



United Nations

Report of the Committee on the Elimination of Racial Discrimination

**Eightieth session
(13 February–9 March 2012)**

**General Assembly
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Sixty-seventh session
Supplement No. 18 (A/67/18)**

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Letter of transmittal

9 March 2012

Sir,

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

At its eightieth session (13 February–9 March 2012), to ensure that future annual reports will be translated in time for the General Assembly, the Committee decided to commence adoption of its annual report during its February/March rather than August session. Thus, the current annual report contains information relating to the eightieth session. The next report will contain information from the eighty-first (August 2012) and eighty-second (March/February 2013) sessions. Subsequent reports will be following the same cycle.

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

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

The Committee adopted a statement on its contribution to the Programme of Action for the Decade for People of African Descent (see annex VII).

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

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

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

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

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

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

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

(Signed) Alexei S. **Avtonomov**
Chairperson
Committee on the Elimination
of Racial Discrimination

I. Organizational and related matters

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination

1. As at 9 March 2012, the closing date of the eightieth session of the Committee on the Elimination of Racial Discrimination, there were 175 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination, which was adopted by the General Assembly in resolution 2106A (XX) of 21 December 1965 and opened for signature and ratification in New York on 7 March 1966. The Convention entered into force on 4 January 1969 in accordance with the provisions of its article 19.

2. By the closing date of the eightieth session, 54 of the 175 parties to the Convention had made the declaration envisaged in article 14, paragraph 1, of the Convention. Article 14 of the Convention entered into force on 3 December 1982, following the deposit with the Secretary-General of the tenth declaration recognizing the competence of the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by the State party concerned of any of the rights set forth in the Convention. Lists of States parties to the Convention and of those which have made the declaration under article 14 are contained in annex I to the present report, as is a list of the 43 States parties that have accepted the amendments to the Convention adopted at the Fourteenth Meeting of States Parties, as at 9 March 2012.

B. Sessions and agendas

3. The Committee on the Elimination of Racial Discrimination holds two regular sessions yearly. The eightieth (2126th–2165th meetings) session was held at the United Nations Office at Geneva from 13 February to 9 March 2012.

4. The agenda of the eightieth session, as adopted by the Committee, is reproduced in annex II.

C. Membership and attendance

5. The list of members of the Committee for 2012 is as follows:

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

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

D. Officers of the Committee

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

Chairperson: Alexei S. Avtonomov (2012–2014)

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

Rapporteur: Anastasia Crickley (2012–2014)

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

7. In accordance with Committee decision 2 (VI) of 21 August 1972 concerning cooperation with the International Labour Organization (ILO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO),¹ both organizations were invited to attend the sessions of the Committee. Consistent with the Committee's recent

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

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

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

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

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

11. Farida Shaheed, Special Rapporteur in the field of cultural rights, held a dialogue in a closed meeting with the Committee at its 2147th meeting (eightieth session), on 27 February 2012.

F. Other matters

12. Carla Edelenbos, chief of the Petitions and Inquiries Section at the Human Rights Treaties Division of the Office of the High Commissioner for Human Rights (OHCHR) addressed the Committee at its 2126th meeting (eightieth session), on 13 February 2012.

13. Ibrahim Salama, director of the Human Rights Treaties Division of OHCHR addressed the Committee at its 2161st meeting (eightieth session), on 7 March 2012.

G. Adoption of the report

14. At its eightieth session, to ensure that future annual reports will be translated in time for the General Assembly, the Committee decided to commence adoption of its annual report during its February/March rather than August session. Thus, the current annual report contains information relating to the eightieth session. The next report will contain information from the eighty-first (August 2012) and eighty-second (March/February 2013) sessions. Subsequent reports will be following the same cycle.

15. At its 2165th meeting (eightieth session), on 9 March 2012, the Committee adopted its annual report to the General Assembly.

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

16. The Committee's work under its early warning and urgent action procedure is aimed at preventing and responding to serious violations of the International Convention on the Elimination of All Forms of Racial Discrimination. A working paper adopted by the Committee in 1993² to guide its work in this area was replaced by new guidelines adopted by the Committee at its seventy-first session, in August 2007.³

17. The Committee's working group on early warning and urgent action, established at its sixty-fifth session in August 2004, is currently comprised of the following members of the Committee:

Coordinator: José Francisco Calí Tzay

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

18. During the eightieth session, the Committee considered a number of situations under its early warning and urgent action procedure, including in particular the following.

19. The Committee considered the situation of the Maya people and their land claims in **Belize**. The Committee expressed its concern at the fact that Belize appears to continue to deny customary land rights of Maya people despite its Supreme Court decisions, recommendations of the Inter-American Commission and the Committee. In its letter dated 9 March 2012, the Committee requested the State party to provide information on steps taken to ensure that Maya people are provided with the protections necessary to exercise their property rights fully and equally with other members of the Belizean population.

20. The Committee considered allegations concerning the construction of new military bases of the United States of America in Okinawa, **Japan**. The Committee expressed its concern that the proposed construction of a military base on the Henoko/Oura Bay would seriously affect the environment and conditions of life of Ryukyans/Okinawa. The Committee requested the State party to provide information on the actual situation concerning the projects and measures taken to protect the rights of ethnic communities living in the area by 31 July 2012.

21. In the light of information received, the Committee considered the situation of 3,000 Samburu people in **Kenya**, who were allegedly evicted from their traditional homeland, Eland Downs. In a letter dated 9 March 2012, the Committee requested the State party to provide information on this issue and on measures taken to promote and protect the rights of Samburu people by 31 July 2012.

22. The Committee considered information concerning an alleged violent clash that occurred between indigenous communities and the police during protests against mining and construction of a hydroelectric dam in the west of **Panama**. The Committee expressed its concern that the protests by the Ngabe-Buglé peoples have been met with a violent

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

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

crackdown by the police. The Committee requested the State party to provide information on the issue raised by 31 July 2012.

23. The Committee further considered the situation of Saramaka people of **Suriname**. The Committee expressed its concern that the State party has not yet implemented its numerous recommendations and decisions regarding indigenous peoples in Suriname, in particular its previous decisions adopted under the early warning and urgent action procedures in 2003 (decision 3 (62)), 2005 (decision 1 (67)) and 2006 (decision 1 (69)) as well as the judgement of the Inter-American Court of Human Rights in the *Saramaka People v. Suriname* (2007). The Committee regretted that the State party has not yet submitted its follow-up replies to recommendations contained in paragraph 18 of its concluding observations (CERD/C/SUR/CO/12). The Committee requested the State party to provide information on the actual situation of Saramaka people and, measures taken to implement the judgment of the Inter-American Court of Human Rights by 31 July 2012.

24. The Committee considered information regarding the situation of Karen indigenous people who allegedly have been forcefully evicted from the Kaeng Krachan National Park (KKNP) in **Thailand**. The Committee requested the State party to provide information on the situation of indigenous people in the Kaeng Krachan National Park and measures taken to improve their situation.

25. Upon receiving updated information from a non-governmental organization, the Committee further considered the situation of Western Shoshone in the **United States of America**. The Committee requested the State party to provide updated information on the implementation of its decision 1 (68) of 7 March 2006. At the same session, the Committee also considered the allegations concerning the ski resort project in San Francisco Peaks, in the United States of America. While recalling paragraph 29 of its previous concluding observations (CERD/C/USA/CO/6) of March 2008, the Committee expressed its concern at the potential impact of the ski resort project on indigenous peoples' spiritual and cultural beliefs and at the process by the State party to obtain free, prior and informed consent of indigenous peoples with regard to this project. The Committee requested the State party to provide information on concrete measures taken to ensure the sacred character of this site for indigenous peoples is respected.

26. During the reporting period the working group on early warning and urgent action conducted a reflection on its work which was then shared and also discussed within the Committee.

