those who are born out of wedlock, born of stateless parents or are adopted or constitute the families of such persons. The prohibited ground of birth also includes *descent*, especially on the basis of caste and analogous systems of inherited status.²¹ States parties should take steps, for instance, to prevent, prohibit and eliminate discriminatory practices directed against members of descent-based communities and act against dissemination of ideas of superiority and inferiority on the basis of descent.

B. Other status²²

¹⁸ See also General Assembly's Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by General Assembly resolution 36/55 of 25 November 1981.

¹⁹ See paras. 25, 26 and 35 respectively.

²⁰ See General Comments Nos. 15 and 4 respectively.

²¹ For a comprehensive overview of State obligations in this regard, see General Comment No. 29 of the Committee on the Elimination of All Forms of Racial Discrimination.

²² See para. 15.

27. The nature of discrimination varies according to context and evolves over time. A flexible approach to the ground of “other status” is thus needed to capture other forms of differential treatment that cannot be reasonably and objectively justified and are of a comparable nature to the expressly recognised grounds in Article 2(2). These additional grounds are commonly recognised when they reflect the experience of social groups that are vulnerable and have suffered and continue to suffer marginalisation. The Committee’s General Comments and Concluding Observations have recognised various other grounds and these are described in more detail below. However, this list is not intended to be exhaustive. Other possible prohibited grounds could include the denial of a person’s legal capacity because he or she is in prison, or is involuntarily interned in a psychiatric institution, or the *intersection* of two prohibited grounds of discrimination, e.g., where access to a social service is denied on the basis of sex and disability.

28. Disability. In General Comment No. 5, the Committee defined discrimination against persons with disabilities²³ as “any distinction, exclusion, restriction or preference, or denial of reasonable accommodation based on disability which has the effect of nullifying or impairing the recognition, enjoyment or exercise of economic, social or cultural rights.”²⁴ The denial of reasonable accommodation should be included in national legislation as a prohibited form of discrimination on the basis of disability.²⁵ States parties should address discrimination, such as prohibitions on the right to education, and denial of reasonable accommodation in public places such as public health facilities and the workplace,²⁶ as well as in private places, e.g., as long as spaces are designed and built in ways that make them inaccessible to wheelchairs, such users will be effectively denied their right to work.

29. Age. Age is a prohibited ground of discrimination in several contexts. The Committee has highlighted the need to address discrimination against unemployed older persons in finding work, or accessing professional training or re-training and against older persons living in poverty with unequal access to universal old age pensions due to their place of residence.²⁷ In relation to young persons, unequal access by adolescents to sexual and reproductive health information and services amounts to discrimination.

30. Nationality. The ground of nationality should not bar access to Covenant rights,²⁸ e.g., all children within a State, including those with an undocumented status,

²³ For a definition see Article 1, CRPD: “Persons with disabilities include, but are not limited to individuals with “long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

²⁴ See General Comment No. 5, para. 15.

²⁵ Article 2, CRPD: “Reasonable accommodation” means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms.”

²⁶ See General Comment No. 5, para. 22.

²⁷ See further General Comment No. 6.

²⁸ This paragraph is without prejudice to the application of article 2(3) of the Covenant, which states: “Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals”.

have a right to receive education and access to adequate food and affordable health care. The Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.²⁹

31. Marital and family status. Marital and family status may differ between individuals because, *inter alia*, they are married or unmarried, married under a particular legal regime, in a *de facto* relationship or one not recognized by law, divorced or widowed, live in an extended family or kinship group or have differing kinds of responsibility for children and dependents or a particular number of children. Differential treatment in access to social security benefits on the basis of whether an individual is married must be justified on reasonable and objective criteria. In certain cases, discrimination can also occur when an individual is unable to exercise a right protected by the Covenant because of his or her family status or can only do so with spousal consent or a relative's concurrence or guarantee.

32. Sexual orientation and gender identity "Other status" as recognized in article 2(2) includes sexual orientation³⁰. States parties should ensure that a person's sexual orientation is not a barrier to realising Covenant rights, for example, in accessing survivor's pension rights. In addition, gender identity is recognized as among the prohibited grounds of discrimination; for example, persons who are transgender, transsexual or intersex often face serious human rights violations, such as harassment in schools or in the work place.³¹

33. Health status. Health status refers to a person's physical or mental health.³² States parties should ensure that a person's actual or perceived health status is not a barrier to realizing the rights under the Covenant. The protection of public health is often cited by States as a basis for restricting human rights in the context of a person's health status. However, many such restrictions are discriminatory, for example, when HIV status is used as the basis for differential treatment with regard to access to education, employment, health care, travel, social security, housing and asylum.³³ States parties should also adopt measures to address widespread stigmatisation of persons on the basis of their health status, such as mental illness, diseases such as leprosy and women who have suffered obstetric fistula, which often undermines the ability of individuals to enjoy fully their Covenant rights. Denial of access to health insurance on the basis of health status will amount to discrimination if no reasonable or objective criteria can justify such differentiation.

34. Place of residence. The exercise of Covenant rights should not be conditional on, or determined by, a person's current or former place of residence; e.g., whether an individual lives or is registered in an urban or a rural area, in a formal or an informal

²⁹ See also General Comment No. 30 of the Committee on the Elimination of All Forms of Racial Discrimination on non-citizens (2004).

³⁰ See General Comments No. 14 and 15.

³¹ For definitions, see Yogyakarta Principles on the Application of International Human Rights Law in relation to Sexual Orientation and Gender Identity.

³² See General Comment No. 14, paras. 12b, 18, 28, and 29.

³³ Office of the UN High Commissioner for Human Rights and Joint United Nations Programme on HIV/AIDS (2006), *International Guidelines on HIV/AIDS and Human Rights, 2006 Consolidated Version*. Geneva: UNAIDS and OHCHR. Available online: http://data.unaids.org/Publications/IRC-pub07/JC1252-InternGuidelines_en.pdf.

settlement, is internally displaced or leads a nomadic lifestyle. Disparities between localities and regions should be eliminated in practice by ensuring, for example, that there is even distribution in the availability and quality of primary, secondary and palliative health care facilities.

35. Economic and social situation. Individuals and groups of individuals must not be arbitrarily treated on account of belonging to a certain economic or social group or strata within society. A person's social and economic situation when living in poverty or being homeless may result in pervasive discrimination, stigmatisation and negative stereotyping which can lead to the refusal of or unequal access to the same quality of education and health care as others, as well as the denial of or unequal access to public places.

IV. NATIONAL IMPLEMENTATION

36. In addition to refraining from discriminatory actions, States parties should take concrete, deliberate and targeted measures to ensure that discrimination in the exercise of Covenant rights is eliminated. Individuals and groups of individuals, who may be distinguished by one or more of the prohibited grounds, should be ensured the right to participate in decision-making processes over the selection of such measures. States parties should regularly assess whether the measures chosen are effective in practice.

37. Legislation. Adoption of legislation to address discrimination is indispensable in complying with Article 2(2). States parties are therefore encouraged to adopt specific legislation that prohibits discrimination in the field of economic, social and cultural rights. Such laws should aim at eliminating *formal* and *substantive* discrimination, attribute obligations to public and private actors and cover the prohibited grounds discussed above. Other laws should be regularly reviewed and, where necessary, amended in order to ensure that they do not discriminate or lead to discrimination, whether formally or substantively, in relation to the exercise and enjoyment of Covenant rights.

38. Policies, plans and strategies. States parties should ensure that strategies, policies, and plans of action are in place and implemented in order to address both formal and substantive discrimination by public and private actors in the area of the Covenant rights. Such policies, plans and strategies should address all groups distinguished by the prohibited grounds and States parties are encouraged, amongst other possible steps, to adopt temporary special measures in order to accelerate the achievement of equality. Economic policies, such as budgetary allocations and measures to stimulate economic growth, should pay attention to the need to guarantee the effective enjoyment of the Covenant rights without discrimination. Public and private institutions should be required to develop plans of action to address non-discrimination and the State should conduct human rights education and training programmes for public officials and make such training available to judges and candidates for judicial appointments. Teaching on the principles of equality and non-discrimination should be integrated in formal and non-formal inclusive and multicultural education, with a view to dismantling notions of superiority or inferiority based on prohibited grounds and to promote dialogue and tolerance

between different groups in society. States parties should also adopt appropriate preventive measures to avoid the emergence of new marginalised groups.

39. Elimination of systemic discrimination. States parties must adopt an active approach to eliminating systemic discrimination and segregation in practice. Tackling such discrimination will usually require a comprehensive approach with a range of laws, policies and programmes, including temporary special measures. States parties should consider using incentives to encourage public and private actors to change their attitudes and behaviour in relation to individuals and groups of individuals facing systemic discrimination, or penalize them in case of non-compliance. Public leadership and programmes to raise awareness about systemic discrimination and the adoption of strict measures against incitement to discrimination are often necessary. Eliminating systemic discrimination will frequently require devoting greater resources to traditionally neglected groups. Given the persistent hostility towards some groups, particular attention will need to be given to ensuring that laws and policies are implemented by officials and others in practice.

40. Remedies and accountability. National legislation, strategies, policies and plans should provide for mechanisms and institutions that effectively address the individual and structural nature of the harm caused by discrimination in the field of economic, social and cultural rights. Institutions dealing with allegations of discrimination customarily include courts and tribunals, administrative authorities, national human rights institutions and/or ombudspersons, which should be accessible to everyone without discrimination. These institutions should adjudicate or investigate complaints promptly, impartially, and independently and address alleged violations relating to article 2(2), including actions or omissions by private actors. Where the facts and events at issue lie wholly, or in part, within the exclusive knowledge of the authorities or other respondent, the burden of proof should be regarded as resting on the authorities, or the other respondent, respectively. These institutions should also be empowered to provide effective remedies, such as compensation, reparation, restitution, rehabilitation, guarantees of non-repetition, public apologies, and State parties should ensure that these measures are effectively implemented. Domestic legal guarantees of equality and non-discrimination should be interpreted by these institutions in ways which facilitate and promote the full protection of economic, social and cultural rights.³⁴

41. Monitoring, indicators and benchmarks. States parties are obliged to monitor effectively the implementation of measures to comply with Article 2(2) of the Covenant. Monitoring should assess both the steps taken and the results achieved in the elimination of discrimination. National strategies, policies and plans should use appropriate indicators and benchmarks, disaggregated on the basis of the prohibited grounds of discrimination.³⁵

³⁴ General Comments No. 3 and 9. See also the practice of the Committee in its concluding observations on reports of States parties to the Covenant.

³⁵ See the Committee's General Comments on education (No.13), health (No.14), water (No.15), author's rights (No.17), social security (No.19), and its new reporting guidelines (E/C.12/2008/2).

IV. COMMITTEE ON THE RIGHTS OF THE CHILD:

A. Concluding Observations

1. Democratic Republic of the Congo, CRC/C/COD/CO/2, January 2009

28. The Committee notes with interest the measures taken to eliminate the disparity between education of girls and of boys, in particular through the acceleration strategy for education of girls (2003-2007). The Committee is nevertheless deeply concerned that certain groups of children face discrimination and marginalization, including children with disabilities, children accused of witchcraft, Batwa children, hidden children, demobilized child soldiers and internally displaced children, and that measures to implement legislation against discrimination, including administrative measures, have been insufficient. The Committee also expresses its concern at the persisting societal discrimination against girls.

29. The Committee urges the State party to take all measures, including administrative measures, to ensure the implementation of legislation protecting children against discrimination. The Committee also encourages the State party to adopt a comprehensive strategy to eliminate discrimination on any grounds and against all vulnerable groups. The Committee further encourages the State party to carry out studies to identify and act on causes of discrimination and carry out awareness-raising activities in order to combat this phenomenon and to train professionals working with and for children.

2. Bangladesh, CRC/C/BGD/CO/4, 26 June 2009

73. While noting the progress made in increasing primary school enrolment, reducing the gender gap and expanding programmes supporting the access of marginalized groups of children living in poverty to school, the Committee remains concerned over the length of compulsory education covering five years only; the differences among parallel educational systems, and among them the *Madrassah* schools; the absence of early childhood development programmes; the hidden costs of education; the lack of materials and equipment; the marked disparities in access to education among the regions and the poor quality of education provided in many schools.

75. The Committee recommends that the State party:

[...]

(e) Consider making multilingual education available in remote areas for minority and indigenous children;

98. The Committee recommends that the combined third and fourth periodic report and written replies submitted by the State party and related recommendations (concluding observations) it adopted be made widely available to the public at large, civil society organizations, youth groups, and children in order to generate debate and awareness of the Convention, its implementation and monitoring. Further, it recommends that the translation into minority languages be included in the dissemination efforts.

3. The Plurinational State of Bolivia, CRC/C/BOL/CO/4, 16 October 2009

3. The Committee welcomes a number of positive developments in the reporting period, including the adoption of legislative and other measures taken with a view to implementing the Convention, such as:

[...]

(c) The enactment as law of the United Nations Declaration on the Rights of Indigenous Peoples [....]

7. The Committee welcomes the new Constitution which includes a section on child rights. However, it regrets that national legislation is not in conformity with the Convention in certain areas, for instance the Child Code (*Codigo del Niño, Niña y Adolescente*) and civil and penal laws concerning the prohibition of corporal punishment, raising the minimum age for marriage and bringing the alternative care of children and juvenile justice system into conformity with the international standards. The Committee also notes difficulties with the dual legal system and certain incompatibilities between positive law and the indigenous customary law.

8. The Committee recommends that the steps taken towards legislative reforms should be part of a comprehensive analysis of the legislative system in order to ensure that both positive law and indigenous customary law meet the obligations under the Convention, in particular regarding the Child Code, the regulations on marriage, corporal punishment, alternative care and juvenile justice. The Committee also recommends that a clear division of the different competencies be established between the judicial bodies and the indigenous local authorities in civil, criminal and administrative matters, and that the State party promote awareness of legislation, in particular among communities which continue to apply customary laws.

13. While noting the work undertaken by the office of the Ombudsman (*Defensor del Pueblo*) for the defence of children's rights, the Committee reiterates its concern that there is no national independent mechanism accessible at all levels with a specific mandate to receive complaints from children and regularly monitor and evaluate progress in the implementation of the Convention.

14. The Committee recommends that the State party establish a Children's Ombudsman either separate or as part of the existing office of the Ombudsman (*Defensor del Pueblo*), accessible to children and their representatives at the national and local levels for the reception and processing of complaints, making sure it conforms to the Paris Principles and taking into account general comment No. 2 (2002) on the role of independent human rights institutions. ... The Committee also recommends that the Ombudsman's office continue reinforcing the local institutions such as the Municipal Child Defence offices (*Defensorías Municipales*) and the Municipal Child Commissions (*Comisiones Municipales de Niñez y Adolescencia*) and possibly adapt these to the indigenous communities or establish community leaders (*Defensores Comunitarios*) working closely with the Ombudsman.

15. The Committee welcomes the efforts to improve the allocation of resources for children, such as the conditional cash transfers in the areas of health and education, but is concerned that budget allocations for children may need a longer-term perspective, which could be provided by a comprehensive and time-bound national

plan of action as part of the national development strategy, as stated earlier, and an open and transparent process. It is also concerned at the difficulty to track investment on children across sectors, departments and municipalities in order to monitor and evaluate performance, as well as at the fact that areas such as child protection and justice are not yet prioritized.

16. The Committee strongly recommends that the State party:

[...]

- (d) Define strategic budgetary lines for those situations that may require affirmative social measures (such as birth registration, chronic malnutrition, indigenous children education, violence against children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies;

Child rights and the business sector

17. The Committee is concerned that as the State party improves its ability to attract private foreign and domestic investment, in addition to increasing State investment, among others, in the mining, forest and soya sectors, the regulatory environment on social and environmental responsibility of business is not yet in place to prevent possible negative impact on children.

18. The Committee suggests that the State party undertake efforts to ensure that foreign and domestic investment through private and State business is mindful and responsive to child rights and operates in a socially and environmentally responsible way to safeguard local communities and their children.

19. The Committee notes efforts made to further improve data collection mechanisms as demonstrated by recent surveys on children in school. Nevertheless, the Committee is concerned at the lack of a comprehensive system of data collection and analysis and at inadequate data on specific groups of children, particularly indigenous children, children with disabilities, children out of school, working children, children in emergency situations and other children in need of special protection.

28. The Committee welcomes the broad definition of discrimination in the new Constitution, the creation of the National Office for the Prevention of Any Form of Violence due to Gender or Generational Differences and the National Plan for Equal Opportunities for Women (2008). It is however concerned about the non-existence of coherent institutional and legal mechanisms to respond to the challenges of discrimination, and about the reported increase in acts of racism against indigenous peoples and afro-descendants, often leading to violence, and about how this affects children. The Committee is further concerned about the significant disparities in the State party in the implementation of the rights enshrined in the Convention, reflected in a range of social indicators such as enrolment in and completion of education, infant mortality rates and access to health care, indicating persistent discrimination against indigenous and afro-descendant children, girls, children with disabilities, children living in rural and remote areas and children from economically disadvantaged families.

29. In light of article 2 of the Convention, the Committee recommends that the State party intensify its efforts to implement the National Plan for Equal Opportunities for

Women, strengthening the National Office for the Prevention of Any Form of Violence due to Gender or Generational Differences, and develop awareness-raising campaigns to prevent and eliminate all forms of de facto discrimination against indigenous and afro-descendant children, children with disabilities, girls, children living in rural and remote areas and children from economically disadvantaged families. The Committee would also like to draw the State party's attention to the principles of the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

34. The Committee welcomes that article 97 of the Child Code establishes that all children should be inscribed in the civil register, and that the first birth certificate is free. The Committee is however concerned that not all children are registered, especially those in rural areas and from indigenous communities.

35. The Committee recommends that the State party continue to take all necessary measures to ensure registration of all children, especially in rural areas, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee further recommends that the State party implement a specific strategy for the indigenous communities based on respect for their cultures and taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention .

53. While welcoming the Strategic National Plan to improve maternal, perinatal and neonatal health, promoting an Intercultural Community Family Health Model, the Committee is still concerned at the high number of maternal deaths, and that there has been no real reduction of the infant mortality rate in rural areas, especially in indigenous communities where the institutional attended childbirth is less than 50 per cent.

59. While welcoming the programme "Desnutricion cero", the Committee is concerned at the high level of chronic malnutrition among children in the State party, and that the prevalence is much higher in rural areas and among indigenous populations.

61. The Committee is concerned that 70 per cent of the children in the State party live in poverty, of which 45 per cent live in extreme poverty. The Committee is also concerned at the extremely low level of sanitation coverage in the State party, the high discrepancy between urban and rural areas and that the National Plan of Basic Sanitation remains inoperative. The Committee is further concerned at the lack of social housing and the negative impact of forced evictions on children, especially of indigenous and rural (*campesino*) families, and reiterates the concern stated by the Committee on Economic, Social and Cultural Rights in 2008 (E/C.12/BOL/CO/2, para. 14(h)).

67. The Committee welcomes the new Constitution which establishes free and compulsory primary and secondary education. ... The Committee is however concerned that not all children, particularly indigenous children, attend primary school despite the introduction of compulsory education, and that some primary

school fees continue to be charged despite the constitutional guarantee of free education. The Committee is further concerned at the lack of preschools, the poor quality of education in consequence of insufficient teacher training, the low transition rate from primary to secondary school and the marked gender disparity in secondary school.

68. The Committee recommends that the State party:
[...]

- (c) Ensure that also girls and indigenous children fully realize their right to education;
- (d) Improve the quality of teacher training, particularly with regard to inter-cultural and bilingual education [...]
- (f) Make parents aware of the importance of early childhood development and education, establish holistic early childhood development programmes and train caregivers and teachers to adequately implement the new child-centred and holistic curricula of early childhood development in a culturally sensitive manner.

73. The Committee expresses its concern and shares the concern of the Committee on Economic, Social and Cultural Rights at the persistence of economic exploitation of children, especially indigenous children (E/C.12/BOL/CO/2 para. 14(d)). The Committee is in particular concerned at the situation of the Guarani children living in conditions of servitude, forced labour and victims of abuses in the Chaco region, as well as children engaging in hazardous work in mining.

74. The Committee recommends that the State party take urgent measures to address and monitor exploitative forms of child labour by:

- (a) Taking measures to prevent children under the minimum age from working in the formal and informal sector, sugar cane and brazil nut harvesting and mining industry;
- (b) Improving monitoring mechanisms in order to enforce existing labour laws and protect children from economic exploitation;
- (c) Creating and implementing norms to regulate apprenticeships;
- (d) Ensuring that children and their families living in particularly vulnerable areas have access to better opportunities for human and economic development, and that efforts to eradicate extreme poverty put children at the centre of all initiatives [...]

77. The Committee is concerned at the scarcity of data available on the number of children victims of sexual exploitation or abuse, or on cases of perpetrators of these crimes who have been prosecuted and convicted. The Committee is further concerned at the sexual abuse of Guarani girls and other indigenous groups serving in landowners' homes or living in conditions that make them vulnerable to being sexually exploited.

82. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of

Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). In particular, the Committee urges the State party to take into account the Committee's general comment No. 10 (2007) on the administration of juvenile justice. It also recommends that:

- (a) The State party ensure that both the positive legal system and the traditional indigenous system respect the Convention, and introduce a clear separation of competencies between the two systems;
- (b) The State party take preventive measures, such as supporting the role of families and communities in order to help eliminate the social conditions leading children to enter into contact with the criminal justice system/ the traditional indigenous system, and take all possible measures to avoid stigmatization;
- (c) Children in conflict with the law are always dealt with within the juvenile justice system and never tried as adults in ordinary courts;
- (d) The institution of specialized judges for children is introduced in all the regions and that such specialized judges receive appropriate education and training;
- (e) Detention is applied as a measure of last resort and for the shortest possible period of time and is reviewed on a regular basis with a view of withdrawing it;
- (f) Alternatives to the deprivation of liberty be developed in both the positive legal system and the traditional indigenous system, such as probation, mediation, community services orders, or suspended sentences, wherever possible [...]

Indigenous children

85. While welcoming political, legal and institutional reforms with the aim of reversing the situation of exclusion and marginalization of the indigenous peoples, the Committee shares the concerns of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people at the illegal appropriation of indigenous lands by farm operators, the pollution of soils and waters traditionally used by the indigenous communities, situations of servitude or forced labour, the failure to adapt the national education system to the traditional indigenous cultures, the indigenous population's limited access to health services and the persistence of manifestations of racism against indigenous people.

86. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children and to guarantee their enjoyment of the rights enshrined in the national constitution, domestic law and in the Convention. In this regard, the Committee refers the State party to its general comment No. 11 (2009) and to the recommendations issued by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (see A/HRC/11/11).

4. Philippines, CRC/C/PHL/CO/3-4, 22 October 2009

21. The Committee notes with concern that the Philippines, being one of the most highly mineralized countries in the world and a middle income economy in search of foreign investment, has not yet addressed the social and environmental impact, in particular on the situation of children, of its 1995 Mining Act that allows up to 100

per cent foreign-owned companies to invest without regulation in large scale exploration, development and utilization of minerals, oil and gas. The Committee is especially concerned at reports from non-governmental and international sources that children are being acutely affected as families are removed from mining areas, indigenous people are being deprived of their ancestral lands and highly polluting technology is being utilized.

22. While mindful of the need for foreign investment, the Committee recommends that the regulatory framework in the country include a requirement for social responsibility and environmental protection making international and national companies aware of and participants in the respect and fulfilment of children's rights.

23. The Committee acknowledges the State party's efforts to improve its data collection system and welcomes, in particular, the development by the CWC of the *Subaybay Bata* Monitoring System (SBMS), linked to the major national government agencies, the development of 143 indicators for the seven major clusters of child rights, as well as the publication of Annual State of the Filipino Children Reports. However, the Committee reiterates its concern at the lack of disaggregated data by region, gender and age and at the insufficient data on children in need of special protection, in particular, children living in extreme poverty, abused and neglected children, children in conflict with the law and children belonging to minorities and indigenous groups.

25. The Committee welcomes the State party's various initiatives to promote and strengthen knowledge about the Convention, including at the local level, but it is concerned that its awareness-raising campaigns and training activities are insufficient to reach all parts of the country, including rural and remote areas, and to cover all persons working with or for children.

26. The Committee recommends that the State party continue to strengthen its awareness-raising campaigns and ensure that such campaigns reach the rural and remote areas, including children belonging to indigenous communities and minorities. [...]

29. While noting efforts by the State party to eliminate discrimination against children, including through the implementation of the Girl Child Plan and a number of programmes targeting indigenous and minority children, the Committee reiterates its concern at discrimination faced by many children, in particular children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in Mindanao, migrant children, street children and children living in rural areas as well as children living in conflict areas, as regards their access, inter alia, to social and health services and education. [...]

30. The Committee urges the State party to increase its efforts to eliminate discrimination against children and in particular to:

- (a) Adopt and implement a comprehensive strategy addressing all forms of discrimination, including multiple forms of discrimination against all vulnerable groups of children and aimed at combating discriminatory social attitudes towards girls, children living in poverty, children with disabilities, indigenous and minority children, including Muslim children living in

Mindanao, migrant children, street children and children living in rural areas as well as children living in conflict areas [...]

35. In light of article 12 of the Convention and drawing the State party's attention to the Committee's general comment No. 12 (2009) on the right of the child to be heard, the Committee encourages the State party to further strengthen its efforts to promote and facilitate, including through legislation, within the family, schools, institutions, the courts and administrative bodies, respect for the views of the child and their participation in all matters affecting them. In this respect, the Committee recommends that the State party draw special attention to minority and indigenous children.

36. The Committee welcomes the efforts by the State party to improve birth registration, including the implementation of the Birth Registration Project (BRP), the establishment of the Barangay Civil Registration System (BCRS) to facilitate registration at the grassroots level as well as the training of *barangay* civil registration agents on the civil registration law and procedures of mobile birth registration. However, the Committee notes with concern that there are 2.6 million unregistered children in the country, most of whom are Muslim and indigenous children living in Mindanao. The Committee is also concerned that birth registration is not free of charge and that fines have to be paid in case of late registration.

37. The Committee recommends that the State party pursue and strengthen its efforts to develop an efficient and free birth registration system for all children. The Committee urges the State party to strengthen the BCRS in order to make the civil registration system more accessible at the grassroots level. The Committee also urges the State party to ensure allocation of adequate financial, human and other resources to registration centres and to take further measures, including mobile services, to ensure easy access to registration by the population, including in the most remote areas of the country, with particular attention to Muslim and indigenous children living in Mindanao. [...]

81. The Committee urges the State party to ensure that juvenile justice standards are fully implemented, in particular articles 37 (b), 39 and 40 of the Convention, as well as the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) and the United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules). The Committee recommends that the State party, while taking into account the Committee's general comment No. 10 (2007) on the administration of juvenile justice:
[...]

- (h) Adopt measures to ensure that an interpreter is provided free of charge in the case of indigenous children if required and that the child is guaranteed legal assistance, in a culturally sensitive manner, in accordance with the Committee's general comment No. 11(2009) on indigenous children and their rights under the Convention [...]

Children belonging to minorities and indigenous peoples

83. While acknowledging steps taken to address the precarious situation of indigenous children, such as the inclusion for the first time of indigenous people's concerns in the Medium-Term Philippine Development Plan 2004-2010 (MTPDP), the Committee

reiterates its concern at the widespread poverty among minorities and indigenous peoples and the limited enjoyment of their human rights, in particular, concerning their access to social and health services and education. The Committee is also concerned at the lack of information in the State party's report and during the dialogue with the delegation of the actual impact of the application of the 1997 Indigenous People's Rights Act (IPRA) on children.

84. Taking into account its general comment No. 11 (2009), the Committee recommends that the State party take the necessary steps to ensure that indigenous children and children belonging to minorities fully enjoy all of their human rights equally and without discrimination. In this respect, the Committee recommends that the State party strengthen its efforts to implement the IPRA and develop and implement policies and programmes in order to ensure equal access for indigenous and minority children to culturally appropriate services, including social and health services and education. The Committee also recommends that general comment No. 11 guide the review process of the IPRA and the MTPDP to ensure that the specific rights of children are upheld. The Committee further recommends that the State party strengthen its mechanisms for data collection on minority and indigenous children so as to identify existing gaps and barriers to the enjoyment of their human rights and with a view to developing legislation, policies and programmes to address such gaps and barriers. Furthermore, the Committee recommends that the State party raise awareness in communities and schools of the multicultural nature of the Filipino society and the need for education to be sensitive to traditions, languages and views by different ethnic groups.

5. Cameroon, CRC/C/CMR/CO/2, 29 January 2010

Non-discrimination

27. The Committee is deeply concerned at the persistence of de facto discrimination among children in the enjoyment of their rights. It is especially concerned that girls, indigenous children, children with disabilities, refugee children, children from poor rural areas, and children in street situations suffer particular disadvantages with regard to education, access to health and social services. The Committee also regrets the existence of traditions under which only male children are regarded as heirs in matters of inheritance.

28. The Committee urges the State party to:

(a) Strengthen efforts to end all discriminatory practices against children and ensure equal respect for the rights of all girl and boy children in the State party, including indigenous and refugee children, children living in poor rural areas and children with disabilities;...

65. The Committee welcomes the adoption by the State party of the National Education Sector Strategy, the measures taken to improve literacy rates among girls, and the increase in enrollment rates in primary education. However, the Committee remains concerned over the low budgetary allocation for education and the significant gender and regional disparities in access to education, particularly in the Far North, North, Adamoua, East and Southern regions. The Committee is also concerned at the extremely high rate of children victims of violence in schools, the high number of school dropouts, the insufficient number of trained teachers, the poor quality of education, the lack of learning materials and equipments as well as the lack of water

and sanitation facilities. Furthermore, the Committee is deeply concerned that despite the 1998 law providing for free primary education, parents still pay the major part of educational costs and that children without birth certificates cannot attend schools.

66. The Committee strongly recommends that the State party:

- (a) Increase its budgetary allocations for basic and secondary education;
- (b) Ensure access to education, including early childhood education, in all regions of the State party and pay particular attention to girls and all vulnerable groups of children, including indigenous children and children without birth certificates;...

Children belonging to indigenous groups

82. The Committee welcomes the signing on 13 September 2007 of the UN Declaration on the Human Rights of Indigenous People by the State party. It also takes note of the State party's continuous efforts to improve the situation of disadvantaged indigenous children, particularly in the areas of education, social welfare and health, and the initiative to develop a law on the rights of indigenous peoples. The Committee appreciates especially the measures taken to raise awareness on HIV/AIDS among indigenous communities and to ensure access to birth registration for indigenous children including those belonging to Bororo, Baka, Bakola and Mafa communities. However, the Committee is concerned at the absence of legislation guaranteeing the rights of indigenous children and at the continuing discrimination and marginalization of indigenous children, in particular those living in remote areas of the country, including Bororo and Baka from the Eastern part of the country.

83. The Committee recommends that the State party strengthen efforts to enhance the situation of indigenous children and in particular to:

- (a) Adopt a law on the rights of indigenous people and ensure that it fully integrates the definition of indigenous people as enshrined in the UN Declaration on the Human Rights of Indigenous Peoples, and takes account of the Committee's General Comment No. 11 of 2009 on indigenous children and their rights under the Convention (CRC/C/GC/11)
- (b) Increase implementation and systematic monitoring of programmes for indigenous children and ensure that they respect their culture in accordance with art. 30 of the Convention, and respond adequately to their needs by, inter alia, intensifying cooperation with indigenous communities and their leaders to find suitable solutions for indigenous children;
- (c) Ensure the participation of indigenous children in the planning, implementation and evaluation of plans and programmes that concern them;
- (d) Ensure that indigenous children, in particular adolescents, are provided with information which is relevant to their needs and interests, especially in the field of education, job opportunities and prevention of sexually transmitted diseases;
- (e) Address the geographical disparities in the protection of indigenous children's rights with particular attention to Bororo, Baka, Bakola and Mafa children living in remote areas;
- (f) Ensure the full participation of civil society, NGOs and children in the design and implementation of programmes and policies to fulfil the rights of indigenous children; and

(g) Seek technical assistance and cooperation inter alia from, UNICEF, OHCHR and ILO, particularly with regard to the elaboration of a draft law on the rights of indigenous.

6. Ecuador, CRC/C/ECU/CO/4, 29 January 2010

4. The Committee welcomes a number of positive developments in the reporting period, including the adoption of legislative and policy measures taken with a view to implementing the Convention, such as:

(a) The new Constitution of 2008, establishing the plurinational and intercultural character of the State, which recognizes the respect and protection of a catalogue of human rights as the main duty of the State, including by enhancing attention to economic, social and cultural rights, and by recognizing international human rights treaties as State obligations requiring legislative adaptation;...

6. The Committee also welcomes the adoption of: ...

(b) The State - Indigenous Peoples and Nationalities Agreement for Children and Adolescents - called "Building Sumak Kawsay from the Beginning of Life" ("Construcción del Buen Vivir desde el principio de la vida") which provides the framework for the Minimum Agenda for Indigenous Children in Ecuador.

21. The Committee welcomes the constitutional provision to allocate at least 5% and 6% of GDP to health and education, respectively. The Committee also welcomes the increase in public social investment in recent years, especially on health, education and social welfare, and the efforts of the State party to protect social expenditure from the effects of the global financial crisis although it notes that it still remains low. It also welcomes efforts to improve the allocation of resources for children in need of special protection, such as cash transfers to families living below the poverty line, the Bono de Desarrollo Humano (conditioned to the use of basic health services for young boys and girls and to school attendance of boys, girls and adolescents 5 to 18 years of age) but it is concerned that it is not yet possible to indicate what proportion of social spending is specifically dedicated to children nor that it is possible to disaggregate by gender, age group, ethnic origin, geographical and/or administrative location and others. The Committee notes efforts to start articulating the new planning process with pluriannual and regionalized budgeting but it is concerned that specific child-related spending, if not identified, may not be sustained over time as part of the national development strategy. The Committee is also concerned at the insufficient budget allocation for implementation of the Code on Children and Adolescents.

22. The Committee recommends that the State party, in light of articles 3 and 4 of the Convention, undertake all appropriate measures to the maximum extent of available resources to ensure that sufficient budgetary allocation is provided to services for children and that particular attention is paid to the protection of the rights of children belonging to disadvantaged groups, including indigenous children, Afro-Ecuadorian children and children living in poverty. In particular and in line with the Committee's recommendations resulting from its Day of General Discussion on "resources for the rights of the child-responsibility of States", it encourages the State party to:...

23. While acknowledging recent efforts to improve planning and budgeting including data collection, the Committee is concerned at the lack of a comprehensive system of data collection and analysis as well as inadequate data on specific groups of children,

particularly indigenous and Afro-Ecuadorian children, children with disabilities, children out of school, working children, and other children in need of special protection.

24. The Committee recommends that the State party strengthen its system of collecting disaggregated data by age group, gender, ethnicity, geographic and/or administrative location, etc. covering all areas of the Convention as a basis to assess progress achieved in the realization of children's rights and to help design policies to implement the Convention. The Committee recommends that the State party seek technical assistance from, inter alia, UNICEF, for this purpose.

25. While welcoming the good experiences in Ecuador particularly by children on dissemination and awareness raising, like the Communication Agency of Children and Adolescents (ACNNA), the Committee remains concerned at the low level of awareness of the Convention among professionals working with and for children, the media, and the general public. The Committee welcomes the two-year research done by ACNNA in monitoring the publications of 10 national and local newspapers for their quantitative and qualitative coverage of children's issues, which clearly shows the little interest and inadequate understanding of the press on these issues.

26. The Committee recommends that the State party strengthen its efforts to ensure that the provisions of the Convention are widely known and understood by adults and children. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcements officials, teachers, including teachers in indigenous communities and rural and remote areas, health personnel, social workers and personnel working in all forms of alternative care.

30. The Committee notes with concern the recent lack of public agreement in the country on social and environmental standards to be placed on projects for the oil and mineral sector. The Committee is concerned over the lack of clear guidelines and regulations to enable the protection and respect by business corporations, both national and international, of children's rights.

31. The Committee urges the State party to develop clear guidelines for the business sector to protect and respect children's rights as enshrined in the Convention, the Code on Children and Adolescents and the Constitution. The Committee recalls the 2008 Committee on the Elimination of Racial Discrimination (CERD/C/ECU/CO/19, para. 16) recommendation in this respect to ensure that oil companies conduct proper environmental and social assessments of impact and do so in consultation with local communities, including indigenous communities.

34. The Committee welcomes the recognition in the new Constitution of the plurinational and intercultural character of the State party. It however shares the concern of the Committee on the Elimination of Racial Discrimination 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 (CERD/C/ECU/CO/19, para. 8), including children. It is further concerned at the clear manifestations of such discrimination, such as the under-5 mortality rate of indigenous children which is 50 % higher than the national average, that chronic

malnutrition among indigenous children is more than double that of mestizo children and that indigenous women and girls are subject to discrimination and assassination, as expressed by the Committee on the Elimination of Racial Discrimination.

35. The Committee urges the State party to ensure practical application of the constitutional and legal provisions that outlaw gender, ethnic and any other form of discrimination and to guarantee special protection measures in favour of indigenous and Afro-Ecuadorian children. The Committee further reminds the State party that the Committee on the Elimination of Discrimination against Women recommended in 2008 that special measures be taken for the protection of the rights of indigenous and Afro-Ecuadorian women and girls (CEDAW/C/ECU/CO/7). The Committee would also like to draw the State party's attention to the principles of the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

60. While welcoming the National Plan for the Prevention of Adolescent Pregnancies as a response to one of the most pressing health problems faced by adolescents, the Committee shares the concern expressed by the Committee on the Elimination of Discrimination against Women in 2008 (CEDAW/C/ECU/CO/7, para. 38) at the high rate of pregnancy among teenage girls, especially among indigenous and Afro-Ecuadorian girls (1 of 5 deliveries is by girls between 15 and 18 years of age). [...]

64. The Committee welcomes increased public spending on education in recent years, as well as the elimination in 2006 of voluntary contributions to schools, and the introduction of free textbooks. It also looks forward to further increase in resources as established in the 2008 Constitution. The Committee also welcomes the 10-year Education Plan that includes early education and aims at full enrolment of all children in basic education and 75% at the secondary level and the 2006 National Action Plan for the Prevention and Eradication of Sexual Offences in the Educational System. It is however concerned at the still high dropout rates, especially of indigenous girls, and at the high rate of sexual abuse and harassment against girls in schools and corporal punishment as a form of "discipline" in schools. It also notes with concern that the low completion rate in secondary education, especially among indigenous children and pregnant girls, point to the inadequate quality of education. The Committee is further concerned that children of irregular migrant workers do not have access to the educational system.