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

27. Canada

(1) The Committee considered the nineteenth to twentieth periodic reports of Canada (CERD/C/CAN/19-20), submitted in one document, at its 2141st and 2142nd meetings (CERD/C/SR. 2141 and 2142), held on 22 and 23 February 2012. At its 2161st and 2162nd meetings (CERD/C/SR. 2161 and 2162), held on 7 and 8 March 2012, it adopted the following concluding observations.

A. Introduction

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

B. Positive aspects

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

(a) New law amending the Citizenship Act which came to effect on 17 April 2009 and gives Canadian citizenship to former Canadians who had lost it due to outdated provisions in earlier citizenship legislation, and to children born outside Canada to a Canadian parent in the first generation who had never acquired citizenship;

(b) Amendment to Section 67 of the Canadian Human Rights Act, which allows, as of July 2011, the Canadian Human Rights Commission to accept complaints regarding actions or decisions under the Indian Act;

(c) Gender Equity in Indian Registration Act, which came into effect in January 2011 and ensures that eligible grand-children of women who lost Status as a result of marrying non-Indian men can become entitled to registration (Indian status);

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

(4) The Committee notes with appreciation the formal apology delivered, in June 2008, by the Prime Minister of Canada, on behalf of the Government of Canada, to former students, their families and communities for Canada's role in the operation of the Indian Residential School System. It also notes with appreciation the apology by the Government of Canada for relocating Inuit from Inukjuak and Pond Inlet to the High Arctic in the 1950s and for the hardship, suffering and loss they experienced.

(5) The Committee also notes with appreciation the endorsement by Canada of the United Nations Declaration on the rights of indigenous peoples.

(6) The Committee welcomes the active engagement and contributions of the Canadian Human Rights Commission and numerous non-governmental organizations in the consideration of the State party's report.

C. Concerns and recommendations

(7) The Committee remains concerned at the absence in the State party's report of recent reliable and comprehensive statistical data on the composition of its population including economic and social indicators disaggregated by ethnicity, including Aboriginal (indigenous) peoples, African Canadians and immigrants living in its territory, to enable it to better evaluate their enjoyment of civil and political, economic, social and cultural rights in the State party.

In accordance with paragraphs 10–12 of its revised reporting guidelines (CERD/C/2007/1), the Committee reiterates its previous recommendation that the State party collect and, in its next periodic report, provide the Committee, with reliable and comprehensive statistical data on the ethnic composition of its population and its economic and social indicators disaggregated by ethnicity, gender, including on Aboriginal (indigenous) peoples, African Canadians and immigrants, to enable the Committee to better evaluate the enjoyment of civil, political, economic, social and cultural rights of various groups of its population.

(8) The Committee, recalling its recommendation to the State party at its seventieth session in February 2007 to reflect on the use of the term “visible minorities”, has taken note of the State party's efforts to comply with this request, including the commissioning of scholars to write research papers on this subject, and the organization of an open workshop in 2008 to discuss this issue. While appreciating the State party's efforts, the Committee continues to have residual doubts regarding continuing use of the term “visible minorities”. The term is considered objectionable by certain minorities who claim that it is being used at all levels of the Canadian society, homogenizing experiences of different ethnic groups. Its lack of precision may pose a barrier to effectively addressing the socio-economic gaps of different ethnic groups (art. 1).

The Committee reiterates its previous recommendation that the State party continue to keep under review, in line with article 1 of the Convention, the implications of the use of the term “visible minorities” in referring to “persons, other than Aboriginal peoples, who are non-Caucasian in race and non-white in colour” (Employment Equity Act, 1995), so as to address more precisely the socio-economic gaps between different ethnic groups.

(9) The Committee takes note of the various forums and mechanisms in the Government of Canada that take part of the State party's efforts to facilitate exchange of information at the federal, provincial, and territorial levels on legislation, policies, programmes and best practices aimed at coordinating the implementation of the Convention. These cover, inter alia, immigrants, Aboriginal peoples, and issues relating to multiculturalism and anti-racism. In spite of the existence of these mechanisms, however, the Committee is concerned that disparities and discrepancies still exist in the implementation of the Convention among provinces and territories (art. 2).

The Committee recommends that the State party take appropriate measures to strengthen the coordination of all existing federal and provincial mechanisms in order to remove discrepancies and disparities in the implementation of anti-racism legislation, policies, programs and best practices, and to ensure the enjoyment on an equal footing within all provinces and territories of the rights set forth in the Convention, including by adopting, when necessary, new federal laws.

(10) The Committee has noted that the various policies, programmes and strategies adopted by the State party at the federal, provincial, and territorial levels do not give a comprehensive and clear picture of the special measures adopted by the State party to address the situation of Aboriginal peoples and African Canadians (arts. 2 and 5).

The Committee recommends that the State party coordinate its various policies, strategies and programmes on Aboriginal peoples and African Canadians by adopting a comprehensive strategy on the situation of Aboriginal people at the federal level, so as to give a coherent picture of its actions and enhance their efficiency, and ensure that any differences of treatment are based on reasonable and objective grounds.

(11) The Committee is concerned at reports that African Canadians, in particular in Toronto, are being subjected to racial profiling and harsher treatment by police and judicial officers with respect to arrests, stops, searches, releases, investigations and rates of incarceration than the rest of the population, thereby contributing to the overrepresentation of African Canadians in the system of criminal justice of Canada (arts. 2 and 5).

Recalling its general recommendation No 34 (2011) on racial discrimination against people of African descent and in 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 reminds the State party that racial profiling should be prevented at all stages of criminal procedure. The Committee recommends that the State party:

- (a) Take necessary steps to prevent arrests, stops, searches and investigations and over-incarceration targeting different groups, particularly African Canadians, on the basis of their ethnicity;**
- (b) Investigate and punish the practice of racial profiling;**
- (c) Train prosecutors, judges, lawyers, other judicial and police officers in the criminal justice system on the principles of the Convention;**
- (d) Provide the Committee with statistical data on treatment of African Canadians in the criminal justice system;**
- (e) Conduct a study on the root causes of the overrepresentation of Africans Canadians in the system of criminal justice.**

(12) The Committee is concerned at the disproportionately high rates of incarceration of Aboriginal people including Aboriginal women, in federal and provincial prisons across Canada (arts. 2, 5 and 7).

In light of its general recommendation No. 31 (2005), the Committee recommends that the State party reinforce measures to prevent excessive use of incarceration of indigenous peoples. The Committee also recommends that the State party:

- (a) Give preference, wherever possible, to alternatives to imprisonment concerning Aboriginal peoples, as set forth in subsection 717 (1) of the Criminal Code;**
- (b) Implement, when appropriate, subsection 718.2 (e) of the Criminal Code, as well as section 742.1, to allow Aboriginal convicted offenders to serve their sentences in their communities;**
- (c) Make adequate use of the Aboriginal Justice Strategy (AJS) in order to prevent Aboriginal overrepresentation in prisons, as a result of the operation of the criminal justice system.**

The Committee urges the State party to train its prosecutors, judges, lawyers, police officers on these provisions of the Criminal Code, and to increase its efforts to address socio-economic marginalization of Aboriginal people.

(13) The Committee remains concerned: (a) at the refusal by the State party to introduce in its legislation a specific offence criminalizing and punishing acts of racist violence; and

(b) at the State party's approach to prohibit racist activities of racist organizations rather than prohibiting and declaring illegal such organizations (art. 4).

Recalling its general recommendations Nos. 1 (1972), 7 (1985) and 15 (1993) according to which article 4 is of a preventive and mandatory nature, the Committee reiterates its previous recommendation that the State party amend or adopt relevant legislation in order to ensure full compliance with article 4 of the Convention.

(14) While noting that the State party has enacted a Corporate Responsibility Strategy, the Committee is concerned that the State party has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities (art. 5).

The Committee recommends that the State party take appropriate legislative measures to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada, and hold them accountable.