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

(b) Address disparities more effectively by allocating specific budget and long-term support targeting the most deprived children, namely indigenous children and girls in rural areas, paying attention to alternative informal education and ensuring vocational training leading both to employment and/or to further technical education;

Children belonging to indigenous groups

82. The Committee welcomes the constitutional definition of Ecuador as a plurinational and intercultural State as well as the participatory process and framework of understanding that has produced the Agreement between the State and Indigenous Peoples and Nationalities for Children as well as the Plan for Good Living

from the Beginning of Life, which encompasses the Minimum Agenda for Indigenous Children of Ecuador. It also welcomes current efforts to define and implement local goals for protection and promotion of indigenous children's rights in 54 cantons. Nevertheless, and in line with Art. 30 of the Convention and having noted the serious breaches to the principle of non-discrimination as they affect indigenous children and girls of all ethnic origins, it remains concerned at the insufficient application of the intercultural bilingual education system and the low budgetary allocation per capita to the educational system in provinces with majority indigenous population, and the lack of information on its evaluation. Likewise, it notes with concern the barriers for adolescents to have access to culturally and gender-sensitive sexual and reproductive health information and education.

83. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children, respect their culture and guarantee their enjoyment of the rights enshrined in the national constitution, domestic law and in the Convention. In this regard, the Committee refers the State party to its general comment no. 11 (2009) on Indigenous Children and their rights under the Convention (CRC/C/GC/11). The Committee also recommends that the State party implements the Minimum Agenda for Indigenous Children in Ecuador, fully respecting its nature and the participatory process that originated it, trains indigenous and local leaders accordingly as well as related public services staff and provides adequate resources, ensuring that monitoring and evaluation mechanisms are put in place. The Committee encourages the State party to continue strengthening the intercultural and bilingual education, paying due attention to the culture of indigenous children in accordance with article 30 of the Convention.

7. El Salvador, CRC/C/SLV/CO/3-4, 29 January 2010

21. The Committee notes that the newly established Secretariat of Social Inclusion within the Office of the Presidency of the Republic has started a consultative process to collect information and statistics in areas where this is virtually absent, such as on indigenous children and children with disabilities. The Committee also notes that ISNA will now have also investigation and research capacity as well as the role of collecting data in areas relevant for the Convention. However, the Committee remains concerned at the current lack of a comprehensive nationwide system of data collection covering all areas of the Convention and its two Protocols throughout the country.

23. The Committee notes the efforts made to further disseminate the Convention among professionals working with and for children as well as among the general public, especially children themselves. However, the Committee regrets that the previous concluding observations of the Committee were not sufficiently disseminated and that, despite the efforts in this respect, the level of awareness in the general population about the Convention is still low, and has not improved since the consideration of the last periodic report.

24. The Committee recommends that the State party:

- a. Continue to strengthen its awareness-raising campaigns and ensure that such campaigns reach the rural and remote areas, including indigenous children;...

27. The Committee regrets that, despite the State party's efforts to combat racism and discrimination, discriminatory attitudes and social exclusion still affect some sections of the child population, and in particular adolescents, children with disabilities, girls, children living in rural and remote areas, indigenous children and children from economically excluded families. The Committee also notes the persistence of a traditional patriarchal conception of the family, which often results in girls being given subordinate and dangerous tasks – such as domestic service - which place them in a vulnerable situation and at risk of abuses. Furthermore, the Committee is also concerned that adolescents are often mistakenly depicted in the media and in the society as the main cause of the spread of violence affecting the country.

28. In light of article 2 of the Convention, the Committee reiterates its recommendation that the State party:

- e) Intensify its efforts to prevent and eliminate all forms of de facto discrimination against adolescents, children with disabilities, girls, children living in rural and remote areas, children in street situations, indigenous children and children from economically excluded families;
- f) Take into account in these efforts the recommendations adopted by the Committee in General Comment No. 11 on Indigenous children and their rights under the Convention (12 February 2009), as well as the outcome document adopted at the 2009 Durban Review Conference.

65. The Committee recommends that the State party continue to enhance quality education related to sexual and reproductive health as a fundamental tool to prevent HIV/AIDS, including to indigenous adolescents in a culturally sensitive way. The State party should also intensify its efforts to prevent mother-to-child transmission.

Indigenous children

91. The Committee remains concerned at the limited enjoyment of rights – including protection and prevention against discrimination - by indigenous children and at the incomplete information provided by the State party on this issue. The Committee is also concerned at the cultural invisibility of the indigenous population in the State party, which result in the lack of specific public policies to promote the development and wellbeing of indigenous children, the discrepancies in the standard of living of indigenous people (more than 38% reportedly live in extreme poverty) and the steep rise of emigration of indigenous adolescents. The Committee is also concerned at the lack of sufficient opportunities for the expression of indigenous culture and practices, including intercultural and bilingual education, as well as at the daily life discrimination to which indigenous people and their children are subjected.

92. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention, including the right to intercultural and bilingual education, in accordance with article 30 of the Convention. To this end, the State party should take into account, inter alia, the General Comment No. 11 on Indigenous Children and their rights under the Convention (February 2009), as well as the recommendations contained in the outcome document of the Durban Review Conference (April 2009).

8. Norway, CRC/C/NOR/CO/4, 29 January 2010

Non-discrimination

19. The Committee welcomes the entry into force in January 2006 of the Antidiscrimination Act and the establishment also in 2006 of an Equality and Anti-Discrimination Ombud, an Equality and Anti-Discrimination Tribunal and the adoption of an Action Plan to Promote Equality and Prevent Ethnic Discrimination. The Committee takes note of the ongoing debate as to whether age discrimination of children should be included in the law and whether children should be given the right to file complaints if they are discriminated against due to their age. However, it is concerned at information, including from children, that minority and indigenous children feel stigmatized and maltreated, including by other children, and that children with disabilities complain that their rights are not respected.

20. The Committee urges the State party to take all necessary steps to combat discrimination against children from minority groups, indigenous children and children with disabilities and to familiarize children from an early age with the right of every child to be protected against discrimination. The Committee also recommends that the State party carefully examine the possibility of expanding legislation to provide protection of children against discrimination on the grounds of their age.

Children belonging to a minority group and indigenous children

60. The Committee welcomes efforts by the State party to ensure the rights of minority and indigenous children and takes note of the New Plan of Action to Promote Equality and Prevent Ethnic Discrimination (2009-2012), the Plan of Action to Strengthen Sami Languages, and the Plan of Action to Improve the Living Conditions of the Roma in Oslo. The Committee notes with interest the State party's indication that it will encourage mass media to give special consideration to the linguistic needs among children who belong to an indigenous group. However, the Committee notes with concern that child welfare assistance for children from ethnic minority is of a much lower standard and that 10 percent of children from immigrant backgrounds have experienced threats or violence due to their cultural background and that boys from minority backgrounds experience more frequent bullying than children from the majority population.

61. The Committee recommends that the State party make every effort to ensure that children from ethnic minority backgrounds and indigenous children have equal access to all children's rights, including access to welfare, health services and schools and are protected against prejudice, violence and stigmatisation.

9. Paraguay, CRC/C/PRY/CO/3, 29 January 2010

3. The Committee welcomes a number of positive developments in the reporting period, including the adoption of legislative measures taken with a view to implementing the Convention, such as: ...

(g) The Indigenous Education Act (Act No. 3231/2007);...

16. The Committee welcomes the efforts carried out by the State party in recent years to improve the allocation of resources for children. Nevertheless, it is concerned that these are not sufficient to answer to all children's needs and that a child right's approach is needed in the elaboration of the State's budget.

17. The Committee strongly recommends that the State party
(d) Define strategic budgetary lines for those situations that may require affirmative social measures (such as birth registration, indigenous children education, violence against children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies;...

20. The Committee welcomes the initiatives carried out to disseminate the Convention in the State party, in particular the work done with the media, including the news' Agency for children rights, thematic training for journalists and media campaigns. However, it reiterates its concern about the insufficient dissemination of the Convention by governmental agencies, in particular in rural areas and among indigenous children. It is also concerned that efforts have not yet generated adequate awareness among professionals working with and for children and among the general public. The Committee is particularly concerned that children themselves are not well informed about their rights and that the Convention is not sufficiently translated into other languages.

21. The Committee reiterates its previous recommendation and urges the State party to:

(a) Increase efforts to translate informative material into Guarani and the main indigenous languages and disseminate it;...

24. The Committee welcomes the fact that the rights of the indigenous have been set as a priority in the platform of the new administration of government and the existence of a bill against all forms of discrimination. However, the Committee remains concerned that discrimination affects children in the State party for reasons of ethnic origin, native language, gender, nationality, disability and street situations. The Committee is particularly concerned about discrimination faced by the indigenous population which resulted in various inequalities for the children.

25. The Committee, in line with article 2 of the Convention, strongly recommends that the State party:

(a) Intensify its efforts to prevent and eliminate any *de facto* discrimination against indigenous children, children living in poverty, girls, children in street situations, and children with disabilities;

(b) Expedite the process to adopt the bill against all forms of discrimination;

(c) Effectively guarantee the indigenous children' services for health, nutrition, education, access to employment and cultural activities.

33. The Committee welcomes the efforts undertaken by the State party to promote timely birth registration, including the new campaign for universal birth registration carried out through schools. However, it is concerned at the large amount of underreporting of births of children and at the difficulties for some children, particularly indigenous children and children living in rural areas, to have access to birth registration services for several reasons, including a lack of knowledge on the process itself.

34. In light of article 7 of the Convention and in line with its previous recommendations, the Committee recommends that the State party take all necessary

measures to ensure registration of all children, paying particular attention to indigenous children and children living in rural areas. It urges the State party to provide decentralized registration offices and units with the necessary human, material and financial resources and strengthen its awareness-raising activities in all communities on the importance of birth registration for all boys and girls. Furthermore, the Committee recommends that the State party ensure that unregistered children are not deprived of their rights, notably to health and education.

50. While welcoming the initiatives carried out by the State party to provide access to health services free of costs for all children, the Committee is concerned that many children, such as children living in rural areas and children living in extreme poverty, face difficulties to have effective access to health services or do not have access at all, due to an insufficient budget. The Committee is also concerned at the negative consequences of *agro-toxic fumigation* faced by peasant families and particularly, for children living in rural areas.

51. The Committee recommends that the State party:

- (a) Take all appropriate measures to extend free medical care to all children, particularly those living in rural areas and those living in extreme poverty;
- (b) Increase the health budget in order to make more effective the implementation of different health care delivery models, such as those from indigenous communities;
- (c) Conduct systematic evaluation and impact assessment of the effect of the health programmes in place, particularly those programmes that are being implemented in areas affected by poverty;
- (d) Implement all the necessary measures, including studies and assessments, to tackle the extremely negative consequences of agro-toxic fumigation in rural communities.

60. The Committee welcomes the efforts carried out by the State party to increase school attendance to reduce dropouts and recognizes the progress made, including the adoption of the Indigenous Education Act (3231/07). However, the Committee is concerned at the poor quality of education in many schools, due partly to the weak training of the teachers and at the dropout rates during the third cycle, sometimes and to a lack of financial resources by families to face fees and other costs. The Committee is further concerned at the difficulties for indigenous children to access education and at the insufficient measures to reflect the multilingual nature of the population. The Committee also takes note of the increase of early childhood education in the years before school, although it is concerned at the insufficient preschools and at the limited access of rural and indigenous children. It regrets the almost complete lack of care and education facilities for the youngest children. The Committee also misses information about vocational training for adolescents who decide for a non-academic occupational career.

61. The Committee recommends that the State party:

- (a) Provide sufficient funding to ensure free education at all levels of primary education for all children, by abolishing fees and any other costs in all schools;
- (b) Provide incentives for staying in school and facilitating the transition from primary to secondary school;
- (c) Reinforce of the multilingual nature of the population (Guarani-Spanish and others) and adapt the education methodologies and materials to this reality;

- (d) Improve the quality of teacher training, particularly with regard to inter-cultural and bilingual education;
- (e) Provide sufficient early childhood facilities, including for young children, and make parents aware of the importance of early childhood development and education;
- (f) Increase efforts for rural and indigenous children to access education, particularly to early childhood education;
- (g) Expand the system of vocational training and improve the access of adolescents to these facilities.

Indigenous children

79. The Committee is concerned at the limited enjoyment of rights by indigenous children, in particular their limited access to education and health, their disproportionately high malnutrition rate and their infant and maternal mortality rates. It is particularly concerned about the very high number of working children among indigenous children.

80. The Committee recommends that the State party take all necessary measures to protect the rights of indigenous children against discrimination and to guarantee their enjoyment of the rights enshrined in domestic law and in the Convention. In this regard, the Committee refers the State party to its general comment no. 11 on Indigenous Children and their rights under the Convention (CRC/C/GC/11) and to the recommendations issued by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, contained in his report A/HRC/11/11.

10. Argentina, CRC/C/ARG/CO/3-4, 11 June 2010

21. The Committee welcomes the sustained increase since 2002 in social investment and, in particular, the introduction in 2009 of a "Universal Family Allowance per Child for Social Protection" of 180 pesos (48 dollars) a month (for families of up to 5 children, of those employed in the informal market and the unemployed, who do not otherwise have social security), covering currently some 3.5 million children. The Committee welcomes some preliminary results of the application of the subsidy, for example, the enrolment in preschool, primary and secondary schools has increased by 15%, 10% and 20%, respectively in one year, and the enrolment in the mother-child health programme (*Programa Nacer*) has increased in 30%, since 2008, both responding to the conditions established (presentation of school certificate and vaccination card). The Committee also welcomes the work that is being done by the Ministry of Economy and Finance and UNICEF in order to identify investment in children (calculated at 2.5% of GDP) and focus on poverty areas. It however notes with serious concern that disparities between provinces remain and are as acute as 500% difference between the poorest and richest provinces.

22. The Committee recommends that the State party, in light of articles 3 and 4, of the Convention, take all appropriate measures, to the maximum extent of available resources, to ensure that sufficient budgetary allocation is provided to services for children and that particular attention is paid to the protection of the rights of children belonging to disadvantaged provinces and groups, including indigenous children and children living in poverty. In particular and in line with the Committee's recommendations resulting from its Day of general discussion on resources for the rights of the child-responsibility of States, it encourages the State party to:

- (a) Continue increasing the level of social investment maintaining its sustainability;
- (b) Protect children's and social budgets from any external or internal instability, such as situations of economic crisis, natural disasters or other emergencies in order to maintain the sustainability of investments;
- (c) Ensure the expansion of and equitable allocation to disadvantaged provinces and groups in order to address disparities and, in particular, consider migrant children and children in alternative care (both in foster care and in other alternative care) as recipients of the universal subsidy per children;
- (d) Define strategic budgetary lines for those situations that may require affirmative social measures (such as birth registration, chronic malnutrition, violence against children, children without parental care, indigenous and migrant children, etc.);...

23. The Committee welcomes the establishment of the National Registry on Integral Protection of Children and Adolescents (Decree 2044/2009), as well as of the Directorate on Institutional Management and Development, in charge of monitoring and evaluation of programmes for children, adolescents and the family. It also notes the commitment (*Acta Compromiso*) with the provinces to build an "Integrated System of Information on Policies for Children and Adolescents". The Committee however remains concerned that the absence of a systematic approach to data collection and analysis in coordination with the National Institute of Statistics and Census (INDEC) continues to impede the availability of transparent and reliable data, disaggregated by provinces and municipalities, as well as by other relevant variables such as gender, age, children with disabilities, indigenous children, etc.

25. While noting the State party's efforts to disseminate the Convention, the Committee is concerned at the low level of awareness in many provinces of the Convention and its Optional Protocols. The Committee is further concerned that the Convention and its Optional Protocols have not yet been translated into the languages of the indigenous populations. It also regrets the lack of knowledge of the Convention among technical and professional cadres working with children, but notes that many universities have begun to incorporate child rights into their programmes.

26. The Committee recommends that the State party increase its efforts to raise awareness of the Convention, the Optional Protocols and its national legislation on integral protection of the child, including by translating them into the languages of the indigenous populations. It also recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, including, teachers, health personnel, social workers, personnel of childcare institutions and law enforcement officials. In this regard, the Committee recommends that human rights education be included in the official curriculum at all levels of education, and in training activities.

31. The Committee notes Decree No. 1086/2005 establishing a national plan against discrimination. While welcoming the State party's effort to favour disadvantaged

children, to establish programs to promote bilingual and intercultural education for indigenous children and health program focusing on the needs of indigenous children, the Committee is nevertheless concerned at persistent reports of discrimination, social exclusion and physical, sexual and psychological abuse of indigenous children, amounting to around 3 to 5% of the total population in the country. The Committee notes with concern that disparities affecting the North East and North West provinces may lead to discrimination, for example the probability of children dying in their first year of life is 60% higher than in the rest of the country and illiteracy amounts to 11% whereas it is almost inexistent elsewhere. It is further concerned at the stigmatization and discrimination of adolescents living in poverty in urban centres or in street situations in the country, as well as children from a migrant background.

32. The Committee urges the State party to increase its efforts:

- a) to fight against discrimination, social exclusion, physical, sexual and psychological abuse of vulnerable groups, in particular indigenous children;...

39. The Committee welcomes the new legislation that guarantees free, universal and “ex officio” birth registration. It however expresses concern at insufficient implementation at provincial level, which leaves many children without adequate access to birth registration. It is further concerned that children who are born outside of health facilities, including indigenous children or children from disadvantaged families, such as those living in remote areas or in social exclusion, do not have access to birth registration.

40. The Committee recommends that the State party continue to take all necessary measures, including retroactively, to ensure access of all children, including children born outside of health facilities, indigenous children, children from disadvantaged families, such as those living in remote areas or in social exclusion, to free birth registration, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee also encourages the State party to adopt flexible measures of birth registration, including mobile units to reach all children. The Committee further recommends that the State party implement a specific birth registration strategy for indigenous communities based on respect for their cultures and taking into account the Committee’s general comment No. 11 (2009) on indigenous children and their rights under the Convention.

50. The Committee encourages the State party to continue its efforts to support families to effectively fight against poverty, as well as to ensure that families are prepared in their parenting roles, in particular families with one parent and those that may have more difficulties to access the State party’s services, such as families from remote areas, indigenous families, migrants and families with children with disabilities. The Committee further encourages the State party to ensure that psychological, social and legal services offered at the local and community levels are accessible to all families and assist them to strengthen family relations, allow children to access day care and other measures to effectively prevent placement of children in institutions.

66. The Committee, nevertheless, observes that there is still a significant number of adolescents who drop out and that there are insufficient measures to ensure a child’s

transition from school to employment. This affects in particular indigenous adolescents living in extreme poverty. Furthermore, the Committee notes that the proportion of children with disabilities receiving special education is growing (78% of those between the age of 3 and 17 years), nevertheless, it regrets that only 53 % are integrated into regular educational facilities. The Committee further regrets the absence of reliable information regarding the number and reasons for drop out, especially of pregnant girls.

67. 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 disparities across the provinces, particularly those related to children with disabilities, indigenous children and pregnant girls, in access to education and full enjoyment of the right to education;...

82. The Committee further recommends that the third and fourth periodic report and written replies submitted by the State party and the related recommendations (concluding observations) it adopted (including those relating to the two Optional Protocols) be made widely available in the languages of the country, including (but not exclusively) through the Internet to the general public at large, civil society organizations, youth groups, professional groups and children, the media, in order to generate debate and awareness of the Convention, its implementation and monitoring. It further encourages that the Convention and its two Optional Protocols be translated into the languages of the indigenous populations.

11. Burundi, CRC/C/BDI/CO/2, 1 October 2010

Children belonging to minority or indigenous groups

78. The Committee remains concerned that Batwa children suffer from discrimination in relation to the enjoyment of their rights, including the rights to health care, food, survival and development. The Committee is particularly concerned at the discrimination faced by the Batwa girls who do not attend school or complete primary or secondary school.

79. The Committee urges the State party urgently to take measures to strengthen the representation of Batwa in national policy-making and to elaborate a plan of action to protect the rights of Batwa children, including in particular those rights of persons belonging to minorities and indigenous peoples. The Committee recommends that the State party:

- (a) Take all measures to ensure that Batwa children, especially Batwa girls benefit from the policy of free primary education including the possible creation of a fund to cover essential items for education (such as school materials, clothing and nutritional support);
- (b) Create effective policies and programmes to improve the marginalised situation of Batwa girls; and
- (c) Collect accurate data disaggregated by ethnicity and gender in order to develop and monitor effective programmes for Batwa girls.

12. Guatemala, CRC/C/GTM/CO/3-4, 1 October 2010

5. The Committee notes with satisfaction that a number of policies, governmental agreements and administrative measures designed to promote and

coordinate public policies relating to indigenous affairs have been adopted. It particularly welcomes initiatives, including the Public Policy for Coexistence and the Elimination of Racism and Racial discrimination, adopted in 2006, related to indigenous children.

24. The Committee recommends that the State party allocate more resources to the Office for children and youth under the authority of the Office of the Ombudsman (*Procuraduría de los Derechos Humanos*), provide it with the necessary power to effectively perform its mandated monitoring functions, and take the necessary steps to correct its shortcomings, professionalize its work and ensure its independence in accordance with the Paris principles and the Committee's general comment no. 2 on the role of independent human rights institutions. The Committee also recommends that the Procuraduría de los Derechos Humanos increase its accessibility, strengthens the local services provided through municipal defenders ("Defensores Municipales") and creates culturally adapted services in the indigenous communities, or establish community defenders (*Defensores Comunitarios*) working closely with the Ombudsman.

26. The Committee recommends that the State party, in line with Article 4 of the Convention:

- (e) Define strategic budgetary lines for those situations that may require affirmative social measures (such as birth registration, chronic malnutrition, indigenous children, education, violence against children) and make sure that those budgetary lines are protected even in situations of economic crisis, natural disasters or other emergencies

29. The Committee takes note of the State party's efforts on the promotion of human rights among governmental agencies and non-governmental organizations. The Committee encourage the State party to further enhance awareness that children are subjects of rights. It reiterates its recommendation that the State party increase its efforts to disseminate more informative material and translate it into the main indigenous languages in a culturally sensitive manner, and that it develop more creative methods to promote the Convention, in particular at the local level.

32. The Committee regrets that cooperation with non-governmental organizations and indigenous traditional leaders is insufficient.

33. The Committee recommends that the State parte strengthen its cooperation with non-governmental organizations, including indigenous organizations, to better implement the Convention at the national and local levels and in urban and rural areas, including indigenous peoples.

40. The Committee reiterates its concern, shared by other treaty bodies, at the alarming level of discrimination suffered by Maya, Garifuna and Xinca children in the State party. The Committee notes that the measures taken by the State party so far are not sufficient to eliminate structural obstacles which prevent the full exercise of the rights of these children, which constitute over half of the total population of the State party. The poverty and extreme poverty rates among the indigenous population are extremely high, as well as the level of chronic malnutrition which affects more than 80% of the indigenous population. The Committee is further concerned that

indigenous and Garifuna adolescents are more likely to be victims of sexual and economic exploitation due to the lack of relevant information about their rights as well as to the absence of mechanisms guaranteeing these rights. The Committee is also concerned at discriminatory attitudes affecting some sections of the child population, in particular adolescents, children with disabilities, girls, children living in rural areas and children from marginalized families.

41. The Committee recommends that the State party urgently address the situation of discrimination against Maya, Garifuna and Xinca children in its policies and plans for the elimination of racial discrimination, as well as in social development plans, ensuring the sustainability and cultural suitability of these programmes. In light of article 2 of the Convention, the Committee recommends that the State party ensure full implementation in practice of all legal provisions prohibiting discrimination, combat discrimination by, inter alia, ensuring equal access to education, health-care, facilities and poverty reduction programmes, and take measures to address the inappropriate characterization and stigmatization of children and adolescents.

47. The Committee is concerned at the extremely high level of chronic and persistent malnutrition in the State party, which undermines the right to live and survival of children, particularly among the rural and indigenous population.

48. The Committee recommends that the State party pay special attention to chronic malnutrition, especially very young children; and continue and strengthen coordinated intersectoral policies and programmes, particularly among the rural and indigenous population.

51. While noting the State party's efforts to improve its birth registration system, the Committee remains concerned at the high rate of under-registration, especially in rural and remote areas, due to the financial cost of birth registration and to lack of awareness of the importance of birth registration. The Committee notes with regret that a cultural dimension aimed at encouraging registration of indigenous children has not been included in the birth registration procedure.

52. The Committee recommends that the State party increase its efforts to ensure access of all children to free birth registration, and that it take steps to identify all children who have not been registered or obtained an identity document. The Committee also encourages the State party to adopt flexible measures of birth registration, including mobile units to reach all children. The Committee further recommends that the State party implement a specific birth registration strategy for indigenous peoples based on respect for their culture and taking into account the Committee's general comment No. 11 (2009) on indigenous children and their rights under the Convention.

56. The Committee welcomes the establishment of comprehensive care centres (*CAI; Centros de Atención Integral*) to help families with daily care for children from 0-7 years. However, it regrets that these services have limited geographical scope. While welcoming programmes to support families in need, such as "My Family Makes Progress" (*Mi familia progresa*), Solidarity Funds and Open Schools, the Committee is concerned at the insufficient clarity in planning and implementing these programmes, including the selection criteria of families as well as its sustainability in time. The Committee regrets the scarcity of programmes to provide psychosocial and legal support to families at local and community level, including services adapted to the diversity of cultures.

57. The Committee recommends the State party to:
- (b) Adopt technical criteria to ensure that priority will be given to families who need positive action measures, such as indigenous and Garifuna families, families living with HIV, single-parent families, families at risk of separation, migrant families and children whose parents have migrated.

74. The Committee is concerned at the lack of adolescent health programmes with a comprehensive approach allowing the State party to take preventive measures, in particular regarding HIV/AIDS and sexual health. While the Committee takes note of the National Reproductive Health Programme (2005), it is concerned at the high rate of teenage pregnancies in the State party, especially among the indigenous and rural populations. The Committee regrets that HIV confidential tests are not guaranteed to adolescents.

77. The Committee, while taking note with satisfaction of the adoption of the Law on the National System of Food Security (2005), remains deeply concerned at negative impact of the “dry corridor” drought crisis on the right to food of children as well as at the lack of adequate and sufficient measures to address this situation. The Committee is also concerned that disputes over land ownership between indigenous peoples and owners often result in forced evictions of indigenous peoples.

Children belonging to minority or indigenous groups

101. The Committee is concerned at the exclusion of Maya, Garifuna and Xinca children in relation to access to basic services necessary for their comprehensive development, such as registration in the civil registry, health services and education adapted to their culture, history and languages, the difficult access to land and the lack of respect of their traditional territories. The Committee is concerned that the Convention and its two Optional Protocols have not been translated yet into the indigenous languages, preventing these populations from taking action to demand the fulfilment of the rights of the child. The Committee shares the concern expressed by the Committee on the Elimination of Racial Discrimination (CERD/C/GTM/CO/12-13, para 11) that the State party continues to allow indigenous peoples to be dispossessed of land that has historically belonged to them.

102. The Committee recommends that:

- (a) The State party ensure that indigenous children are registered in the civil registry, and that they receive health services and education adapted to their culture, history and languages;

- (b) In the exceptional cases in which the relocation of indigenous peoples is considered necessary, the State party monitor the protection of children;

- (c) The State party should provide relocation sites equipped with basic utilities, such as drinking water, electricity, and washing and hygiene facilities, and with appropriate services, including schools, health-care centres and means of transportation. In this regard, the Committee reiterates the recommendation expressed by the Committee on the Elimination of Racial Discrimination; and

- (d) The State party take into account the Committee’s general comment No.11 (2009) on indigenous children and their rights under the Convention.

13. Nicaragua, CRC/C/NIC/CO/4, 1 October 2010

4. The Committee welcomes a number of positive developments in the reporting period, including the adoption of legislative measures taken with a view to implementing the Convention, such as:...

- (e) ILO Convention no. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

20. In particular and in line with the Committee's recommendations resulting from its day of general discussion on "Resources for the rights of the child - responsibility of States" (2007), the Committee encourages the State party to: ...

- (e) Define strategic budgetary lines for those situations that may require affirmative social measures, such as birth registration, especially in the Caribbean Coast autonomous regions (RAAN and RAAS), chronic malnutrition, violence against children and women, children without parental care, indigenous and migrant children, among others;...

26. The Committee is concerned at the low level of awareness of the Convention among professionals working with and for children.

27. The Committee recommends the reinforcement of adequate and systematic training of all professional groups working for and with children, in particular law enforcements officials, teachers (including teachers in indigenous and afro-descendant communities and rural and remote areas), health workers, social workers and personnel working in all forms of alternative care.

28. The Committee is concerned that the long-standing tradition of collaboration between the State party and an extensive network of national and international non-governmental organisations has recently become more limited, among others due to the weakening of CONAPINA.

29. The Committee urges the State party to take all necessary measures to reinstate the climate of trust and cooperation with civil society and to systematically involve communities, including indigenous and Afro-descendants, civil society as well as children's organisations in the planning, implementation and monitoring and evaluation of policies, plans and programmes related to child rights.

36. The Committee welcomes legislative action taken by the State party to guarantee equal rights of people, especially those with disabilities, living with HIV/AIDS and indigenous and Afro-descendants. It also welcomes the establishment of the Office of the Special Ombudsperson for the Rights of Indigenous People and Ethnic Communities, and its local office in the Caribbean Coast autonomous region, as well as the Office of the Special Ombudsperson for Sexual Diversity. Notwithstanding, the Committee shares the concerns of the Committee on the Elimination of Racial Discrimination (CERD/C/NIC/CO/14 para 12, 2008) and that of CEDAW (CEDAW/C/NIC/CO/6, para 31, 2007) respectively, that indigenous and peoples of African descent, as well as women and girls and children in rural and remote areas continue to suffer de facto discrimination.

37. The Committee urges the State party to strengthen efforts at combating racist and gender biased attitudes and behaviour, as well as those against children and adolescents who are indigenous, come from rural or remote areas or have disabilities. It further recommends that the State party place high priority in the public agenda to

prevent and eradicate discrimination, inter alia, through the media and the educational system. The Committee would also like to draw the State Party's attention to the principles of the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, as well as the outcome document adopted at the 2009 Durban Review Conference.

44. The Committee notes with interest the National Plan to reduce the number of unregistered children (*Plan Nacional para la Reducción del Subregistro de la Niñez Nicaragüense*), with vast efforts including by NGOs, and which has resulted in 20% decrease to date. It also notes other efforts such as the Law on Responsible Paternity and Maternity, which allows for DNA testing. However, the Committee is concerned at the high number of children who are still not registered and lack birth certificates (around 40%), particularly those of indigenous and Afro-descendant origin.

63. The Committee recommends that the State party increase its efforts to sustain and increase achievements in infant, child and maternal mortality by ensuring access to high quality, culturally sensitive health care for all children and women, including in rural and indigenous areas, targeting especially the prenatal and neonatal period. It further recommends that the State party:

- (a) Promote exclusive breastfeeding and the enforcement of the Breastfeeding Marketing Code and develop a feeding strategy for small children;
- (b) Implement the Comprehensive Care for Prevailing Childhood Illnesses (AIEPI) and Maternal Illnesses (AIEPM) programmes, as well as the Women and Child Friendly Units Initiative (IUAMN);
- (c) Strengthen the Family and Community Health Model and support public and private service providers for the implementation of the maternal houses network; and
- (d) Sustain and increase the budgetary allocations to primary health care, and facilitate appropriate increases of international cooperation.

Children belonging to indigenous and minority groups

83. The Committee notes that the rights of indigenous peoples and ethnic communities of African descent are formally recognized in the Constitution and in the Autonomy Law. However, the Committee is concerned that indigenous and afro-descendant children face significant challenges in exercising their substantive rights under the Convention and specifically the right to enjoyment of their culture and language.

84. The Committee recommends that the State Party:

- (a) Promote the right to be heard for indigenous and Afro-descendant children in decision-making and in cultural life;
- (b) Monitor and evaluate the integration of indigenous and Afro-descendant children's rights in national plans and programmes;
- (c) Ensure that the rights of indigenous and Afro-descendant children are specifically protected in relation to their culture and language, particularly when providing access to basic services, and through promoting culturally and linguistically sensitive education and health policies and programmes; and

(d) Take into account the Committee's General Comment no. 11 (2009) on Indigenous Children and their rights under the Convention (CRC/C/GC/11).

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

1. Argentina, CRC/C/OPAC/ARG/CO/1, 11 June 2010

23. The Committee recommends that the initial report submitted by the State party and concluding observations adopted by the Committee be made widely available in all languages of the State party, including spoken languages of the indigenous populations, to the public at large in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring.

2. Colombia, CRC/C/OPAC/CO/1, 21 June 2010

18. The Committee welcomes the numerous efforts undertaken in the area of prevention of child recruitment, including the following;...

(b) The important role of the Human Rights Ombudsman (*La Defensoria del Pueblo*) and the presence of community-based human rights ombudsmen (*defensores comunitarios*) in areas which are particularly vulnerable to armed conflict, including indigenous and Afro-Colombian communities. The Committee, however, is concerned that the children's unit (*Delegada para los derechos de la Niñez*) within the Human Rights Ombudsman lacks resources and that the community-based ombudsmen lack sufficient coverage and sustained State funding;...

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

(b) Expand, through increased and sustained State funding, the presence of the human rights ombudsman (*La Defensoria del Pueblo*) and in particular the community-based human rights ombudsmen (*defensores comunitarios*) in areas affected by the armed conflict, including indigenous and Afro-Colombian communities, where children are particularly vulnerable to recruitment by illegal armed groups;...

26. The Committee abhors the continued extensive recruitment and use of children by illegal armed groups. The Committee deeply regrets that despite having made commitments not to recruit children under the age of 15 years, both the FARC-EP and the ELN continue such practices, which constitute serious war crimes. The Committee is gravely concerned that children who refuse to be recruited are killed or forcibly displaced and that Afro Colombian and indigenous children are particularly vulnerable as their communities often are affected by the armed conflict. The Committee is furthermore concerned over reports that new illegal armed groups have emerged following the demobilization of paramilitary organizations and that these organizations recruit and use children in violation of article 4 of the Protocol.

27. The Committee recommends that:

(a) In the light of article 4 of the Protocol, the State party take all feasible measures to eliminate the root causes and prevent recruitment and use of persons below the age of 18 years by armed groups that are distinct from the armed forces of the State.

Particular attention should be paid to preventing recruitment and use of Afro-Colombian and indigenous children and that such measures should be developed in consultation with the affected communities;...

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

1. Ecuador, CRC/C/OPSC/ECU/CO/1, 29 January 2009

17. Recognizing the existence of information material available, including in indigenous languages, the Committee notes that preventive measures are inadequate, and that documentation and research are insufficient on the root causes, nature and extent of the sale of children, child prostitution and child pornography. It is also concerned at the low number of prosecutions of cases of sale of children, child prostitution and child pornography.

18. The Committee recommends that the State party take measures to identify children who are especially vulnerable to the practices covered by the Protocol, such as children in street situations, girls, children living in remote areas and working children. The Committee encourages the State party to carry out further gender-sensitive research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems, the existence of protection and prevention measures and adopt targeted measures. It further recommends ensuring that the perpetrators of these crimes are properly prosecuted and punished.

39. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, professional groups in order to generate debate and awareness of the Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Protocol widely known to children, including indigenous children, and their parents through, inter alia, school curricula and human rights education.

2. El Salvador, CRC/C/OPSC/SLV/CO/1, 12 February 2010

17. The Committee takes note of the State party's initiatives aimed at preventing the offences covered by the Optional Protocol, especially within the context of the activities of the round table ("*Mesa*") focused on the issue of commercial sexual exploitation of children. The Committee is concerned, however, that preventive efforts do not cover sufficiently large groups of vulnerable children in the State party, such as children living in poverty, indigenous children, children living in difficult family situations and children left behind by their migrating parents.

18. The Committee recommends that the State party continue and intensify its preventive efforts by giving adequate attention to projects aimed at addressing the root causes, such as poverty, underdevelopment and cultural attitudes, contributing to the vulnerability of children to sale, prostitution, pornography and sex tourism, including at the local level. The State party should also endeavour to promote the strengthening of international cooperation in this respect.

3. Argentina, CRC/C/OPSC/ARG/CO/1, 18 June 2010

45. The Committee recommends that the report and written replies submitted by the State party and related recommendations (concluding observations) adopted by the Committee be made widely available, including through the Internet (but not exclusively), to the public at large, civil society organizations, the media, youth groups, children and professional groups in order to generate debate and awareness of the Optional Protocol, its implementation and monitoring. Furthermore, the Committee recommends that the State party make the Optional Protocol widely known to children, including indigenous children, and their parents through, inter alia, school curricula and human rights education.

4. Colombia, CRC/OPSC/COL/CO/1, 11 June 2010

12. The Committee is concerned that public awareness of the provisions of the Protocol is insufficient, especially among children themselves and in particular among vulnerable groups of children, such as those living in poverty, children who have been affected by the armed conflict, displaced children and Afro Colombian and indigenous children.

18. The Committee notes as positive certain preventive initiatives, such as codes of conduct for the tourism industry. The Committee however notes that prevention efforts are inadequate, in particular given the large number of victims and the lack of targeted measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro Colombian and indigenous children.

29. The Committee notes efforts by the ICBF and the Family Defenders, however is concerned that social reintegration and physical and psychosocial recovery measures for child victims are insufficient and that victims face difficulties in accessing compensation. In particular, the Committee is concerned over the lack of recovery and reintegration measures for vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro Colombian and indigenous children.

30. The Committee recommends that the State party;

- a.) Ensure that resources be earmarked in order to provide adequate social reintegration and physical and psychosocial recovery measures, in accordance with article 9, paragraph 3, of the Protocol, in particular by providing interdisciplinary assistance for child victims, both girls and boys, while paying particular attention to vulnerable groups of child victims, including those living in poverty, children who have been affected by the armed conflict, displaced children and Afro Colombian and indigenous children;...

5. Nicaragua, CRC/C/OPSC/NIC/CO/1, 1 October 2010

19. While noting the development of various offices and programmes for the prevention of offences referred to in the Optional Protocol, such as the National Coalition against Trafficking in Persons, the National Police special stations for women and children, the role of the Special Ombudsperson for children and adolescents and the special Unit for Children and adolescents within the office of the Ministerio Publico, the Committee notes that preventive measures are weak,

fragmented and inadequate, and that documentation and research are insufficient on the root causes, nature and extent of the sale of children, child prostitution and child pornography.

20. The Committee encourages the State party to carry out further documentation and gender-sensitive research on the nature and extent of the sale of children, child prostitution and child pornography, in order to identify the root causes, the extent of the problems, including within the indigenous and Afro-descendant populations, and undertake prevention measures and adopt targeted measures.

D. General Comments

1. GENERAL COMMENT NO. 11 (2009): INDIGENOUS CHILDREN AND THEIR RIGHTS UNDER THE CONVENTION. CRC/C/GC/11, 12 FEBRUARY 2009

Introduction

1. In the preamble of the Convention on the Rights of the Child, States parties take “*due account of the importance and cultural values of each people for the protection and harmonious development of the child*”. While all the rights contained in the Convention apply to all children, whether indigenous or not, the Convention on the Rights of the Child was the first core human rights treaty to include specific references to indigenous children in a number of provisions.

2. Article 30 of the Convention states that “*In those States in which ethnic, religious, or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language.*”

3. Furthermore, article 29 of the Convention provides that “*education of the child shall be directed to the preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin*”.

4. Article 17 of the Convention also makes specific mention as States parties shall “*encourage the mass media to have particular regard for the linguistic needs of the child who belongs to a minority group or who is indigenous*”.

5. The specific references to indigenous children in the Convention are indicative of the recognition that they require special measures in order to fully enjoy their rights. The Committee on the Rights of the Child has consistently taken into account the situation of indigenous children in its reviews of periodic reports of States parties to the Convention. The Committee has observed that indigenous children face significant challenges in exercising their rights and has issued specific recommendations to this effect in its concluding observations. Indigenous children continue to experience serious discrimination contrary to article 2 of the Convention

in a range of areas, including in their access to health care and education, which has prompted the need to adopt this general comment.

6. In addition to the Convention on the Rights of the Child, various human rights treaties, have played an important role in addressing the situation of indigenous children and their right not to be discriminated, namely, the International Convention on the Elimination of All Forms of Racial Discrimination, 1965, the International Covenant on Civil and Political Rights, 1966, and the International Covenant on Economic, Social and Cultural Rights, 1966.

7. The International Labour Organization Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 1989 contains provisions which advance the rights of indigenous peoples and specifically highlights the rights of indigenous children in the area of education.

8. In 2001, the United Nations Commission on Human Rights appointed a Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, subsequently confirmed by the Human Rights Council in 2007. The Council has requested the Special Rapporteur to pay particular attention to the situation of indigenous children and several recommendations included in his annual and mission reports have focused on their specific situation.

9. In 2003, the United Nations Permanent Forum on Indigenous Issues held its second session on the theme indigenous children and youth and the same year the Committee on the Rights of the Child held its annual Day of General Discussion on the rights of indigenous children and adopted specific recommendations aimed primarily at States parties but also United Nations entities, human rights mechanisms, civil society, donors, the World Bank and regional development banks.

10. In 2007, the United Nations General Assembly adopted the Declaration on the Rights of Indigenous Peoples which provides important guidance on the rights of indigenous peoples, including specific reference to the rights of indigenous children in a number of areas.

Objectives and structure

11. This general comment on the rights of indigenous children as provided for by the Convention on the Rights of the Child draws on the legal developments and initiatives outlined above.

12. The primary objective of this general comment is to provide States with guidance on how to implement their obligations under the Convention with respect to indigenous children. The Committee bases this general comment on its experience in interpreting the provisions of the Convention in relation to indigenous children. Furthermore, the general comment is based upon the recommendations adopted following the Day of General Discussion on indigenous children in 2003 and reflects a consultative process with relevant stakeholders, including indigenous children themselves.

13. The general comment aims to explore the specific challenges which impede indigenous children from being able to fully enjoy their rights and highlight special

measures required to be undertaken by States in order to guarantee the effective exercise of indigenous children's rights. Furthermore, the general comment seeks to encourage good practices and highlight positive approaches in the practical implementation of rights for indigenous children.

14. Article 30 of the Convention and the right to the enjoyment of culture, religion and language are key elements in this general comment; however the aim is to explore the various provisions which require particular attention in their implementation in relation to indigenous children. Particular emphasis is placed on the interrelationship between relevant provisions, notably with the general principles of the Convention as identified by the Committee, namely, non-discrimination, the best interests of the child, the right to life, survival and development and the right to be heard.

15. The Committee notes that the Convention contains references to both minority and indigenous children. Certain references in this general comment may be relevant for children of minority groups and the Committee may decide in the future to prepare a general comment specifically on the rights of children belonging to minority groups.

Article 30 and general obligations of States

16. The Committee recalls the close linkage between article 30 of the Convention on the Rights of the Child and article 27 of the International Covenant on Civil and Political Rights. Both articles specifically provide for the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion or to use his or her own language. The right established is conceived as being both individual and collective and is an important recognition of the collective traditions and values in indigenous cultures. The Committee notes that the right to exercise cultural rights among indigenous peoples may be closely associated with the use of traditional territory and the use of its resources.³⁶

17. Although article 30 is expressed in negative terms, it nevertheless recognizes the existence of a "right" and requires that it "shall not be denied". Consequently, a State party is under an obligation to ensure that the existence and the exercise of this right are protected against their denial or violation. The Committee concurs with the Human Rights Committee that positive measures of protection are required, not only against the acts of the State party itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State party.³⁷

18. In this context, the Committee also supports the Committee on the Elimination of Racial Discrimination in its call upon States parties *to recognize and respect indigenous distinct cultures, history, language and way of life as an enrichment of the State's cultural identity and to promote its preservation.*³⁸

³⁶ Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, paras. 3.2, 7. Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 4.

³⁷ Human Rights Committee, general comment No. 23 on article 27, CCPR/C/Rev.1/Add.5, 1994, para. 6.1.

³⁸ Committee on the Elimination of Racial Discrimination, general recommendation No. 23 on Indigenous Peoples, 1997, contained in A/52/18, Annex V.

19. The presence of indigenous peoples is established by self-identification as the fundamental criterion for determining their existence.³⁹ There is no requirement for States parties to officially recognize indigenous peoples in order for them to exercise their rights.

20. Based on its reviews of States parties reports, the Committee on the Rights of the Child has observed that in implementing their obligations under the Convention many States parties give insufficient attention to the rights of indigenous children and to promotion of their development. The Committee considers that special measures through legislation and policies for the protection of indigenous children should be undertaken in consultation with the communities concerned⁴⁰ and with the participation of children in the consultation process, as provided for by article 12 of the Convention. The Committee considers that consultations should be actively carried out by authorities or other entities of States parties in a manner that is culturally appropriate, guarantees availability of information to all parties and ensures interactive communication and dialogue.

21. The Committee urges States parties to ensure that adequate attention is given to article 30 in the implementation of the Convention. States parties should provide detailed information in their periodic reports under the Convention on the special measures undertaken in order to guarantee that indigenous children can enjoy the rights provided in article 30.

22. The Committee underlines that cultural practices provided by article 30 of the Convention must be exercised in accordance with other provisions of the Convention and under no circumstances may be justified if deemed prejudicial to the child's dignity, health and development.⁴¹ Should harmful practices be present, inter alia early marriages and female genital mutilation, the State party should work together with indigenous communities to ensure their eradication. The Committee strongly urges States parties to develop and implement awareness-raising campaigns, education programmes and legislation aimed at changing attitudes and address gender roles and stereotypes that contribute to harmful practices.⁴²

General principles (arts. 2, 3, 6 and 12 of the Convention)

Non-discrimination

23. Article 2 sets out the obligation of States parties to ensure the rights of each child within its jurisdiction without discrimination of any kind. Non-discrimination has been identified by the Committee as a general principle of fundamental importance for the implementation of all the rights enshrined in the Convention. Indigenous children have the inalienable right to be free from discrimination. In order to effectively protect children from discrimination, it is a State party obligation to ensure that the principle of non-discrimination is reflected in all domestic legislation and can be directly applied and appropriately monitored and enforced through judicial and administrative bodies. Effective remedies should be timely and accessible. The

³⁹ ILO Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, article 1 (2).

⁴⁰ ILO Convention No. 169, articles 2, 6, 27.

⁴¹ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 7.

⁴² CRC, general comment No. 4 on Adolescent Health, 2003, para. 24.

Committee highlights that the obligations of the State party extend not only to the public but also to the private sector.

24. As previously stated in the Committee's general comment No. 5 on general measures of implementation, the non-discrimination obligation requires States actively to identify individual children and groups of children the recognition and realization of whose rights may demand special measures. For example, the Committee highlights, in particular, the need for data collection to be disaggregated to enable discrimination or potential discrimination to be identified. Addressing discrimination may furthermore require changes in legislation, administration and resource allocation, as well as educational measures to change attitudes.⁴³

25. The Committee, through its extensive review of State party reports, notes that indigenous children are among those children who require positive measures in order to eliminate conditions that cause discrimination and to ensure their enjoyment of the rights of the Convention on equal level with other children. In particular, States parties are urged to consider the application of special measures in order to ensure that indigenous children have access to culturally appropriate services in the areas of health, nutrition, education, recreation and sports, social services, housing, sanitation and juvenile justice.⁴⁴

26. Among the positive measures required to be undertaken by States parties is disaggregated data collection and the development of indicators for the purposes of identifying existing and potential areas of discrimination of indigenous children. The identification of gaps and barriers to the enjoyment of the rights of indigenous children is essential in order to implement appropriate positive measures through legislation, resource allocation, policies and programmes.⁴⁵

27. States parties should ensure that public information and educational measures are taken to address the discrimination of indigenous children. The obligation under article 2 in conjunction with articles 17, 29.1 (d) and 30 of the Convention requires States to develop public campaigns, dissemination material and educational curricula, both in schools and for professionals, focused on the rights of indigenous children and the elimination of discriminatory attitudes and practices, including racism. Furthermore, States parties should provide meaningful opportunities for indigenous and non-indigenous children to understand and respect different cultures, religions, and languages.

28. In their periodic reports to the Committee, States parties should identify measures and programmes undertaken to address discrimination of indigenous children in relation to the Declaration and Programme of Action adopted at the 2001 World Conference against Racism, Discrimination, Xenophobia and Related Intolerance.⁴⁶

29. In the design of special measures, States parties should consider the needs of indigenous children who may face multiple facets of discrimination and also take into

⁴³ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

⁴⁴ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 9.

⁴⁵ *Ibid.*, para. 6.

⁴⁶ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 12.

account the different situation of indigenous children in rural and urban situations. Particular attention should be given to girls in order to ensure that they enjoy their rights on an equal basis as boys. States parties should furthermore ensure that special measures address the rights of indigenous children with disabilities.⁴⁷

Best interests of the child

30. The application of the principle of the best interests of the child to indigenous children requires particular attention. The Committee notes that the best interests of the child is conceived both as a collective and individual right, and that the application of this right to indigenous children as a group requires consideration of how the right relates to collective cultural rights. Indigenous children have not always received the distinct consideration they deserve. In some cases, their particular situation has been obscured by other issues of broader concern to indigenous peoples, (including land rights and political representation).⁴⁸ In the case of children, the best interests of the child cannot be neglected or violated in preference for the best interests of the group.

31. When State authorities including legislative bodies seek to assess the best interests of an indigenous child, they should consider the cultural rights of the indigenous child and his or her need to exercise such rights collectively with members of their group. As regards legislation, policies and programmes that affect indigenous children in general, the indigenous community should be consulted and given an opportunity to participate in the process on how the best interests of indigenous children in general can be decided in a culturally sensitive way. Such consultations should, to the extent possible, include meaningful participation of indigenous children.

32. The Committee considers there may be a distinction between the best interests of the individual child, and the best interests of children as a group. In decisions regarding one individual child, typically a court decision or an administrative decision, it is the best interests of the specific child that is the primary concern. However, considering the collective cultural rights of the child is part of determining the child's best interests.

33. The principle of the best interests of the child requires States to undertake active measures throughout their legislative, administrative and judicial systems that would systematically apply the principle by considering the implication of their decisions and actions on children's rights and interests.⁴⁹ In order to effectively guarantee the rights of indigenous children such measures would include training and awareness-raising among relevant professional categories of the importance of considering collective cultural rights in conjunction with the determination of the best interests of the child.

The right to life, survival and development

34. The Committee notes with concern that disproportionately high numbers of indigenous children live in extreme poverty, a condition which has a negative impact

⁴⁷ Convention on the Rights of Persons with Disabilities, preamble. United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 21, 22.

⁴⁸ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 1.

⁴⁹ CRC, general comment No. 5 on General Measures of Implementation, 2003, para. 12.

on their survival and development. The Committee is furthermore concerned over the high infant and child mortality rates as well as malnutrition and diseases among indigenous children. Article 4 obliges States parties to address economic, social and cultural rights to the maximum extent of their available resources and where needed with international cooperation. Articles 6 and 27 provide the right of children to survival and development as well as an adequate standard of living. States should assist parents and others responsible for the indigenous child to implement this right by providing culturally appropriate material assistance and support programmes, particularly with regard to nutrition, clothing and housing. The Committee stresses the need for States parties to take special measures to ensure that indigenous children enjoy the right to an adequate standard of living and that these, together with progress indicators, be developed in partnership with indigenous peoples, including children.

35. The Committee reiterates its understanding of development of the child as set out in its general comment No. 5, as a “holistic concept embracing the child’s physical, mental, spiritual, moral, psychological and social development”.⁵⁰ The Preamble of the Convention stresses the importance of the traditions and cultural values of each person, particularly with reference to the protection and harmonious development of the child. In the case of indigenous children whose communities retain a traditional lifestyle, the use of traditional land is of significant importance to their development and enjoyment of culture.⁵¹ States parties should closely consider the cultural significance of traditional land and the quality of the natural environment while ensuring the children’s right to life, survival and development to the maximum extent possible.

36. The Committee reaffirms the importance of the Millennium Development Goals (MDGs) and calls on States to engage with indigenous peoples, including children, to ensure the full realization of the MDGs with respect to indigenous children.

Respect for the views of the child

37. The Committee considers that, in relation to article 12, there is a distinction between the right of the child as an individual to express his or her opinion and the right to be heard collectively, which allows children as a group to be involved in consultations on matters involving them.

38. With regard to the individual indigenous child, the State party has the obligation to respect the child’s right to express his or her view in all matters affecting him or her, directly or through a representative, and give due weight to this opinion in accordance with the age and maturity of the child. The obligation is to be respected in any judicial or administrative proceeding. Taking into account the obstacles which prevent indigenous children from exercising this right, the State party should provide an environment that encourages the free opinion of the child. The right to be heard includes the right to representation, culturally appropriate interpretation and also the right not to express one’s opinion.

39. When the right is applied to indigenous children as a group, the State party plays an important role in promoting their participation and should ensure that they

⁵⁰ Ibid.

⁵¹ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 8.

are consulted on all matters affecting them. The State party should design special strategies to guarantee that their participation is effective. The State party should ensure that this right is applied in particular in the school environment, alternative care settings and in the community in general. The Committee recommends States parties to work closely with indigenous children and their communities to develop, implement and evaluate programmes, policies and strategies for implementation of the Convention.

Civil rights and freedoms (arts. 7, 8, 13-17 and 37 (a) of the Convention)

Access to information

40. The Committee underlines the importance that the media have particular regard for the linguistic needs of indigenous children, in accordance with articles 17 (d) and 30 of the Convention. The Committee encourages States parties to support indigenous children to have access to media in their own languages. The Committee underlines the right of indigenous children to access information, including in their own languages, in order for them to effectively exercise their right to be heard.

Birth registration, nationality and identity

41. States parties are obliged to ensure that all children are registered immediately after birth and that they acquire a nationality. Birth registration should be free and universally accessible. The Committee is concerned that indigenous children, to a greater extent than non-indigenous children, remain without birth registration and at a higher risk of being stateless.

42. Therefore, States parties should take special measures in order to ensure that indigenous children, including those living in remote areas, are duly registered. Such special measures, to be agreed following consultation with the communities concerned, may include mobile units, periodic birth registration campaigns or the designation of birth registration offices within indigenous communities to ensure accessibility.

43. States parties should ensure that indigenous communities are informed about the importance of birth registration and of the negative implications of its absence on the enjoyment of other rights for non-registered children. States parties should ensure that information to this effect is available to indigenous communities in their own languages and that public awareness campaigns are undertaken in consultation with the communities concerned.⁵²

44. Furthermore, taking into account articles 8 and 30 of the Convention, States parties should ensure that indigenous children may receive indigenous names of their parents' choice in accordance with their cultural traditions and the right to preserve his or her identity. States parties should put in place national legislation that provides indigenous parents with the possibility of selecting the name of their preference for their children.

⁵² UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 9.

45. The Committee draws the attention of States to article 8 (2) of the Convention which affirms that a child who has been illegally deprived of some or all of the elements of his or her identity shall be provided with appropriate assistance and protection in order to re-establish speedily his or her identity. The Committee encourages States parties to bear in mind article 8 of the United Nations Declaration on the Rights of Indigenous Peoples which sets out that effective mechanisms should be provided for prevention of, and redress for, any action which deprives indigenous peoples, including children, of their ethnic identities.

Family environment and alternative care
(arts. 5, 18 (paras. 1-2), 9-11, 19-21, 25, 27 (para. 4) and 39 of the Convention)

46. Article 5 of the Convention requires States parties to respect the rights, responsibilities and duties of parents or where applicable, the members of the extended family or community to provide, in a manner consistent with the evolving capacities of all children, appropriate direction and guidance in the exercise by the child of the rights recognized in the Convention. States parties should ensure effective measures are implemented to safeguard the integrity of indigenous families and communities by assisting them in their child-rearing responsibilities in accordance with articles 3, 5, 18, 25 and 27 (3) of the Convention.⁵³

47. States parties should, in cooperation with indigenous families and communities, collect data on the family situation of indigenous children, including children in foster care and adoption processes. Such information should be used to design policies relating to the family environment and alternative care of indigenous children in a culturally sensitive way. Maintaining the best interests of the child and the integrity of indigenous families and communities should be primary considerations in development, social services, health and education programmes affecting indigenous children.⁵⁴

48. Furthermore, States should always ensure that the principle of the best interests of the child is the paramount consideration in any alternative care placement of indigenous children and in accordance with article 20 (3) of the Convention pay due regard to the desirability of continuity in the child's upbringing and to the child's ethnic, religious, cultural and linguistic background. In States parties where indigenous children are overrepresented among children separated from their family environment, specially targeted policy measures should be developed in consultation with indigenous communities in order to reduce the number of indigenous children in alternative care and prevent the loss of their cultural identity. Specifically, if an indigenous child is placed in care outside their community, the State party should take special measures to ensure that the child can maintain his or her cultural identity.

⁵³ Recommendations of CRC Day of General Discussion on the Rights of Indigenous Children, 2003, para. 17.

⁵⁴ Ibid.

Basic health and welfare
(arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) of the Convention)

49. States parties shall ensure that all children enjoy the highest attainable standard of health and have access to health-care service. Indigenous children frequently suffer poorer health than non-indigenous children due to inter alia inferior or inaccessible health services. The Committee notes with concern, on the basis of its reviews of States parties' reports, that this applies both to developing and developed countries.

50. The Committee urges States parties to take special measures to ensure that indigenous children are not discriminated against enjoying the highest attainable standard of health. The Committee is concerned over the high rates of mortality among indigenous children and notes that States parties have a positive duty to ensure that indigenous children have equal access to health services and to combat malnutrition as well as infant, child and maternal mortality.

51. States parties should take the necessary steps to ensure ease of access to health-care services for indigenous children. Health services should to the extent possible be community based and planned and administered in cooperation with the peoples concerned.⁵⁵ Special consideration should be given to ensure that health-care services are culturally sensitive and that information about these is available in indigenous languages. Particular attention should be given to ensuring access to health care for indigenous peoples who reside in rural and remote areas or in areas of armed conflict or who are migrant workers, refugees or displaced. States parties should furthermore pay special attention to the needs of indigenous children with disabilities and ensure that relevant programmes and policies are culturally sensitive.⁵⁶

52. Health-care workers and medical staff from indigenous communities play an important role by serving as a bridge between traditional medicine and conventional medical services and preference should be given to employment of local indigenous community workers.⁵⁷ States parties should encourage the role of these workers by providing them with the necessary means and training in order to enable that conventional medicine be used by indigenous communities in a way that is mindful of their culture and traditions. In this context, the Committee recalls article 25 (2) of the ILO Convention No. 169 and articles 24 and 31 of the United Nations Declaration on the Rights of Indigenous Peoples on the right of indigenous peoples to their traditional medicines.⁵⁸

53. States should take all reasonable measures to ensure that indigenous children, families and their communities receive information and education on issues relating to health and preventive care such as nutrition, breastfeeding, pre- and postnatal care, child and adolescent health, vaccinations, communicable diseases (in particular

⁵⁵ ILO Convention No. 169, article 25 (1, 2).

⁵⁶ CRC, general comment No. 9 on The Rights of Children with Disabilities, 2006.

⁵⁷ ILO Convention No. 169, article 25 (3).

⁵⁸ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, articles 24, 31.

HIV/AIDS and tuberculosis), hygiene, environmental sanitation and the dangers of pesticides and herbicides.

54. Regarding adolescent health, States parties should consider specific strategies in order to provide indigenous adolescents with access to sexual and reproductive information and services, including on family planning and contraceptives, the dangers of early pregnancy, the prevention of HIV/AIDS and the prevention and treatment of sexually transmitted infections (STIs). The Committee recommends States parties to take into account its general comments No. 3 on HIV/AIDS and the rights of the child (2003) and No. 4 on adolescent health (2003) for this purpose.⁵⁹

55. In certain States parties suicide rates for indigenous children are significantly higher than for non-indigenous children. Under such circumstances, States parties should design and implement a policy for preventive measures and ensure that additional financial and human resources are allocated to mental health care for indigenous children in a culturally appropriate manner, following consultation with the affected community. In order to analyse and combat the root causes, the State party should establish and maintain a dialogue with the indigenous community.

Education (arts. 28, 29 and 31 of the Convention)

56. Article 29 of the Convention sets out that the aims of education for all children should be directed to, among other objectives, the development of respect for the child's cultural identity, language and values and for civilizations different from his or her own. Further objectives include the preparation of the child for responsible life in a free society, in the spirit of understanding peace, tolerance, equality of sexes and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin. The aims of education apply to education for all children and States should ensure these are adequately reflected in the curricula, content of materials, teaching methods and policies. States are encouraged to refer to the Committee's general comment No. 1 on the aims of education for further guidance.⁶⁰

57. The education of indigenous children contributes both to their individual and community development as well as to their participation in the wider society. Quality education enables indigenous children to exercise and enjoy economic, social and cultural rights for their personal benefit as well as for the benefit of their community. Furthermore, it strengthens children's ability to exercise their civil rights in order to influence political policy processes for improved protection of human rights. Thus, the implementation of the right to education of indigenous children is an essential means of achieving individual empowerment and self-determination of indigenous peoples.

58. In order to ensure that the aims of education are in line with the Convention, States parties are responsible for protecting children from all forms of discrimination as set out in article 2 of the Convention and for actively combating racism. This duty

⁵⁹ CRC, general comment No. 3 on HIV/AIDS and the Rights of the Child, 2003 and general comment No. 4 on Adolescent Health, 2003.

⁶⁰ CRC, general comment No. 1 on the Aims of Education, 2001.

is particularly pertinent in relation to indigenous children. In order to effectively implement this obligation, States parties should ensure that the curricula, educational materials and history textbooks provide a fair, accurate and informative portrayal of the societies and cultures of indigenous peoples.⁶¹ Discriminatory practices, such as restrictions on the use of cultural and traditional dress, should be avoided in the school setting.

59. Article 28 of the Convention sets out that States parties shall ensure that primary education is compulsory and available to all children on the basis of equal opportunity. States parties are encouraged to make secondary and vocational education available and accessible to every child. However, in practice, indigenous children are less likely to be enrolled in school and continue to have higher drop out and illiteracy rates than non-indigenous children. Most indigenous children have reduced access to education due to a variety of factors including insufficient educational facilities and teachers, direct or indirect costs for education as well as a lack of culturally adjusted and bilingual curricula in accordance with article 30. Furthermore, indigenous children are frequently confronted with discrimination and racism in the school setting.

60. In order for indigenous children to enjoy their right to education on equal footing with non-indigenous children, States parties should ensure a range of special measures to this effect. States parties should allocate targeted financial, material and human resources in order to implement policies and programmes which specifically seek to improve the access to education for indigenous children. As established by article 27 of the ILO Convention No. 169, education programmes and services should be developed and implemented in cooperation with the peoples concerned to address their specific needs. Furthermore, governments should recognize the right of indigenous peoples to establish their own educational institutions and facilities, provided that such institutions meet minimum standards established by the competent authority in consultation with these peoples.⁶² States should undertake all reasonable efforts to ensure that indigenous communities are aware of the value and importance of education and of the significance of community support for school enrolment.

61. States parties should ensure that school facilities are easily accessible where indigenous children live. If required, States parties should support the use of media, such as radio broadcasts and long distance education programmes (internet-based) for educational purposes and establish mobile schools for indigenous peoples who practice nomadic traditions. The school cycle should take into account and seek to adjust to cultural practices as well as agricultural seasons and ceremonial periods. States parties should only establish boarding schools away from indigenous communities when necessary as this may be a disincentive for the enrolment of indigenous children, especially girls. Boarding schools should comply with culturally sensitive standards and be monitored on a regular basis. Attempts should also be made to ensure that indigenous children living outside their communities have access to education in a manner which respects their culture, languages and traditions.

⁶¹ ILO Convention No. 169, article 31, United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 15.

⁶² ILO Convention No. 169, article 27.

62. Article 30 of the Convention establishes the right of the indigenous child to use his or her own language. In order to implement this right, education in the child's own language is essential. Article 28 of ILO Convention No. 169 affirms that indigenous children shall be taught to read and write in their own language besides being accorded the opportunity to attain fluency in the official languages of the country.⁶³ Bilingual and intercultural curricula are important criteria for the education of indigenous children. Teachers of indigenous children should to the extent possible be recruited from within indigenous communities and given adequate support and training.

63. With reference to article 31 of the Convention, the Committee notes the many positive benefits of participation in sports, traditional games, physical education, and recreational activities and calls on States parties to ensure that indigenous children enjoy the effective exercise of these rights.

Special protection measures (arts. 22, 30, 38, 39, 40, 37 (b)-(d), 32-36 of the Convention)

Children in armed conflict and refugee children

64. Through its periodic reviews of States parties' reports, the Committee has concluded that indigenous children are particularly vulnerable in situations of armed conflict or in situations of internal unrest. Indigenous communities often reside in areas which are coveted for their natural resources or that, because of remoteness, serve as a base for non-State armed groups. In other situations, indigenous communities reside in the vicinity of borders or frontiers which are disputed by States.⁶⁴

65. Indigenous children in such circumstances have been, and continue to face risks of being, victims of attacks against their communities, resulting in death, rape and torture, displacement, enforced disappearances, the witnessing of atrocities and the separation from parents and community. Targeting of schools by armed forces and groups has denied indigenous children access to education. Furthermore, indigenous children have been recruited by armed forces and groups and forced to commit atrocities, sometimes even against their own communities.

66. Article 38 of the Convention obliges States parties to ensure respect for the rules of humanitarian law, to protect the civilian population and to take care of children who are affected by armed conflict. States parties should pay particular attention to the risks indigenous children face in hostilities and take maximum preventive measures in consultation with the communities concerned. Military activities on indigenous territories should be avoided to the extent possible, the Committee recalls article 30 of the United Nations Declaration on the Rights of Indigenous Peoples in this regard.⁶⁵ States parties should not require military conscription of indigenous children under the age of 18 years. States parties are encouraged to ratify and implement the Optional Protocol on the Involvement of Children in Armed Conflict.

⁶³ ILO Convention No. 169, article 28.

⁶⁴ UNICEF Innocenti Digest No. 11, Ensuring the Rights of Indigenous Children, 2004, p. 13.

⁶⁵ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, article 30.

67. Indigenous children who have been victims of recruitment in armed conflict should be provided with the necessary support services for reintegration into their families and communities. Consistent with article 39 of the Convention, States parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of exploitation, abuse, torture or any other form of cruel, inhuman or degrading treatment or punishment or armed conflicts. In the case of indigenous children, this should be done giving due consideration to the child's cultural and linguistic background.

68. Indigenous children who have been displaced or become refugees should be given special attention and humanitarian assistance in a culturally sensitive manner. Safe return and restitution of collective and individual property should be promoted.

Economic exploitation

69. Article 32 of the Convention provides that all children should be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development. In addition, ILO Convention No. 138 (Minimum Age Convention) and Convention No. 182 (Worst Forms of Child Labour Convention) set parameters for distinguishing child labour that needs abolition, on the one hand, and acceptable work done by children, including such activities that allow indigenous children to acquire livelihood skills, identity and culture, on the other. Child labour is work that deprives children of their childhood, their potential and dignity and that is harmful to their physical and mental development.⁶⁶

70. Provisions in the Convention on the Rights of the Child refer to the use of children in illicit production and trafficking of drugs (art. 33), sexual exploitation (art. 34), trafficking in children (art. 35), children in armed conflicts (art. 38). These provisions are closely related to the definition of the worst forms of child labour under ILO Convention No. 182. The Committee notes with grave concern that indigenous children are disproportionately affected by poverty and at particular risk of being used in child labour, especially its worst forms, such as slavery, bonded labour, child trafficking, including for domestic work, use in armed conflict, prostitution and hazardous work.

71. The prevention of exploitative child labour among indigenous children (as in the case of all other children) requires a rights-based approach to child labour and is closely linked to the promotion of education. For the effective elimination of exploitative child labour among indigenous communities, States parties must identify the existing barriers to education and the specific rights and needs of indigenous children with respect to school education and vocational training. This requires that special efforts be taken to maintain a dialogue with indigenous communities and parents regarding the importance and benefits of education. Measures to combat exploitative child labour furthermore require analysis of the structural root causes of child exploitation, data collection and the design and implementation of prevention

⁶⁶ ILO, Handbook on Combating Child Labour among Indigenous and Tribal Peoples, 2006, p. 9.

programmes, with adequate allocation of financial and human resources by the State party, to be carried out in consultation with indigenous communities and children.

Sexual exploitation and trafficking

72. Articles 34 and 35 of the Convention with consideration to the provisions of article 20, call on States to ensure that children are protected against sexual exploitation and abuse as well as the abduction, sale or traffic of children for any purposes. The Committee is concerned that indigenous children whose communities are affected by poverty and urban migration are at a high risk of becoming victims of sexual exploitation and trafficking. Young girls, particularly those not registered at birth, are especially vulnerable. In order to improve the protection of all children, including indigenous, States parties are encouraged to ratify and implement the Optional Protocol on the sale of children, child prostitution and child pornography.

73. States should, in consultation with indigenous communities, including children, design preventive measures and allocate targeted financial and human resources for their implementation. States should base preventive measures on studies which include documentation of the patterns of violations and analysis of root causes.

Juvenile justice

74. Articles 37 and 40 of the Convention ensure the rights of children within, and in interaction with, State judicial systems. The Committee notes with concern that incarceration of indigenous children is often disproportionately high and in some instances may be attributed to systemic discrimination from within the justice system and/or society.⁶⁷ To address these high rates of incarceration, the Committee draws the attention of States parties to article 40 (3) of the Convention requiring States to undertake measures to deal with children alleged as, accused of, or recognized as having infringed the penal law without resorting to judicial proceedings, whenever appropriate. The Committee, in its general comment No. 10 on children's rights in juvenile justice (2007) and in its concluding observations, has consistently affirmed that the arrest, detention or imprisonment of a child may be used only as a measure of last resort.⁶⁸

75. States parties are encouraged to take all appropriate measures to support indigenous peoples to design and implement traditional restorative justice systems as long as those programmes are in accordance with the rights set out in the Convention, notably with the best interests of the child.⁶⁹ The Committee draws the attention of States parties to the United Nations Guidelines for the Prevention of Juvenile Delinquency, which encourage the development of community programmes for the prevention of juvenile delinquency.⁷⁰ States parties should seek to support, in consultation with indigenous peoples, the development of community-based policies, programmes and services which consider the needs and culture of indigenous children, their families and communities. States should provide adequate resources to juvenile justice systems, including those developed and implemented by indigenous peoples.

⁶⁷ CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 6.

⁶⁸ Ibid. para. 23.

⁶⁹ Recommendations of Day of General Discussion on the Rights of Indigenous Children, 2003, para. 13.

⁷⁰ United Nations Guidelines for the Prevention of Juvenile Delinquency, "the Riyadh Guidelines", 1990.

76. States parties are reminded that pursuant to article 12 of the Convention, all children should have an opportunity to be heard in any judicial or criminal proceedings affecting them, either directly or through a representative. In the case of indigenous children, States parties should adopt measures to ensure that an interpreter is provided free of charge if required and that the child is guaranteed legal assistance, in a culturally sensitive manner.

77. Professionals involved in law enforcement and the judiciary should receive appropriate training on the content and meaning of the provisions of the Convention and its Optional Protocols, including the need to adopt special protection measures for indigenous children and other specific groups.⁷¹

States parties' obligations and monitoring of the implementation of the Convention

78. The Committee reminds States parties that ratification of the Convention on the Rights of the Child obliges States parties to take action to ensure the realization of all rights in the Convention for all children within their jurisdiction. The duty to respect and protect requires each State party to ensure that the exercise of the rights of indigenous children is fully protected against any acts of the State party by its legislative, judicial or administrative authorities or by any other entity or person within the State party.

79. Article 3 of the Convention requires States parties to ensure that in all actions concerning children, the best interests of the child shall be a primary consideration. Article 4 of the Convention requires States parties to undertake measures to implement the Convention to the maximum extent of their available resources. Article 42 sets out that States parties are further required to ensure that children and adults are provided information on the principles and provisions of the Convention.

80. In order to effectively implement the rights of the Convention for indigenous children, States parties need to adopt appropriate legislation in accordance with the Convention. Adequate resources should be allocated and special measures adopted in a range of areas in order to effectively ensure that indigenous children enjoy their rights on an equal level with non-indigenous children. Further efforts should be taken to collect and disaggregate data and develop indicators to evaluate the degree of implementation of the rights of indigenous children. In order to develop policy and programming efforts in a culturally sensitive manner, States parties should consult with indigenous communities and directly with indigenous children. Professionals working with indigenous children should be trained on how consideration should be given to cultural aspects of children's rights.

81. The Committee calls for States parties to, when applicable, better integrate information in their periodic reports to the Committee on the implementation of indigenous children's rights and on the adoption of special measures in this regard. Furthermore, the Committee requests States parties to strengthen efforts to translate and disseminate information about the Convention and its Optional Protocols and the reporting process among indigenous communities and children, in order for them to

⁷¹ CRC, general comment No. 1 on Children's Rights in Juvenile Justice, 2007, para. 97.

actively participate in the monitoring process. Furthermore, indigenous communities are encouraged to utilize the Convention as an opportunity to assess the implementation of the rights of their children.

82. Finally, the Committee urges States parties to adopt a rights-based approach to indigenous children based on the Convention and other relevant international standards, such as ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples. In order to guarantee effective monitoring of the implementation of the rights of indigenous children, States parties are urged to strengthen direct cooperation with indigenous communities and, if required, seek technical cooperation from international agencies, including United Nations entities. Empowerment of indigenous children and the effective exercise of their rights to culture, religion and language provide an essential foundation of a culturally diverse State in harmony and compliance with its human rights obligations.

V. COMMITTEE ON THE ELIMINATION OF DISCRIMINATION AGAINST WOMEN

A. Concluding Observations⁷²

1. GUATEMALA: CEDAW/C/GUA/CO/7, 10 FEBRUARY 2009

3. The Committee commends the State party for its high-level delegation headed by the Minister of the Presidential Secretariat for Women, and composed of representatives of the Supreme Court, the Institute of Public Criminal Defence, the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women, the Presidential Human Rights Commission, the Office for the Defence of Indigenous Women's Rights, the Guatemala Beijing Committee and Guatemala's Permanent Mission in Geneva. The Committee appreciates the open and constructive dialogue that took place between its members and the delegation.

6. The Committee also welcomes the reinforcement of the Presidential Secretariat for Women, the Office for the Defence of Indigenous Women's Rights and the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women, by providing these institutions with additional human and financial resources.

11. While noting with appreciation that international treaties prevail over domestic laws and can be directly invoked in national courts, the Committee remains concerned that a prohibition of all forms of discrimination against women in line with articles 1 and 2 b of the Convention, including sanctions for such documentation, has not yet been adopted. ... The Committee is also concerned at the lack of awareness of women, in particular rural and indigenous women, domestic workers and women working in the maquiladora industry and agro-industrial companies, of their rights.

12. The Committee recommends that the State party prohibit discrimination against women in line with articles 1 and 2 b of the Convention, including sanctions, in relevant national legislation. ... It further urges the State party to take proactive measures, including comprehensive legal literacy programmes to enhance women's awareness of their rights. These measures should be adapted and take into account the illiteracy and the multilingual character of the population, and should also target all vulnerable groups of women, so that they may know and be able to exercise their rights.

17. While acknowledging the important work undertaken by the National Coordinating Office for the Prevention of Domestic Violence and Violence against Women to eradicate domestic violence and violence against women, as well as the work of the Office for the Defence of Indigenous Women's Rights to protect and promote the rights of indigenous women, and the key role of the Presidential Secretariat for Women as the highest national machinery for the advancement of women and the executive branch's leading organ for the promotion of public policies

⁷² CEDAW's concluding observations on the following states with self-identifying indigenous peoples did not make any reference to indigenous women, directly or indirectly: Rwanda, Cameroon, Laos, Botswana, Fiji, Russian Federation and India.

for gender equity and equality, the Committee is concerned about weak coordination of the work of these different bodies, as well as the possible overlap in their work.

18. The Committee recommends that the State party strengthen the existing machinery for gender equality by providing it with adequate visibility, power and human and financial resources at all levels, in order to increase its effectiveness, and enhance its capacity to coordinate and monitor actions at the national and local levels for the advancement of women and the promotion of gender equality.

27. While welcoming the introduction of free education and the efforts made to encourage bilingual and multicultural education, the Committee is concerned at the significant level of illiteracy among indigenous and rural women, the difficulties of accessibility of schools, and the poor quality of education, in particular in rural areas. The Committee is also concerned at the lack of information provided by the State party on vocational education and training for girls and women in professions traditionally occupied by men.

28. The Committee calls on the State party to continue to take proactive measures to reduce the illiteracy rate among indigenous women and to continue to provide education, both formal and informal, to all women and girls, especially in rural areas. The Committee recommends that the State party accelerate the process of training bilingual teachers and the extension of bilingual education to all indigenous communities.