(15) The Committee is concerned that Bill C-11, The Balanced Refugee Act, which received Royal Assent in 2010, and which proposes to establish a list of "safe countries" and to expedite asylum requests introduced by persons from "safe countries", may not be in full compliance with the Convention, in not providing all required legal procedural guarantees as well as the protection of the non-refoulement principle. The Committee is also concerned that under Bill C-4, any migrant and asylum seeker designated as an "irregular arrival" would be subject to mandatory detention for a minimum of one year or until the asylum seeker's status is established (arts. 1 and 5).

The Committee recommends that the State party take appropriate measures to ensure that procedural safeguards will be guaranteed when addressing asylum requests of persons considered coming from "safe countries", without any discrimination based on their national origin. The Committee also recommends that the State party review Bill C-4 in order to repeal the provision on the mandatory detention.

(16) While noting different measures taken by the State party to address the socio-economic inequalities faced by African Canadians, such as the Federal Employment Act, the African Nova Scotian Employability Table, as well as policies concerning minority groups in the State party, the Committee is concerned that African Canadians continue to face discrimination in the enjoyment of social, economic and cultural rights, in particular in access to employment, housing, education, wages, and positions in the public service (art. 5).

Recalling its general recommendation No. 34 (2011) and in the light of its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention of All Forms of Racial Discrimination, the Committee recommends that the State party take concrete specific measures to foster the effective integration at federal, provincial and territorial levels of African Canadians into Canadian society by effectively ensuring the implementation of its non-discrimination legislation, in particular the Federal Employment Equity Act, and policies regarding access to employment, non-discriminatory wages, housing, and public service. The Committee also recommends that the State party strengthen its special measures to increase the level of educational attainment of African Canadian children in particular by preventing their marginalization and reducing their dropout rates. The Committee requests that the State party provide it with information on specific measures taken as well as on their concrete results.

(17) The Committee takes note of various measures taken by the State party to combat violence against Aboriginal women and girls, such as the Family Violence Initiative, the

Urban Aboriginal Strategy, and various initiatives taken at the provincial or territorial level to address murders and disappearances of Aboriginal women. However, the Committee remains concerned that Aboriginal women and girls are disproportionately victims of life-threatening forms of violence, spousal homicides and disappearances (art. 5).

The Committee recommends that the State party:

(a) Strengthen its efforts to eliminate violence against Aboriginal women in all its forms by implementing its legislation and reinforcing its preventive programmes and strategies of protection, including the Shelter Enhancement Program, the Family Violence Prevention Program, the Policy Centre for Victim Issues and the Aboriginal Justice Strategy and the new National Police Support Centre for missing persons;

(b) Facilitate access to justice for Aboriginal women victims of gender-based violence, and investigate, prosecute and punish those responsible;

(c) Conduct culturally-sensitive awareness-raising campaigns on this issue, including in affected communities and in consultation with them;

(d) Consider adopting a national plan of action on Aboriginal gender-based violence;

(e) Consult Aboriginal women and their organizations and support their participation in development, implementation and evaluation of measures taken to combat violence against them.

The Committee further recommends that the State party support existing databases and establish a national database on murdered and missing Aboriginal women and provide the Committee with statistical data and information on concrete results of its programmes and strategies.

(18) The Committee is concerned that the State party has not yet removed all discriminatory effects in matters relating to the Indian Act that affect First Nations women, in particular relating to band membership and matrimonial real property on reserve lands (arts. 2 and 5).

The Committee urges the State party to adopt and implement the proposed Family Homes on Reserves and Matrimonial Interests or Rights Act presently under consideration before Parliament, without further delay, in order to allow the enjoyment by First Nations women of their rights in the areas of property, marriage and inheritance.

(19) While noting measures taken by the State party, such as the Aboriginal Health Transition Fund, Canada Economic Action Plan 2009, the new Federal Framework for Aboriginal Economic Development, and the new Aboriginal Skills and Employment Training Strategy, the Committee remains concerned about the persistent levels of poverty among Aboriginal peoples, and the persistent marginalization and difficulties faced by them in respect of employment, housing, drinking water, health and education, as a result of structural discrimination whose consequences are still present (art. 5).

The Committee recommends that the State party, in consultation with Aboriginal peoples, implement and reinforce its existing programmes and policies to better realize the economic, social and cultural rights of Aboriginal peoples, in particular through:

(a) Speeding up the provision of safe drinking water to Aboriginal communities on reserves;

- (b) Intensifying efforts to remove employment-related discriminatory barriers and discrepancies in salaries between Aboriginal and non-Aboriginal people, in particular in Saskatchewan and Manitoba;
- (c) Finalizing the construction of homes for the Attawapiskat communities in northern Ontario, and facilitating access to housing by Aboriginal people, by adopting and implementing the plan currently being drafted;
- (d) Facilitating their access to health services;
- (e) Improving access to education for Aboriginal children including to the post-graduate education, in particular by generalizing the Enhanced Prevention Focus, and providing it with sufficient funding;
- (f) Discontinuing the removal of Aboriginal children from their families and providing family and child care services on reserves with sufficient funding;
- (g) Providing adequate compensation through an appropriate settlement mechanism, to all students who attended the Indian Residential Schools in order to fully redress the intergenerational effects.

The Committee requests that the State party, in consultation with indigenous peoples, consider elaborating and adopting a national plan of action in order to implement the United Nations Declaration on the Rights of Indigenous Peoples.

The Committee also requests that the State party provide it with information on the progress and concrete results of such programmes and policies, in its next periodic report.

(20) The Committee is concerned about reports according to which the right to consultation as provided in legislation and the right to prior, free and informed consent to projects and initiatives concerning Aboriginal peoples, are not fully applied by the State party, and may be subject to limitations. It is also concerned that Aboriginal peoples are not always consulted for projects conducted on their lands or which affect their rights and that treaties with Aboriginal peoples are not fully honoured or implemented. The Committee is further concerned that Aboriginal peoples incur heavy financial expenditures in litigation to resolve land disputes with the State party owing to rigidly adversarial positions taken by the State party in such disputes. While acknowledging that the Special Claims Tribunal constitutes a positive step, the Committee is concerned at reports that this tribunal does not resolve disputes on treaty rights for all First Nations and does not provide for all guarantees for a fair and equitable settlement (art. 5).

In the light of its general recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee recommends that the State party, in consultation with Aboriginal peoples:

- (a) Implement in good faith the right to consultation and to free, prior and informed consent of Aboriginal peoples whenever their rights may be affected by projects carried out on their lands, as set forth in international standards and the State party's legislation;
- (b) Continue to seek in good faith agreements with Aboriginal peoples with regard to their lands and resources claims under culturally-sensitive judicial procedures, find means and ways to establish titles over their lands, and respect their treaty rights;
- (c) Take appropriate measures to guarantee that procedures before the Special Tribunal Claims are fair and equitable and give serious consideration to the establishment of a Treaty Commission with a mandate to resolve treaty rights issues.

(21) The Committee is concerned that persons belonging to Aboriginal peoples and African Canadians continue to face obstacles in recourse to justice, despite the existence of some programmes at the provincial and territorial levels. The Committee also draws attention to the lack of information about the mechanism to replace the Court Challenges Programs which were cancelled by the State party (art. 6).

The Committee recommends that the State party strengthen its efforts to promote and facilitate access to justice at all levels by persons belonging to minority groups, in particular by Aboriginal peoples and African Canadians. The Committee also urges the State party to establish without further delay, a mechanism to fill the gap caused by the cancellation of the Court Challenges Programs, as previously recommended by the Committee.

(22) While noting that the State party has established a Black History Month, the Committee is concerned at reports according to which the contributions of African Canadians in the State party's history are not fully recognized and that this non-recognition may contribute to the maintenance of discriminatory stereotypes and prejudice against African Canadians (arts. 2 and 7).

The Committee recommends that the State party increase its efforts to fully recognize the achievements and the contributions of the African Canadian community to the history of Canada. The Committee encourages the State party to ensure that the bicentennial celebration of the War of 1812 also reflects the contributions and role of African Canadians.

(23) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular treaties the provisions of which have a direct relevance to communities that may be the subject of racial discrimination, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the ILO Convention 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries and the 1954 Convention relating to the Status of Stateless Persons.

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

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

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

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

(28) Noting that the State party has submitted its core document in 1998, the Committee encourages the State party to submit an updated core document, in accordance with the

harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

(29) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 16, 17, 19 and 21 above.

(30) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 12, 18, 20, and 22 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(31) The Committee recommends that the State party submit its twenty-first and twenty-third periodic reports in a single document by 15 November 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

28. **Israel**

(1) The Committee considered the fourteenth to sixteenth periodic reports of Israel, submitted in one document (CERD/C/ISR/14-16), at its 2131st and 2132nd meetings (CERD/C/SR.2131 and 2132), held on 15 and 16 February 2012. At its 2148th meeting (CERD/C/SR.2148), held on 28 February 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the detailed, although rather lengthy, report submitted by the State party, and expresses appreciation for the frank and constructive oral responses provided by the large delegation during the consideration of the report.

(3) The Committee recognizes the issues related to security and stability in the region. The State party should, however, ensure that, in conformity with the principles of the Convention, measures taken are proportionate, do not discriminate in purpose or in effect against Palestinian citizens of Israel, or Palestinians in the Occupied Palestinian Territory, or any other minorities whether in Israel proper or in territories under the State party's effective control; and that they are implemented with full respect for human rights as well as relevant principles of international humanitarian law.

(4) The Committee reiterates its view that the Israeli settlements in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem, are not only illegal under international law but are an obstacle to the enjoyment of human rights by the whole population, without distinction as to national or ethnic origin. Actions that change the demographic composition of the Occupied Palestinian Territory and the Occupied Syrian Golan are also of concern as violations of human rights and international humanitarian law.

B. Positive aspects

(5) The Committee welcomes the efforts made by the State party to address inequality, particularly in the area of employment and education, faced by the most vulnerable groups in Israeli society, and acknowledges that it has made progress in this regard in Israel proper.

(6) The Committee welcomes the enactment of the 2008 Prohibition of Violence in Sport Law and the enactment of the Expansion of Adequate Representation for Persons of the Ethiopian Community in the Public Service (Legislative Amendments) Law (5771-2011) on March 28, 2011.

(7) The Committee welcomes the establishment in the Prime Minister's Office of the Economic Development Authority for the Arab, Druze and Circassian Sectors and the allocation of a consequential budget for its functioning, and the adoption of a Five-Year Plan for the Economic Development of Minority Localities.

(8) The Committee welcomes the announcement made by the delegation on the establishment in 2011 of a joint inter-ministerial team headed by one of the Ministry of Justice's Deputy Attorney Generals, for implementing the treaty bodies' concluding observations on Israel, as well as the establishment by the Ministry of Interior and the Minister of Public Security of a ministerial team, which meets regularly to address matters relating to violence perpetrated by Jewish settlers and its severe consequences.

(9) The Committee also welcomes affirmative action measures taken by the State party to enhance the integration of the Arab and Druze population into the civil service.

C. Concerns and recommendations

General situation

(10) The Committee takes note of the willingness of the State party delegation to discuss questions regarding the West Bank and the Gaza Strip but regrets that the report did not contain any information concerning the population living in these territories. In this regard, the Committee is deeply concerned at the position of the State party to the effect that the Convention does not apply to all the territories under the State party's effective control, which not only include Israel proper but also the West Bank, including East Jerusalem, the Gaza Strip and the Occupied Syrian Golan. The Committee reiterates that such a position is not in accordance with the letter and spirit of the Convention, and international law, as also affirmed by the International Court of Justice and by other international bodies.

Recalling its previous concluding observations (CERD/C/ISR/CO/13, para. 32), the Committee strongly urges the State party to review its approach and interpret its obligations under the Convention in good faith and in accordance with international law. The Committee also urges the State party to ensure that all civilians under its effective control enjoy full rights under the Convention without discrimination based on ethnicity, citizenship, or national origin.

(11) The Committee notes with increased concern that Israeli society maintains Jewish and non-Jewish sectors, which raises issues under article 3 of the Convention. Clarifications provided by the delegation confirmed the Committee's concerns in relation to the existence of two systems of education, one in Hebrew and one in Arabic, which except in rare circumstances remain impermeable and inaccessible to the other community, as well as separate municipalities: Jewish municipalities and the so-called "municipalities of the minorities". The enactment of the Admissions Committees Law (2011), which gives private committees full discretion to reject applicants deemed "unsuitable to the social life of the community", is a clear sign that the concerns as regards segregation remain pressing (arts. 3, 5 and 7 of the Convention).

Recalling its previous concluding observations (CERD/C/ISR/CO/13, para. 22), the Committee urges the State party to give full effect to article 3 and to make every effort to eradicate all forms of segregation between Jewish and non-Jewish communities. The State party is requested to provide information on action taken in this regard in its next periodic report.

(12) Bearing in mind the clarifications provided by the delegation, the Committee regrets the absence of statistical information on the ethnic plurality of the Jewish population of Israel.

Recalling its previous concluding observations (CERD/C/ISR/CO/13, para. 15), the Committee strongly recommends that the State party provide information on the composition of the Jewish population of Israel, disaggregated by relevant criteria.

(13) As mentioned in its previous concluding observations (CERD/C/ISR/CO/13, para. 16), the Committee is concerned that no general provision for equality and the prohibition of racial discrimination has been included in the Basic Law: Human Dignity and Liberty (1992), which serves as Israel's bill of rights; nor does Israeli legislation contain a definition of racial discrimination in accordance with article 1 of the Convention. These lacunae seriously undermine the protection afforded to all persons under the jurisdiction of the State party for equal access to human rights (art. 2 of the Convention).

The Committee reiterates its previous concluding observations (CERD/C/ISR/CO/13, para. 16) and recommends that the State party ensure that the prohibition of racial discrimination and the principle of equality are included in the Basic Law and that a definition of racial discrimination is duly incorporated into the Law.

(14) While noting the existence of criminal legislation on incitement to racism, racist organizations and participation in and support for such organizations, the Committee is concerned about the limitations therein, such as the restricted definition of racism, the exclusive role of the Attorney General in authorizing the prosecution of offences of incitement to racism, and the overly strict approach of Israeli legislation to proving the intentional element of such crimes. While noting the State party's concerns in regard to freedom of speech, the Committee recalls that the prohibition of the dissemination of all ideas based upon racial superiority or hatred is compatible with the right to freedom of opinion and expression (arts. 2 and 4 of the Convention).

The Committee recommends that the State party amend its current legislation to modify current requirements relating to the proof of intent for the criminal offence of incitement to racism; that it provide a more comprehensive mechanism of protection by extending the power to investigate and indict to other bodies of the judiciary; and that it expand the definition of racism to include incitement on account of ethnic origin, country of origin, and religious affiliation, when there is intersectionality of these elements, so as to equally protect Ethiopians, Russians, Sephardim, and any other groups that are currently not sufficiently protected by the Law.

(15) The Committee notes with concern the enactment of a number of discriminatory laws on land issues which disproportionately affect non-Jewish communities. The Committee is particularly concerned at the enactment of the Israel Land Administration Law of 2009; the 2010 Amendment to the Land (Acquisition for Public Purposes) Ordinance (1943); the 2010 Amendment to the Negev Development Authority Law (1991), and the Admissions Committees Law (2011) (Articles 3 and 5 of the Convention).

In line with its previous concluding observations (CERD/C/ISR/CO/13, para. 19), the Committee strongly recommends that the State party ensure equal access to land and property and to that end abrogate or rescind any legislation that does not comply with the principle of non-discrimination.

(16) The Committee notes with concern the adoption of laws and the consideration of bills conditioning social and economic benefits on completion of military service, thus excluding non-Jewish communities who are exempted from military service such as Palestinian citizens of Israel. Moreover, it regrets the adoption of the 2009 Special Amendment No. 6 to the Regional Councils Law (Date of General Elections) (1994), which

could considerably restrict the political participation of non-Jewish minorities (arts. 2 and 5 of the Convention).