33. The Committee recognizes the efforts made by the State party to initiate and support community projects which promote women's economic empowerment, but remains concerned at the effects and the sustainability of these programmes, the persistence of high levels of poverty and social exclusion of women, especially in rural areas. The Committee is also concerned about issues relating to access to land for women in general and in particular women belonging to indigenous communities, who can be displaced as a result of new economic development plans.

34. The Committee recommends that the State party to ensure that economic and social policies and public investment take into specific account the situation of women and monitor the impact resulting from these programmes. The Committee urges the State party to strengthen initiatives aimed at encouraging women's economic sustainable empowerment, in particular promote women's access to land and to credits.

Indigenous and other minority women

41. While welcoming various initiatives by the State party to improve the status of indigenous women, the Committee is concerned about the precarious situation of indigenous women and the lack of information provided by the State party on Maya, Xinca and Garifuna women, who experience multiple and intersectoral discrimination, based on their sex, ethnic origin and social status.

42. The Committee encourages the State party to adopt concrete, targeted and timebound measures, with evaluation criteria, to accelerate the improvement of conditions of indigenous women in all spheres of life. It calls upon the State party to

ensure that maya, xinca and garifuna women have full access to land, education and health services and can fully participate in decision-making processes.

2. Dominica, CEDAW/C/DMA/CO/7, 26 January 2009

8. The Committee also noticed some lack of conceptual clarity on issues contained in the Convention, such as the definition of temporary special measures, some concepts related, *inter alia*, to education, health and violence against women, and urges the State party to update its understanding of the concepts as elaborated in the Committee's general recommendations, in particular, general recommendations 5, 12, 19, 21 and 23 to 25. The Committee requests the State party to include in its report statistical and detailed information, disaggregated by sex and other variables, such as rural and urban areas, on all the substantive provisions contained in the Convention. The Committee also requests the State party to provide information on the situation of indigenous Carib women as well as other vulnerable groups.

3. Denmark, CEDAW/C/DEN/CO/7, 7 August 2009

2. The Committee commends the State party for the submission of its seventh periodic report, which followed the Committee's former guidelines for the preparation of periodic reports and took into account its previous concluding observations. The Committee also commends the State party for the written replies to the list of issues and questions raised by the pre-session working group and for the oral presentation and responses to the questions posed by the Committee. The Committee regrets, however, that information in the report about the situation of women in the Faroe Islands and Greenland is still too limited.

4. The Committee welcomes the State party's recognition of the positive contribution made by non-governmental human rights and women's organizations to the preparation of the State party's report but regrets that it has not received information regarding the Faroe Islands and Greenland.

10. The Committee recalls the State party's obligation systematically and continuously to implement all the provisions of the Convention, and views the concerns and recommendations identified in the present concluding observations as requiring the State party's priority attention between now and the submission of the next periodic report. Consequently, the Committee urges the State party to focus on those areas in its implementation activities and to report on action taken and results achieved in its next periodic report. It calls upon the Governments of Denmark, the Faroe Islands and Greenland to submit the present concluding observations to all relevant ministries, to the Parliament and the judiciary, so as to ensure their full implementation.

13. While reaffirming that the Government has the primary responsibility and is particularly accountable for the full implementation of the State party's obligations under the Convention, the Committee stresses that the Convention is binding on all branches of Government, and it invites the State party, including the Faroe Islands and Greenland, to encourage its Parliament, in line with its procedures, where appropriate, to take the necessary steps with regard to the implementation of these concluding observations and the Government's next reporting process under the Convention.

14. While recognizing that some of the State party's domestic laws reflect the articles enshrined in the Convention, the Committee is concerned at the decision taken by the State party not to incorporate the Convention into its domestic legal order. It also reiterates the concerns expressed in its previous concluding observations that the Convention's provisions and rights have not been fully incorporated in the Faroe Islands and Greenland. Furthermore, given the special status of the self-governing and autonomous territories of the Faroe Islands and Greenland, the Committee considers that the incorporation of the Convention into the Constitution or other appropriate legislation would provide full protection to all citizens under the Danish Realm. The Committee notes that under Home Rule legislation the Danish Parliament has delegated legislative and executive powers to the authorities of the Faroe Islands and Greenland. It underlines, however, that the State party bears the primary responsibility of ensuring the full implementation of the Convention within the Danish Realm and dividing responsibilities with self-governing and autonomous territories in that regard. In addition, while noting the existence of gender equality machineries and regulations in Denmark, the Faroe Islands and Greenland, the Committee is concerned that there is inadequate effective coordination of the application of the Convention in all Territories of the State party and of reporting as required under article 18 of the Convention.

15. The Committee calls on the State party to reconsider its decision not to incorporate the Convention into its domestic legal order, with a view to ensuring that all rights protected under the Convention are given full effect in domestic law. It recalls the State party's obligation, as stated in article 2 (a) of the Convention, to embody the principle of the equality of men and women in its national Constitution or other appropriate legislation. The Committee recommends that the State party ensure that full implementation of the Convention is achieved throughout the State party's entire territory, including the Faroe Islands and Greenland. It also requests that an efficient division of responsibilities and reporting under the Convention is guaranteed through the establishment of effective coordination and reporting mechanisms.

16. The Committee takes note of the efforts made by the State party to increase the visibility of the Convention and the Optional Protocol, but remains concerned that the Convention and its Protocol have not received a high degree of visibility and importance, and are therefore not regularly used as the central legal basis for measures, including legislation, aimed at the elimination of discrimination against women and the promotion of gender equality in the State party, including in the Faroe Islands and Greenland. The Committee is further concerned that the provisions of the Convention have been used only once in a court case, which may indicate a lack of awareness of the Convention among the judiciary and the legal profession.

17. The Committee calls upon the State party, including the Faroe Islands and Greenland, to place greater emphasis, in their efforts to eliminate discrimination against women, on the Convention as a central legally binding women's human rights instrument. It also calls upon the State party to take proactive measures to enhance awareness of the Convention and its Optional Protocol at all levels, in particular among the judiciary and the legal profession, political parties, Parliament and Government officials, including law enforcement officials, as well as the general public, in order to strengthen the use of the Convention in the development and implementation of its legislation, policies and programmes aimed at the practical

realization of the principle of equality between women and men. The Committee encourages the State party to systematically promote knowledge and understanding of the Convention and its Optional Protocol, as well as the Committee's general recommendations and the views adopted on individual communications and enquiries, and to ensure that they are made an integral part of educational curricula, including legal education and the training of the judiciary.

19. The Committee calls upon the State party to establish a dedicated coordination mechanism and to introduce at all levels — ministerial, regional and municipal — effective monitoring and accountability mechanisms for the implementation of the gender mainstreaming strategy, as well as to include sanctions for non-compliance in such mechanisms. The Committee also recommends that the State party apply the gender impact assessment of all new bills in order to ensure that implementation of laws does not have an adverse impact on achieving de facto gender equality. The Committee recommends that the Governments of the Faroe Islands and Greenland also envisage the adoption of a gender mainstreaming strategy.

21. The Committee recommends that the State party, including the Faroe Islands and Greenland, take concrete measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and general recommendation No. 25 to accelerate the practical realization of women's de facto equality with men.

23.... The State party therefore urges the State party to adopt appropriate temporary special measures in order to increase the number of women in politics, in particular at the regional and local levels, in the State party, including the Faroe Islands and Greenland.

4. Japan, CEDAW/C/JPN/CO/6, 7 August 2009 **Minority women**

51. The Committee regrets the lack of information and statistical data about the situation of minority women in the State party, who suffer from multiple discrimination based on gender and ethnic origin, both in society at large and within their communities. The Committee further regrets the absence of any proactive measures, including a policy framework for each minority group, to promote the rights of minority women.

52. The Committee urges the State party to take effective measures, including the establishment of a policy framework and the adoption of temporary special measures, to eliminate discrimination against minority women. To this end, the Committee urges the State party to appoint minority women representatives to decision-making bodies. The Committee reiterates its previous request (A/58/38, para. 366) that the State party include information on the situation of minority women in Japan, especially with regard to education, employment, health, social welfare and exposure to violence, in its next periodic report. In this context, the Committee calls upon the State party to conduct a comprehensive study on the situation of minority women, including indigenous Ainu, Buraku and Zainichi Korean and Okinawa women.

5. Panama, CEDAW/C/PAN/CO/7, 5 February 2010

2. The Committee expresses its appreciation to the State party for its combined fourth, fifth, sixth and seventh periodic report, which followed the Committee's previous guidelines for the preparation of reports but it regrets that the report did not refer to the previous concluding observations or the Committee's general recommendations. It also regrets the absence of sufficient statistical data disaggregated by sex on the situation of women, in particular Afro-descendant and indigenous women, with respect to all areas covered by the Convention. The Committee appreciates the frankness of the report in assessing challenges to the implementation of the Convention. It regrets, however, that the absence of regular reports during the period under consideration made it more difficult to monitor progress towards the achievement of gender equality.

15. The Committee calls upon the State party to undertake all necessary measures to ensure that the provisions of the Convention are sufficiently known and applied by all branches of Government and the judiciary as a framework for all laws, court decisions and policies on gender equality and the advancement of women. It recommends that the State party raise awareness of the Convention among women themselves, particularly rural and indigenous women. ...It further recommends that the State party take all appropriate measures to make the provisions of the Convention and the Optional Protocol part of the educational system, at all levels and available in the different indigenous languages, so that they are accessible to all women and girls.

34. The Committee, while welcoming efforts by the State party to eliminate illiteracy, including through campaigns such as "Muévete por Panamá", notes with concern the high level of illiteracy among rural women speaking indigenous languages. The Committee also notes with concern that higher education choices continue to reflect stereotypical notions of appropriate fields of study for women.

35. The Committee encourages the State party to strengthen its efforts to eradicate illiteracy, in particular among rural women speaking indigenous languages, taking into account the plurality of languages in the country. It also urges the State party to take measures and carry out studies with a view to addressing the root causes of gender discrimination and stereotypical gender roles in the field of education, and encourages the State party to strengthen its efforts to promote the inclusion of women in non-traditional careers.

42. The Committee notes with concern the high rate of maternal mortality in the State party, caused mainly by the lack of provision of appropriate medical care, in particular to rural and indigenous women and adolescents girls. The Committee is further concerned that, owing to difficulties in enforcing existing legislation in the State party, many women are unable to obtain a legal abortion and are therefore forced to resort to an illegal abortion. The Committee is also concerned at the lack of programmes that include measures to raise victims' awareness of the importance of seeking medical treatment after a sexual assault and reporting the incident.

43. The Committee urges the State party to improve access to health services for all women and in particular for the most vulnerable groups of women, such as indigenous, Afro- and Asian-descendant women. It also urges the State party to adopt without delay effective measures to resolve the problem of the high rate of maternal

mortality by guaranteeing adequate prenatal, childbirth, and post-natal care and ensuring access to health-care facilities and medical assistance provided by trained workers in all parts of the country, particularly in rural areas. The Committee urges the State party to adopt regulations aimed at enforcing existing legislation on women's right to abortion and to give women access to high-quality services for the treatment of complications resulting from unsafe abortions. It invites the Ministry of Health to undertake a thorough investigation or study of unsafe abortions and their impact on women's health, in particular those resulting in maternal mortality, which will serve as the basis for legislative and policy action. It also urges the State party to facilitate a national dialogue on women's right to reproductive health, including on the consequences of restrictive abortion laws. It further recommends that the State party establish programmes that include measures aimed at raising victims' awareness of the importance of seeking medical treatment after an assault and reporting the incident.

44. The Committee regrets the lack of information available on the issue of HIV/AIDS, as well as on the apparent feminization of the disease in the State party, particularly among rural and indigenous women and girls.

46. 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 the social exclusion of women in Panama, especially rural and indigenous women, as well as obstacles preventing them from enjoying basic rights.

47. The Committee urges the State party to strengthen initiatives aimed at encouraging women's economic empowerment, keeping in mind the specific situations 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.

53. The Committee recommends that the State party step up its efforts to establish a comprehensive and unified system of sex-disaggregated information in all areas covered by the Convention. The Committee also recommends that the State party 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 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 and domestic workers, particularly girls.

6. Argentina, CEDAW/C/ARG/CO/6, 16 August 2010

15. The Committee is concerned that, while women's access to justice is provided for by legislation, their ability in practice to exercise that right and to bring cases of discrimination before the courts is limited by such factors as lack of information about their rights, language barriers, particularly for indigenous women, and other structural difficulties in accessing the courts. The Committee is also concerned about gender stereotyping by the justice system and its lack of knowledge on discrimination on the grounds of sex and gender as well as on violence against

women.

16. The Committee requests that the State party take all appropriate measures to remove impediments women may face in gaining access to justice and to put in place measures to ensure women's access to justice. It specifically recommends that the State party enhance women's awareness of their rights, inter alia in rural areas and among the most disadvantaged groups, including indigenous communities, through legal literacy programmes and legal assistance so that they can gain knowledge of available legal remedies for discrimination and abuse and claim all their rights under the Convention. It further urges the State party to ensure that the judiciary, including judges, lawyers, prosecutors and public defenders, is familiar with the rights of women and the obligations of the State party under the Convention. The Committee also encourages the State party to provide training on gender awareness to all members of the justice system, including law enforcement agencies, and to monitor the results of such efforts.

41. While acknowledging efforts aimed at decentralizing and providing training opportunities, relatively extensive health care and substantial credit loans, including to rural families, the Committee remains concerned about the situation of rural women, particularly older women and indigenous women, in view of their extreme poverty, marginalization and frequent lack of access to health care, education, credit facilities and community services.

42. The Committee urges the State party to continue to pay special attention to the needs of rural women, including older women and indigenous women, ensuring that they participate in decision-making processes and have full access to education, health services and credit facilities.

7. Australia, CEDAW/C/AUL/CO/7, 30 July 2010

2. The Committee expresses its appreciation to the State party for its combined sixth and seventh periodic report, which was well structured and followed the Committee guidelines for the preparation of reports. The Committee appreciates that, in response to its previous concerns about insufficient disaggregated data, the State party provided information on the steps taken to improve the collection of data by the Office for Women and the development of indicators on gender equality, including data for indigenous people, people with disabilities and people from lower socio-economic and rural and remote backgrounds. The Committee expresses its appreciation to the State party for the written replies to the list of issues and questions raised by its pre-session working group, its oral presentation and the further clarifications to the questions posed orally by the Committee.

4. The Committee notes with appreciation that the report was prepared through a participatory process involving government institutions, non-governmental organizations and extensive community consultations at the State and Territory levels. It further notes with satisfaction that specific consultations were also held with women with disabilities, indigenous women, migrant and refugee women and women from remote or rural communities in response to the expressed concerns of the Committee about the lack of information on these groups of women in previous reports. It commends the State party for providing financial support to various non-

governmental and civil society organizations to assist them in preparing alternative reports for the Committee.

12. The Committee welcomes Australia's endorsement of the United Nations Declaration on the Rights of Indigenous Peoples, and commends the Australian Parliament's motion of apology to Australia's indigenous peoples for the laws and policies of successive governments that have inflicted profound grief, suffering and loss. The Committee also welcomes the nomination and election of the first Australian indigenous woman as a member of the Permanent Forum on Indigenous Issues.

13. The Committee welcomes the State party's commitment to work with indigenous communities to "close the gap" with regard to the disadvantaged situation of Australia's indigenous peoples and the forums created to allow indigenous people's voices to be heard, including an independent Indigenous Steering Committee and the National Congress of Australia's First Peoples — with gender-balanced representation — and the continuing support for the National Aboriginal and Torres Straits Islander Women's Gathering.

26. The Committee notes with concern that, despite a large number of policies and programmes adopted by the State party to address underrepresentation of certain vulnerable groups of women, including indigenous women, women with disabilities, migrant women, women from culturally and linguistically diverse backgrounds and women from remote or rural communities, there has been slow progress in ensuring their equal participation in leadership and decision-making positions, in public and political life and their equal access to education, employment and health. The Committee continues to be concerned that the State party does not favour adoption of temporary special measures in the form of compulsory targets and quotas to address the underrepresentation of women in decision-making bodies, in political and public life and the persistent inequality of their access to education, employment opportunities and health-care services.

27. The Committee reiterates its recommendation in its previous concluding observations (CEDAW/C/AUL/CO/5, para. 17) that the State party fully utilize the Sex Discrimination Act and consider the adoption of temporary special measures, in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, to increase further the number of women in political and public life and to ensure that the representation of women in political and public bodies reflect the full diversity of the population, including indigenous women and women from ethnic minorities.

36. The Committee notes that a number of well-resourced initiatives have been undertaken to eliminate discrimination against girls and women at all levels in the education system. The Committee is, however, concerned that information, as provided, does not always allow for a full understanding of ways in which multiple forms of discrimination impact outcomes for specific groups such as indigenous women and girls. The Committee is also concerned with segregation of fields of study in higher education and vocational training, which ultimately results in occupational sex segregation of the labour market.

38. The Committee is concerned about the labour force, which continues to be segregated by gender; the persistence of the pay gap with women working full time earning 18 per cent less than their male counterparts; the caring responsibilities, which continue to affect women's labour force participation and the limited access to job opportunities for women with disabilities and indigenous women. The Committee also notes that, despite the provisions in the Sex Discrimination Act, sexual harassment continues to be a serious problem in the workplace. The Committee welcomes the first paid parental leave scheme, which will come into operation on 1 January 2011, but notes that it does not include superannuation, which impacts on the major gender gap in retirement savings and economic security between older women and men, that the leave is of limited duration (18 weeks), and that compensation is limited to an amount equal to the federal minimum wage and subject to other conditions.

40. The Committee notes with concern that, despite strengthened efforts to address the issue since the last report, socio-economic indicators consistently show that the Aboriginal and Torres Straits Islander communities continue to be among the most disadvantaged among Australians, with indigenous women being particularly disadvantaged. The Committee is concerned that indigenous women and girls face the highest levels of violence, especially at home where indigenous women are 35 times as likely to be hospitalized as a result of family violence-related assaults as non-indigenous females. The Committee also continues to be concerned that indigenous women have fewer opportunities and more restricted access to quality education, health care and legal aid services.

41. The Committee reiterates its previous recommendation that the State party adopt and implement targeted measures, including temporary special measures in accordance with article 4, paragraph 1, of the Convention and the Committee's general recommendation No. 25, to improve indigenous women's enjoyment of their human rights in all sectors, taking into account their linguistic and cultural interests. It urges the State party to implement specific strategies within the national plan to address violence against Aboriginal and Torres Straits Islander women, including funding culturally appropriate indigenous women's legal services in urban, rural and remote areas of Australia. It recommends that the State party pay particular attention to ensuring access to quality education, including post-graduate education, vocational training, adequate health and social services, legal literacy and access to justice.

8. Uganda, CEDAW/C/UGA/CO/7, 22 October 2010

39. Despite the existence of the State party's National Development Plan (2010/11-2014/15) and the reduction of poverty from 56 per cent to 31 per cent in 2006, including as a result of the former Poverty Eradication Action Plan, the Committee expresses its concern at the fact that 31 per cent of the Ugandan population still lives below the poverty line, the majority of whom are women. The Committee is also concerned that female-headed households are more disproportionately represented among the chronically poor and households moving into poverty. The Committee is further concerned that, according to research studies, women experience severe constraints, including limited access to the key factors of production, such as land, capital and micro finance facilities, as well as several legal and administrative obstacles that constrain their level of entrepreneurship. The Committee also notes with concern the particularly marginalized situation of the Batwa women.

40. The Committee urges the State Party to continue to intensify the implementation of gender-sensitive poverty reduction and development programmes in rural and urban areas and to pay particular attention to the Batwa women in the development of such programmes. The Committee also reiterates its recommendation that the State party continue to develop targeted policies and support services for women aimed at alleviating and reducing poverty.

VI. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A. Concluding Observations

1. Chile, CAT/C/CHL/CO/5, 23 June 2009

3. The Committee notes with satisfaction that in the period since its consideration of the fourth periodic report of the State party, the latter has ratified: ...

(b) The International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) on 15 September 2008.

Indigenous peoples

23. The Committee takes note of the text of the constitutional amendment now before Congress which accords recognition to indigenous peoples. The Committee also welcomes the establishment of an ombudsman's office for indigenous peoples specializing in criminal matters. Nevertheless, the Committee is concerned by the many reports that it has received regarding the continuing commission of abusive acts by police officers against members of indigenous peoples, especially members of the Mapuche people. The Committee is particularly concerned by the fact that the victims of these acts include women, children and older persons. The Committee also notes with concern that the State party has on occasion applied the Counter-Terrorism Act to members of indigenous peoples in connection with acts of social protest (art. 16).

The State party should:

(a) Take all necessary steps to carry out prompt and effective investigations into abuses committed against members of indigenous peoples and to bring to trial and punish any police officers who commit such abuses;

(b) Provide detailed statistics, with breakdowns by age, sex and geographical location, on all complaints of acts of torture or ill-treatment committed by law enforcement officers against members of indigenous peoples, as well as on the corresponding investigations, trials and convictions;

(c) Provide detailed data on the cases involving indigenous persons in which the Counter-Terrorism Act has been applied.

27. The Committee recommends that the State party widely disseminate the reports it submits to the Committee, together with these conclusions and recommendations, in, inter alia, the indigenous languages, through the media, official websites and non-governmental organizations.

2. New Zealand, CAT/C/NZL/CO/5, 14 May 2009

Protection of minorities from torture and ill-treatment

5. While taking note of the Maori Strategic Plan developed by the Department of Corrections, as well as the various initiatives undertaken by the Ministry of Justice to reduce Maori offending, the Committee is alarmed at the disproportionately high number of Maoris and Pacific Islands people incarcerated, in particular women who, according to information available to the Committee represent 60% of the female prison population. The Committee is further concerned at the over-representation of Maoris at all levels of the criminal justice process, as well as at the insufficient safeguards in place to protect the rights of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment. (art.2)

The Committee recalls that the protection of certain minorities or marginalized individuals or populations especially at risk of torture is a part of the obligation of the State party to prevent torture and ill-treatment. In this regard, the State party should take further measures including legal, administrative and judicial measures, to reduce the over-representation of Maoris and Pacific Islands people in prison, in particular women. The State party should also provide adequate training to the judiciary and law enforcement personnel that takes into account the obligation to protect minorities, and integrates a gender perspective. Also, the State party should undertake an in-depth research on the root causes of this phenomenon in order to put in place adequate safeguards to ensure full protection of minorities from discrimination and marginalization, which put them at a higher risk of torture and ill-treatment.

16. While taking note of the assurances by the State party whereby tasers are only to be used by trained and certified staff and only when the officer has an honest belief that the subject is capable of carrying out the threat posed and that the use of the taser is warranted, the Committee is deeply concerned about the introduction of these weapons in the New Zealand police. The Committee is concerned that the use of these weapons causes severe pain constituting a form of torture, and that in some cases it may even cause death. In addition, the Committee is concerned at reports whereby during the trial period tasers were predominantly used on Maoris and youths. (arts. 2 and 16)

The State party should consider relinquishing the use of electric taser weapons, the impact of which on the physical and mental state of targeted persons would appear to violate articles 2 and 16 of the Convention.

17. While appreciating the various initiatives taken by the State party to eliminate violence against women, the Committee remains 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, as also stated by the Committee on the Elimination of Discrimination against Women (CEDAW/C/NZL/CO/6, para. 24, 10 August 2007) (art. 16).

The State party should ensure that all reasonable allegations of violence against women are promptly and impartially investigated, alleged perpetrators duly prosecuted, and punished if found guilty, and victims accorded adequate redress, including compensation and rehabilitation. The State party should also put in place additional protective measures for women, such as enabling the police to issue protective orders. The State party should continue to launch programmes of public awareness and sensitization to prevent and eradicate of violence against women.

3. Philippines, CAT/C/PHL/CO/2, 29 May 2009

5. The Committee notes with satisfaction the ongoing efforts at the State level to reform its legislation, policies and procedures in order to ensure better protection of human rights, including the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, in particular: ...

(e) The adoption, in 1997, of the Indigenous People's Rights Act (RA 8371);...

11. The Committee notes with concern the numerous documented reports of harassment and violence against human rights defenders that hamper the capacity of civil society monitoring groups to function effectively. The Committee is also concerned at reports that others are also commonly victims of serious human rights violations, including torture, ill-treatment, killings, disappearances and harassment. Among those so affected are indigenous rights defenders, such as Lumads of Mindanao and Igorots of the Cordillera, trade union and peasant activists, journalists and reporters, medical personnel, and religious leaders. (arts. 2, 12 and 16)

The State party should take all necessary steps to ensure that all persons, including those monitoring human rights, are protected from any intimidation or violence as a result of their activities and exercise of human rights guarantees, to ensure the prompt, impartial and effective investigation of such acts, and to prosecute and punish perpetrators with penalties appropriate to the nature of those acts.

Recalling the Committee's general comment No. 2 (CAT/C/GC/2, para. 21), the State party should ensure the protection of members of groups especially at risk of ill-treatment, including by prosecuting and punishing all acts of violence and abuses against such individuals and ensuring implementation of positive measures of prevention and protection.

24. The Committee appreciates the various legislative and other measures adopted by the State party, including the 2001 Comprehensive Program on Children Involved in Armed Conflict, the creation, in 2004, of an Inter-Agency Committee on Children Involved in Armed Conflict, the activities of the National Commission on Indigenous Peoples in this respect as well as the visit of the Special Representative of the Secretary-General for children and armed conflict in December 2008. Nonetheless, the Committee expresses serious concern about allegations of continued abduction and military recruitment of child soldiers by the non-State armed groups, including the Moro Islamic Liberation Front, the New People's Army and the Abu Sayyaf. (art. 16)

The State party should take the necessary steps, in a comprehensive manner and to the extent possible, to prevent the abduction and military recruitment of children by armed groups that are distinct from the armed forces of the State. The State party should also take the necessary measures to facilitate the reintegration of former child soldiers into society.

4. Colombia, CAT/C/COL/CO/4, 4 May 2010

20. The Committee is concerned about the high incidence of arbitrary arrests, and in particular the use of preventive administrative detention by the police and mass arrests by the police and the army. The Committee notes that arrest warrants are frequently insufficiently substantiated by evidence and that arrests are used as a means of stigmatizing certain groups such as community leaders, youth, indigenous people, Afro-Colombians and peasants (art. 2 of the Convention).

The Committee recommends that the State party take steps to eradicate preventive administrative detention and mass arrests, and act on the recommendations made by the Working Group on Arbitrary Detention following its mission to Colombia in 2008 (A/HRC/10/21/Add.3).

25. The Committee is concerned about the lack of redress available for victims of torture and other cruel, inhuman or degrading treatment. It notes that to date there are 250,000 victims of the armed conflict and that Act No. 975 of 2005 and Decree No. 1290 of 2008 make provision for redress for the victims of violations committed by illegal armed groups. Article 42 of Act No. 975 of 2005 assigns liability for redress to armed groups that have been convicted by the courts, a provision so far rendered inoperative by the lack of any convictions. The Committee acknowledges the efforts made by the State party to establish a programme to provide individual administrative redress via Decree No. 1290 of 2008; it notes, however, that in spite of the references to the “State’s subsidiary or residual responsibility”, the programme is based on the principle of solidarity rather than on the State’s duty to guarantee rights. Given that the State party is responsible for violations committed with the consent or complicity of, or through omission by, agents of the State, the Committee is seriously concerned that the responsibility of the State is not clearly defined and that current legislation may lead to discrimination among victims (art. 14 of the Convention).

The State party should fully guarantee the right of victims of torture and other cruel, inhuman or degrading treatment to redress and ensure that this right is established without discrimination in national legislation, and is enforced in practice. Implementation of this right must be pursued taking into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (A/RES/60/147, adopted on 16 December 2005, attached as an annex) and take into account the five elements of that right; restitution, compensation, rehabilitation, satisfaction and guaranteed non-repetition. Particular attention should be paid to gender issues and to victims who are children, Afro-Colombians or indigenous people. Resources should be specifically assigned to provide psychological and social care.

26. The Committee is concerned about the threats against victims of forced displacement who have asked for the return of their land. It notes that those mainly affected are peasants, Afro-Colombians and indigenous people. The Committee is concerned that land belonging to displaced persons has been seized by illegal armed groups and in some cases sold to third parties for monocultivation and exploitation of natural resources (art. 14 of the Convention).

The Committee urges the State party to adopt effective measures to ensure the return of land to victims of displacement and to respect the land ownership of peasants, Afro-Colombians and indigenous people.

5. El Salvador, CAT/C/SLV/CO/2, 9 December 2009

34. The Committee recommends that the State party disseminate widely through the media, official websites and non-governmental organizations, including in indigenous languages, the reports it submits to the Committee, together with these conclusions and recommendations.

VII. HUMAN RIGHTS COUNCIL, UNIVERSAL PEER REVIEW MECHANISM

1. New Zealand, A/HRC/12/8, 4 June 2009

A. Presentation by the State under review

6. Indigenous people, the Māori, are integral to the national identity and represent about 15 per cent of the population. Māori are a people with various political and tribal allegiances and individuals can choose to be recognized as Māori through a self-identification process.

7. The delegation highlighted that a very significant part of indigenous rights in New Zealand is the Treaty of Waitangi signed in 1840. The Treaty is a unique agreement between the indigenous people and the Crown or Government. The Treaty remains one of the core constitutional documents and is the basis for the continuing partnership between Māori and the Government. Since 1867 Māori have enjoyed continuous representation in New Zealand's Parliament. Seven seats are specifically allocated to Māori and there are currently 20 Members of Parliament who identify as Māori.

12. New Zealand made reference to the challenges it still faces. While Māori hold a unique place in the society, improvements are needed. The Government is committed to advancing the Treaty of Waitangi settlement process. The Government's goal is to achieve just and durable settlement of historical Treaty claims by 2014.

13. The Foreshore and Seabed Act 2004 encouraged a significant amount of debate in New Zealand. The Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people expressed concern that the Act would limit Māori customary rights. The new Government has entered into a formal agreement with the Māori Party, which provides for the two co-leaders of the Māori Party to hold ministerial office as part of the Executive and for the Māori Party to be consulted across the Government's legislative programme. Moreover, an expert and independent ministerial panel has been established to review the Foreshore and Seabed Act 2004 and is due to provide its written report to the Attorney-General by the end of June 2009.

14. Despite recent socio-economic improvements, disparities still persist for Māori in education, health, employment, crime statistics and income. The Government is seeking to remedy these inequalities through initiatives such as the 2009 Māori economic summit, Māori health action plans and the recently launched Māori education curriculum guidelines. The Māori language is an official language of New Zealand along with English and New Zealand Sign Language.

15. In 2007, the previous Government did not support the United Nations Declaration on the Rights of Indigenous Peoples because some of the Declaration's provisions were considered incompatible with New Zealand's legal and constitutional arrangements. The New Zealand Prime Minister has indicated that he would like to see New Zealand move to support the Declaration provided that New Zealand can protect the unique and advanced framework that has been developed for the resolution

of issues related to indigenous rights. That framework has been developed in the context of New Zealand's existing legal arrangements and democratic processes.

22. A recent national meeting co-hosted by the Ministers of Justice and Māori Affairs on the “drivers of crime” focused on how to prevent crime in New Zealand. The meeting noted that disadvantaged people were more likely to be victims or repeat victims of crime. The Government is committed to incorporating these outcomes into a new policy approach to reducing crime.

B. Interactive dialogue and responses by the State under review

27. India ... referred to the establishment of the Waitangi Tribunal and the Treaty of Waitangi, and to the positive notes of the Human Rights Committee and the Committee on the Elimination of Racial Discrimination on the contribution made to protect the human rights of Māori. However, concerns were acknowledged in the national report about constitutional weaknesses relating to the rights of Māori and the Treaty of Waitangi, as well as the persisting disparities between Māori and non-Māori with regard to education, employment, income, housing, health and criminal justice system. While noting the assurance by New Zealand that a group will be established by 2010 to consider constitutional issues, India requested information about the number of settled and outstanding claims before the Waitangi Tribunal and whether those settlements were binding on the Government.

28. Norway welcomed the significant progress made in the protection of Māori rights and the fact that strengthening the partnership between the Māori and the Government was a priority. Citing the 2007 observation by the Committee on the Elimination of Racial Discrimination that the Treaty of Waitangi is not a formal part of domestic legislation, Norway recommended that New Zealand continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm. It also recommended that New Zealand consider ratifying and implementing ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

29. The Netherlands ... recommended taking further measures to ensure full and consistent protection of human rights in domestic law and policies, taking into account recommendations made by several United Nations human rights bodies in this regard. Recognizing that New Zealand is working hard to address the economic crisis, the Netherlands recommended that the Government further strengthen its actions to ensure that the economic and social rights of vulnerable persons are protected, especially Māori, people with Pacific background and people with disabilities, and that special attention be given to these persons to include them fully in society.

30. Argentina noted progress made with respect to the Māori community. It noted that New Zealand has not supported the Declaration on the Rights of Indigenous Peoples. Despite social programmes, there are still disparities between Māori and non-Māori. Argentina enquired about policies being implemented or being planned by New Zealand to reduce them, with a particular emphasis on the situation of children. It recommended that New Zealand consider ratifying ILO Convention No. 169 and applying international standards with respect to the rights of indigenous peoples. ...

33. The Islamic Republic of Iran shared the concern expressed by several United Nations mechanisms about, in particular, the situation of indigenous people, particularly the Māori, who are discriminated against in education, employment, housing and health care, while the media exacerbate the problem by perpetuating discriminatory stereotypes. The Islamic Republic of Iran asked about measures to address those concerns and redress and alleviate the suffering of the affected people. It regretted that New Zealand had voted against the Declaration on the Rights of Indigenous Peoples. It recommended that the Government revisit its decision with a view to protecting the rights of indigenous peoples in the country and engage with the Māori and the wider community to promote the realization of indigenous rights, and that it ratify fundamental ILO conventions, in particular Convention No. 169. ...

34. Ukraine ... highlighted the concerns expressed by the Committee on the Elimination of Discrimination against Women in 2007 about the lack of a legal mechanism to address discrimination against women in the area of employment, particularly against Māori women. It enquired about measures undertaken by New Zealand to fulfill the recommendations of the Committee in this connection.

35. Azerbaijan ... [asked about measures] to strengthen partnership with the Māori, [and] about measures implemented for their achievement.

36. Mexico understood that the task of building a diverse society, inclusive and respectful of intercultural relations, is not easy and paid tribute to achievements made by New Zealand. Mexico noted that New Zealand has committed itself to combating discrimination, racism and xenophobia and, regretting that it did not participate in the Durban Review Conference, recommended that it adopt the text approved during that Conference. ... It recommended that New Zealand join the favourable momentum generated by the adoption of the Declaration on the Rights of Indigenous Peoples and give its support to this instrument. It recommended ratifying the ILO Convention No. 169 and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mexico recommended continuing the new dialogue between the State and the Māori regarding the Foreshore and Seabed Act 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected.

37. New Zealand thanked the delegations for their questions. It stated [that] ... It has no plans to ratify ILO Convention No. 169 but a number of specific laws take into account customs and methods of indigenous people. Moreover a broad constitutional review to be undertaken in 2010 is likely to cover such issues.

38. The delegation indicated that the Waitangi Tribunal recommendations were not binding but very authoritative and that successive Governments had had close regard to them. The Treaty settlements between the Māori and the Crown are essentially political agreements, so they are best negotiated rather than arbitrated. There have been many references to the Treaty in legislation and the constitutional status of the Treaty has been continually discussed and debated and will likely be part of the above-mentioned constitutional review.

39. Despite recent social-economic improvements, disparities persist for Māori. There are many governmental programmes designed to reduce these inequalities, especially in health and education. In addition to the recent Jobs Summit, the Government convened a Māori economic summit in January 2009 and a Māori Affairs Ministerial Taskforce on the Economy will be established. A key priority for the Government is to ensure that Māori are not disproportionately represented in the criminal justice system.

40. South Africa was encouraged by progress made in New Zealand but noted that significant challenges remained. South Africa asked how the Government intended to address inequalities related to Māori rights; inequalities related to access to education, health and housing for the disabled, undocumented migrants and minority groups, particularly in rural areas; and negative stereotyping and portrayals of minority women by the media. It noted the recommendations made by the Committee on the Elimination of Racial Discrimination and of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding the 2004 Foreshore and Seabed Act and enquired about progress made in this regard. ...

41. ... Germany asked about existing mechanisms to define priorities regarding the enjoyment of human rights by the Māori and to ensure that the views of the different Māori communities are taken into account. ...

42. Nepal ... appreciated New Zealand's approach to empower Māori indigenous people, women, persons with disabilities, migrants and asylum seekers as well as the comprehensive scheme of social security and social safety nets.

44. Canada ... noted that Māori are significantly overrepresented as victims and perpetrators of domestic violence and asked about initiatives to address this situation. Noting the high rate of convictions and incarceration of indigenous people, Canada recommended that New Zealand commit itself to combating institutional bias that can result in the overrepresentation of specific groups in the criminal justice system.

46. Austria, while welcoming the substantial progress made regarding the situation of Māori, referred to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who had highlighted remaining disparities between Māori and non-Māori. Austria recommended that New Zealand support the Declaration on the Rights of Indigenous Peoples.

48. Pakistan ... recommended that New Zealand (a) in line with the concerns expressed by a number of treaty bodies, take action to provide constitutional protection to both the national and international human rights acts and standards; (b) seriously consider implementing the observations and recommendations of different treaty bodies; and (c) support and implement the Declaration on the Rights of Indigenous Peoples.

49. The United Kingdom ... recommended that New Zealand consider further action to fully understand the causes of inequality faced by indigenous peoples and take steps to minimize the effects;...

50. Australia ... warmly welcomed its consideration of supporting the Declaration on the Rights of Indigenous Peoples. It encouraged New Zealand on its policies to reduce poverty, improve access to primary health care, and economic and social improvements for Māori and Pacific peoples.

51. Sweden noted the concern expressed by the Committee on the Elimination of Discrimination against Women about the prevalence of violence against women, particularly among Māori, Pacific and other minority women, and about low rates of prosecution and convictions for such crimes. It recommended increasing efforts to combat all forms of violence against women. Sweden welcomed the State's presentation on equality and non-discrimination of Māori and noted measures taken to address these challenges but expressed concern about the overrepresentation of Māori and Pacific persons in prisons and in the criminal justice system at large. It recommended continuing efforts to ensure that people belonging to minority groups are not discriminated against in the criminal justice system.

56.[New Zealand said] While the previous Government did not support the adoption of the Declaration on the Rights of Indigenous Peoples in September 2007, New Zealand noted that many of the rights in the Declaration have been enjoyed in New Zealand for many years. New Zealand has extensive consultation mechanisms and the Treaty settlement process is an unparalleled system of redress, accepted by Māori and non-Māori.

59. Bangladesh expressed concern at the existing constitutional, legal and institutional gaps that allow for continued discriminatory treatment against the Māori and Asian and Pacific communities. It noted that the long-standing demand of the Māori to make the Treaty of Waitangi an integral part of constitutional arrangements remains unfulfilled. Bangladesh stressed the need for accelerating the Treaty Settlement Process with various Māori groups; expressed concern over the prevalence of domestic violence and racially-instigated crimes; and stressed the need to revisit the existing immigration policy. Bangladesh recommended that New Zealand (a) continue to address all forms of political, economic and social discrimination against the Māori by meeting their various demands for constitutional and legal reforms and recognition;...

60. The Russian Federation ... asked why New Zealand had not responded to the questionnaires sent by special procedures since 2005. According to information from United Nations mechanisms, despite efforts made, Māori still experience problems regarding access to, inter alia, the labour market, health and education. The Russian Federation recommended that New Zealand pursue its efforts to improve Māori participation in all areas of social life....

62. Slovenia referred to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, who reported that despite social programmes in place, disparities remain between Māori and non-Māori. It asked whether New Zealand envisaged specific strategies or measures based on ethnicity to strengthen the social, economic and cultural rights of Māori. ...

63. Malaysia referred to the observations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people regarding disparities between indigenous and other groups. ...

64. China noted measures taken to ensure that Māori people, women, people with disabilities, the elderly and sexual orientation minorities enjoy the same rights as other citizens. ... China understood that as a multicultural society, New Zealand faced challenges in protecting the rights of the indigenous people.

65. Maldives ... noted the ongoing inequalities faced by the Māori and asked to what extent the discriminatory stereotypes in the media exacerbate the situation and what could be done.

66. Switzerland noted with great interest measures taken to combat all forms of discrimination, and encouraged New Zealand to pursue its efforts to combat all forms of discrimination, in particular those based on ethnic origin. While noting efforts made to accept the rights of indigenous people on traditional lands by concluding treaties, Switzerland recommended that New Zealand pursue its efforts to comprehensively settle land claims. ...

67. Jordan ... recommended that New Zealand (a) continue to address effectively the socio-economic inequalities for the Māori; (b) further incorporate, as appropriate, its international human rights obligations into domestic law; and (c) consider implementing, as appropriate, the recommendations of human rights treaty bodies and special procedures on indigenous people. ...

68. Japan welcomed the reduction of socio-economic disparities between the Māori and Pacific peoples and the rest of the population, as noted by the Committee on the Elimination of Racial Discrimination. It recommended that further measures be taken to correct the gaps in employment, salary, health care and education that exist between Māori and non-Māori peoples. ...

70. Angola referred to the report stating that despite recent socio-economic improvements, inequalities still persist for Māori people in education, health, employment and income. Angola inquired about strategies aimed at reversing this situation and at further improving the rights of the Māori people. It recommended finding appropriate ways to provide adequate compensation to Māori, in particular for their loss of land. ...

80. The delegation's concluding comments stated that complacency cannot be tolerated in the field of human rights. More needs to be done to reduce the overrepresentation of Māori in negative statistics and the abuse and neglect of children. The Government is committed to breaking these trends despite the challenging economic times. The delegation recalled that New Zealand was open to constructive dialogue through treaty body monitoring and had issued a standing invitation to all special procedures. The delegation concluded that the international community has set the benchmark for human rights standards and implementation matters.

CONCLUSIONS AND/OR RECOMMENDATIONS

81. The following recommendations will be examined by New Zealand, which will provide responses in due time. The responses to these recommendations will be included in the outcome report adopted by the Human Rights Council at its twelfth session:

5. Ratify International Labour Organization (ILO) fundamental conventions (Brazil, Islamic Republic of Iran), and in particular the Indigenous and Tribal Peoples Convention No. 169 (Islamic Republic of Iran);
6. Consider ratifying and implementing the Indigenous and Tribal Peoples Convention No. 169 (Norway);
7. Consider ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries and applying international standards with respect to the rights of indigenous peoples (Argentina);
8. Support (Austria, Pakistan) and implement (Pakistan) the United Nations Declaration on the Rights of Indigenous Peoples;
9. Join the favourable momentum generated by the adoption of the United Nations Declaration on the Rights of Indigenous Peoples and give its support to this instrument (Mexico);
10. Revisit its decision not to support the United Nations Declaration on the Rights of Indigenous Peoples, with a view to protecting the rights of indigenous peoples in the country, and engage with the Māori and the wider community to promote the realization of indigenous rights (Islamic Republic of Iran);
21. Continue the public discussion over the status of the Treaty of Waitangi, with a view to its possible entrenchment as a constitutional norm (Norway);
26. Continue to take targeted action to eliminate the socio-economic disparities that persist among its population, including those affecting Māori, Pacific, Asian and other groups (Turkey);
28. Further strengthen its actions to ensure that the economic and social rights of vulnerable persons are protected, especially Māori, people with Pacific background and people with disabilities, and ensure that special attention is given to these persons with a view to including them fully in society (Netherlands);
29. Continue to address all forms of political, economic and social discrimination against the Māori by meeting their various demands for constitutional and legal reforms and recognition (Bangladesh);
30. Continue addressing effectively the socio-economic inequalities affecting the Māori (Jordan);
31. Take further measures to correct the gaps in employment, salary, health care and education that exist between Māori and non-Māori peoples (Japan);
32. Consider further action to fully understand the causes of inequality faced by indigenous people and take steps to minimize the effects (United Kingdom);
58. Consistent with the observations of the Committee on the Elimination of Racial Discrimination and the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, continue the new dialogue between the State and the Māori regarding the Foreshore and Seabed Act of 2004, in order to find a way of mitigating its discriminatory effects through a mechanism involving prior informed consent of those affected (Mexico);
59. Pursue efforts to settle comprehensively land claims of the indigenous population (Switzerland);
60. Find appropriate ways to provide adequate compensation to Māori, in particular for their loss of land (Angola)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/12/8/Add.1, 7 July 2009)

Response of New Zealand to Recommendations:

5. New Zealand is party to six of the eight fundamental ILO conventions. New Zealand **does not accept** the recommendations to consider ratifying the remaining two fundamental ILO conventions or ILO Convention No. 169. New Zealand will not ratify conventions or apply international standards that are inconsistent with New Zealand's unique legal, constitutional and Treaty of Waitangi arrangements including ILO Convention No. 169.

6. New Zealand has indicated that the Government would like to **move to support** the Declaration on the Rights of Indigenous Peoples, provided that New Zealand can protect the unique and advanced domestic framework that has been developed for the resolution of issues related to indigenous rights. That framework has been developed in the context of New Zealand's legal arrangements and democratic processes.

18. New Zealand **agrees** with the underlying premise of this recommendation to continue the public discussion on the status of the Treaty of Waitangi. New Zealand will encourage that discussion though it does not assume that the current mechanisms in place are inadequate or that entrenchment of the Treaty is the only possible outcome of the public discussion.

22. New Zealand **agrees** with the recommendation to address all forms of political, economic and social discrimination against Māori, and will continue to strive to achieve it. For example, as part of the Confidence and Supply Agreement between the National Party and the Maori Party, both parties agree to establish a group, by no later than early 2010, to consider constitutional issues.

38. New Zealand **accepts** the recommendation to continue the new dialogue between the State and Maori regarding the Foreshore and Seabed Act 2004, but notes that the nature of any new mechanism, including whether it involves prior informed consent, has not yet been decided.

39. In March 2009, the New Zealand Government announced the establishment of an expert and independent Ministerial panel to investigate whether the Foreshore and Seabed Act 2004 effectively recognises and provides for customary and public interests in the coastal marine area. This review will provide opportunities for Māori and other people and groups with interests in the foreshore and seabed to provide their views and proposals.

40. The Ministerial panel will provide a written report to the Attorney General by the end of June 2009 for the Government's consideration. The Government will then consider that advice to decide if legislative change is required. Bearing in mind the ongoing review process, it is not appropriate for the Government to pre-empt the future recommendations of the Ministerial panel by agreeing to the nature of any future mechanism.

41. New Zealand **accepts** the recommendation to pursue efforts to settle comprehensively land claims of the indigenous population. The New Zealand Government's policy is to reach comprehensive settlements of all historical claims under the Treaty of Waitangi by 2014. The Government is committing significant resources to the settlement process and good progress continues to be made in settling claims.

42. New Zealand **agrees** with the underlying principle of this recommendation and aims to provide fair and durable redress to Māori for the settlement of their historical claims under the Treaty of Waitangi.

43. The New Zealand Government is committed to settling all historical claims under the Treaty of Waitangi by 2014. While the settlements framework does not apply a strict compensation or damages and losses approach, redress is provided in relation to historical breaches of the Treaty of Waitangi, including those that resulted in the loss of land. Redress takes the form of both cash and the transfer of land.

44. New Zealand **accepts** the recommendation to pursue efforts to improve Māori participation in all areas of social life.

2 Belize, A/HRC/11/4, 4 June 2009

Presentation by the State under review

24. The situation of the Maya of Belize is a matter of national importance. Belize intends to engage the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

25. On 12 October 2004, the Inter-American Commission on Human Rights (IACHR) issued recommendations pertaining to the case *Maya Indigenous Communities of the Toledo District of Belize*. The parties were unable to agree on an implementation mechanism.

26. The villages of Conejo and Santa Cruz of the Toledo District sought to have their customary rights recognized by the Supreme Court of Belize in the *Cal* case. The Government respectfully refrained from taking any measures to implement the recommendations of IACHR as soon as the matter became the subject of litigation.

27. On 18 October 2007, the Supreme Court issued its ruling, which contained provisions similar to the recommendations of IACHR but pertaining only to the villages of Conejo and Santa Cruz.

28. The Government is committed to implementing the Court's decision.

29. There are many complex matters affecting implementation. Parts of the land in question are within declared national parks; and some are settled or owned by non-Mayans. In some instances, cessation of existing licenses would have a direct economic impact. More importantly, there is a lack of consensus among the Maya themselves and, in the case of the village of San Antonio, the residents have indicated that they do not wish to be included in the exercise since they prefer individual ownership to communal ownership.

30. Some interim measures, notably a cease-and-desist order, have been instituted by the Government, and remain in place, to ensure that the enforcement of the judgment is not compromised while the legal advisers of the Parties agree on a framework for the implementation.

31. Thirty-eight other villages in the Toledo District have initiated a class action suit. While this case is pending the Government has ceased the issuing of licenses relating to forestry or petroleum or the sale/transfer of land, with the single exception of the license granted for seismic testing in the Sarstoon Temash National Park in compliance with a separate court Judgement.

Interactive dialogue and responses by the State under review

33. The United Kingdom ... urged the Government to recognize the social, cultural and property rights of persons belonging to minorities and indigenous Maya people, and take steps to eliminate all forms of discrimination....

40. Mexico ... recommended Belize (a) to redouble its efforts in favour of the respect of the rights of indigenous peoples, in line with the dispositions contained in the United Nations Declaration on the Rights of Indigenous Peoples....

41. Canada noted that UNICEF and the Committee on the Rights of the Child had expressed concern about the disparities and widespread poverty experienced by indigenous populations. ...

42. ... On indigenous peoples' rights, Argentina took note of the information provided on the Mayan communities of Toledo, Santa Cruz and Conejo and asked what additional measures Belize is considering to implement the international standards under the Universal Declaration on Indigenous Rights, particularly with regard to the provision of land.

51. ... Slovenia asked what the Government intended to do to improve the equal enjoyment of all rights of children belonging to minorities and indigenous peoples. ... It recommended [that] Belize (d) to protect Maya customary property rights in accordance with Maya customary laws and land tenure practices in consultation with affected Maya people of the whole Toledo district.

55. Trinidad and Tobago underscored Belize's commitment to democratic traditions and values, and the system of local governance that facilitates greater enfranchisement of rural communities, particularly of indigenous peoples.

56. The Czech Republic ... recommended that (h) human rights training with regard to the protection of the human rights of vulnerable groups, in particular women, children [and] indigenous peoples....

64. Belize reiterated the measures undertaken to implement the Supreme Court decision, including continuing dialogue, a moratorium on the issuing of licences for mining, logging or the sale or transfer of lands in the area in question and sustaining an environment of trust and confidence.

CONCLUSIONS AND RECOMMENDATIONS

67. The recommendations formulated during the interactive dialogue have been examined by Belize and the recommendations listed below enjoy the support of Belize:

- 8. Implement the recommendations of the Committee on the Rights of the Child to prioritize effective measures to reduce poverty among indigenous and minority children (Canada);
- 12. Provide human rights training with regard to the protection of vulnerable groups, in particular women, children, indigenous peoples...;
- 35. Redouble its efforts in favor of the respect of the rights of indigenous peoples, in line with the provisions of the United Nations Declaration on the Rights of Indigenous Peoples (Mexico)

68. The following recommendations will be examined by Belize, which will provide responses in due time. The response of Belize to these recommendations will be included in the outcome report adopted by the Human Rights Council at its twelfth session:

- 9. Protect Mayan customary property rights in accordance with Mayan customary laws and land tenure practices in consultation with affected Mayan people of the whole Toledo district (Slovenia)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/12/4/Add.1, 18 September 2009)

Response of Belize to Recommendations:

12. To provide human rights training with regard to the protection of the vulnerable groups, in particular women, children, indigenous peoples, and persons of minority sexual orientation or gender identity, to law enforcement officials, judicial officers, and all state officials

12. Belize accepts this recommendation and considers this recommendation an ongoing programme.

19. To implement the recommendations of the Committee on the Rights of the Child to prioritize effective measures to reduce poverty amongst indigenous and minority children

19. Belize accepts this recommendation and looks forward to sharing its progress on this recommendation with the Committee on the Rights of the Child.

39. To protect Maya customary property rights in accordance with Maya customary laws and land tenure practices in consultation with affected Maya people of the whole Toledo district

39. Belize wishes to reiterate its position that the issue of the recognition of the customary land rights of the Mayas is a matter that it is before the Supreme Court of Belize, and that the Government will respect the decision of the Court on this matter.

40. To redouble its efforts in favour of the respect of the rights of indigenous peoples, in line with the dispositions contained in the UN Declaration on the Rights of Indigenous Peoples

40. The Government of Belize accepts this recommendation and draws attention to its response above at 39.

3. Central African Republic, A/HRC/12/2, 4 June 2009

VOLUNTARY COMMITMENTS OF THE STATE UNDER REVIEW

77. During the presentation of its report, the Central African Republic made the following voluntary commitments:

(b) Ratification of International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries No. 169, of 27 June 1989, by the last quarter of 2009....

4. Mexico, A/HRC/11/27, 29 May 2009

Presentation by the State under review

19. The country's multiethnic composition and the rights of indigenous peoples are both recognized in the Constitution. Of 106 million Mexicans, 10 percent live in indigenous communities and many of them in poverty. A variety of programmes are implemented to overcome this situation through the National Commission for the Development of Indigenous Peoples. The 68 indigenous languages are recognized in the 2003 General Act on the Linguistic Rights of Indigenous Peoples, and therefore have the same status as Spanish. The National Institute of Indigenous Languages was created in 2005 to elaborate educational material, promote basic and professional education for educators, and promote the teaching of indigenous languages. Nevertheless, one of the main challenges is achieving full access for indigenous peoples to compulsory, bilingual and intercultural education. The Federal Government is creating Intercultural Universities in several states. Mexico recognized the challenge of respecting indigenous peoples' right of access to justice and ensures certified defence counsel, interpreters and translators in all lawsuits and proceedings involving indigenous people.

Interactive dialogue and responses by the State under review

23. Brazil welcomed the abolition of the death penalty in 2005. It stressed the significant challenges faced by Mexico, such as equalizing social and regional disparities, adding that a significant part of the Mexican population still lives in poverty, a situation which disproportionally affects indigenous people, the disabled and other vulnerable groups. Brazil recommended that Mexico (a) consider progressively withdrawing its reservations to international human rights instruments; (b) strengthen efforts to fight poverty; and (c) harmonize national and regional legislation in order to avoid discriminatory practices against women and indigenous peoples.

24. ... Algeria recommended that Mexico (a) attach particular attention to indigenous communities in its strategies to reduce poverty and to combat extreme poverty; referring to the 2006 conclusions of the Committee on the Rights of the Child (CRC) and of the Committee on Economic, Social and Cultural Rights (CESCR), Algeria recommended that Mexico (b) take effective measures to put an end to domestic violence and abuse of children; it further recommended that Mexico (c) ensure the effective access of all children to education, in particular migrant and indigenous

children, and take effective measures to combat their exclusion from the education system....

29. Azerbaijan recommended ... (d) increase its efforts to improve the whole system with regard to indigenous peoples; and (f) put more efforts and financial resources into eradicating poverty and high mortality and malnutrition rates, especially in rural areas and among indigenous peoples.

34. Bolivia noted that in 2008 Mexico introduced a strategy to combat economic inequality and poverty. It enquired about actions taken on this issue regarding indigenous peoples, and whether the principles set out in the Declaration on the Rights of Indigenous Peoples are being incorporated in domestic law. Bolivia recommended that Mexico (a) adopt the necessary measures to harmonize federal and state laws with international human rights instruments it ratified; (b) adopt necessary measures to eradicate impunity for human rights violations, particularly against women and indigenous population; and (c) adopt necessary measures to ensure the right of indigenous peoples to be consulted, in accordance with the commitments undertaken by ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples.

37. Pakistan underlined that Mexico has amended its Constitution to incorporate international human rights standards, recognize the rights of indigenous peoples, prohibit all forms of discrimination.... It recommended that Mexico ... (f) invite the relevant special rapporteurs to visit Mexico and make necessary recommendations to uplift the lot of indigenous communities, in line with its commitments and relevant international instruments.

40. The United Kingdom ... recommended that Mexico ... (b) take further steps to address discrimination against, and protect and provide assistance to women and vulnerable groups including children, minorities and indigenous peoples....

43. Canada ... Welcoming the intensified cooperation, internally and bilaterally, to advance progress of indigenous communities, Canada recommended that Mexico (d) continue to strengthen programmes aimed at creating growth and employment and combating poverty.

49. New Zealand, welcoming significant transformations in Mexico's institutions, noted that several states continue to have discriminatory legislation. At local level, there can be limited understanding of legislative requirements to take into account the particular needs of indigenous peoples. It recommended that Mexico ... (d) that the Federal Government strengthen its efforts to raise awareness of indigenous rights, language and customs, by providing guidance and training to military and local officials, including the police, judiciary, and members of the legal community, particularly in rural areas.

53. Finland welcomed the abolition of death penalty in 2005 and Mexico's commitment to push forward important reform processes in the justice sector, stressing the lack of access to justice, particularly in states and for indigenous peoples. Finland recommended (a) that the human rights of indigenous peoples be placed high on the agenda when addressing questions of impunity and that access to justice be

improved for indigenous peoples, including by strengthening public defence for indigenous peoples and providing better translation services. ...

59. India noted with appreciation: the full incorporation of the rights enumerated in the Mexican Constitution into the constitutions of the 32 federal entities; [and] its acknowledgement of the socioeconomic deficit among indigenous peoples; and the high allocation of resources to remedy this situation. ...

60. ... Argentina noted reports of discrimination against indigenous peoples, adding that the 2001 constitutional reform only included limited protection of the rights of indigenous peoples. It recommended that Mexico adopt appropriate legislation in full conformity with international standards on the rights of indigenous peoples.

61. The Holy ... recommended that the Government redouble efforts to reduce the number of maternal deaths, especially among indigenous women, by training birth attendants and establishing more obstetric clinics. ...

62. ... Bangladesh recommended ... (e) measures be undertaken to redress marginalization of indigenous and migrant populations in line with the prominent role of Mexico on the international scene....

66. Denmark ... recommended ... (b) that indigenous peoples and other marginalized communities affected by planned economic or development projects are adequately and fairly consulted....

70. Japan congratulated Mexico for pledging to implement recommendations resulting from the UPR. ... Japan applauded progress made in promoting the rights and protecting the languages and cultures of indigenous peoples. It noted that imbalances in employment, education, living standards, and access to justice remain between indigenous and non-indigenous people and recommended more concrete measures be taken to eliminate employment and wage gaps, to increase school enrolment rates of indigenous children, and to review the justice system.

71. Guatemala ... recommended that [Mexico]...(e) continue addressing the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people.

72. The Philippines ... recommended that Mexico ... (b) pay special attention to the situation of indigenous people in its poverty-eradication programmes....

79. Panama ... recommended that Mexico ... (b) persevere in efforts to build a truly inclusive democracy by fully recognizing the rights of indigenous peoples....

[Mexico responded that] 86. The indigenous population has the same rights as all other members of the nation. According to the Mexican Constitution, indigenous peoples also enjoy specific rights based on their cultural differences.

87. The National Programme for the Development of Indigenous Peoples contains specific goals reflecting the Government's aims in overcoming the social, environmental and development difficulties of indigenous peoples.

88. The delegation recalled that, following the constitutional reform in 2001, the collective rights of indigenous peoples were recognized, particularly the rights to self-determination, autonomy as well as access to justice.

89. Bilingual education has been provided to indigenous children since the 1970's. The delegation also noted that the United Nations Declaration on the Rights of Indigenous Peoples has been translated into 20 languages.

CONCLUSIONS AND/OR RECOMMENDATIONS

11. Take further steps to address discrimination against, protect and provide assistance to women and vulnerable groups including children, minorities and indigenous peoples (United Kingdom)

48. Adopt necessary measures to eradicate impunity for human rights violations, particularly against women and indigenous population (Bolivia) and journalists. (Sweden)

49. Place high on the agenda the human rights of indigenous peoples when addressing questions of impunity; and improve access to justice for indigenous peoples, including by strengthening public defense for indigenous peoples and providing better translation services (Finland)

64. Take more concrete measures to eliminate employment and wage gaps, to increase school enrolment rates of indigenous children, and review the justice system (Japan)

67. Pay special attention to the situation of indigenous people in programmes/strategies to reduce/eradicate poverty (Algeria, Azerbaijan, Philippines) and take measures to reduce that the problem of extreme poverty affecting them (Honduras)

68. Put more efforts and financial resources to eradicate high level mortality and malnutrition rates, especially in rural areas and among indigenous peoples (Azerbaijan)

69. Continue to extend and strengthen the system of primary healthcare and improve the quality of such services (Honduras); and redouble efforts to reduce the number of maternal deaths by training birth attendants and establishing more obstetric clinics (Holy See), with particular attention to indigenous women and peoples (Holy See, Honduras).

70. Continue efforts and take further steps / strengthen the national programme to ensure the right to food (Vietnam), to health (Saudi Arabia, Vietnam), and to education (Saudi Arabia), particularly for the vulnerable groups living in extreme poverty, including indigenous people (Vietnam)

73. Ensure the effective access of all children to education, in particular migrant and indigenous children, and take effective measures to combat their exclusion from the education system (Algeria)

75. Increase efforts to improve the whole system with regard to the indigenous peoples (Azerbaijan); and persevere efforts to build a truly inclusive democracy by fully recognizing the rights of indigenous peoples (Panama); and undertake measures to redress marginalization of indigenous and migrant populations, in line with the prominent role of Mexico in the international scene (Bangladesh)

76. Continue addressing the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (Guatemala) and invite the relevant special rapporteurs to visit Mexico and make

necessary recommendations to uplift the lot of indigenous communities, in line with its commitments and relevant international instruments (Pakistan)

77. Adopt appropriate legislation in full conformity with international standards on the rights of indigenous peoples (Argentina); and take necessary measures to ensure the right of indigenous peoples / other marginalized communities affected by planned economic or development projects to be adequately and fairly consulted (Bolivia, Denmark), in accordance with the commitments undertaken by ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples (Bolivia)

78. Strengthen efforts at the federal level to raise awareness of indigenous rights, language and customs, by providing guidance and training to military and local officials, including the police, judiciary, and members of the legal community, particularly in rural areas (New Zealand)

5. Congo, A/HRC/12/6, 5 June 2009

Interactive dialogue and responses by the State under review

25. Djibouti ... recommended that it continue efforts to combat all forms of discrimination which may victimize vulnerable groups, such as indigenous communities....

27. The United Kingdom ... recommended that the Congo ... (c) take further steps to address discrimination against women and vulnerable groups including children, persons belonging to minorities and indigenous people....

28. The Russian Federation ... Noting the large numbers of indigenous peoples and that the Congo is planning to adopt an appropriate programme of action and to introduce certain legislative initiatives, it asked for more information in this regard.

35. ... Mexico recommended (a) the Congo's accession to ILO Convention No. 169 concerning indigenous and tribal peoples....

36. Burkina Faso ... asked for more information about the bill for the promotion and protection of human rights of indigenous communities and the present status of the adoption of this law. ...

41. Regarding the rights of minorities, Italy acknowledged the ongoing efforts by the authorities to draft specific norms in this field and recommended that the Congo (c) approve in the shortest period of time and implement the new law regarding indigenous peoples with the aim of safeguarding minority rights in the country, specifically those of the Pygmies....

42. The Congolese delegation gave the following answers to the questions asked.

48. The Government was paying particular attention to the issue of indigenous populations. Draft legislation had been drawn up in that regard, and was currently under consideration.

55. Germany ... noted that according to the Committee on the Rights of the Child, there is widespread ethnic-based discrimination against indigenous people finding manifestation in systematic violence even though the Constitution prohibits that

discrimination. Germany asked what measures have been undertaken to guarantee the full and equal enjoyment of civil, political, social and economical rights of different ethnic groups and to combat discrimination that might occur.

64. Ghana noted that the National Action Plan 2009-2013 for improving the quality of life of indigenous peoples has been drafted and asked the Congo to elaborate on the essential elements of this action plan. ...

66. Côte d'Ivoire... encourage[d] concluding the consideration of the bill for the promotion and protection of the rights of indigenous populations.

67. Latvia ... On the issue of a standing invitation to special procedures, which Latvia had also addressed as a written question before the session, and considering the recent request by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people to visit the country, Latvia recommended that the Congo consider extending a standing invitation to all special procedures of the Human Rights Council.

69. Equatorial Guinea ... supported the effort made to guarantee and protect the rights of indigenous peoples....

70. The Central African Republic recommended the Congo continue with its efforts to assist the indigenous communities, including the Pygmies who are sharing the same culture as those living in the Central African Republic

72. Angola ... As the rights of indigenous peoples continue to be a challenge, Angola recommended to (c) streamline and fine-tune policies to improve indigenous people's rights.

76. With regard to extending a standing invitation to Human Rights Council special rapporteurs, the Congolese delegation reiterated its commitment to cooperating with United Nations bodies. An invitation had been issued to the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people who, because of scheduling problems, had been unable to visit the Congo in 2008. The visit would take place in 2010.

CONCLUSIONS AND/OR RECOMMENDATIONS

3. Accede to ILO Convention N° 169 concerning Indigenous and Tribal Peoples in Independent Countries (Mexico);

23. Continue implementing measures to handle the problem of violence against women and combat impunity in this regard (Sweden); take further steps to address discrimination against women and vulnerable groups, including children, persons belonging to minorities and indigenous people (United Kingdom);

32. Finalize and enact the draft law prohibiting all forms of trafficking and develop formal procedures for identifying trafficking victims among vulnerable populations such as females in prostitution, street children and Pygmies, and train police and social workers to implement these procedures (United States);

33. Continue efforts to combat all forms of discrimination which may victimize vulnerable groups such as indigenous peoples and the disabled (Djibouti);

49. Approve in the shortest period of time the new law regarding indigenous peoples with the aim of safeguarding minority rights, specifically those of the Pygmies (Italy); continue strengthening its institutional reform in the field of human rights and, in particular, encourage rapid consideration of the bill for the promotion and protection of the rights of indigenous population (Côte d'Ivoire); continue its efforts to assist indigenous communities, including the Pygmies, who share the same culture as those living in the Central African Republic (Central African Republic); streamline and fine tune policies to improve indigenous people's rights (Angola)

6. Chile, A/HRC/12/10, 4 June 2009

Presentation by the State under review

10. Aware of the valuable contribution of its aboriginal populations to shaping Chilean society, the democratic governments of Chile have made endeavours to deepen the recognition of their rights and promote their identity, establishing the historical truth about their contribution to the development of the nation and redressing the unfair treatment they received over the centuries. Constitutional recognition of the indigenous populations is under discussion in Congress and subject to wide consultation with the indigenous communities.

11. A social pact for multiculturalism, under the name *Re-Conocer*, has been put into place. A land restitution programme has been established and 500,000 hectares of land handed over to indigenous communities for the benefit of 22,000 families. A law on the rights of indigenous communities in coastal areas was adopted.

12. Chile is working on the implementation of the recently ratified ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

Interactive dialogue and responses by the State under review

19. Algeria enquired about the protection of freedom of religion and belief in Chilean legislation. It recommended that Chile (a) give particular attention to indigenous peoples when implementing poverty reduction and alleviation programmes and works towards eliminating any discriminatory measures applied to them. ... (c) guarantee effective access to education for all children, especially those from indigenous communities....

21. Norway welcomed the recent ratification of the ILO Convention No. 169, enquiring as to the degree of its practical implementation. It recommended that Chile (a) intensify its work to improve the situation of its indigenous population....

22. Malaysia ... recommended ... (d) continuing to strengthen poverty alleviation efforts, including through programmes for indigenous people.

23. Brazil enquired specifically about women and children and indigenous people. ... It recommended that Chile ... (c) continue its effort to fight against impunity and human rights violations, with particular attention to the rights of indigenous peoples....

24. Sweden recommended (a) continuing and strengthening efforts to find a solution that respects the land rights of indigenous groups and ensures legal protection of their human rights. ...

26. The United Kingdom ... recommended [that Chile] ... (b) take further steps to address discrimination against women and people belonging to vulnerable groups including children, minorities and indigenous people.

29. Mexico recommended [that Chile] ... (b) realize the principles established in the United Nations Declaration on the Rights of Indigenous Peoples and fully implement the recently ratified ILO Convention No. 169, particularly ensuring the participation of indigenous peoples in the political sphere, and proceed with the demarcation and titling of land referred to in its report....

30. Denmark recommended to (a) take all necessary steps to implement all aspects of ILO Convention No. 169. Enquiring about the process towards constitutional recognition of the indigenous populations, it recommended to (b) pursue such recognition within a reasonable time without neglecting the consultations mentioned in the presentation. It also recommended to (c) ensure full and effective consultation of indigenous communities before granting licenses for the economic exploitation of disputed land; noting this was recommended by the Human Rights Committee in 2007.

31. Azerbaijan recommended . [that Chile] ... (e) tackle the problem of street children and child labour, as well as discrimination against indigenous children; and (g) continue its efforts to solve the problems of indigenous peoples, in particular their land issues, and ensure that the Anti-Terrorism Act not undermine their rights.

33. Austria recommended that Chile (a) intensify efforts to demarcate and restore land and to systematically consult with indigenous people before granting licenses for economic exploitation; (b) introduce new legislation to further strengthen the rights of indigenous peoples. ...

34. New Zealand recommended that Chile (a) ensure indigenous groups are able to express their view, have access to relevant political and decision-making processes and are provided with the support necessary to meaningfully engage on issues that affect them. ...

35. Switzerland recommended [that Chile] ... (c) not apply the Anti-Terrorism Act for acts related to the claims of indigenous peoples.

36. Bangladesh recommended [that] ... (b) undertake appropriate electoral and legislative reforms to enhance the scope for political representation of indigenous people, particularly women; [and] (c) provide adequate policy and institutional support to address the marked disparities in the socio-economic indicators between the indigenous and non-indigenous populations. ...

37. Finland recommended that Chile ... (b) promote a constructive dialogue between authorities and indigenous people and their organizations. The participation of

indigenous people in the formulation and implementation of laws and programmes affecting their lives should be promoted and resources provided to that end.

39. ... Taking note of the views expressed by the Committee of the Rights of the Child on access to education for indigenous peoples, Turkey encouraged Chile to increase budget allocations to education with a view to overcoming this problem.

45. Chile indicated there is a text currently under review to recognize the multicultural nature of Chilean society in the country's fundamental charter as well as the collective and individual rights of indigenous peoples, in particular protection of their land and water resources, their participation in decision-making processes and the promotion of their cultures and traditions. This important step is the result of a wide-ranging process of national consultation with indigenous peoples, since it is through dialogue that Chile hopes to incorporate the opinions of all society, especially indigenous peoples.

46. Political participation of indigenous peoples in Chile is happening in two ways: through constitutional recognition of their right to participate in consultations on the future draft laws that will create an independent entity called the National Council of Indigenous Peoples, and in proposals of special quotas for their participation in the National Congress and Regional Councils.

47. Chile's antiterrorist law cannot be applied on the basis of ethnic, religious or political considerations, but only in accordance with the gravity of the crime committed. Chile reiterated its commitment to full and transparent investigation of cases presented for disproportionate use of public force and the application of sanctions according to the law.

48. Chile's Indigenous Law, which enshrines access to the right to possess land and water of indigenous communities, has been applied through the Land and Water Policy, which recognizes ancestral possession of these resources. This procedure has been recognized by indigenous peoples and society in general as an effective mechanism. Chile's challenge lies in the fact that together with the acquisition and handover of land and water, Chile must generate methods of productive development in line with the reality of each indigenous group.

49. Chile, in the framework of its new indigenous policy called *Re-conocer*, has a plan for participatory implementation of Convention No. 169, through consultations on issues which may affect indigenous communities, and a Code of Responsible Conduct for private and public investment. Chile will follow the recommendations which have been made about adopting and achieving the objectives of the Declaration on the Rights of Indigenous Peoples, an important political instrument.

50. The National Corporation of Indigenous Development of Chile and the Ministry of Education have developed programmes of bilingual intercultural education. Furthermore, the General Law of Education, recently approved, includes the protection and promotion of indigenous languages, promoting generation of pedagogical methods and curricular adaptation of educational institutions in Chile.

51. Chile has been reducing the levels of poverty and extreme poverty of its population. The gap between indigenous and non-indigenous poverty has dropped and Chile aims to reduce it even more through pertinent policies.

63. Bolivia asked if Chile could comment on the level of participation of indigenous peoples in the adoption of laws which are of concern to them in Congress, and also on the measures that will be taken to implement ILO Convention 169. Bolivia recommended that Chile (a) consider promoting more effective participation by indigenous peoples in political decision-making; and (b) continue strengthening those mechanisms which protect the rights of women, especially indigenous women.

64. Guatemala recommended to (a) continue efforts, in consultation with indigenous peoples, to address the issue of indigenous peoples' rights through the application of ILO Convention 169 and the Declaration on the Rights of Indigenous Peoples....

67. The Holy See noted that Chile had committed itself to improving the situation of the indigenous population and that lands had been restituted, but expressed concern that the speed of the process remained slow. It asked how the Government intended to respond to this challenge. ...

69. Italy recommended to (a) intensify efforts for the full respect of the rights of the Mapuche people and their protection from discriminatory practices....

70. Pakistan commented that some concerns, such as ... constitutional non-recognition of the indigenous population, had found resonance among civil society. ...

73. Uzbekistan ... (c) take proper legal and administrative measures and adopt the national plan of action to ensure full observance for rights of indigenous peoples....

76. Spain recommended that Chile ... (d) recognize the indigenous peoples in its Constitution, to implement the outstanding recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, and acknowledge their contribution to the Chilean identity as a people....

82. Uruguay ... recommended ... (b) continuing and deepening respect for indigenous peoples, recognizing their cultural wealth and facilitating their participation in national and community issues, particularly issues of direct concern to them such as property and land use, to eliminate all discrimination against indigenous persons or indigenous communities.

85. Slovenia ... recommended that Chile continue to increase budget allocations to the educational sector, focus on overall improvement in the quality of education, particularly in rural areas, and ensure the expansion of the bilingual intercultural programme for indigenous peoples.

86. Viet Nam commended Chile for its cooperation with the special procedures. Realizing that protection of the rights of vulnerable groups, in particular indigenous peoples, is one of the main challenges facing Chile, Viet Nam recommended that it continue to strengthen its measures and mechanisms to overcome this challenge.

87. Canada expressed concern that, in select instances, the Government of Chile responded to indigenous people demanding rights with police intimidation and the application of antiterrorism legislation. It recommended that Chile (a) reinforce efforts to recognize indigenous rights and to effectively include them in Chile's legal and administrative structure, and to address land claims with indigenous peoples and communities through a process of effective dialogue and negotiation. ...