The Committee recommends that the State party abrogate all discriminatory laws and rescind all discriminatory bills so as to ensure non-Jewish communities' equal access to work and social benefits as well as the right to political participation enshrined in the Convention.

(17) While the Committee notes the existence of State mechanisms for the protection and promotion of human rights such as the State Comptroller, which also seems to fulfil the function of the Ombudsman, as well as a special office within the Prime Minister's Office dedicated to the Economic Development for the Arab, Druze and Circassian Sectors, and a Minister for Minorities, the individual competence of and the division of labour between these bodies are not clear. The Committee regrets the absence of a specialized agency on racial discrimination or a national human rights institution established in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles, General Assembly resolution 48/134, annex) (arts. 2 and 6 of the Convention).

The Committee reiterates its previous recommendation (CERD/C/ISR/CO/13, para. 31) that the State party consider the establishment of a national mechanism for redress of racial discrimination either as a specialized agency on racial discrimination or as a national human rights institution in accordance with the Paris Principles.

(18) The Committee reiterates its concern at the maintenance of discriminatory laws especially targeting Palestinian citizens of Israel such as the Citizenship and Entry into Israel Law (Temporary Provision). The Law suspends the possibility, with certain rare exceptions, of family reunification between an Israeli citizen and a person residing in the West Bank, including East Jerusalem, or the Gaza Strip, thus greatly affecting family ties and the right to marriage and choice of spouse. The Committee is particularly concerned at the recent decision of the High Court of Justice, which confirmed its constitutionality (arts. 2 and 5 of the Convention).

The Committee urges the State party to revoke the Citizenship and Entry into Israel Law (Temporary provision) and to facilitate family reunification of all citizens irrespective of their ethnicity or national or other origin.

(19) While some efforts have been made to improve the access to economic and social rights of non-Jewish minorities, such as the adoption in March 2010 of a Five Year Plan for the Economic Development of Minority Localities and reforms engaged for increased protection of migrant workers, the socio-economic gap between Jewish and non-Jewish communities remains worrying. It is of great concern that the two communities often continue to be compartmentalized, with one accessing education in Hebrew in Jewish schools and the other often living in separate municipalities and attending Arabic-language schools. Such separation is an obstacle to uniform access to education and empowerment. The Committee is particularly concerned at the continued low level of education and managerial employment of non-Jewish women in the private and public sectors (arts.2 and 5 (e) (i) and (v) of the Convention).

In line with its previous concluding observations (CERD/C/ISR/CO/13, para. 24), the Committee strongly recommends that the State party ensure equal enjoyment of economic and social rights for non-Jewish minorities, in particular their right to work and education.

In line with its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party redouble its

efforts to achieve equality in women's access to all the rights enshrined in the Convention.

(20) The Committee is concerned about the current situation of Bedouin communities, particularly with regard to the policy of demolitions, notably of homes and other structures, and the increasing difficulties faced by members of these communities in gaining access on a basis of equality with Jewish inhabitants to land, housing, education, employment and public health.

The Committee recommends that the State party address satisfactorily the problems faced by Bedouin communities, in particular with regard to the loss of their land and access to new land. The Committee also recommends that the State party step up its efforts to ensure equal access to education, work, housing and public health in all territories under the State party's effective control. In this regard, the State party should withdraw the 2012 discriminatory proposed Law for the Regulation of the Bedouin Settlement in the Negev, which would legalize the ongoing policy of home demolitions and forced displacement of the indigenous Bedouin communities.

(21) Despite some information contained in the State party's report and clarifications provided orally by the delegation, the Committee remains concerned at the lack of consideration given to de facto and perceived discrimination towards minorities within the Jewish population. Worrying information provided by civil society and observed in the media sheds light on the issue of underrepresentation of Mizrahi groups in higher education, the academic-management job market and the political/judicial sphere. Despite increased efforts aimed at addressing unequal access to education and employment for newly arrived Jewish communities, the Committee remains particularly concerned at allegations of ongoing discrimination, especially by private individuals, against Ethiopian Jews. The Committee is also concerned at discrimination targeting women from Jewish minorities in relation to the implementation of religious laws (art. 5 of the Convention).

The Committee recommends that the State party adequately address all forms of racial discriminations affecting Jewish minorities so as to ensure equal enjoyment of their rights, particularly in the areas of the right to education, work and political representation. The Committee recommends that the State party pay particular attention to gender-related discrimination affecting women from Jewish minorities, especially those with low economic status.

(22) The Committee notes the State party's efforts to accept and host asylum seekers and refugees on its territory and the protection framework afforded to migrant workers against potential abuses by employers. The Committee is, however, concerned at the stigmatization of migrant workers on the basis of their country of origin, as suggested by the enactment of the 2012 Law to Prevent Infiltration, pursuant to which irregular asylum seekers can be imprisoned for at least three years upon entry into Israel and asylum seekers from "enemy states" can serve life sentences (arts. 2 and 5 (d) (iii) of the Convention).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to amend the Law to Prevent Infiltration and any other legislation aimed at discriminating against asylum seekers or denying refugees, on the basis of their national origin, the protection guaranteed under the 1951 Convention relating to the Status of Refugees.

(23) The Committee is concerned at the recent increase in racist and xenophobic acts, manifestations and discourse, especially against Palestinian citizens of Israel, Palestinians residing in the Occupied Palestinian Territory including East Jerusalem, and asylum seekers of African origin. The Committee is greatly preoccupied at the unavailability of precise data on complaints, investigations, indictments and prosecutions against politicians, public officials and religious leaders involved in such manifestations and discourse as well as on

the outcome of the procedures related to these complaints (arts. 2, 4, 6 and 7 of the Convention).

Recalling its previous concluding observations (CERD/C/ISR/CO/13, para. 29), the Committee recommends that, in addressing issues that affect various vulnerable population groups, the State party make it quite clear, in its discourse and its action, that it has the political will to promote understanding, tolerance and friendship between individuals irrespective of their origin.

The Committee also recommends that the State party step up its efforts and use all possible means to counter and stem the tide of racism and xenophobia in public discourse, in particular by strongly condemning all racist and xenophobic statements by public officials and political and religious leaders, and by implementing appropriate measures to combat the proliferation of acts and manifestations of racism that particularly target non-Jewish minorities in the territories under the State party's effective control.

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also requests the State party to remind public prosecutors and the judiciary as a whole of the general importance of even-handedly prosecuting racist acts, irrespective of the alleged perpetrators' status.

The Occupied Palestinian Territory, including East Jerusalem, and the Occupied Syrian Golan

(24) The Committee is extremely concerned at the consequences of policies and practices which amount to de facto segregation, such as the implementation by the State party in the Occupied Palestinian Territory of two entirely separate legal systems and sets of institutions for Jewish communities grouped in illegal settlements on the one hand and Palestinian populations living in Palestinian towns and villages on the other hand. The Committee is particularly appalled at the hermetic character of the separation of two groups, who live on the same territory but do not enjoy either equal use of roads and infrastructure or equal access to basic services and water resources. Such separation is concretized by the implementation of a complex combination of movement restrictions consisting of the Wall, roadblocks, the obligation to use separate roads and a permit regime that only impacts the Palestinian population (art. 3 of the Convention).

The Committee draws the State party's attention to its general recommendation No. 19 (1995) concerning the prevention, prohibition and eradication of all policies and practices of racial segregation and apartheid, and urges the State party to take immediate measures to prohibit and eradicate any such policies or practices which severely and disproportionately affect the Palestinian population in the Occupied Palestinian Territory and which violate the provisions of article 3 of the Convention.

(25) The Committee is increasingly concerned at the State party's discriminatory planning policy, whereby construction permits are rarely if ever granted to Palestinian and Bedouin communities and demolitions principally target property owned by Palestinians and Bedouins. The Committee is concerned at the adverse tendency of preferential treatment for the expansion of Israeli settlements, through the use of "state land" allocated for settlements, the provision of infrastructure such as roads and water systems, high approval rates for planning permits and the establishment of Special Planning Committees consisting of settlers for consultative decision-making processes. The Committee is greatly concerned at the State party's policy of "demographic balance", which has been a stated aim of official municipal planning documents, particularly in the city of Jerusalem (arts. 2, 3 and 5 of the Convention).

In the light of its previous concluding observations (CERD/C/ISR/CO/13, para. 35) and considering that the current Israeli planning and zoning policy in the West Bank, including East Jerusalem, seriously breaches a range of fundamental rights under the Convention, the Committee urges the State party to reconsider the entire policy in order to guarantee Palestinian and Bedouin rights to property, access to land, access to housing and access to natural resources (especially water resources). The Committee also recommends that any planning and zoning policy be implemented in consultation with the populations directly affected by those measures. It calls on the State party to eliminate any policy of “demographic balance” from its Jerusalem Master Plan as well as from its planning and zoning policy in the rest of the West Bank.

(26) Despite explanations provided by the delegation during the dialogue, the Committee remains concerned at the dramatic and disproportionate impact of the Israel Defense Forces’ blockade and military operations on Palestinians’ right to housing and basic services in the Gaza Strip. The Committee received worrying reports that only a minority of houses and civilian infrastructures, such as schools, hospitals and water plants, could be rebuilt, due to the State party’s blockade on the import of construction materials into the Gaza Strip (arts. 2, 3 and 5 of the Convention).

The State party should fully respect the norms of humanitarian law in the Occupied Palestinian Territory, rescind its blockade policy and urgently allow all construction materials necessary for rebuilding homes and civilian infrastructures into the Gaza Strip so as to ensure respect for Palestinians’ right to housing, education, health, water and sanitation in compliance with the Convention.

(27) The Committee is extremely concerned at the existence of two sets of laws, for Palestinians on the one hand and Jewish settlers on the other hand who reside in the same territory, namely the West Bank, including East Jerusalem, and are not subject to the same justice system (criminal as well as civil matters). The Committee is particularly concerned at worrying reports of an increase in the arrest and detention of children and of the undermining of their judicial guarantees, notably in relation to the competence of military courts to try Palestinian children, which is inconsistent with international law. The Committee expresses great concern at the State party’s maintenance of administrative detention for both Palestinian children and adults based on evidence that is kept secret for security reasons. It also expresses concern at the monetary and physical obstacles faced by Palestinians seeking compensation before Israeli tribunals for loss suffered, in particular as a consequence of the IDF Operation Cast Lead in the Gaza Strip (arts. 3, 5 and 6 of the Convention).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure equal access to justice for all persons residing in territories under the State party’s effective control. The Committee urges the State party to end its current practice of administrative detention, which is discriminatory and constitutes arbitrary detention under international human rights law.

(28) The Committee is concerned about the increase in racist violence and acts of vandalism on the part of Jewish settlers in the Occupied Palestinian Territory targeting non-Jews, including Muslims and Christians and their holy places, and about information according to which 90 per cent of Israeli police investigations into settler-related violence carried out between 2005 and 2010 were closed without prosecution. The Committee is particularly alarmed by reports of impunity of terrorist groups such as Price Tag, which reportedly enjoy political and legal support from certain sections of the Israeli political establishment. The Committee is also concerned about the impact of settler violence on the

right of women and girls to access basic services such as the right to education (arts. 4 and 5 of the Convention).

While noting with interest the establishment of the ministerial team meant to address matters relating to settler violence, the Committee, recalling its previous concluding observations (CERD/C/ISR/CO/13, para. 37), urges the State party to ensure that all forms of violence and harassment are impartially investigated by the judiciary and that perpetrators are prosecuted to the fullest extent of the law, irrespective of their national, ethnic or other origin.

(29) The Committee remains concerned at the vulnerable situation of Syrian residents of the Occupied Syrian Golan and their unequal access to land, housing and basic services. The Committee is also gravely concerned at the continued impact of the Citizenship Law on family ties, which continue to be disrupted as a consequence of the territory's illegal annexation in 1981 (arts. 2 and 5 of the Convention).

The State party should ensure equal access for all residents of Israeli-controlled territories to fundamental rights such as the right to land, housing, movement, marriage and choice of spouse. The Committee urges the State party to find a satisfactory solution to the issue of family separation that particularly affects Syrian residents of the Occupied Syrian Golan.

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

(31) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party give effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the Outcome Document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order. The Committee takes note of Israel's explanation for its refusal to acknowledge and abide by the Durban Declaration of the International Conference against Racism and Related Intolerance held in Durban, South Africa, in 2001. However, taking into consideration the evident importance of that document for a large segment of humanity, the Committee strongly recommends that Israel re-examine its position and adopt adequate policies and plans to implement the Declaration.

(32) The Committee recommends that the State party consult and expand its dialogue with organizations of civil society working in the area of human rights protection, in particular in combating racial discrimination in Israel proper and the territories under its effective control, in connection with the preparation of the next periodic report.

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

(34) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention

concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(36) 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 16, 18 and 30 above.

(37) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 11, 12, 21, 26 and 29 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(38) The Committee recommends that the State party submit its combined seventeenth to nineteenth periodic reports in a single document, due on 2 February 2016, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

29. Italy

(1) The Committee considered the combined sixteenth to eighteenth periodic reports of Italy (CERD/C/ITA/16-18), submitted in one document, at its 2156th and 2157th meetings (CERD/C/SR.56 and 57), held on 5 March 2012. At its 2164th meeting (CERD/C/SR.64), held on 9 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the report and commends the regularity with which the State party has interacted with the Committee. It expresses appreciation for the dialogue held with the large delegation of the State party and thanks it for the information provided orally to complement the report. The Committee welcomes the positive and constructive dialogue with the delegation of the State party as well as its efforts to answer to the questions put by Committee members.

B. Positive aspects

(3) The Committee notes with interest the upcoming revision of Law No. 482/1999 to allow the recognition of Roma, Sinti and Camminanti communities as minorities.

(4) The Committee also notes the strengthening of the National Office against Racial Discrimination (UNAR) and the relevant activities undertaken by UNAR during the period under review.

(5) The Committee welcomes the legislative measures reversing the burden of proof on the defendant for civil cases of racial discrimination.

(6) The Committee welcomes the ratification on 5 June 2008 of the Cybercrime Convention of the Council of Europe and the State party's declaration regarding the upcoming amendment of the Criminal Code to tackle hate speech on the Internet.

(7) The Committee welcomes the creation of a working group tasked to prepare by September 2012 a new National Plan of Action against all forms of racial discrimination and to implement the Durban Declaration and Programme of Action at the national level.

(8) The Committee welcomes the adoption on 24 February 2012 of the National Strategy for the Inclusion of Roma, Sinti and Camminanti communities within the European Union Framework covering relevant key sectors such as education, employment, health and housing.

(9) The Committee notes with particular interest the information provided by the State party on the creation of a new Ministry for Cooperation and Integration, to be responsible, inter alia, for interethnic relations.

(10) The Committee welcomes the information that the State party is considering withdrawing its declaration with regard to article 4 of the Convention.

C. Concerns and recommendations

(11) The Committee takes note of the statistical data provided on foreigners and on UNAR's activities but regrets the absence in the report of data on the ethnic composition of the population. It is also extremely concerned about the census which took place further to the state of emergency imposed in May 2008 and the "Nomad Emergency Decree" (NED) regarding the settlements of nomad communities in Italy. It is concerned by the information that this census, in the course of which fingerprints and photographs of camps' residents Roma and Sinti including children have been collected. The Committee notes the declaration made by the State party that data has since been destroyed.

The Committee invites the State party to compile disaggregated data on the ethnic composition of its population. In view of its general recommendation No. 8 (1990) on identification with a particular racial or ethnic group, the Committee wishes to recall that the ways in which individuals are identified as members of racial or ethnic groups should be established on a voluntary and anonymous basis, and on the basis of self-identification by the individuals concerned. The Committee also recommends that the State party refrain from conducting emergency censuses targeted at minority groups.