Conclusions and/or recommendations

96. The recommendations formulated during the interactive dialogue have been examined by Chile and the recommendations listed below enjoy the support of Chile:

16. Take proper legal and administrative measures and adopt the national plan of action to ensure full observance of rights of indigenous peoples (Uzbekistan);

18. Continue to strengthen its measures and mechanisms to overcome the challenges related to the protection of the rights of vulnerable groups, including indigenous peoples (Viet Nam) and indigenous women (Bolivia);

19. Take further steps to address discrimination against women and people belonging to vulnerable groups including children, minorities and indigenous people (United Kingdom) and intensify efforts for the full respect of their rights and their protection from discriminatory practices (Italy);

40. Continue efforts to fight impunity and human rights violations, with particular attention to the rights of indigenous peoples (Brazil);

53. Appropriately fight and eradicate the worst forms of child labour (Uzbekistan) and further tackle the problem of street children and child labour, as well as discrimination against indigenous children (Azerbaijan);

54. Intensify its work to improve the situation of its indigenous population (Norway) and continue strengthening efforts in poverty alleviation, including through programmes for indigenous people (Malaysia);

55. Continue to increase budget allocations to the educational sector; focus on overall improvement in the quality of education provided, in particular in rural areas, and ensure expansion of the bilingual intercultural programme for indigenous peoples (Slovenia);

56. Further guarantee effective access to education for all children, especially those from indigenous communities, refugee children and children whose families live in rural areas or below the poverty line and take effective measures to fight against the factors behind their exclusion from the educational system (Algeria);

57. Complete the process of constitutional recognition of the indigenous populations with the adequate consultations mentioned in its presentation (Denmark);

58. Complete the process of recognition of the indigenous peoples in its Constitution, implement the recommendations of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people and recognize their contribution to the Chilean identity as a people (Spain);

59. Introduce new legislation to further strengthen the rights of indigenous peoples (Austria);

60. Continue to provide adequate policy and institutional support to address the marked disparities in the socio-economic indicators between the indigenous and non-indigenous populations (Bangladesh);

61. Continue to give particular attention to indigenous peoples when implementing the poverty reduction and alleviation programmes and ensure that it works towards the elimination of any discriminatory measures applied to them (Algeria);
 62. Consider promoting more effective participation by indigenous peoples in political decision-making (Bolivia); undertake appropriate electoral and legislative reforms to enhance the scope for political representation of the indigenous people, particularly women (Bangladesh); and further ensure indigenous groups are able to express their views, have access to relevant political and decision-making processes and are provided with the support necessary to meaningfully engage on issues that affect them (New Zealand);
 63. Promote a constructive dialogue between authorities and indigenous people and their organizations and the participation of indigenous people in the formulation and implementation of laws and programmes affecting their lives and provide resources to this end (Finland);
 64. Continue and deepen respect for indigenous peoples, recognizing their cultural wealth and facilitating their participation in national and community issues, particularly issues of direct concern to them such as property and land use, to eliminate all discrimination against indigenous persons or indigenous communities (Uruguay);
 65. Reinforce its efforts to recognize indigenous rights and effectively include them in Chile's legal and administrative structure, and address land claims of indigenous peoples and communities through a process of effective dialogue and negotiation (Canada);
 66. Take all necessary steps to complete the process of implementation of the Indigenous and Tribal Peoples Convention No. 169 (Denmark); continue efforts, in consultation with indigenous peoples, towards addressing the issue of the rights of indigenous peoples through the application of Convention No. 169 and the realization of the principles established in the United Nations Declaration on the Rights of Indigenous Peoples (Guatemala), particularly ensuring the participation of indigenous peoples in the political sphere and continuing with the process of transferring land duly demarcated and titled (Mexico);
 67. Improve effective consultation with indigenous communities before granting licenses for the economic exploitation of disputed land (Denmark); intensify efforts to transfer land and to systematically consult with indigenous peoples before granting licences for economic exploitation (Austria); continue and strengthen efforts to find a solution that respects the land rights of indigenous groups and ensures legal protection of their human rights (Sweden);
 68. Continue its efforts to solve the problems of indigenous peoples, in particular their land issues, and ensure that the Anti-Terrorism Act (Law 18.314) does not undermine their rights (Azerbaijan);
 69. Not apply the Anti-Terrorism Act to acts related to the non-violent claims of indigenous peoples (Switzerland);
 70. Take the necessary measures to prevent outlawing or penalizing legitimate and peaceful activities or social demands by indigenous organizations and peoples and reinforce the notion that the Anti-Terrorism Act is to be applied only within its scope and not to acts related to non-violent claims of indigenous peoples, taking into account the recommendations of the Human Rights Committee (Netherlands)
97. The following recommendations will be examined by Chile, which will provide responses during the adoption of the outcome report by the Council at its twelfth

session. The response of Chile to these recommendations will be included in the outcome report:

3. Fully investigate the alleged cases of arrest and deportation of journalists and filmmakers depicting the problems of the Mapuche people (Azerbaijan);
4. Review the anti-terrorist law and its application so that it cannot be abused for persecution of persons from indigenous communities, including the Mapuche, for their peaceful political or religious activity (Czech Republic)

7. Bangladesh, A/HRC/11/18, 5 October 2009

Presentation by the State under review

19. Among government measures aimed at the development of religious and ethnic minority groups, a separate Ministry had been set up for the tribal communities residing in the Chittagong Hill Tracts. It was mandated to uphold social, economic, cultural and educational rights of the hill people.

Interactive dialogue and responses by the State under review

53. Australia ... encouraged Bangladesh to (d) take steps to protect the social, economic and cultural rights of minorities, refugees and displaced persons and recommended that Bangladesh: (e) take steps to implement the Chittagong Hill Tracts Peace Accord;...

68. Mexico ... recommended that Bangladesh ... positively consider acceding to ... (e) ILO No. 169 Convention on Indigenous and Tribal Peoples;...

75. Holy See ... recommended that Bangladesh investigate complaints concerning discrimination against members of minority religions, while developing educational and awareness programmes addressing these human rights violations. It asked about measures envisaged to confront the plight of indigenous peoples.

77. Norway acknowledged efforts to strengthen the human rights situation and recommended that (a) full implementation of the Chittagong Hill Tracts Accord be made a matter of priority and that a time frame for its full implementation be developed. ...

Conclusions and/or recommendations

2. Consider ratifying or acceding to: 1951 Refugee Convention (Brazil, Chile, Czech Republic, Mexico), bearing in mind resolution 9/12 of the Human Rights Council entitled "Human rights goals" (Brazil); ILO No. 169 Convention on Indigenous and Tribal Peoples (Mexico).
34. Fully implement the Chittagong Hill Tracts Accord as a matter of priority and develop a time frame for its full implementation (Norway, Australia)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/18/Add.1, 9 June 2009)

Response of Bangladesh to Recommendations:

2. ... Bangladesh has ratified the ILO indigenous and tribal population convention, 1957 (No-107) in 1972, which covers a number of issues including fundamental rights, land rights, employment, vocational training, health etc of the indigenous and

tribal peoples. The convention no 111 on discriminations (employment and occupation) was also ratified by Bangladesh in 1972. Though the Convention no. 169 on indigenous and tribal peoples is not yet ratified by Bangladesh, the tribal peoples of CHT are already enjoying most of provisions enshrined in the ILO convention No. 169 through the implementation of the CHT Peace Accord. Most of the provisions of the Accord have already been implemented. The present government is continuing the process of implementation within the framework of the constitution of the People's Republic of Bangladesh.

34. Bangladesh accepts the recommendation, and is in the process of full implementation of the Accord. Most of the provisions of the CHT Peace Accord have already been implemented. The rest will be implemented within the shortest possible time within the framework of the Constitution of Bangladesh.

8. Canada, A/HRC/11/17, 5 October 2009

Presentation by the State under review

7. Canada is a multicultural and multi-ethnic society shaped over time by different waves of immigrants and their descendants. Aboriginal peoples are a defining aspect of Canada and of Canadian identity.

10. Reconciliation work between Aboriginals and the rest of Canadian society is ongoing. Canada acknowledged the particular challenges faced by Aboriginal peoples and welcomed the opportunity to highlight progress and the need for improvement. Reconciliation and a renewed partnership with Aboriginal people are key pillars in Canada's Aboriginal Agenda. In June 2008, the Government offered a historic formal apology to former students of Indian Residential Schools. The Indian Residential Schools Settlement Agreement includes compensation to former students and the creation of a Truth and Reconciliation Commission. Closing a long-standing legislative gap the *Canadian Human Rights Act* was amended in 2008 to allow addressing of issues of discrimination arising under the *Indian Act*.

11. Violence against Aboriginal women is of significant concern. Canada is working with Aboriginal women and organizations on family violence prevention programmes and services on reserves. The Government supports the Sisters in Spirit initiative undertaken by the Native Women's Association of Canada to better understand and define the problem of missing and murdered Aboriginal women.

12. Canada seeks to reconcile the rights of Aboriginal peoples over traditional lands with the sovereignty of the Government, including the recognition of existing treaties, and the negotiation of new land and self-government agreements. The Government seeks to balance the rights and interests of Aboriginal and non-Aboriginal Canadians in a manner consistent with the Constitution. Canada recognizes the collective nature of Aboriginal peoples' interest in lands and resources and that the nature of this collective interest may vary.

13. While unable to support the United Nations Declaration on the Rights of Indigenous Peoples because the text failed to address Canada's key concerns and lacks clear guidance for States in several areas, including lands and resources, the concept of free, prior and informed consent and self-government, Canada remains committed to fulfilling its existing human rights obligations and commitments to

Aboriginal peoples in Canada and is active internationally in working to improve the situation of indigenous peoples.

Interactive dialogue and responses by the State under review

19. Switzerland ... Recognizing efforts to accept indigenous rights regarding traditional territories, it noted NGO reports that Canada limits the scope of certain rights, while renegotiating treaties, thus forcing indigenous peoples into long and costly appeals. It recommended (b) reinforcing efforts to settle territorial claims and improve the mechanism of conflict resolution. While welcoming efforts to combat poverty, Switzerland expressed concern that poverty affects 11.2 per cent of the population, particularly indigenous people, Afro-Canadians, immigrants, persons with disabilities, single mothers and women with low salaries. It asked about improvement measures.

20. Austria noted the Government's efforts to work with Aboriginal peoples at settling land claims, particularly through the specific claims process, and asked about its acceleration. It recommended (a) ensuring that all consultation and consent duties are respected by all responsible government agencies at federal and provincial levels and ensuring that the relevant treaty body recommendations are fully taken into account and these processes do not restrict the progressive development of Aboriginal rights in the country; (b) continuing consultations on the issue with all stakeholders with a view to being able to support the Declaration on the rights of indigenous peoples in the future; (c) studying and address the root causes of domestic violence against women, in particular Aboriginal women; and (d) taking measures to facilitate effective access to justice for victims of domestic violence and provide immediate means of redress and protection.

22. Chile ... Regarding indigenous peoples, it noted improvement but that extreme poverty, family violence and low levels of education persist. It also noted violence against women and domestic violence, particularly against indigenous and minority women, and racism and discrimination against minorities. Chile asked about Canada's implementation of CERD and HR Committee recommendations.

23. Cuba said it hoped that Canada would, at the end of its time as a Council member, reflect deeply on its previous role as an advocate for the third world. It noted that Aboriginals are disadvantaged in terms of self-generated income, education and health, with the highest ranks in suicide and poverty indexes, asking about measures to repair this historic injustice, in line with the Declaration on the rights of indigenous peoples. Noting that approximately 125 Canadian NGOs expressed concerns at the lack of appropriate and transparent procedures on implementation of treaty body recommendations, it asked about reform, especially regarding recommendations made during the UPR. It asked why funding of HIV/AIDS programmes was cut. Consistent with CESCR's comments, it recommended that Canada (a) integrate these rights in its poverty reduction strategies in a way that can benefit the most vulnerable groups in society, especially the Aboriginals, Afro-Canadians, migrants, persons with disabilities, youth, women with low incomes, and single mothers, and (b) adopt all necessary measures, including the full implementation of the Declaration on the Rights of Indigenous Peoples, to guarantee Aboriginals full enjoyment of their rights, including economic, social and cultural rights, so that their standard of living was similar to that of the rest of the citizens in Canada.

24. Norway appreciated Canada's active role in the human rights machinery and commended civil society and indigenous representatives for contributions to this process. It recommended that Canada (a) establish an effective and inclusive process to follow up on UPR recommendations; (b) reconsider its position and endorse the Declaration on the Rights of Indigenous Peoples and consider ratifying ILO Convention 169; and (c) institute comprehensive reporting and statistical analysis of the scale and character of violence against indigenous women, so that a national strategy can be initiated, in consultation with indigenous representatives, to respond to the severity of the issues.

26. The United Kingdom ... noted inequalities between Aboriginals and other Canadians, recommending that Canada (c) give the highest priority to addressing these fundamental inequalities between some of its citizens including through its policy agenda focused on five key areas: economic development, education, citizen empowerment and protection of the vulnerable, resolution of land claims and reconciliation, governance and self-government. It welcomed steps to promote inclusion of traditionally vulnerable groups, but noted that disabled adult women and Aboriginal women are marginalised in the labour force, with lower incomes and limited employment opportunities. It recommended that Canada (d) consider taking additional steps to address discrimination in this area.

29. Mexico ... commended progress made regarding the rights to health, education, housing, social security, the administration of justice, and indigenous issues, noting the Prime Minister's recent apology. It noted the Canadian House of Commons chamber motion, appealing for endorsement of the Declaration on the Rights of Indigenous Peoples. It recommended that Canada: ... (c) consider positively the ratification of the American Convention on Human Rights, the ICRMW, ILO Convention 169, and the Optional Protocol to the International Covenant on Economic Social and Cultural Rights (OP-ICESCR); (d) criminalize domestic violence and adequately investigate and sanction those responsible for the death and disappearance of indigenous women.

30. Pakistan recommended that Canada: ... (e) support and fully implement the Declaration on the Rights of Indigenous Peoples;

33. The Netherlands ... recommended: ... (c) strengthening and enlarging existing programmes and taking more and specific measures towards Aboriginals, particularly with regard to the improvement of housing, educational opportunities, especially after elementary school, employment, and that women's and children's rights are better safeguarded, in consultation with civil society.

36. ... [Canada responded that] The Government remains committed to reducing violence against Aboriginal women. There is ongoing research and data collection on this issue.

39. The Government targets investments for segments of the population which remain vulnerable: Aboriginal Canadians, disabled people, single older adults, new immigrants and lone parents. In its recent federal budget, it proposed further changes to the Employment Insurance programme; training for youth, older workers, and

Aboriginal Canadians; the National Child Benefit supplement; the Canada Child Tax Benefit; and the Working Income Tax Benefit. ...

44. India noted that Canada is known for its commitment to upholding human rights. It noted comments by CERD on discrimination against First Nations women and children and by CEDAW and CESCR on the need for legislation on discriminatory effects of the Indian Act and CEDAW's concerns about protection and redress for Aboriginal and ethnic women. It sought Canada's response on those matters.

45. Malaysia ... recommended that Canada: ... (b) consider taking more resolute action to prevent and punish perpetrators of racially motivated acts of violence against members of the Muslim and Arab communities [and] the indigenous population....

46. The Philippines ... asked whether there is specific legislation covering conflicts between private mining corporations and indigenous peoples.

47. Turkey ... recommended: (a) taking further measures to ensure effective implementation of CEDAW at the federal, provincial and territorial levels, giving particular attention to Aboriginal women and girls.... It noted treaty body observations of poverty among vulnerable groups, cited the Special Rapporteur on adequate housing's concerns about homelessness and families living without access to drinking water and sanitation, and CESCR concerns that low-income Aboriginal and Afro-Canadian families had to relinquish children into foster care due to inadequate housing.

48. Finland noted Canada's acknowledgement of persisting inequalities faced by Aboriginals. It was unfortunate that Canada was unable to support the Declaration on the Rights of Indigenous Peoples. Finland sought more information on the Sisters in Spirit initiative regarding, in particular the partnership between Government and civil society, or on other best practices. It recommended that Canada continue its efforts to tackle discrimination against Aboriginal women in all sectors of society, including employment, housing, education and health care.

49. The Czech Republic recommended adopting further measures to ensure: (a) accountability of the police for their proper, sensitive and effective conduct in cases of violence against women; and (b) better protection of in particular Aboriginal women against all violence, including through addressing their low socio-economic status and discrimination against them; (c) better accessibility of alternative/protected housing for victims of domestic violence....

50. Bolivia noted that the indigenous population in Canada live in conditions of inequality, and poverty and are more likely to commit suicide. Despite a number of programmes, the problem persisted. It recommended that Canada (a) request from OHCHR the necessary support for the process of ratification of a greater number of international human rights instruments; (b) implement in national norms the commitments made when ratifying the ICESCR and the CERD through the implementation of the recommendations which have come out of their respective Committees; (c) take the provisions of the Declaration on the Rights of Indigenous Peoples into account in national legislation, because the Declaration is a United Nations document and represents guidelines for the conduct of States; (d) implement

in national legislation the prohibition and criminalization of all types of violence against women and children, specially indigenous women and children, in accordance with the commitments acquired in the corresponding Conventions; (e) ratify and implement in national norms ILO Convention 169.

53. Jordan ... It recommended that Canada consider (a) ratifying the ICRPD, and (b) implementing, as appropriate, the recommendations of human rights treaty bodies on indigenous peoples.

54. The Islamic Republic of Iran noted that the OHCHR reports made reference to the growing discriminatory treatment against indigenous people, aboriginal women, migrants, Muslims, Arabs and Afro-Canadians, and CERD, HRC and CEDAW concerns about serious acts of violence against Aboriginal women. It noted that Canada places several barriers to refugee and migrant family reunification. It recommended that Canada: (a) address root causes of discrimination, (b) ensure effective access to justice, and (c) establish immediate means of redress and protection of rights of ethno-minorities, in particular, Aboriginals. ...

55. Belgium commended Canada's commitment to the rights of indigenous people and gender equality, but cited CERD, HR Committee, CEDAW and NGO concerns about violence and discrimination against indigenous and ethnic minority women. Belgium recommended (a) systematic investigation and collection of data on violence against women and dissemination of this information; (b) taking measures to combat socioeconomic discrimination, which is a cause of continuous violence against Aborigine women and to inform them better of their rights.

63. Saudi Arabia cited CERD's concerns over the lack of equality in living standards of Aboriginals. It recommended Canada implement all international human rights instruments related to these groups and enhance and protect their rights against violations.

65. Argentina noted Canada's multicultural nature and the long tradition of democracy and human rights. It asked about concrete measures to improve indigenous rights, particularly their land claims. ...

66. China noted that Canada provides medical services; primary and secondary education free of charge; promotes social welfare programmes, and has achieved progress in the rights of women, children, the elderly, and persons with disabilities. It noted efforts to protect Aboriginal rights, migrant rights, and combating racism. It noted inequalities between Aboriginals and other Canadians persist and sought clarification on specific measures to improve the situation.

68. Portugal ... recommended to the Government (a) to create or reinforce a transparent, effective and accountable system that includes all levels of the government and representative of the civil society, including indigenous people, to monitor and publicly and regularly report on the implementation of Canada's human rights obligations;...

69. Bosnia and Herzegovina ... asked about follow-up on urgent appeals by CERD, CESCR, and the Special Rapporteur on the Rights of Indigenous Peoples to find legislative solutions addressing the discriminatory effects of the Indian Act.

72. Vietnam ... recommended that Canada (a) intensify efforts already undertaken to better ensure the right to adequate housing, especially for vulnerable groups and low income families, and; (b) continue policies and programmes aimed at reducing inequalities that still exist between the Aboriginal, recent immigrants and other Canadians. ...

73. The Republic of Korea welcomed the human rights values enshrined in the Constitution, the Charter and Canada's democratic institutions. It noted civil society and treaty body concerns relating to counter-terrorism and the lack of protection of indigenous peoples....

74. The Syrian Arab Republic recommended that Canada: ... (d) take the necessary measures to end violence against women including domestic violence and against aboriginal women, and implement CEDAW and HR Committee recommendations in this context....

76. Denmark recommended that Canada, (a) in its follow-up to the UPR, engage with civil society in a thorough and timely manner. Denmark asked how the Government views the open letter from legal scholars arguing for endorsement of the Declaration on the rights of indigenous peoples and the House of Commons Motion calling for its endorsement. It recommended that Canada (b) reconsider its stance vis-à-vis the Declaration....

77. On Aboriginal issues, Canada acknowledged that there have been wrongs in the past. The Government is working with aboriginal communities to establish priorities, and while the challenges are significant, there is progress on many fronts, including education, entrepreneurship, economic development, land claims and safe drinking water. 78. The 2009 federal budget invests \$1.4 billion for the following priority issues for Aboriginal peoples: training and skills development, housing, urgent needs such as improved access to drinking water, health programmes for the Inuit and First Nations, child services, and creation of economic opportunities.

79. Negotiated treaties, both historic and modern, address land claims covering the majority of Canada's territory. Treaty negotiation processes are long and complex, but are the best tool for striking a balance between the interests of Aboriginal peoples and other Canadians. The Territory of Nunavut, covering one-fifth of Canada's landmass, was created in April 1999 as a result of a negotiated Inuit land claims agreement. The first modern treaty signed in an urban context will come into force in April 2009, signed with a nation in British Columbia.

80. On collective rights, Canada has developed, through negotiations with partners, a number of approaches that do not require extinguishment of Aboriginal rights. Progress has been made with regards to specific claims and a new independent body with the power to make decisions on the validity of a claim and compensation to be paid has been established. Whereas the court offers a new option to settle claims, the

Federal Government maintains its commitment to settle claims through negotiation. The law setting up the new tribunal was drawn up with the Assembly of First Nations.

81. Aboriginal women constitute a substantial proportion of the population of Saskatchewan. The philosophy in that province for addressing violence against women is to work in partnership and be proactive by creating key programmes such as pro-charging and prosecution policies; domestic violence courts that use a therapeutic model; shelters and sexual assault centres; legislation allowing women to apply for emergency intervention to deal with abusive spouses; programmes dealing with Aboriginal family violence.

82. To address the sensitive issue of missing Aboriginal women, Saskatchewan has created a provincial partnership committee, including representatives from the Aboriginal community, the Royal Canadian Mounted Police, local police and many other groups. This taskforce is used to support families, to examine underlying reasons behind missing persons, to help women and children enhance their safety and to develop information sharing and data collection networks. There is similar important work at national, federal and provincial levels, involving collaboration between community and Government, and comprehensive victims' service programmes.

Conclusions and/or recommendations

6. Consider ratifying (Norway, Mexico)/ratify and implement in national norms ILO Convention 169 (Bolivia)....

14. Create or reinforce a transparent, effective and accountable system that includes all levels of the government and representative of the civil society, including indigenous people, to monitor and publicly and regularly report on the implementation of Canada's human rights obligations (Portugal); establish a mechanism that will meet regularly with the effective participation of civil society organizations and indigenous peoples, and have national reach to implement all Canada's international obligations and facilitate the acceptance of pending commitments, (Mexico)....

15. Effectively implement United Nations treaty bodies' recommendations (Azerbaijan) and as appropriate on indigenous people (Jordan); implement in national norms, the commitments made when ratifying the ICESCR and the CERD through the implementation of the recommendations which have come out of their respective Committees (Bolivia); analyze United Nations treaty bodies recommendations in consultation with representatives of the civil society, including indigenous people, and implement them or publicly report on the reasons why it considers no implementation is more appropriate (Portugal); include participation of civil society (in mechanisms and procedures that are in place for national follow up to recommendations of treaty bodies) and publication of the concluding recommendations of treaty bodies (Czech Republic)....

19. Give the highest priority to addressing the fundamental inequalities between some of its citizens including through its policy agenda focused on five key areas of economic development: education, citizen empowerment and protection of the vulnerable, resolution of land claims and reconciliation, governance and self-government (United Kingdom);

20. Continue policies and programmes aimed at reducing inequalities that still exist between the Aboriginal, recent immigrants and other Canadians (Vietnam);

27. Takes further measures to ensure effective implementation of CEDAW at the federal, provincial and territorial levels, giving particular attention to the Aboriginal women and girls (Turkey); continue efforts to tackle discrimination against Aboriginal women in all sectors of society, including employment, housing, education and health care (Finland); take measures to combat socio-economic discrimination, which is a cause of continuous violence against Aboriginal women, and to inform them better of their rights (Belgium); consider taking additional steps to address discrimination against disabled adult women and Aboriginal women (United Kingdom);
28. Take effective measures to combat and put an end to discrimination against indigenous population and to elaborate and implement a National Action Plan to deal with this phenomenon (Azerbaijan); address root causes of discriminations, ensure effective access to justice, establish immediate means of redress and protection of rights of ethno-minorities, in particular, Aboriginals (Islamic Republic of Iran);
33. Consider taking on board CEDAW recommendations (Malaysia) to criminalise domestic violence (Malaysia; Italy; Mexico), ensuring to victims effective access to immediate means of protection and reinforcing prosecution of perpetrators (Italy) and adequately investigate and sanctioning those responsible for the death and disappearance of indigenous women (Mexico); take measures to help effective access to justice for victims of domestic violence and provide immediate means of redress and protection (Austria);
34. Implement in national legislation the prohibition and criminalization of all types of violence against women and children, specially indigenous women and children, in accordance with the commitments acquired in the corresponding Conventions (Bolivia);
35. Take the necessary measures to end violence against women including domestic violence and against aboriginal women, and implement CEDAW and the Human Rights Committee recommendations in this context (Syrian Arab Republic);
38. Institute comprehensive reporting and statistical analysis of the scale and character of violence against indigenous women, so that a national strategy can be initiated, in consultation with indigenous representatives, to respond to the severity of the issues (Norway); study and address the root causes of domestic violence against women, in particular Aboriginal women (Austria);
45. Integrate economic social and cultural rights in its poverty reduction strategies in a way that can benefit the most vulnerable groups in society, specially the Aborigines, afro-Canadians, migrants, persons with disabilities, youth, women with low incomes, and single mothers and adopt all necessary measures, including the full implementation of the United Nations Declaration on the Rights of Indigenous Peoples, to guarantee Aboriginals the full enjoyment of their rights including economic, social and cultural so that their standard of living was similar to that of the rest of the citizens in Canada (Cuba);
46. Establish policies to improve healthcare and general welfare of indigenous children (Indonesia);
52. Reconsider its stance (Denmark; Norway), endorse (Norway), support and fully implement (Pakistan) the United Nations Declaration on the Rights of Indigenous Peoples (Norway, Denmark, Pakistan); continue consultations on the issue with all stakeholders with a view to being able to support the Declaration in the future

(Austria); take the provisions of the Declaration into account in the national legislation, because the Declaration is a United Nations document and represents guidelines for the conduct of States (Bolivia);

54. Strengthen and enlarge existing programmes and take more and specific measures towards Aboriginals, particularly with regard to the improvement of housing, educational opportunities, especially after elementary school, employment, and that women's and children's rights are better safeguarded, in consultation with civil society (The Netherlands);

55. Ensure that all consultation and consent duties are respected by all responsible government agencies at federal and provincial level as well as to ensure that the relevant recommendations of United Nations treaty bodies are fully taken into account and that the specific claims processes do not restrict the progressive development of Aboriginal rights in the country (Austria);

56. Reinforce efforts to settle territorial claims and improves the mechanism of conflict resolution (Switzerland)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/17/Add.1, 8 June 2009)

Response of Canada to Recommendations:

2. The Government of Canada met with civil society and Aboriginal organizations and solicited comments on the recommendations through an electronic consultations exercise. Views expressed through these processes have informed the following response and will inform Canada's implementation of the accepted recommendations. As demonstrated by these actions, Canada therefore accepts recommendation 63.

11. Canada does not accept recommendation 52, the related part of recommendation 45 or those of Ireland and Zambia. Canada continues to have concerns with respect to the wording of the United Nations Declaration on the Rights of Indigenous Peoples, including the provisions on lands, territories and resources, and free, prior and informed consent. Canada remains strongly committed to the rights of indigenous peoples. The rights of Aboriginal people in Canada are protected by the Canadian Constitution and other domestic laws, and Canada is committed to making progress on issues of particular concern to Aboriginal people in Canada.

18. Canada accepts recommendation 19, and in part recommendation 54 as we must strengthen and improve Aboriginal programs, and related recommendations from South Africa and Djibouti. Canada accepts in part recommendation 45. Canada continues to take important steps to address fundamental inequalities between Aboriginal and non-Aboriginal Canadians.

19. Federal, provincial and territorial governments, Aboriginal governments and communities, and learning institutions are working together to improve education outcomes of First Nations, Métis and Inuit students. The Government of Canada recently announced new investments to improve performance of students in First Nations and provincial schools, and, in April, signed the first Inuit Education Accord. Tripartite partnership agreements are in place in British Columbia and New Brunswick.

20. Canada is working with Aboriginal organizations to better respond to employer and labour market demands and reduce the gap between Aboriginal employment levels and those of other Canadians. At the federal level, the new two-year Aboriginal Skills and Training Strategic Investment Fund will complement the existing Aboriginal Human Resources Development Strategy and the Aboriginal Skills and Employment Partnership program.

21. Canada accepts recommendation 46. It recognizes that strategic investments in a child's early years lead to greatly improved long-term health outcomes in Indigenous communities. The focus of government programs includes pregnant women, new parents and children under six years of age, and supports the growth of healthy families. The Government of Canada is providing new funding for Indigenous health programs, health facilities and infrastructure.

22. Canada accepts recommendation 55. As part of a comprehensive Action Plan on Aboriginal Consultation and Accommodation, Interim Consultation Guidelines are in place for federal officials. Provinces also ensure that their arrangements are consistent with provincial consultation duties. Canada is continually seeking to improve land claims processes, whose goal is not to restrict the progressive development of Aboriginal rights, but rather to reconcile competing interests in a manner that allows for harmonious co-existence of Aboriginal and non-Aboriginal Canadians.

23. Canada accepts recommendation 56, noting that modern treaty negotiations are tripartite negotiations that involve complex issues and often a lengthy process. Twenty-two modern treaties have been reached to date. An independent specific claims tribunal was established by statute. Procedural efficiencies resulted in 117 specific claims being addressed in 2008-2009.

24. Canada commits to consider the future recommendations of the Indian Residential Schools Truth and Reconciliation Commission.

28. Canada accepts recommendations 47 and 48. Canada is working to improve housing choice and affordability. Governments are making substantial investments in housing through programs targeting affordability, housing renovation, homelessness and support for existing social housing units. Addressing Aboriginal housing issues on reserve remains a priority. Canada provides support through programs targeting the construction of new housing units, the renovation of existing housing stock, and subsidies for existing rental housing. Since 2006, new funding for Aboriginal people has been dedicated to resolving challenges of poverty and housing.

29. Canada accepts recommendation 51 as it relates to international human rights treaties to which it is a party. Canada also accepts recommendations 16, 20, 43, and 44, and accepts in part recommendation 53. Measures to promote equality for disadvantaged groups include antidiscrimination provisions in federal and provincial/territorial legislation, and policies and programs with Aboriginal governments and organizations and the private sector. ...

33. Canada is working to increase the representation of women, Aboriginal people, members of visible minority groups and persons with disabilities in employment. All

governments have employment policies that promote the hiring of disadvantaged groups within the public service.

34. Police forces in Canada use diversity and cultural awareness training to promote the equitable treatment of all persons by law enforcement officials. In most jurisdictions, police forces are overseen by independent civilian review agencies.

37. Canada accepts recommendations 22 and 28, as Canada already combats racism and discrimination against all groups, including Aboriginal people, with an emphasis on initiatives that strengthen inter-cultural and interfaith understanding.

45. Canada accepts recommendation 27 and the related recommendation from Hungary, and is working to advance equality of women across Canada and ensure the protection of their rights. Governments are addressing women's economic security, including the distinct obstacles faced by Aboriginal women. Canada is committed to legislation to end a clear inequality, often adversely affecting Aboriginal women and children, to ensure that, in the event of a marriage or common law relationship break down, Aboriginal people on reserve are afforded the same rights and protections that all other Canadians currently enjoy.

49. The issue of missing and murdered Aboriginal women is a pressing concern for Canada. Governments have dedicated resources to investigate and solve cold cases involving murdered Aboriginal women. For example, in British Columbia, under Project E-PANA, a dedicated team of investigators continue to review a number of files involving missing and murdered women.

50. Canada commits to identifying the causes of violence against Aboriginal women and developing appropriate responses in consultation with Aboriginal and civil society organizations. Governments are working together to strengthen preventative measures and improve criminal justice system responses to violence against all women, including Aboriginal women. Governments have developed spousal abuse risk assessment tools for intervention in such cases. In addition, the First Nations Family Violence Prevention Program supports community-based projects aimed at preventing and reducing family violence in First Nation communities.

9. Cameroon, A/HRC/11/21, 12 October 2009

Presentation by the State under review

9. The rights of indigenous peoples and minorities are guaranteed by the Constitution. Cameroon has actively participated in the adoption of the Declaration on the Rights of Indigenous Peoples in September 2007. To combat exclusion and marginalisation and advance fundamental rights and socio-economic integration, the Government has established programmes of action with various partners and donors.

Interactive dialogue and responses by the State under review

35. The Philippines noted that Cameroon as a developing country needed the support of the international community to enhance local and national capabilities, asking Cameroon to outline its priorities for human rights capacity-building. It encouraged further measures to increase enrolment rates, especially of girls and indigenous children, in primary education. Philippines recommended that the Government

continue to strengthen the health sector, paying particular attention to access to health services for children and indigenous peoples.

44. South Africa ... recommended: (a) ratifying the OP-CAT; (b) adopting legislative and administrative measures to compensate and resettle indigenous communities forcibly removed from their land....

46. Mexico ... recommended ... (c) that all necessary efforts be undertaken to resolve the situation of indigenous peoples, in accordance with, international standards, particularly for the *Mbororo fulani* peoples to have ownership of their traditional lands and the still denominated *pygmy communities* which according to the ILO were not officially recognized in Cameroon's administrative structures; (d) and that Cameroon ratify and implement effectively ... Convention No. 169 of the ILO concerning indigenous and tribal peoples in independent countries.

66. Niger ... asked about experiences in incorporating international norms concerning women and children's rights; on constraints encountered and its approach to remedying certain gender discrimination problems; and on the correlation between education of girls and the status of women, particularly regarding indigenous communities.

69. Botswana ... asked Cameroon to share experiences on measures to address the concerns regarding treatment of minorities and indigenous peoples vis-à-vis other ethnic communities. ...

73. In its response, Cameroon thanked delegations for the statements encouraging it in the perennial exercise of entrenching a human rights culture in Cameroon. ... On respect for indigenous rights, it said legislation was being prepared to entrench some of those rights, dealing with issues such as grazing rights and rights to their specific way of life.

Conclusions and/or recommendations

32. Continue its efforts to strengthen the health sector, paying particular attention to access to health services for children and indigenous peoples (Philippines);

37. Respect international provisions in the area of the protection of minorities and vulnerable groups, particularly Pygmies and Mbororo (France); reinforce measures to compensate and resettle indigenous communities forcibly removed from their land (South Africa); reinforce measures to resolve the situation of indigenous peoples, in accordance with international standards, particularly for the Mbororos fulany and pygmy peoples to have ownership of their traditional lands (Mexico)

77. The following recommendations will be examined by Cameroon which will provide responses in due time. The response of Cameroon to these recommendations will be included in the outcome report to be adopted by the Human Rights Council at its eleventh session:

3. Ratify the Convention No. 169 of the ILO concerning indigenous and tribal peoples in independent countries (Mexico);

7. Put in place a special law that will take into consideration the land rights of the "pygmy" communities (Holy See)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/21/Add.1, 9 June 2009)

Response of Cameroon to Recommendations:

Recommendation 77(3). Most of the Convention's provisions are already being applied under the country's legislation. The Constitution also protects "minorities and indigenous peoples". Nevertheless, certain provisions of the International Labour Organization (ILO) Convention concerning Indigenous and Tribal Peoples in Independent Countries (No. 169) are inconsistent with the commitment of Cameroon to strengthening national unity and preserving its territorial integrity. For this reason, Cameroon **does not accept** this recommendation as it stands, since it calls for more detailed consideration.

Recommendation 76(37). While it **accepts** this recommendation, Cameroon points out that Mbororos enjoy the status of vulnerable population (not indigenous people) and that, like Pygmies and other citizens, they enjoy the right to own property. In addition, the Government pays special attention to them.

Recommendation 77(7). Cameroon **rejects** this recommendation. Domestic law provides guarantees in this regard which may, where appropriate, be invoked by representatives of the Pygmy communities.

10. Russian Federation, A/HRC/11/19, 5 October 2009

Interactive dialogue and responses by the State under review

28. Nicaragua noted legislative advances, including the adoption of laws aiming at improving the situation of minorities, particularly indigenous people and internally displaced persons. ...

30. Brazil praised Russia's efforts to implement social, economic and cultural rights. The existing legal framework in Russia provided for the protection of the rights of ethnic minorities and indigenous people. Nevertheless, stereotypes and discriminatory attitudes with respect to minority groups persisted.

49. Indonesia ... commended Russia on the establishment of an institutional framework for the protection of the rights of ethnic minorities and indigenous peoples. ...

59. ... Denmark noted concerns regarding the rights of indigenous communities from the North, Siberia and the Far East, as highlighted by CERD. It asked for more information and recommended that Russia implements the recommendations raised by CERD as to how to improve the situation of the indigenous communities.

62. ... Sweden recommended to increase its efforts to ensure full respect of the rights of persons belonging to minorities and indigenous groups, including education of their children.

81. ... As part of the efforts being undertaken to guarantee equality of rights for all, Mexico recommended that the attention should be paid to CERD's observation to strengthen the legislative framework in the area of non-discrimination. It referred to the elimination of discrimination, with special attention to gender equality, ethnic

minorities, indigenous people and migrants, regardless of their migratory status. ... Mexico also recommended that the Russian Federation ratifies ... Convention 169 of the ILO. Mexico recommended that Russia complies with the principles contained in the declaration on the rights of indigenous peoples.

CONCLUSIONS AND/OR RECOMMENDATIONS

24. Continue its positive work to combat racial discrimination and related intolerance (Algeria); Attention be paid to CERD's observation to strengthen the legislative framework in the area of non-discrimination with a special attention to gender equality, ethnic minority, indigenous people and migrants regardless of their minority status (Mexico); Apply its current anti racism legislation in an effective way and take new structural measures specifically to counter discrimination (Belgium); Adopt a clear and comprehensive definition of racial discrimination in its legislation (New Zealand); Consider a comprehensive approach and specific programs to combat racist attacks and discrimination, especially with regard to the vulnerable position of migrants (The Netherlands)

56. Increase its efforts to ensure full respect of the rights of persons belonging to minorities and indigenous groups, including education of their children (Sweden); Implement the recommendations raised by CERD as to how to improve the situation of the indigenous communities (Denmark); Comply with the principles contained in the Declaration on the rights of indigenous people (Mexico);

57. Undertake measures ensuring rights of ethnicities and national minorities to use its native languages in practice (Ukraine); Intensify its efforts to ensure provision of education in minority languages (Finland)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/19/Add.1, 5 June 2009)

Response of Russia to Recommendations:

7. The Russian Federation does not, however, accept the recommendation on the ratification of International Labour Organization (ILO) Convention, 1989 (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries, since the legislation of the Russian Federation relating to numerically small indigenous peoples is more progressive, in a number of ways, and provides a more realistic picture of the specific situation of the country's indigenous peoples.

56. The Russian Federation accepts this recommendation. The Russian Federation Framework State Policy on Nationalities, adopted by Presidential Decree in 1996, set out a system of principles and priorities with regard to official action at every level - federal, regional and local - to ensure the steady development of indigenous populations, ethnic minorities and small indigenous peoples in the long term. In order to achieve these aims, action is being taken in a number of directions, including improvements to the legal basis of federal legislation, the development and modernization of traditional economic activity, improved quality of life, the creation of opportunities for better demographic indicators, improved access to educational services, the preservation of their cultural heritage and assistance in developing communities and other forms of self-government for indigenous populations and small indigenous peoples.

57. The Russian Federation accepts this recommendation. The Government has devoted considerable attention to ensuring that the language rights and the ethnic and cultural needs of those engaging in the educational process in the Russian educational system are met. The Russian Federation Framework Ethnic Education Policy was adopted in August 2006 and measures are being taken under a plan adopted at the same time as the Framework to establish priority orientations for a modern ethnic education policy within the general educational system, 2004-2010. Any procedure to monitor any problems arising out of the learning of native languages in the Russian educational system is also organized every year.

11. Malaysia, A/HRC/11/30, 5 October 2009

Presentation by the State under review

7. The delegation informed that the Federal Constitution clearly defines the responsibilities of the State towards the individual, and vice-versa. For the past 35 years, poverty rates have declined dramatically due to effort in introducing new dimensions to address poverty among broad sections of the population, including indigenous groups, urban and rural poor. ...