The Committee strongly recommends that the State party inform the communities concerned that data from the previous emergency census have been destroyed.

(12) The Committee regrets that the equality provisions of article 3 of the Italian Constitution do not include non-citizens nor is it clear to the Committee that the offence of racial discrimination in the State party's legislation includes both the purpose and the effect of prohibited acts (art. 1).

In view of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee urges the State party to ensure that non-citizens enjoy equal protection and recognition before the law. The Committee recommends that the State party ensure that its legislation and policies do not discriminate, in purpose or effect, on grounds of race, colour, descent, or national or ethnic origin. The Committee draws the attention of the State party to the importance of ensuring that legislative guarantees against racial discrimination apply to non-citizens regardless of their immigration status.

(13) The Committee is concerned that despite the State party's commitment to its establishment, a national human rights institution has not yet been established. According to the information received by the Committee, the relevant bill, currently in the Second Chamber (Camera dei Deputati), has been finalized without proper consultation with civil society actors (art. 2).

The Committee notes the commitment by the State party to conclude as soon as possible the lengthy process to establish an independent national human rights institution in line with the Paris Principles. The Committee encourages the State party to actively involve civil society actors in this process and to revise draft Law No. 4534 to ensure that the institution is fully compliant with the Paris Principles. The Committee encourages the State party to request technical assistance from the Office of the Human Rights Commissioner for Human Rights (OHCHR).

(14) The Committee notes concerns raised regarding the need to increase the independence of UNAR as the single equality body established in compliance with European Union Directives (art. 2).

Noting the commitment by the State party to improve UNAR's functional, administrative and management independence, the Committee recommends that the State party take necessary measures to guarantee the independence of UNAR so that it may implement its activities more efficiently.

(15) The Committee deplores the targeted evictions of Roma and Sinti communities which have taken place since 2008 in the context of the NED and notes with concern the lack of remedies provided to them despite the ruling of the Council of State in November 2011 annulling the NED. It is concerned that forced evictions have rendered several Roma and Sinti families homeless and regrets the ways in which security personnel and video-controlled access to some of these camps are used. As indicated in its previous concluding observations, the Committee is concerned that the Roma, Sinti and Camminanti populations, both citizens and non-citizens, are living in a situation of de facto segregation from the rest of the population in camps that often lack access to the most basic facilities. The Committee takes note of the statement of the delegation on the intention to apply a new housing policy in favour of Roma and Sinti (art. 3).

The Committee encourages the State party to take the necessary measures to avoid forced evictions and provide adequate alternative housing to these communities. It also urges the State party to refrain from placing Roma in camps outside the populated areas without basic facilities such as health-services and education. Bearing in mind its general recommendations No. 27 (2000) on discrimination against Roma and No. 30 (2004), as well as the National Strategy for the inclusion of Roma, Sinti and Caminanti communities, the Committee encourages the State party to intensify efforts to avoid residential segregation of Roma and Sinti communities, both citizens and non-citizens, and to develop social housing programmes for them.

In view of the ruling of the Council of State, the Committee recommends that the State party take appropriate measures to provide effective remedies to members of Roma and Sinti communities for all the negative effects that followed the implementation of the NED, including by providing appropriate housing for them, and ensuring that segregated camps are not the only housing solution available to them.

(16) While noting that Law No. 654/1975 punishes racial discrimination and that Law No. 205/1993 (Mancino's Law) provides for aggravating circumstances for ordinary crimes committed with racial motives, the Committee is concerned that the provision on aggravating circumstances is used when a racist motive appears to be the only motivation but not when there are mixed motives. The Committee also regrets the lack of information on decisions adopted to apply this provision and penalties for propaganda of racial or ethnic superiority (art. 4).

The Committee recommends that the State party amend article 61 of the Criminal Code so as to establish that an offence with racist motivation constitutes an aggravating circumstance, including in cases where there are mixed motives. It also

recommends that the State party take the necessary measures to prosecute and punish cases of dissemination of ideas of racial superiority and of incitement to racist violence or crime, in accordance with the provisions of the law and with article 4 of the Convention.

(17) The Committee is extremely concerned by the prevalence of racist discourse, stigmatization and stereotypes directed against Roma, Sinti, Camminanti and non-citizens. The Committee is concerned that in the few cases where politicians have been prosecuted for discriminatory statements, stays of execution have allowed those prosecuted to continue their political activities and to stand for election. The Committee notes that the fundamental right to freedom of expression does not protect the dissemination of ideas of racial superiority or incitement to racial hatred. The Committee is also concerned that racial discrimination is increasing in the media and on the Internet, particularly on the social networks (arts. 2 and 4).

The Committee recommends that the State party:

(a) Take appropriate measures to prosecute individuals, including politicians, for the acts referred to in article 4, and to ensure that the legal principle of stay of execution does not prevent justice from prevailing. The Committee wishes to underline that the fundamental right of freedom of expression should not subtract from the principles of equality and non-discrimination as the exercise of the right to freedom of expression carries with it special responsibilities, among which is the obligation not to disseminate ideas on racial superiority or hatred.

(b) Reinforce the mandate of the Authority which monitors the media to ensure that racist statements are prosecuted and victims granted reparations. The Committee recommends that the State party ensure that the media do not stigmatize, stereotype or negatively target non-citizens and ethnic minorities. It encourages the State party to invite the media to strictly respect the Rome Charter in order to avoid racist, discriminatory or biased language. It also encourages the State party to consider ratifying the Additional Protocol to the European Convention on Cybercrime concerning the criminalization of acts of a racist and xenophobic nature committed through computer systems.

(c) Raise awareness among media professionals of their responsibility not to disseminate prejudice and to avoid reporting incidents involving non-citizens, members of Roma and Sinti communities in a way that stigmatizes such communities as a whole, bearing in mind its general recommendations No. 27 (2000) and No. 30 (2004).

(18) The Committee is deeply concerned about several cases of racist violence and the murders of a number of migrants, including people of African descent and members of Roma and Sinti communities. It is also concerned about racist violence manifested against members of these groups, including destruction of their property (arts. 2, 4 and 6).

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party ensure the security and integrity of non-citizens, and of Roma and Sinti, without any discrimination, by adopting measures to prevent racially motivated acts of violence against them, and ensure prompt action by the police, prosecutors and judges and make sure that perpetrators, including political authorities do not enjoy de jure or de facto impunity. It also recommends that the State party systematically collect data on racist hate crimes.

(19) The Committee regrets that Roma, Sinti and Camminanti communities continue to experience severe marginalization and discrimination. It expresses regret that measures

such as the NED have fostered stereotypes, prejudices and negative attitudes towards these communities. The Committee regrets the persistence of stereotypes associating ethnic minorities and non-citizens with criminality, and Islam with terrorism (arts. 3 and 5).

In view of the National Strategy for the inclusion of Roma, Sinti and Camminanti communities, the Committee recommends that the State party initiate consultations with these communities as well as organizations representing them for the implementation, monitoring and evaluation of this strategy. Particular attention should be given to the enjoyment of their economic, social and cultural rights as well as awareness-raising activities on tolerance, respect for diversity, social cohesion and non-discrimination in Italian society. The Committee, bearing in mind its general recommendations No. 27 (2000) and No.30 (2004), invites the State party to keep it informed regarding the implementation and impact of the actions under the above-mentioned Strategy.

Bearing in mind the intersectionality of racial and religious discrimination, the Committee recommends that the State party increase its efforts to prevent and combat racial discrimination against Muslims and foster dialogue with Muslim communities.

(20) The Committee expresses its concern that children of Roma and Sinti communities continue to experience discrimination with regard to access to education. It is concerned by the information that forced evictions and inadequate housing conditions have negatively affected school enrolment and attendance of children from these communities. The Committee is also concerned about the high school dropout rate and the low number of Roma and Sinti children enrolled in secondary schools and about the fact that very few of them progress to higher education (art. 5).