Interactive dialogue and responses by the State under review

26. China ... cited laws on the rights of children, disabled people, indigenous peoples and foreign workers. China ... (b) appreciated its positive initiatives in guaranteeing indigenous peoples' access to education, healthcare and judicial assistance and hoped continuous efforts will be made....

30. ... Myanmar recommended that Malaysia (a) continue to share and extend its experience and best practices in the efforts in developing comprehensive policies and strategies for the advancement of indigenous groups which focus on uplifting the status and quality of life of the community via socioeconomic programs....

32. Singapore commended Malaysia's continual efforts, as a diverse country, to improve the welfare of its various communities, of women, children, minorities, indigenous peoples and persons with disabilities, through wide-ranging legislation to safeguard their rights and through policies to provide access to basic services like health care and housing, all of which have helped raise living standards. ...

49. On the question of indigenous peoples' rights, the [Malaysian] delegation stated that the land rights for indigenous people, natives and aborigines were adequately protected under existing laws, including the right to compensation.

66. Bangladesh welcomed Malaysia's socio-economic development, progress in poverty reduction and in increasing access to quality education and health care. It welcomed measures taken to safeguard the rights of vulnerable groups, including women, children, persons with disabilities, indigenous and migrant populations. ...

69. Sri Lanka noted, inter alia, that Malaysia had developed comprehensive policies and strategies for the development of indigenous groups and communities It recommended that Malaysia: a) continue to intensify its efforts to prevent and combat discriminatory disparities against children belonging to vulnerable groups, including children of indigenous group, children with disabilities as well as those living in remote areas.

73. Qatar ... asked what safeguards and measures are in place to promote and protect indigenous' rights and to strengthen minorities' rights.

75. Ukraine ... recommended that Malaysia ... (c) ensure comprehensive and universal access to health services for citizens and non-citizens alike, including migrant workers, refugees, asylum seekers, indigenous peoples....

84. ... South Africa recommended that Malaysia (a) implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples....

89. Mexico ... recommended: (a) bearing in mind that there has already been thinking in this direction, consider positively accession to international human rights treaties, particularly ICCPR, ICESCR, ICRMW and ILO Convention 169 on indigenous peoples and tribes; (b) an open standing invitation to special procedures visiting the country, particularly relating to the fundamental rights and freedoms of indigenous peoples....

96. [Malaysia] informed that the status of indigenous people had been legally recognised since 1954 and was fully enshrined in the Federal Constitution. In accordance with the Constitution, the indigenous population had always been represented in the Senate of the Malaysian Parliament.

100. The delegation of Malaysia ... also recognised the importance of education for the Orang Asli children and children of other indigenous groups, which had led to the introduction of a modified curriculum in Orang Asli primary schools and Penan schools of Sarawak that took into consideration the knowledge relevant to the indigenous groups and adopted indigenous pedagogy. ...

CONCLUSIONS AND/OR RECOMMENDATIONS

22. Continue to intensify its efforts to prevent and combat disparities against children belonging to vulnerable groups, including children of indigenous groups, children with disabilities as well as those living in remote areas (Sri Lanka);

51. Continue its efforts and positive initiatives in guaranteeing indigenous peoples' access to education, healthcare and judicial assistance (China);

58. Continue to share and extend its experience and best practices in the efforts in developing comprehensive policies and strategies for the advancement of indigenous groups which focus on uplifting the status and quality of life of the community via socio-economic programmes (Myanmar)

106. As for recommendations listed below, Malaysia notes those recommendations and will provide the response in due time. The response of Malaysia will be included in the outcome report to be adopted by the Human Rights Council at its eleventh session.

6. Implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples and migrant workers (South Africa);

17. Ensure comprehensive and universal access to health services for citizens and non-citizens alike, including migrant workers, refugees, asylum seekers, indigenous peoples (Ukraine)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/11/30/Add.1, 3 June 2009)

Response of Malaysia to Recommendations:

6 Implement the recommendations of the Committee on the Rights of the Child to ensure comprehensive protection of the rights of children, including those of minority groups, indigenous peoples and migrant workers (South Africa).

The Government has established a Technical Committee to coordinate implementation of recommendations of the CRC Committee, including the protection of the rights of children of minority groups, indigenous peoples and migrant workers.

12. Vietnam, A/HRC/12/11, 5 October 2009

Presentation by the State under review

15. Members of ethnic minorities participate in an increasingly equal manner in the country's socio-political life. The twelfth National Assembly (2007–2011) includes 87 deputies of ethnic minorities, accounting for nearly 18 per cent of all deputies. Ethnic minority members are present in the People's Council at provincial, district and communal levels and assume high positions, including the highest portfolio, in State agencies and varied organizations.

Interactive dialogue and responses by the State under review

34. ... Cuba recommended [that Vietnam] (b) continue to take measures to provide education and health care, especially in mountainous areas and to the population of ethnic minorities and with their involvement.

36. ... China recommended that Viet Nam (a) take active measures to close the gap between rich and poor and between the mountainous and urban areas; (b) continue to help ethnic groups to increase awareness of their rights and responsibilities so that they can improve their living conditions and better enjoy their rights.

45. Sweden ... recommended that Viet Nam (a) take further measures to prevent violence and discrimination against ethnic minorities. ...

55. Highlighting Viet Nam's excellent results in, inter alia, poverty reduction, Mexico recommended ... with a view to complementing the initiatives taken by the Government concerning ethnic minorities, (c) favourably considering the ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries.

67. ...Morocco recommended: ... (b) continuing paying attention to equality of opportunities, and creating favourable conditions for people residing in rural and mountainous areas; (c) taking supplementary measures to support access of minority children to education by helping them maintain and develop their traditions and languages;

68. India ... recommended that the Government (a) continue to pay special attention to disadvantaged sections of the society, in particular the ethnic minorities and persons with disabilities, so as to ensure their fuller participation in the socio-political life of the country. It also recommended that the Government (b) continue its efforts to preserve the language and culture of the country's ethnic minorities. ...

72. The delegation noted that Viet Nam is a unified country with 54 ethnic groups, 53 of which are minorities making up nearly 14 per cent of the population. The equal political rights of the ethnic minorities are proclaimed in the Constitution, and any ethnic-based division or discrimination is forbidden. The proportion of ethnic minorities in all levels of the administration is increasing. Nationalities enjoy equality in education and health care, and the cultural identities, language and scripts of all nationalities are preserved and promoted. Viet Nam builds houses for poor ethnic minority people, promoting education and builds boarding schools for ethnic minority students. Languages and scripts of the ethnic minorities are taught in their schools and public offices; the areas of ethnic minority people have seen rapid development and improved conditions, with places of worship preserved and upgraded. The delegation acknowledged that ethnic minority areas still lag behind in terms of development.

95. Nepal noted with great appreciation the increasing role of the National Assembly in legislating and managing diverse views. It recommended Viet Nam to continue its efforts to preserve languages and culture of ethnic minorities and to promote and protect economic, social and cultural rights of its people, and share its experience on poverty reduction and agriculture development.

CONCLUSIONS AND/OR RECOMMENDATIONS

100. The following recommendations will be examined by Viet Nam which will provide responses in due time. The response of Viet Nam to these recommendations will be included in the outcome report adopted by the Human Rights Council at its twelfth session:

1. ... favourably consider the ratification of ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries (Mexico)....

101. Viet Nam noted the following recommendations and indicated that they pertain to measures which have been implemented or are currently being implemented:

5. Take further measures to prevent violence and discrimination against ethnic minorities (Sweden)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/12/11/Add.1, 16 September 2009)

Response of Vietnam to Recommendations:

Take further measures to prevent violence and discrimination against ethnic minorities

10. In Viet Nam, the 54 ethnic groups are strongly and peacefully bonded. They have stood side by side throughout the nation's history of defence and development. National solidarity has been a fundamental and consistent principle in Viet Nam's ethnic policy. The principle of equal treatment among ethnic groups is not only reflected in various laws, policies and socio-economic development programmes but

also implemented in practice. Moreover, the equality of ethnic minorities in terms of political, economic, cultural and social rights and non-discrimination against ethnic minorities are well enshrined in article 5 of the 1992 Constitution. The spirit of this constitutional provision is reflected in various laws and policies and enforced by administrative as well as judicial measures. Any violation is penalized by law. The Government has introduced many development schemes tailored for ethnic minorities, including Programme 135 for the extremely poor communes and ethnic minorities living in mountainous and remote areas and the policy to provide production land, housing and clean water for poor ethnic minority households...

13. Costa Rica, A/HRC/13/15, 4 January 2010

Interactive dialogue and responses by the State under review

23. ... Belarus referred to the need to better combat discrimination and protect the rights of indigenous people and migrants. ...

24. ... Turkey noted that more needed to be done for indigenous peoples. It noted the strategy on education and intercultural dialogue and that education was free and compulsory. ... It noted a high percentage of dwellings in poor condition, especially of indigenous peoples, Afro-descendants, migrants.

26. Brazil ... asked about policies and legal framework for the rights of indigenous peoples and Afrodescendants and the situation of those groups.

31. ... Canada noted the efforts made to address the social development challenges of indigenous people and minorities (Office of the Attorney for Indigenous Affairs, indigenous languages translator in the judicial system). ...

34. Spain ... Given indigenous communities' low human development indexes, it asked how the Autonomous Development of Indigenous Peoples Bill might improve the situation.

40. Since the ratification of ILO Convention No. 169 in 1993, Costa Rica has worked towards fulfilling the rights of indigenous populations. Article 76 of the Constitution stipulates that the State shall maintain and promote the national indigenous languages. There are 313 educational institutions in indigenous communities and the coverage of health services has been increased. Costa Rica also referred to the *Extramuros* Programme, which provides food and milk to indigenous children. In addition, Costa Rica reported on the establishment of electoral and civil services in some indigenous communities, as well as the establishment of the Commission on Indigenous Electoral Affairs. Costa Rica further reported on the establishment of the Fiscalía of Indigenous Affairs in 2009, and on the Autonomous Development of Indigenous Peoples Bill, which aims at improving the legal framework for the protection and development of indigenous people.

64. Panama recognized its human rights achievements, in particular the establishment of the Commission on Indigenous Electoral Affairs.... It noted bilateral efforts undertaken in the areas of trafficking of people, the eradication of child labour and indigenous migration.

67. The Republic of Congo ... congratulated Costa Rica for the establishment of the office of the Attorney for Indigenous Affairs and its role related to human rights education

72. Peru ... asked about the Autonomous Development of Indigenous Peoples Bill and the National Commission on Indigenous Affairs. ...

73. Ghana referred to the limited access of indigenous and migrant children and children living in rural areas to education, health and their low standard of living. Ghana also underlined the wage gap between men and women and the disadvantageous working and housing conditions for indigenous people, Afro-descendants and migrants....

74. Guatemala asked clarification ... about policies to improve the integration of the indigenous population and Afro-Descendants people.

75. Ecuador ... noted CRC concern about limited access to health and education for indigenous and migrant children.

Conclusions and/or recommendations

55. Continue efforts to fight against impunity and human rights violations, with special attention to the rights of indigenous populations ... as well as to combat all forms of discrimination (Brazil);

67. Take further measures to address the disparity in wages between men and women and continue to allocate sufficient funds to increase the availability of social housing for indigenous people, those of African descent and migrants, in line with the concerns raised by the Committee on Economic, Social and Cultural Rights and the United Nations country team (Ghana);

68. Take measures to ensure equitable access of indigenous children, migrant children and those living in rural areas to education and health services and improve their standard of living (Ghana)

74. Increase its efforts in favour of indigenous populations to ensure the satisfaction of their basic needs (water, health, education) and to combat social exclusion affecting them (France);

75. Redouble efforts so that positive results in the area of economic, social and cultural rights reach the most vulnerable populations on an equal footing, in particular minorities, indigenous and African-descended peoples and rural populations (Peru)

14. Dominica, A/HRC/13/12, 4 January 2010

Presentation by the State under review

23. The rights of Dominica's indigenous people, the Kalinago, are enshrined in the Constitution, and the Carib Reserve Act of 1978. The Kalinago people live in the Carib Territory under a communal land tenure system which is governed by the Carib Chief and the Carib Council.

24. Central to Dominica's development thrust is particular focus on the advancement of the indigenous peoples. At the United Nations, Dominica has been steadfast in its support of the Declaration on the Rights of Indigenous People and has been

unwavering in its support for the United Nations Permanent Forum on Indigenous Issues (PFII).

25. The Government of Dominica has undertaken important initiatives to improve social development for the indigenous Kalinago people. The Ministry of Carib Affairs was formally established in 2005. Its creation, and the policy direction of its Minister, the Honourable Kelly Graneau, the elected Member of Parliament for the Carib Territory, has contributed to the heightened attention which Government accorded to comprehensive development of the Kalinago people. Much emphasis has been placed on improving housing conditions, and providing greater opportunities for training at the secondary and tertiary levels.

29. ... The delegation addressed concerns regarding its indigenous people, the Kalinago, and noted that they are accorded the same rights as others. In terms of access to Government services, there is no discrimination based on ethnic origin. ...

Interactive dialogue and responses by the State under review

39. Venezuela noted the efforts underway to promote and protect human rights, particularly the indigenous populations, which is the largest in the Eastern Caribbean. Venezuela referred to the ratifications by Dominica of Conventions 169 on Indigenous and Tribal People and its support of Declarations about Indigenous People rights, enshrined in its Constitution.

43. ... Finally, France raised concerns about discrimination against the indigenous Caribbean minority and asked what measures have been envisaged to remedy the situation.

47.... . China noted that in areas such as combating HIV/AIDS, protecting the rights of indigenous and disabled people, and improving the scope and equality of education, some difficulties and challenges still exist.

55. ... Spain asked if Dominica could explain if specific legislation exists that recognizes the particularities of the Kalingo indigenous population and what measures Dominica has taken to improve the access of indigenous children to education or health. ...

56. ... Bolivia ... highlighted the national health plans, free education at primary and secondary levels, as well the recognition of indigenous population rights.

60. ... Jamaica indicated that the indigenous Kalinago people, although comprising a small segment of the population, are of great historical and cultural importance. ...

61. ... Trinidad and Tobago acknowledged that challenges still exist with respect to a variety of issues such as ensuring fair and equitable treatment for the indigenous Kalinago peoples, ensuring gender equity and reducing corruption. It noted, nonetheless, that despite resource constraints, efforts are being continually made at the level of policy and practice, to redress any existing inequities with the establishment of a Ministry of Caribbean Affairs headed by a Kalinago....

Conclusions and/or recommendations

41. Continue promoting social policies aimed at meeting the needs of its people, especially its indigenous populations, for which it is important to have appropriate technical assistance and international aid in order to continue strengthening capacity in this area (Venezuela)

15. Cambodia, A/HRC/13/4/, 4 January 2010

Presentation by the State under review

11. In implementing the land law and policies, the Government was focusing on strengthening the system of land management, distribution and use, land ownership, land rights security and eradication of illegal encroachment, and preventing the concentration of unused and unproductive lands. More than 1.6 million land titles had been provided. Efforts were also being made to establish institutional and legal frameworks and mechanisms to address the issue of land reform, including programmes pertaining to the rights of ethnic and minority communities.

20. On questions relating to land issues, the delegation reiterated that land grabbing was not the policy of the Government. The Government had taken serious steps and measures to address the issue and would expand upon that further.

Interactive dialogue and responses by the State under review

28. Sweden was concerned about reports of displacement after legally doubtful land concessions, of evictees forced to resettle far from their original homes, and of human rights monitors denied access to sites.

38. Indonesia ... noted the importance Cambodia attached to setting up adequate structures for the protection of vulnerable groups, expressed appreciation for the Government's openness about the difficulties and challenges faced, and made a recommendation.

44. The Netherlands ... Taking note of efforts in the area of land ownership and reform, it cited reports of legally dubious land concessions, land-grabbing and forced evictions. It noted that a more equal distribution of wealth and opportunities would enhance economic, social and cultural rights.

54. In its responses, the Cambodian delegation highlighted that land issues are among the priorities in its national agenda. The delegation explained the objectives of the 2001 land law, inter alia to determine ownership; apply the law through negotiations with the rightful private owners to avoid litigation; and find solutions providing evictees with appropriate compensation or relocation. Cambodia established a national authority for the resolution of land disputes in 2006. The policy and legal framework for effective implementation of the land law has been developed and approved by sub-decrees and the draft policy on a land evaluation system. The Council of Ministers also recently announced the creation of a working group to find satisfactory solutions for landowners and land occupants prior to eviction.

55. The land dispute resolution mechanism has so far resolved 1,400 cases. There are continuous efforts to improve and implement land registration procedures for systematic and sporadic titling. The delegation also reported progress in transparency and accountability. Immediate challenges ahead were to curb further illegal land

occupancy and land concentration for unproductive purposes. Priority is given to people needing

60. Switzerland noted with concern forced and illegal evictions, as well as land confiscation without adequate compensation. ...

62. Venezuela ... highlighted land distribution among citizens and minority communities in need, in the framework of agrarian reform promoted by the government, ensuring ownership through land registry and legal granting of land. ...

67. New Zealand ... expressed concern about reports of large-scale evictions and increasing conflicts over land. ...

Conclusions and/or recommendations

16. Further strengthen its advocacy efforts to enhance public awareness of human rights in general and the human rights of vulnerable groups, including women, children, the disabled, the elderly and indigenous people, in particular (Republic of Korea);

54. (a) In line with a previous recommendation made by the Committee on Economic, Social and Cultural Rights, adopt effective measures to combat the culture of violence and impunity and to better protect human rights defenders, including indigenous leaders and peasant activists (Germany) ...

62. Promote a legal framework that provides legal certainty in property matters, in particular land ownership and protection against forced evictions (Mexico);

64. (a) Fully implement the 2001 land law and institute a moratorium on evictions until safeguards such as full compensation and access to basic services in resettlement areas can be guaranteed (Sweden); (b) adopt a moratorium on eviction until measures are taken to guarantee effective implementation of the 2001 law on land property and to deal with this problem in a more humane and dignified manner (Switzerland); (c) put an end to forced evictions, notably by improving the application of the land law of 2001, ensuring a better verification of land titles and guaranteeing strengthened protection of the population affected by the expropriations, which implies in particular prior consultations, a search for alternative solutions to expropriations, offers of re-housing and appropriate compensation of evicted persons (France);

65. Continue to prioritize the issue of land evictions and to work with the Special Rapporteur to ensure an end to forced evictions and fulfil its obligations to respect and protect the human rights of all Cambodians, including individuals belonging to indigenous groups (Ireland);

66. (a) Undertake a transparent and fair process to determine the conditions and procedures of involuntary relocation (Canada); (b) halt relocations of families to uninhabitable sites and consider evictions as a last recourse, as was requested by the Secretary-General (Germany); (c) develop an effective, transparent and fair resettlement policy and process that is based on national consultations and international best practice and suspend all planned resettlements until this framework is in place (United Kingdom); (d) increase efforts to ensure that evictions occur in compliance with the land law and that greater attention is paid to ensuring that communities relocated to resettlement sites have access to appropriate facilities, especially in urban areas (Australia); (e) work to advance the legal and policy framework on evictions, expropriations and resettlements and to

ensure that those resettled have access to the necessary facilities and support (New Zealand);

67. Adopt and implement a strict legislative framework on evictions and resettlement which ensures that evictions and relocations are legal, negotiated and fairly compensated (Austria)

16. Norway, A/HRC/13/5, 4 January 2010

Presentation by the State under review

7. The Norwegian State is established on the territory of two peoples, the Norwegians and Sámi. Five national minorities are represented in Norway: Kven, Jews, Forest Finns, Roma and Romani. Throughout history, the Sámi people and national minorities have been victims of assimilation policies and injustices.

8. The establishment of the Sámi Parliament, Sámediggi, in 1989 was recognized as a leap forward. The Government seeks to maintain a close dialogue with the Sámi people and the national minorities to ensure participation and prevent discrimination and exclusion.

22. The Vice-President of Sámediggi, Laila Susanne Vars, referred to the positive dialogue with the Government regarding the periodic review. UNESCO had categorized all the Sámi dialects as being among the world's threatened languages. Sámediggi commended the Government's action plan for the safeguarding and development of the Sámi language. The closure of local schools and the lack of knowledge of Sámi culture and language in the public health care and prison system represented a threat to the Sámi cultures.

23. Sámediggi referred to the follow-up to the report on rights to sea fisheries in the northernmost Sámi areas of Norway and the urgent need for acceptance of the Sámi rights to marine resources.

24. The procedures for consultations gave Sámediggi a better influence on the Government's policies in Sámi issues. Experiences with the consultation agreement were mixed. There were still challenges regarding traditional Sámi ways of living and industrial developments.

25. Sámediggi expect speedy progress with Sámi rights in the areas south of Finnmark to avoid further loss of lands and resources.

26. Sámediggi are concerned that indigenous peoples be heard at the Copenhagen climate conference. Indigenous peoples are particularly vulnerable in a climate change context.

Interactive dialogue and responses by the State under review

39. Denmark welcomed efforts to recognize Sámi rights in legislation and was concerned about the practical implementation of the action plan for the Sámi languages. It enquired about measures taken concerning the special situation of the East Sámi in consultations with the community. It asked about Sámi teaching materials, personnel and institutions. Denmark made a related recommendation.

49. ... Australia recognized that particular challenges exist in ensuring that the human rights of indigenous people are respected and asked about any formal framework to ensure that the East Sámi people are consulted on indigenous policy matters.

73. ... Finland asked about Norway's experience in implementing the law relating to legal relations and the management of land and natural resources in the Finnmark County, adopted in 2005. It also asked whether Norway has taken any measures to address the specific situation of the East Sámi, which the Committee had raised in 2006.

76. Slovenia ... asked how the Sámi indigenous minority is protected in practice, especially its language, culture, way of life and self-organization.

96. According to the Government, the Finnmark Act was working according to its purpose. The East Sámi language and culture had to be addressed in cooperation with the Russian Federation and Finland, in consultations with the Sámediggi and in dialogue with the East Sámi people. The Finnmark Act established the Finnmark Commission to investigate and map existing rights in Finnmark. Its work will include East Sámi areas.

97. Aware of the challenges regarding Sámi teaching materials, Norway had taken steps to improve the situation.

Conclusions and/or recommendations

105. The recommendations formulated during the interactive dialogue have been examined by Norway and the recommendations listed below enjoy the support of Norway:

35. Take further steps to adopt special and concrete measures to ensure the adequate development and protection of the Sámi people (Denmark)

17. Bolivia, A/HRC/14/7, 15 March 2010

Presentation by the State under review

5. In her introductory statement, the Minister of Institutional Transparency and the Fight against Corruption, Nardy Suxo, referred to the historic moment that Bolivia is experiencing. Since 2006, Bolivia has been undergoing a democratic and cultural revolution driven by social movements and indigenous peoples that have been fighting for their rights for decades. The social movements presented specific demands: to regain ownership of natural resources so that everyone could benefit from their exploitation; to establish the basis for a new and more inclusive and participatory State; and to bring to justice the perpetrators of human rights abuses and acts of corruption.

6. ... The delivery of land titles for indigenous and rural farming families has been accelerated.

7. A new and inclusive State Constitution, recognizing and guaranteeing all human rights, with an emphasis on economic, social, cultural and environmental rights under the principles of solidarity, equality and fairness, has been adopted. It recognizes traditional forms of organization and justice of indigenous peoples. ...

11. In compliance with observations made by international human rights mechanisms regarding the existence of Guaraní peoples living under contemporary forms of slavery, 150 Guaraní families have been released from bondage. Identity papers have been granted to more than 2,600 Weenhayek, Taipete and Guaraní peoples, and Guaraní families have received compensation payments and lands to ensure their livelihoods.

12. Efforts to build an inclusive State have been accompanied by acts of racist violence against indigenous peoples and human rights defenders, particularly those advocating for indigenous people's rights, committed by radical groups opposed to the Government, as verified and reported by intergovernmental and non-governmental bodies.

Interactive dialogue and responses by the State under review

19. Venezuela (Bolivarian Republic of) noted not only the process of change in Bolivia, but also an oligarchy that was denying the need to hand over the privileges of the indigenous majority among the people. Venezuela recalled that Bolivia had ratified International Labour Organization (ILO) Convention No. 169 and that the rights of indigenous people were enshrined in the Constitution.

20. The Libyan Arab Jamahiriya commended Bolivia's inclusion of the United Nations Declaration on the Rights of Indigenous Peoples in legislation and its National Plan to ensure equal opportunity. Libya praised Bolivia's decision to use resources collected for political campaigns by political parties for the benefit of indigenous peoples.

21. Cuba noted Bolivia's progress and its political will to prioritize the needs of the majority and of those who had been excluded. It noted the programme of structural change aimed at building a society based on social justice and the enjoyment of the rights to health, education, citizen participation, social security, work, justice, housing, food and water. It welcomed the fact that indigenous people and nations were now key actors represented in government, with their rights fully recognized.

24. The Russian Federation commended measures aimed at democratic processes and social reforms to improve the position of the indigenous population and to overcome racial discrimination. ...

25. Pakistan noted that Bolivia's political system was evolving and wished it well in implementing its 2003 civil society agenda. Pakistan noted measures to end servitude and slavery, and the distribution of land to indigenous communities. ...

26. Brazil ... asked about mechanisms to guarantee the conformity of indigenous justice with international human rights obligations....

27. The Islamic Republic of Iran ... noted Bolivia's commitment to indigenous peoples' rights. ...

31. Canada ... commended Bolivia for steps to protect indigenous rights. ...

32. Panama ... welcomed the adoption into law of the United Nations Declaration on the Rights of Indigenous Peoples. It noted that the distribution of land posed a challenge and asked about measures to accelerate that process. ...

33. India ... requested information about progress with regard to judicial reforms and measures taken to reduce poverty among indigenous peoples and to address maternal mortality and sexual and reproductive health care.

34. Finland ... expressed concern about the potential conflict between ordinary and indigenous justice under the new Constitution. ...

36. Austria ... welcomed efforts to put an end to discrimination against indigenous peoples. It expressed concern about the separation of jurisdiction between indigenous and ordinary courts and about violence against indigenous communities.

43. Azerbaijan highlighted ... steps taken to protect indigenous rights, including the incorporation of the United Nations Declaration on the Rights of Indigenous Peoples into the country's legislation.

44. Norway commended the new Constitution and the promotion of indigenous rights. It expressed concern about the living conditions and de facto servitude to which many indigenous people were still being subjected. ...

47. In response to questions raised, Bolivia noted progress in the implementation of the United Nations Declaration on the Rights of Indigenous Peoples, which had been incorporated into the Constitution. As a result of the most recent general elections, the Legislature, for the first time, included deputies belonging to indigenous jurisdictions.

48. Through a democratic process, Bolivia had carried out a national referendum so that the population could decide on the maximum size of territorial property. The result established the maximum size at 5,000 hectares in order to put an end to large estates (*latifundios*).

49. Through the communitarian management of agrarian reform, Bolivia had achieved important results between 2006 and 2009, with land titles for 31,187,185 hectares and 1,077,973 hectares in the distribution of fiscal lands to 153,349 beneficiaries. Bolivia had carried out expropriations of land that had not fulfilled either an economic or a social function and had given them to peasant communities and/or indigenous peoples. During the period from 2006 to 2009, Bolivia gave 10,299 property titles to women.

50. Bolivia had repatriated families of indigenous, native and peasant heritage living in neighbouring countries. In compliance with ILO Convention No. 169, the right to consultation with indigenous peoples had been included in Bolivian legislation through the adoption of specific norms in 2007.

52. Bolivia had committed itself to eradicating bondage. An Inter-Ministerial Council for the Eradication of Slavery, Forced Labour and Analogous Forms had been created in 2007. The Government was taking steps, in coordination with the Assembly of

Guaraní Peoples, to achieve the prohibition and eradication of forced labour. Bolivia had developed a Plan for the Integral Development of the Guaraní Nation for 2009-2015, which responded to the need to eradicate forced labour and slavery in the Bolivian Chaco. Under Transition Plan, labour inspectorates had been created to carry out the fundamental task of safeguarding and re-establishing the validity of work rights for the Guaraní.

60. Indigenous justice was independent, impartial and public. It was speedy, oral and socially harmonious. It addressed damages, managing conflict with absolute regulatory capacity in a social communitarian environment, without State intervention or bureaucracy. It was a self-managed system, consensual and based on values recognized in the Constitution. It had been applied in the past in rural areas by native, indigenous and peasant authorities, with the participation of the community and its administration councils. It had now been incorporated into the draft law on the delimitation of ordinary jurisdiction and native indigenous peasant jurisdiction, with mechanisms for cooperation and coordination that had no impact on due process. Unfortunately, distorted information had resulted in misunderstandings concerning this practice, in which it had been confused with practices that violated human rights, such as lynching. Lynching is not a form of indigenous justice from any perspective, and it will be considered a crime of collective assassination in the new Penal Code.

69. Colombia ... also recognized the positive efforts with regard to the promotion and protection of the fundamental rights of indigenous peoples. Colombia made recommendations.

76. Switzerland referred to the “native indigenous campesino justice” and to the effectiveness of the ordinary justice system. It also cited reports that criticized the functioning of the judiciary bodies. ...

80. Paraguay asked about the principal challenges related to the consolidation of the human rights of indigenous peoples, in particular with regard to the right to education, adequate housing, food and health services. ...

82. Guatemala referred to important steps taken with a view to recognizing the rights of indigenous peoples. However, it noted that the problem of discrimination and racism persisted and asked about the status of the draft law to prevent and eliminate all forms of racial discrimination. ...

87. Argentina highlighted the adoption of the new Constitution, which incorporated a wide range of human rights. It also referred to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples as domestic legislation, as well as its incorporation into the Constitution. ...

89. Nigeria ... noted that Bolivia had been the first country to incorporate the United Nations Declaration on the Rights of Indigenous Peoples into its national legislation.

90. Lebanon ... also noted with satisfaction the efforts being made by Bolivia to ensure freedom of expression and the enjoyment of cultural rights by indigenous peoples. ...

93. Bolivia also referred to its efforts to guarantee access to universal health insurance for all, especially the native indigenous and peasant communities. It was implementing a new mode of medical attention and new policies in a participatory manner, responding to a multi-ethnic population, and was respectful of traditional medicine. It also relied on social movements to monitor transparency in the use of State resources. ...

94. ... Bolivia had established three indigenous intercultural universities: one in Warisata, in the Aymara region; one that provided instruction in the Quechua language, in Chimore; and one that provided instruction in the Guaraní language, in the Machareti region.

96. Bolivia noted the importance of the protection of Mother Earth, the environment and biodiversity. Bolivia had called for the Peoples' World Conference on Climate Change and the Rights of Mother Earth, to be held in Cochabamba in April 2010, to which all were invited.

Conclusions and/or recommendations

45. To continue efforts to implement the provisions of the new Constitution in order to ensure that indigenous peoples fully enjoy their rights (Slovenia); to ensure that the implementation of indigenous systems of justice conforms to international human rights standards, including those set out in the Convention on the Elimination of All Forms of Discrimination against Women (Canada);

46. To take the measures necessary to ensure that the traditional indigenous justice system complies with the provisions of the international human rights treaties that Bolivia has ratified (Netherlands); to ensure that the separation of ordinary and indigenous courts does not contribute to tensions among different communities, but rather promotes inclusion and social stability by, inter alia, bringing the jurisdiction into full conformity with the new Constitution (Austria); to ensure that all judgments and sentences handed down by indigenous courts respect international provisions and, in that regard, to establish an appeals system and an independent monitoring system (Switzerland);

69. To take further efforts to ensure that all women enjoy their right to sexual and reproductive health, and to increase access to health services, particularly in rural areas, in order to reduce the incidence of maternal mortality, especially among young, rural and indigenous women (Sweden);

74. To continue to strengthen the rights of indigenous peoples, placing priority on the adoption of a law to prevent and eliminate all forms of discrimination and criminalizing such offences (Bolivarian Republic of Venezuela); to intensify measures to ensure that indigenous peoples' rights are respected at the community level (Norway);

75. To continue efforts to ensure a life of dignity for members of indigenous communities (Pakistan);

76. To continue to consolidate the rights of indigenous peoples both in practice and within its legal framework, thereby guaranteeing their participation and consultation (Bolivarian Republic of Venezuela);

77. To continue to effectively address the precarious situation of the Guaraní indigenous peoples (Germany)

18. Nicaragua, A/HRC/14/3, 17 March 2010

Presentation by the State under review

24. ... Nicaragua was multi-ethnic in nature, and the State recognized the existence of indigenous peoples, who were entitled to the rights sets out in the Constitution. The State had enacted a communal property law for indigenous peoples in the autonomous regions of the Atlantic coast, the development of which was part of the national development plan and a major pillar in its strategy.

25. In order to ensure the implementation of the plan, the Government had institutionalized a development secretariat for the Atlantic coast that is responsible for coordinating autonomous regional councils with national ministries. In 2009, the State had restored to two indigenous communities of the Caribbean their right to ancestral lands, granting 12 land titles that represent 12.8 per cent of the national territory, benefiting 152 indigenous and Afro-descents communities comprising 58,000 people. In the rest of the country, the State had handed over 56,868 title deeds, restoring lands rights to more than 262,562 people.

Interactive dialogue and responses by the State under review

43. ... Nicaragua acknowledged the rights of indigenous peoples to their culture and identity, and their traditional collective system of land tenure and usage. ...

46. Uzbekistan ... Domestic legislation incorporated human rights norms, including the rights of indigenous people, the prohibition of discrimination of all forms, access to education and the right to health care. ...

47. Kyrgyzstan appreciated the establishment of the special commission on rights of indigenous peoples and ethnic communities, and the results achieved in education. ...

52. Viet Nam noted the measures, legal and judicial reforms and plans of action to protect fundamental rights and freedoms and democracy in the areas of education, health care, job creation, social security, rights of vulnerable groups, including women, children, persons with disabilities and indigenous people. ...

57. Panama ... commended Nicaragua for establishing special procurators for children and juveniles [and] indigenous peoples....

60. Nicaragua was implementing a gender policy leading to the empowerment of women and encouraging preventive action in the political, economic and organizational fields. A total of 327 training activities had been conducted on the law of equal opportunities, gender violence, security for citizens and family violence, prevention of violence and citizen participation model, including indigenous and Afro- descendant populations.

70. ... Israel was concerned that human rights violations remained prevalent, including ... discrimination against ethnic minorities and indigenous communities.

71. ... Sweden referred to reports on the discrimination of indigenous people in areas such as education, health services, election participation and land rights.

87. India ... noted the Autonomous Regional Education System recognized the right of indigenous peoples to education in their own language. ...

Conclusions and/or recommendations

90. The recommendations formulated during the interactive dialogue and listed below enjoy the support of Nicaragua:

64. Ensure the full participation of indigenous, communities of African descent and women in all levels of public affairs (Israel);

65. Ensure that indigenous persons fully enjoy all human rights, including the rights to education, adequate access to health services and land rights (Sweden)

19. El Salvador, A/HRC/15/5, 18 March 2010

Presentation by the State under review

23. El Salvador recognizes the existence of indigenous peoples, in particular the Nahua-Pipiles, the Lencas and the Cacaopera.

Interactive dialogue and responses by the State under review

37. Kazakhstan ... El Salvador was also commended for its recognition of the rights of indigenous people and for its steps to promote those rights.

43. ... Panama highlighted the establishment of the Secretariat for Social Inclusion, in charge of policies regarding vulnerable groups and, in that context, asked about the inclusion of indigenous peoples in the national statistical data.

54. El Salvador ... highlighted the fact that the Secretariat for Social Inclusion was tasked with promoting the human rights of groups generally excluded or marginalized, including ... indigenous peoples....

61. The United States of America appreciated El Salvador's recognition of the cultural, historic and ethnic heritage of its indigenous people and applauded El Salvador's interest in promoting the economic, social, and cultural development of those populations. ...

69. Guatemala ... highlighted the efforts of the Procuraduría General de la República and other institutions to provide access to justice, and asked about actions taken to ensure access to justice for indigenous peoples.

Conclusions and/or recommendations

81. The recommendations formulated during the interactive dialogue and listed below have been examined by El Salvador and enjoy the support of El Salvador:

23. To intensify efforts to prevent and eliminate discrimination against indigenous children, children with disabilities, and girls (Malaysia);

24. To continue to include in its social policies anti-discrimination measures and programmes in favour of indigenous peoples ... (Colombia);

25. To enact and enforce laws and implement programmes directed specifically at combating discrimination and promoting the rights of indigenous peoples (United States of America);

73. To pursue a robust policy aimed at promoting and protecting the rights of indigenous people (Kazakhstan);

74. To promote a legal framework providing legal certainty for the protection of the rights of indigenous peoples (Mexico)

82. The following recommendations will be examined by El Salvador, which will provide responses in due course, but no later than the 14th session of the Human Rights Council, in June 2010:

19. To ratify ILO Convention No. 169, concerning Indigenous and Tribal Peoples in Independent Countries (Kyrgyzstan)

20. Guyana, A/HRC/15/14, 21 June 2010

Presentation by the State under review

7. ... The Indigenous Peoples Commission should be fully operational before the end of the year. The delegation described the method of appointing the members of the Human Rights Commission and reiterated its conviction that the rights commissions provided opportunities to receive and address complaints of violations of human rights.

10. The delegation noted that Guyana was cognizant of the threats facing it as a consequence of climate change. While a response to climate change must be global, Guyana could contribute by offering solutions to the problem. To that end, Guyana had developed a Low-Carbon Development Strategy calling for the provision of resources to small and vulnerable countries to enable them to adapt to and mitigate the impacts of climate change, and offered a sustainable development model, while contributing to the reduction in carbon emissions globally, in part through the preservation and sustainable use of forests. The delegation reiterated that the Strategy had been subjected to an extensive consultative process that had included more than 130 Amerindian communities.

11. The delegation stated that Guyana had made significant strides in relation to the development of its indigenous peoples, who represented some 9 per cent of its population. A Ministry of Amerindian Affairs had been established, and the Amerindian Act of 2006 provided for, inter alia, land claims, resource rights, traditional rights, the governance of communities and the establishment of a National Toshias Council. Access to social services had been significantly improved, and more indigenous children were now in school than in any previous period in the country's history. Over the past five years, the ownership of land by indigenous communities had increased from 6.5 per cent to approximately 14 per cent of Guyana's land mass, with 134 communities now having legal title to the lands that they used and occupied. Those legal titles were grants of State lands that were "absolute and forever" and allowed for their indisputable control by communities. Addressing land claims was a continuous process.

12. In response to an advance question, the delegation stated that the veto power of the Minister of Mines was used only in relation to large-scale mining deemed to be in the national interest. Since the enactment of the legislation in 2006, there had been no such case. The delegation clarified that communities had veto power in relation to small- and medium-scale mining and that several were engaged in these. The delegation noted that, with regard to the rights of indigenous peoples, Guyana had come a long way in a short period of time.

Interactive dialogue and responses by the State under review

35. Brazil noted the establishment of commissions on ethnic relations, women and gender equality, the rights of the child, indigenous peoples, and human rights, as well as the positive measures to eliminate hunger and to promote food security, Guyana's housing programme, and the country's increased capacity to offer social services. ...

38. Norway noted Guyana's commitment to promoting the rights of indigenous peoples. Norway also welcomed legislation that provided for the statutory legitimacy of an independent national human rights commission and an independent national indigenous peoples' commission. Norway noted the bilateral cooperation with Guyana covering governance, development and forest-related issues. ...

48. Bolivia (Plurinational State of) appreciated the participatory and inclusive model of governance currently promoted by the Government. It highlighted the positive measures adopted to eliminate hunger and promote food security while bearing in mind a sustainable environment. It noted the considerable efforts made to eradicate poverty, which had reduced maternal mortality and increased life expectancy. Bolivia inquired about Guyana's experience relating to cultural, ethnic, religious and linguistic diversity. Bolivia encouraged Guyana to recognize all rights of indigenous peoples, notably by amending the Amerindian Act of 2006 to include the right to land. Bolivia made recommendations.

50. ... Mexico expressed appreciation for the information provided by Guyana concerning the land property rights of indigenous communities, requesting additional information about efforts to be made to ensure the participation of indigenous women in political processes. Mexico made recommendations.

52. The delegation of Guyana responded to issues raised during the dialogue. ...The delegation stated that protecting the rights of indigenous people was of paramount importance and that those rights, including the right to land, were included in the Amerindian Act. The political representation of indigenous women was important, and, as of December 2009, three out of the six women in the Cabinet were indigenous women. The delegation also indicated that indigenous women occupied positions in the various administrative structures. In relation to the Low-Carbon Development Strategy, the delegation reiterated that it had been initiated following broad consultation.

61. The United States of America ...remained concerned about the continuing discrimination, violence and exploitation against vulnerable groups, particularly children; women; lesbian, gay, bisexual and transgender people; and indigenous communities. The United States made recommendations.

62. Jamaica ... also noted the special attention devoted to the most vulnerable groups within society, such as women, children and Amerindian communities.

63. Trinidad and Tobago stated that Guyana had sought to progressively address historical wrongs and forms of exclusion to ensure that its people could freely exercise their human rights. It commended Guyana for the legislation permitting the titled ownership of land by indigenous peoples, and measures for their better integration into Guyanese society. ...

Conclusions and/or recommendations

68. The following recommendations, which were formulated during the interactive dialogue, enjoy the support of Guyana: ...

68.10. Continue to review and bring into line its domestic legal framework with international human rights norms to which Guyana is a party, in particular to make progress towards non-discrimination against minorities, indigenous peoples, women and children (Nicaragua);

68.13. Strengthen and enforce its various commitments to embracing its cultural diversity and ensuring the safety of and equal opportunities for all citizens (United States of America);

68.24. While commending ongoing efforts of the Government, strengthen the efforts aimed at protecting Amerindians from marginalization and at defending their issues and not subject them to any discrimination (Libyan Arab Jamahiriya);

68.26. Undertake a participatory and inclusive process with civil society organizations, including indigenous peoples in the implementation of universal periodic review recommendations (Norway)

70. The following recommendations will be examined by Guyana, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010:

70.10. Consider ratifying ILO Convention No. 169 (Bolivia);

70.11. Ratify ILO Convention No. 169 (Germany);

70.12. Consider ratifying ILO Convention No. 169, concerning Indigenous and Tribal Peoples, and take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land and resource rights and effective political participation (Norway);

70.21. Eliminate discriminatory provisions in its legislation (Brazil);...

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/15/14/Add.1), 13 September 2010)

The State Party wishes to briefly inform the UNHRC of some developments since it appeared before the UPR in May 2010:

2. Guyana wishes to report that the Indigenous Peoples Commission was approved by the National Assembly on July 29, 2010. The members will be appointed in September 2010 and it is expected to be fully operational before the end of the year. Office facilities and budgetary allocations are in place.

The Response of the Government of Guyana to the Universal Periodic Review (A/HRC/15/14), Part 11, 70- 70.55:

37. Guyana adopted the UN Declaration on the Rights of Indigenous Peoples on September 13, 2007. Furthermore through constitutional, legislative and administrative means it is in compliance with the recognition of land rights and effective political participation as it relates to the International Convention on the Elimination of all Forms of Racial Discrimination, the UN Declaration on the Rights of Indigenous Peoples and the ILO # 169.

38. Guyana re-affirms and reiterates Part IV, B 1, 2, and 3, of its report to the UPR. Guyana reiterates that it is the only country in the region that has granted through a participatory process legal communal land titles to 134 indigenous communities that are “absolute and forever”, a total grant representing 14 % of its land mass. Guyana is proud that it has corrected an historical injustice.

46. Guyana holds to the view that the state does not discriminate by statute, policy, programme or administration. It does recognize, however, that disparities created by poverty and geographic distance coupled with competing and limited resources pose challenges to ensure equitable distribution of goods and services to its people. Its Poverty Reduction Programmes concentrate on equalizing access to goods and services for those who are vulnerable- women, children, the elderly, indigenous peoples and differently-abled persons.

21. Kenya, A/HRC/15/8, 17 June 2010

Interactive dialogue and responses by the State under review

39. Bolivia ... Information about the implementation of the recommendations of the Special Rapporteur on indigenous peoples was sought. ...

64. Denmark ... requested information about the implementation of the recommendations made by the Special Rapporteur on the rights of indigenous people following his 2007 visit. ...

Conclusions and/or recommendations

101. The recommendations formulated during the interactive dialogue listed below have been examined by Kenya and enjoy its support:

101.114. Implement the recommendations and decisions of its own judicial institutions and of the African Commission on Human and Peoples’ Rights, particularly those relating to the rights of indigenous peoples (Bolivia)

102. The following recommendations will be examined by Kenya, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010:

102.5. Implement all recommendations put forward by the Special Rapporteur on the rights of indigenous people following his visit to Kenya in 2007, as well as ratify ILO Convention No. 169 (Denmark);

102.6. Consider ratifying ILO Convention 169, and take steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including through constitutional and statutory recognition of land and resource rights and effective political participation (Norway)

103. The recommendations below did not enjoy the support of Kenya:

103.6. Support the United Nations Declaration on the Rights of Indigenous Peoples, and devote attention to the recommendations made by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous peoples, after her visit to the country (Mexico);

103.7. Further strengthen relations with the indigenous communities with a view to promoting and protecting their rights and assisting them in their development initiatives (Malaysia)

109. With regard to recommendations in paragraphs 103.6 and 103.7 above, Kenya indicated that the term “indigenous peoples” was not applicable, as all Kenyans of African descent were indigenous to Kenya. However, the Government recognized the vulnerabilities of minorities/marginalized communities.

22. Laos, A/HRC/15/5, 15 June 2010

Presentation by the State under review

12. It was emphasized that the Lao People’s Democratic Republic consisted of 49 ethnic groups living together in peace and harmony. The Constitution and national legislation and policies encouraged solidarity among all ethnic groups and condemned ethnic discrimination, including against Lao Hmong. Those Lao Hmong who had been illegal migrants in Thailand had been welcomed back and had resettled in designated development areas, and they enjoyed all rights guaranteed by the Constitution, without discrimination. These included the right to freedom of movement within the country and to leave and return to their home country.

13. While referring to significant progress and achievements in advancing human rights, Laos was aware of challenges that needed to be addressed, including with regard to public awareness concerning national laws and regulations, especially among persons living in mountainous and remote areas, and in relation to the effective enforcement of the law.

Interactive dialogue and responses by the State under review

22. Norway ... expressed concern at ... disparities among ethnic groups....

29. India ... requested Laos to share its experience with the 2006 Law on Handling Petitions, intended to facilitate the administration of justice for all ethnic groups.

34. France ... expressed concern at the situation of the Hmong and the persistence of certain discriminatory laws and practices in the area of freedom of religion, as well as restrictions on the freedom of expression.

35. The Netherlands referred to the situation of the Lao Hmong people sent from Thailand to Laos in 2009, including recognized refugees selected for third-country repatriation. ...

50. With regard to questions concerning ethnic groups and the Hmong issue, it was noted that Laos was a nation with 49 ethnic groups that lived together in peace and harmony. The Government pursued an unswerving policy of enhancing the solidarity and equality among the Lao multi-ethnic people. Equality for all ethnic groups was provided for in the Constitution, and the State pursued a policy of promoting unity and equality among all ethnic groups; ensuring for all groups the right to protect, preserve and promote their customs and cultures. Acts of segregation or discrimination aimed at ethnic groups were prohibited; the State implemented every measure to gradually develop and upgrade the socio-economic development levels of all ethnic groups. The Government had paid great attention to alleviating poverty with regard to each ethnic group in order to gradually improve their living conditions.

51. Laos noted that the Hmong were one of the ethnic groups that stood side by side with other such groups in the struggle for national liberation and in carrying out the

strategic tasks of safeguarding and constructing the country. Although the Hmong represented less than 7 per cent of the population, their representation in the party was 12 per cent; in the Government, more than 10 per cent; in the National Assembly, 8 per cent; and among newly graduated students at primary and secondary schools and university, more than 12 per cent.

52. Regarding concerns over the repatriation of Hmong from Thailand, it was noted that more than 7,000 Lao Hmong who had illegally migrated to Thailand for economic reasons had been safely welcomed back in accordance with the bilateral agreement between the Governments of Laos and Thailand. A great number of them had voluntarily returned to their original home towns, with the assistance of the Government. For those who did not wish to return to their original home towns or villages, but rather to move to the new Government-sponsored development villages arranged for returnees, the Government had responded accordingly and continued to provide assistance.

53. Those who had once considered migrating to a third country had now changed their minds and decided to resettle in their mother land, since they had met their loved ones and relatives after having been apart for three years, and had been treated fairly by the Government. The Government maintained its consistent position of welcoming goodwill visits to their sites by representatives of diplomatic missions and international organizations.

54. With regard to the 158 Hmong recognized as “persons of concern” under the mandate of UNHCR, it was noted that they should no longer be seen as persons of concern, since the repatriated Hmong were now living safely in their homeland without fear and were being assisted by their own Government. The returnees were full citizens of Laos and could travel inside the country and abroad, like other Lao citizens.

64. ... Switzerland expressed concern about the treatment of the Hmong and the confiscation of lands without adequate compensation.

66. The Islamic Republic of Iran ... noted that, as a multi-ethnic nation, Laos was pursuing a policy of ensuring unity and equality among all ethnic groups and of protecting their rights, customs and cultures.

69. The United Kingdom ... expressed concern at the repatriation of more than 4,000 Hmong from Thailand and asked Laos to ensure that international humanitarian organizations, including UNHCR, and the diplomatic community were allowed access.

76. Hungary recalled that the fate of Hmong individuals reported to have returned voluntarily to Laos continued to be a source of concern for the international community, as highlighted by the Secretary-General in December 2009.

80. Denmark ... asked how the Government ensured that indigenous peoples had the opportunity to influence Government decisions and what measures had been taken to avoid their displacement and to ensure compensation.

83. ... Australia also expressed concern at the treatment of the Lao Hmong and the situation of some 4,500 Lao Hmong forcibly repatriated in 2009.

92. With regard to a request by ICRC to visit detention centres, it was noted that such a request should be submitted in written form through diplomatic channels for consideration. Over the previous 10 years, a number of foreign delegations and representatives of international organizations had been permitted to visit detention and re-education centres.

Conclusions and/or recommendations

96. The recommendations listed below have been examined by Laos and enjoy its support:

96.19. Issue travel and identification documents to all Lao Hmong returnees in a timely manner, and guarantee freedom of movement (Australia);

96.33. Continue to take active measures to develop remote mountainous areas in order to reduce the gap between mountainous regions and urban regions (China); enhance efforts to build and improve infrastructure in rural areas (Pakistan)

98. The following recommendations will be examined by Laos, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010:

98.24. Recognize the rights of persons belonging to minorities and indigenous peoples as set out in international law, regardless of the names given to such groups in domestic law (Hungary);

98.27. Consider the greater participation and incorporation of indigenous peoples in governmental decisions, and ensure that the Hmong are integrated into society on an equal footing with other citizens (Denmark);

98.28. Adopt and implement the measures necessary to grant the Hmong the same rights and freedoms as the other members of the Lao population in accordance with international human rights standards, including through genuine engagement with the international community on the issue (Slovakia);

98.29. Take all measures necessary to find a lasting solution to the situation of the repatriated Hmong, notably by settling the question of the legal status of persons concerned and granting refugee status to those to whom the United Nations High Commissioner for Refugees (UNHCR) has accorded the status of “person of concern”, in full cooperation with UNHCR, and allowing the delivery of international assistance for resettlement, as proposed by certain States (France);

98.30. Deepen dialogue with UNHCR regarding the situation of individuals belonging to the Hmong minority returned from third countries (Brazil);

98.31. Allow international humanitarian organizations, including UNHCR and the diplomatic community, unfettered access to Hmong returnees, and further ensure that the Hmong people repatriated from Thailand are treated in accordance with international law, including the 158 eligible for third-country resettlement (United Kingdom); allow the international community meaningful and confidential access to Lao Hmong returnees from Thailand (New Zealand); ensure independent access for UNHCR and other international humanitarian agencies to all Lao Hmong returnees from Thailand to Lao, including in Phonekham, and assess their well-being (Australia); allow meaningful and confidential access for international groups to persons returned to the Lao People’s Democratic Republic from Thailand (Canada);

98.32. Fulfil its obligation under article 12 of the ICCPR by allowing the Lao Hmong refugees who have received third-country invitations to migrate to these countries if they wish to do so, and provide the means for them to do so (Netherlands)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/15/5/Add.1, 14 September 2010)

**Response of Laos to Recommendations:
Recommendations 98(27) (Denmark), 98(28) (Slovakia), 98(25) (New Zealand), 98(24) (Hungary).**

Explanations:

9. The policies, constitution and laws of Lao PDR ensure the equality and non-discrimination among the 49 ethnic groups in the Lao PDR. No ethnic group is inferior to any other. Representatives of ethnic groups, including the Hmong hold office at different levels of government. The Hmong, like any other ethnic group, have the rights and duties as enshrined in the Constitution and laws and they are part of this harmonized and inclusive Lao society. No ethnic group in the Lao PDR is classified as indigenous. Therefore, the Lao PDR is not supporting the part of this recommendation mentioning indigenous people.

10. The Lao PDR supports this Recommendation with the understanding, and stresses that the Hmong, like all ethnic groups in the Lao PDR enjoy the protection of the law in the country. The Lao PDR's constitution and laws guarantee the rights and freedoms to all Lao citizens without discrimination on the ground of ethnicity, including the Hmong which is one among the 49 ethnic groups living in this harmonized and inclusive Lao society. The Lao PDR is party to several human rights treaties and is paying great attention to their implementation at the national level. Lao PDR welcomes appropriate engagement of the international community on this issue. Lao PDR hopes that the international community will continue in its cooperation and assistance towards creating conditions for better human rights for the Lao people of all ethnic groups in accordance with the international human rights instruments to which the country is party to. Such conditions include poverty reduction, UXOs clearance, employment, infrastructure such as schools, hospitals, etc according to the national socio-economic development plans of the country.

11. The Lao PDR supports this Recommendation because all groups in the Lao PDR receive equitable treatment. The Lao PDR, however, notes that the term minority is normally referred to the inferior status of such group as opposed to the rest of the population. The Constitution of the Lao PDR provided for the equality of all ethnic groups in the county as a multi ethnic society. Accordingly, all laws and policies of the government stress on equality of all 49 ethnic groups before the law. Any reference to ethnic groups in Lao PDR that focus on 'minorities' runs counter to the aspirations of multi-ethnic people of Lao PDR. With regard to the visit of the Independent Expert on Minority Issues, the Lao PDR notes that it has hosted the visit of the Special Rapporteur on Religious Freedoms recently. It will, therefore, consider further inviting Independent Experts at appropriate time.

Recommendations 98(29) (France), 98(31) (United Kingdom, New Zealand, Australia and Canada).

Explanations:

12. The Lao PDR supports in part the recommendations 25, 26 because it is in line with Lao Government's policies to provide humanitarian assistance to the group of Lao Hmong who returned from Thailand. There are no grounds in international law to consider them refugees as they were merely economic migrants seeking better economic conditions but are illegal immigrants according to Thai law. The Lao PDR will continue to organise visits by the international community. As of today several foreign delegations including US Congressmen, US Government and UNHCR officials have visited villages where Hmong returnees are living.

Recommendation 98(32) (The Netherlands).

Explanations:

13. The Lao PDR's constitution and laws guarantee the right to freedom of movement and residence, including the right to leave and return to the country in accordance with Article 12 of the ICCPR. Lao citizens without discrimination based on ethnicity, gender, age or any other grounds may apply for travel documents at any time. Thousands of Lao citizens travel daily abroad. The Hmong who were repatriated from Thailand benefit the same rights like other Lao citizens.

Recommendation 98(30) (Brazil).

Explanations:

27. The Lao Government recognises the important role of this global humanitarian agency in assisting refugees worldwide, including the repatriation of the Lao refugees in the past. However, since none of the Lao Hmong who returned from Thailand are refugees according to the definition of refugee in international law, the Government does not see any need for the UNHCR to get involved in the matters relating to the Hmong who have returned from Thailand. The Government will continue dialogue on this matter through bilateral engagement and also through the UN Human Rights Council as and when necessary.

23. Sweden, A/HRC/15/11, 16 June 2010

Presentation by the State under review

7. Sweden had five national minorities: the Jews, the Roma, the Sami, the Swedish Finns and the Tornedalers. In 1977, the Sami had been recognized by Parliament as Sweden's only indigenous people. ...

19. The Sami Parliament had been established in 1993. The Government continued to study the ratification of ILO Convention No. 169, but all possible legal consequences would have to be further clarified.

Interactive dialogue and responses by the State under review

26. Greece ... noted that the rights of the Sami to their traditional lands and natural resources were systematically violated. ...

29. Canada ... noted that both countries shared similar concerns and good practices regarding the situation of indigenous peoples. ...

43. Cuba ... was also concerned about discrimination against Sami....

45. New Zealand ... noted that the land issues of the Sami people had not been resolved and asked questions in that regard. ...

47. Bolivia (Plurinational State of) expressed concern about participation by the Sami in political decisions affecting them, especially regarding land issues. It noted that Sweden supported the United Nations Declaration on Indigenous Peoples but had not implemented the rights set out therein and had not ratified ILO Convention No. 169. It asked whether Sweden intended to expropriate indigenous lands to install windmills. ...

50. South Africa sought clarifications on challenges faced in implementing policies to address discrimination against the Sami. ...

51. Germany acknowledged that Sweden had made comprehensive efforts to address the issue of discrimination, including against the Roma and the Sami. ...

56. A new strategy on national minorities had been adopted to improve the implementation of relevant conventions. It included measures to promote national minority languages and culture, as well as participation. An administrative board and the Sami Parliament were entrusted with following up on the minority policy.

59. A bill had been submitted to Parliament proposing an amendment to the Constitution to give explicit recognition to the Sami. Sami policy promoted self-determination on issues directly affecting them. The Sami Parliament had been given new responsibilities regarding reindeer herding, and in 2006 the Government had submitted a bill on increasing Sami independence.

70. Turkey applauded Sweden's high human rights standards, but noted that efforts were needed to combat discrimination against the Roma, the Sami and migrant communities. ...

74. Austria ... expressed concern at continuing discrimination against the Sami. ...

78. ... Norway also noted the slow progress with regard to the Sami people.

84. According to non-governmental organization information, the rights of the Sami people were not clearly specified in the Constitution, and their right to traditional land and natural resources were not being respected. China asked about measures Sweden would take to address such issues. ...

93. In its responses to the questions and comments of various delegations, Sweden ... referred to ... a proposal to introduce increased consultation of Sami people.

Conclusions and/or recommendations

95. The recommendations formulated during the interactive dialogue and listed below have been examined by Sweden and enjoy its support:

95.1. Complete the work on clarifying the legal consequences of the ratification of ILO Convention No. 169 as a matter of priority (Norway);

95.2. Consider ratifying ILO Convention No. 169 as a matter of priority (Norway);

95.3. Amend the Swedish Constitution so as to give explicit recognition to the Sami people (Greece);

95.6. Incorporate into its domestic law norms protecting all children, including indigenous children, in line with the Convention on the Rights of the Child (Plurinational State of Bolivia);

95.44. Take additional measures to combat discrimination against national minorities, in particular the Sami and the Roma, and against immigrants, refugees and women (Russian Federation);

95.68. Continue to develop and institute effective mechanisms for improved dialogue and consultation with the Sami people in all areas of Government policy that affect them and in the development of legislation (Canada);

95.69. Implement effectively the United Nations Declaration on the Rights of Indigenous Peoples, and establish mechanisms for its full implementation in full cooperation with the Sami people (Islamic Republic of Iran);

95.70. Implement measures aimed at eliminating discrimination against the Sami people, with particular focus on ensuring access to basic services in education, employment and health, as well as access to land, and ensuring that their right to land and cultural life is preserved (South Africa);

95.71. Initiate further studies on methods by which Sami land and resource rights could be established, taking into account the culture of the Sami community (Austria);

95.72. Develop measures in order to ensure that affected Sami communities can take part and participate actively in consultations held between federal government and municipalities on issues related to land rights, water and resources (Austria);

95.73. Remain proactive in combating discrimination against Sami and Roma and in protecting their economic, social and cultural rights in consultation with the communities concerned (Netherlands)

96. The following recommendations will be examined by Sweden, which will provide responses in due course, but no later than the fifteenth session of the Human Rights Council, in September 2010. The response of Sweden to these recommendations will be included in the outcome report adopted by the Human Rights Council at its fifteenth session:

96.6. Ratify ILO Convention No. 169 (Bolivia);

96.36. Transfer the administration of land-user rights and land use to the Sami people (Greece);

96.37. Include representatives of the Sami people in all political, economic and social decisions that concern them, on an equal footing with others (Bolivia);

96.38. Provide all necessary support to the Sami people so that they may make use of legal resources that enable them to defend their rights, on an equal footing (Bolivia)

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review (A/HRC/15/11/Add.1, 1 July 2010)

Response of Sweden to Recommendations:

96.6 Sweden **does not accept** the recommendation. The Government is continuing to study the complicated issue of ratification of ILO Convention No. 169. When it comes to land rights, the Government must maintain a balance between the competing interests of all individuals, Sámi and non-Sámi, living in the same areas of northern Sweden. The areas where the Sámi have reindeer herding rights are often owned and

used by non-Sámi. Before the Government can consider ratification, all issues relating to the legal consequences must be clarified.

96.36 Sweden **does not accept** the recommendation. A basic element of Swedish Sámi policy is to support and promote Sámi self-determination on issues directly affecting the Sámi people. In 2006, the Government submitted a bill on increased Sámi influence. In the bill, the Government designated the Sámi Parliament as the central administrative agency responsible for reindeer husbandry and transferred a number of administrative tasks. The bill was endorsed by Parliament. The Government is open to transferring further responsibilities to the Sámi Parliament on issues directly affecting the Sámi people in order to strengthen their participation in decision-making.

96.37 Sweden **does not accept** the recommendation. A bill on Swedish Sámi policy was due to have been presented to the Swedish parliament in March 2010. A proposal to introduce a Swedish consultation process regarding questions of interest to the Sámi was one of the key issues to be included in the bill. Due to criticism directed by the Sámi parties at the proposals, the Government has postponed the process for the purpose of entering into a closer dialogue with Sámi interest groups. The Government remains committed to involving the Sámi and the Sámi Parliament in decision-making processes that affects them on an equal footing with others. However, it is difficult to guarantee representation at all levels.

96.38 Sweden **does not accept** the recommendation. All persons belonging to the Sámi people naturally have the same right as all other Swedish citizens to legal aid on an individual basis. However, under the Legal Aid Act, legal aid is not granted to legal entities. The Sámi villages are therefore, like other legal entities, referred to private legal protection insurance. Regarding the question of legal costs it is a principle in the Swedish legal system that the party that has failed to prove their case in court pays for their own legal costs and for the costs of winning party. In its judgment of 30 March 2010 in the case of Handölsdalen Sámi village and others v. Sweden, the ECHR tried a claim for legal costs and found that, under the current Swedish system, the Sámi villages were afforded reasonable opportunity to present their cases effectively before the national courts.

24. Honduras, A/HRC/WG.6/9/L.8, 12 November 2010

Presentation by the State under review

17. Honduras recognized the reality of the problem of racism and racial discrimination and its direct impact on the effective enjoyment of their human rights by indigenous and Afro-Honduran peoples.

Interactive dialogue and responses by the State under review

53. Austria expressed concern about discrimination against indigenous minorities, Afrodescendant and lesbian, gay, bisexual and transgender persons. It inquired about measures taken to protect the lands of indigenous communities

63. With regard to indigenous groups and Afro-Honduran peoples, legislative measures had been taken to recognize their ancestral rights, and institutions had been created to regulate land tenure. The Office of the Special Prosecutor for Ethnic Groups and Cultural Heritage was currently investigating a series of allegations

involving the crime of usurpation and other offences committed against indigenous communities. It was expected that the new State Secretariat to address issues regarding ethnic groups would effectively ensure the monitoring of the relevant provisions contained in the Constitution and the law.

69. Ghana commended Honduras' efforts to address the challenges of the national health system and to promote women's rights. Ghana noted with concern the high poverty and illiteracy rates among the indigenous and Afro-Honduran peoples and asked about the implementation of programmes to improve the situation of indigenous peoples. ...

77. Angola noted Honduras' efforts to improve the human rights situation despite the challenges it faced. It inquired about the effects of the food security policy, particularly addressing indigenous peoples and the most vulnerable groups. It also asked for further information about the results of and lessons learned from the launching of the national programme on education for indigenous peoples and peoples of African descent.

Conclusions and/or recommendations

81. The recommendations formulated during the interactive dialogue and listed below have been examined by Honduras and enjoy its support:

81.1. Review its national law in order to ensure full and unhampered enjoyment of human rights by all members of society, including those belonging to the most vulnerable groups, such as women, lesbian, gay, bisexual and transgender persons and indigenous peoples (Czech Republic);

82.11. Continue pursuing the promotion of human rights, particularly through the consolidation of democratic institutions, freedom of expression, the protection of women, and assistance to indigenous and Afro-Honduran peoples (The Holy See);

82.106. Take urgent action to develop a specific policy to protect the rights of minorities and indigenous peoples and address the key question of racism (Nigeria);

82.108. Make efforts to take into account the need to integrate indigenous and Afro-Honduran peoples into the labour market (Angola)

83. The following recommendations will be examined by Honduras, which will provide responses in due course, but no later than the 16th session of the Human Rights Council, in March 2011. The response of Honduras to these recommendations will be included in the outcome report adopted by the Council at its 16th session:

83.4. Enact comprehensive anti-discrimination legislation to effectively protect the human rights of persons belonging to indigenous minorities and Afro-Honduran peoples and of lesbian, gay, bisexual and transgender persons, in particular with regard to violence against such persons and their access to the labour market (Austria);

83.5. Repeal all national legal provisions that are incompatible with international norms, such as the legislation that encourages detention on the basis of mere suspicion of having broken the law (Haiti);

83.6. Establish an institution specifically addressing the rights of children; ensure respect for the rights of indigenous children or children living in rural or remote areas ... (Ecuador)

83.12. Enact legislation to protect the land rights of indigenous persons and to ensure that their interests are safeguarded in the context of the exploitation of natural resources (Austria)

25. Panama, A/HRC/WG.6/9/L.4, 8 November 2010

Presentation by the State under review

20. The Panamanian Administration was aware of its historical responsibility towards indigenous peoples and had enacted specific legislation at both the constitutional and the legal levels that recognized their cultural heritage. The Government had established an inter-agency committee to study the possibility of ratifying ILO Convention No. 169. The committee had recommended its ratification by Panama.

21. With regard to the events of Bocas del Toro of July 2010, the Government regretted the loss of human lives, the injuries and the damage to public and private property. The Government had promoted dialogue and had signed the agreement of Changuinola on 11 July 2010.

Interactive dialogue and responses by the State under review

27. France ... With reference to the concerns of the Committee on the Elimination of Racial Discrimination regarding the harassment of indigenous communities, France asked whether Panama intended to strengthen measures to protect the security of such communities. ...

30. Canada commended Panama for its efforts in promoting and protecting human rights, and for adhering to several international and regional human rights instruments. It expressed concern at the recent clashes between police and workers in Changuinola, which had resulted in injuries and two deaths, and urged round-table consultations with labour and civil society leaders to address the problem. ...

31. Germany ... Referring to the discrimination faced by indigenous children, it also asked about the plans to preserve bilingual and cultural education for indigenous children. ...

32. ... Hungary noted the efforts undertaken to combat discrimination against vulnerable groups and asked about the need for technical assistance in protecting the rights of women, children, Afro-Panamanians and indigenous persons. ...

33. China ... encouraged the country to take further measures to consolidate those policies. China stated that the human rights of indigenous peoples needed to be further guaranteed. It supported Panama in continuing to address poverty among indigenous peoples, ensure their right to education and protect their traditional culture.

35. ... Brazil asked about the policies and the legal framework regarding the promotion of the rights of indigenous peoples and people of African descent. ...

36. Norway ... expressed concern over reports of the excessive use of force by the national police during the national strike in Changuinola in the province of Bocas del Toro in July 2010. ...

37. The United Kingdom ... asked whether the incidents that had occurred during the protests against Law 30 in Changuinola in July would be fully investigated. The United Kingdom expressed concerns about the law, in particular regarding its negative impact on the environment and on the rights of workers. ...

38. Italy ... asked for further information about the participation of civil society in the country, including the role of indigenous communities. ...

40. The United States of America ... welcomed Panama's engagement with civil society in modifying Law 30, but expressed concern that the law had been adopted without consulting labour organizations and other stakeholders. It expressed concern at the alleged excessive use of force by the police against the Banana Industry Workers Union and indigenous communities in the July 2010 Bocas del Toro events, and looked forward to the report of the independent investigative commission thereon. ...

42. Guatemala ... noted with interest the social development programmes being carried out. It praised the attention given to bilingual, intercultural education for indigenous communities. ...

44. The delegation of Panama elaborated on issues that had been raised in the advance questions or during the interactive dialogue. With regard to the hydroelectric project Chan 75, in the province of Bocas del Toro, the Government had consulted with the Ngobe indigenous community, in compliance with national law and international standards. With respect to the Cerro Colorado Mining project, in the Ngobe Bugle area, it was still under study and undergoing technical verifications. Furthermore, the Government was in the process of consulting with the affected population and with local authorities.

45. Concerning the issue of education and health care for the most vulnerable groups, the delegation presented further information about specific indicators and programmes for the regions of Kuna Yala, Embera and Ngobe Bugle, where mainly indigenous populations live.

46. The delegation also provided further details about the Bocas del Toro incident of July 2010 and steps taken to eradicate child labour.

48. Argentina ... also asked about measures to guarantee access for indigenous communities to economic, social and cultural rights. ...

57. Ecuador Important efforts had also been made in protecting the rights of indigenous peoples and their traditions and customs, particularly by recognizing an indigenous judicial system and the right to territory, through territorial delimitation to benefit these ancestral peoples.

58. Trinidad and Tobago acknowledged that Panama was one of the few countries with delimited areas for exclusive occupation by indigenous groups and encouraged the Government to protect the cultural identity and traditional knowledge systems of indigenous people. ...

65. In respect of civil society, the [Panamanian] delegation highlighted the fact that the Administration valued its role and stated that there were several forums for dialogue to address indigenous issues and discrimination against women.

Conclusions and/or recommendations

68. The recommendations formulated during the interactive dialogue and listed below have been examined by Panama and enjoy its support:

68.4. Consider ratifying Convention No. 169 of the International Labour Organization (ILO) (Chile);

68.10. Undertake a participatory and inclusive process with civil society organizations, including indigenous peoples, in the implementation of the universal periodic review recommendations (Norway);

68.26. Continue its efforts to combat impunity and violations of human rights, with particular attention to the rights of indigenous populations and persons of African descent (Brazil);

68.27. Intensify the necessary measures to guarantee the right of all children to have their birth registered, in particular children of African descent, indigenous children and those who live in rural and border areas (Mexico);

68.28. Address difficult access to birth registration procedures, particularly for children of African descent, indigenous children and those living in rural and border areas (Nigeria);

68.29. Take measures to overcome the difficulty of access to birth registration procedures, particularly for children of African descent, indigenous children and children living in rural and border areas (Haiti);

68.31. Redouble efforts to enhance the positive results in the area of economic, social and cultural rights to provide more benefits to the most vulnerable populations, in particular children, indigenous peoples, people of African descent and the rural population (Peru);

68.36. Give full implementation to the standards in force concerning the education of indigenous peoples, through study plans that take into account their language, history, art and philosophy (Uruguay)

69. The following recommendations enjoy the support of Panama, which considers that they have already been implemented or in the process of implementation:

69.7. Prioritize its legislation and policies, and empower the National Commission against Discrimination to combat discrimination against women, with particular attention to indigenous communities (Slovakia);

69.8. Adopt measures to eliminate discrimination against people of African descent and indigenous peoples (Argentina);

69.16. Investigate thoroughly the Bocas del Toro Case (Germany);

69.17. Ensure a credible independent investigation of the July 2010 Bocas del Toro incident, and prosecute all perpetrators of alleged human rights violations in compliance with international standards (Slovakia);

69.18. Effectively investigate and prosecute those responsible for excessive use of force during the national strike in Changuinola in the Province of Bocas del Toro in July 2010, and take steps to ensure total respect for freedom of assembly in the country (Norway);

69.31. Take operational steps to implement the United Nations Declaration on the Rights of Indigenous Peoples, including the recognition of the right to land and natural resources of all indigenous peoples in Panama (Norway);

69.32. Conduct prior consultations with indigenous communities, as required by international standards, in relation to all plans and projects that might affect them, in particular when it comes to large-scale projects such as hydroelectric dams and mining activities and regarding national plans and projects to reduce emissions from deforestation and forest degradation (Norway);

69.33. Reinststate the requirement to produce environmental impact studies which take into account the possible impact on the rights of persons living in the affected area for all major projects, especially in indigenous and protected areas, and that these studies are made public (United Kingdom)

70. The following recommendations will be examined by Panama, which will provide responses in due course, but no later than the 16th session of the Human Rights Council, in March 2011.

70.7. Ratify Convention No. 169 of the International Labour Organization, concerning indigenous peoples (Brazil and Norway);

70.8. Ratify ILO Convention No. 169, concerning indigenous and tribal peoples ... (Ecuador)

Voluntary pledges and commitments

72. During the interactive dialogue, the delegation of Panama put forward the following pledges and commitments:

(a) International law: ... The Government was also prepared to consider adhering to the ILO Convention No. 169, on indigenous and tribal peoples

26. United States of America, A/HRC/WG.6/9/L.9, 10 November 2010

Interactive dialogue and responses by the State under review

21. China ... was also concerned ... that the incidence of poverty was higher among Afro-Americans, Latinos and Native Americans.

39. The Libyan Arab Jamahiriya was concerned at, inter alia ... the denial of the indigenous community of their rights....

42. Australia ... welcomed the United States' efforts to address the gap between the rights of Native and other Americans.

56. Turning to indigenous issues, the delegation noted the many challenges faced by Native Americans – poverty, unemployment, health care gaps, violent crime, and discrimination – and the laws and programmes it has in place to address these problems. The United States stated its belief that tribes and their members will flourish if they are empowered to deal with the challenges they face. This conclusion is reflected in law and policy regarding tribal self-determination. President Obama hosted the White House Tribal Nations Conference at which he directed all agencies to submit plans for and progress reports on implementation of the Executive Order on Consultation and Coordination with Indian Tribal Governments. As a result, the level of tribal consultations is now at an historic high.

57. In response to questions from Australia, Cyprus, Finland, and Norway, the delegation noted the considerable attention that has been paid to the interagency consultations with tribal leaders as a part of the United States review of its position on the United Nations Declaration on the Rights of Indigenous Peoples. The decision to

review its position was made in response to calls from tribes and other indigenous groups and individuals.

58. The United States has also taken numerous steps to address particular challenges faced by indigenous communities. These include health care reform, the settlement of certain claims, and improvements in criminal justice issues.

60. Finland, while welcoming the progress made by the United States in enhancing the rights of indigenous peoples, including the ongoing review of its position on the United Nations Declaration on the Rights of Indigenous Peoples, asked how the Government was conducting the review and about the current situation with respect to the process. ...

68. The Holy See ... asked for information about the Government's decision to review its position on the United Nations Declaration on the Rights of Indigenous Peoples.

Conclusions and/or recommendations

92. In the course of the discussion, the following recommendations were made to the United States of America:

92.1. Ratify without reservations the following conventions and protocols: ... the United Nations Declaration on Indigenous Peoples (Bolivarian Republic of Venezuela);

92.83. Implement concrete measures consistent with the Covenant on Civil and Political Rights, to ensure the participation of indigenous peoples in the decisions affecting their natural environment, measures of subsistence, culture and spiritual practices (Plurinational State of Bolivia);

92.85. Formulate goals and policy guidelines for the promotion of the rights of indigenous peoples and cooperation between government and indigenous peoples (Finland);

92.199. End the violation of the rights of indigenous peoples (Cuba);

92.200. Guarantee the rights of indigenous Americans, and to fully implement the United Nations Declaration on the Rights of Indigenous Peoples (Islamic Republic of Iran);

92.201. Recognize the United Nations Declaration on the Rights of Indigenous Peoples without conditions or reservations, and implement it at the federal and state levels (Plurinational State of Bolivia);

92.202. Adopt and implement the United Nations Declaration on the Rights of Indigenous Peoples (Libyan Arab Jamahiriya);

92.203. Endorse the United Nations Declaration on the Rights of Indigenous Peoples when completing its national review process (Finland);

92.204. That the United Nations Declaration on the Rights of Indigenous Peoples be used as a guide to interpret the State obligations under the Convention relating to indigenous peoples (Ghana);

92.205. Continue its forward movement on the Declaration of the Rights of Indigenous Peoples (New Zealand);

92.206. Guarantee the full enjoyment of the rights on natives of America in line with the United Nations Declaration on the Rights of Indigenous Peoples (Nicaragua)