The Committee encourages the State party to intensify its efforts to ensure effective access to education by Roma and Sinti children and other vulnerable groups. The Committee recommends that the State party take all necessary measures to facilitate the inclusion of all Roma and Sinti children in the school system. In this regard, the Committee encourages the State party to avoid implementing policies which may indirectly discriminate against these groups or affect their school attendance. It recommends that the State party ensure that the administrative measure limiting to 30 per cent the number of children with non-Italian nationality in each class does not negatively affect the enrolment in education of children from the most vulnerable groups.

The Committee encourages the State party to recruit school personnel from among members of Roma and Sinti communities, to promote intercultural education in schools and to provide training to school staff and awareness-raising activities for Roma and Sinti parents.

(21) The Committee regrets the lack of information on the situation of migrant women and women belonging to Roma and Sinti communities. It is concerned that the already lamentable situation of these groups as regards their enjoyment of human rights in Italy may be worse for women belonging to these communities (art. 5).

Bearing in mind its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination, the Committee recommends that the State party provide data on difficulties experienced by Sinti and Roma women as well as migrant women, and that it provide information on measures taken to guarantee to these women equal enjoyment of their rights under the Convention.

(22) The Committee is concerned that, despite its previous recommendations, the precarious conditions in assistance, reception and identification centres have worsened with

the arrival of migrants from North Africa, particularly in recent years. The Committee is concerned about information according to which migrants are more likely to be arrested and often receive harsher sentences than Italians. This situation may also have been aggravated by Law No. 94/2009 which criminalized undocumented entry and stay in Italy, and Law No. 129/2011 which allows the detention of undocumented migrants for up to 18 months. The Committee is concerned about breaches of international norms regarding protection of refugees or asylum seekers as demonstrated by the judgement of the European Court of Human Rights of 23 February 2012 against the State party on the collective expulsion of 24 Somalian and Eritreans (arts. 2 and 5).

The Committee recommends that the State party:

(a) Take the necessary measures to ensure that conditions in centres for refugees and asylum seekers meet international standards. The Committee notes the State party's declaration that preliminary steps are being taken to implement the European Court of Human Rights' judgment including bilateral agreements with North African countries so as to avoid similar human rights violations in the future. The Committee wishes to reiterate that the State party has the obligation under its international human rights law to respect the principle of non-refoulement and to ensure that migrants are not subject to collective expulsion.

(b) Seek to eliminate the discriminatory effects of some of its legislation and prevent arrests and harsher sentences based solely on the origin or status of individuals on its territory and to monitor and punish racial discrimination by law enforcement officials.

(c) Adopt a comprehensive long-term strategy for the protection of refugees and asylum seekers in addition to any emergency measures in accordance with the 1951 Convention and the 1967 Protocol relating to the Status of Refugees.

(23) The Committee notes the difficulties experienced by non-citizens in accessing some social services provided in particular by local authorities. For example, according to Law 133/2008 they cannot access rent reimbursements offered by the State party without providing a certificate of residence for a minimum of ten years. The Committee expresses its concern that discrimination against non-citizens in the labour market persists. It is also concerned by the lack of appropriate legal protection for migrants, in particular against exploitation or abusive working conditions.

In line with its general recommendation No. 30 (2004), the Committee recommends that the State party remove obstacles that hinder the enjoyment of economic, social and cultural rights by non-citizens, in particular their rights to education, adequate housing, employment and health. The Committee recommends that the State party amend its legislation to allow undocumented migrants to claim rights arising out of previous employment and to file complaints irrespective of immigration status. It also recommends that the State party take all other measures to eliminate discrimination against non-citizens in relation to working requirements and conditions.

The Committee recommends that the State party review some of its administrative policies and organize awareness-raising activities for regional and local authorities on the prohibition of racial discrimination, including on non-discriminatory access to social services.

(24) The Committee notes that a number of Roma who came to Italy following the dismantling of the former Yugoslavia have lived in Italy for many years without citizenship, a situation which also affects their children. The Committee notes that citizenship for children born in Italy whose parents are foreigners is still to be granted (art. 5).

The Committee recommends that the State party take measures to facilitate access to citizenship for stateless Roma, Sinti and non-citizens who have lived in Italy for many years, and to pay due attention to and remove existing barriers. Bearing in mind the 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness, the Committee also recommends that the State party take measures to reduce statelessness, in particular statelessness among Roma and Sinti children and children born in Italy.

(25) The Committee notes the persistently low number of proceedings and convictions for racial discrimination despite many manifestations of racial or ethnic discrimination and stereotypes. While noting that a revision of Law No. 654 is under consideration to increase effective remedies for victims of racial discrimination, it is concerned that the State party has not taken effective measures to raise awareness of legal remedies available to victims as well as to reduce the costs of court proceedings (arts. 2 and 6).

The Committee requests that the State party provide statistical data on complaints, prosecutions and convictions relating to acts of racism and xenophobia, as well as on compensation provided to the victims of such acts. The Committee recommends that UNAR continue its collaboration with non-governmental organizations in assisting victims of racism and encourages the State party to review the system of registration so as to facilitate the inclusion of non-governmental organizations on the “list”, allowing them to initiate legal action on behalf of victims.

The Committee recommends that the State party raise awareness among the population, including the most vulnerable social groups, about legal and administrative remedies and increase free legal services for such groups. It requests that the State party include additional information on measures taken to improve redress for victims of racial discrimination in its next periodic report.

(26) The Committee is concerned about the lack of systematic specialized training for law enforcement officials on the international obligations of the State party under the Convention, which may explain the small number of prosecutions and convictions for racial discrimination despite the high number of hate crimes and violence (arts. 2, 6 and 7).

The Committee wishes to recall that, in accordance with article 2 of the Convention, States parties must ensure that all national and local public authorities do not engage in racial discrimination. The Committee strongly recommends that law enforcement officials receive intensive training to ensure that, in the performance of their duties, they respect and uphold all human rights for all without discrimination. The Committee recommends that the State party ensure that claims of racial discrimination are thoroughly investigated and are subject to independent inspection. It also invites the State party to encourage the recruitment of persons belonging to ethnic groups into the police or other law enforcement agencies.

(27) The Committee is concerned that the strongly decentralized system of Italy may lead to diversity of policies and decisions at the level of regions and provinces with regard to discrimination on ground of race or ethnic origin. The Committee also notes the need to adopt a global and comprehensive plan of action on human rights in view of the fragmented nature of measures on human rights taken by regional authorities (arts. 2 and 5).

The Committee recommends that the State party establish a mechanism of consultation and coordination with the local authorities, so as to avoid policies and decisions that are contrary to articles 2 and 5 of the Convention. It encourages the State party to adopt a global and comprehensive plan of action on human rights.

(28) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not

yet ratified, in particular treaties the provisions of which have a direct bearing on the subject of racial discrimination, such as the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

(29) In the light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee welcomes that the State party gave effect to the Durban Declaration and Programme of Action, adopted in September 2001 by the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, by adopting a national plan of action against racism in 2006 and currently drafting a new plan. The Committee requests that the State party include in its next periodic report specific information on the implementation of that plan of action.

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

(31) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(33) Noting that the State party has not submitted a core document, the Committee encourages the State party to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

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

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

(36) The Committee recommends that the State party submit its nineteenth and twentieth periodic reports in a single document by 4 February 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap I, para. 19).

30. **Jordan**

(1) The Committee considered the thirteenth to seventeenth periodic reports of Jordan, submitted in one document (CERD/C/JOR/13-17), at its 2153rd and 2154th meetings (CERD/C/SR.2153 and 2154), held on 1 and 2 March 2012. At its 2166th meeting (CERD/C/SR.2166), held on 8 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the report, albeit delayed, submitted by the State party, and expresses appreciation for the frank and constructive oral responses provided by the multi-sectoral delegation during the consideration of the report.

(3) The Committee commends the inclusion by the State party, in its periodic report, of new and updated information on the implementation of the Convention.

B. Positive aspects

(4) The Committee welcomes the State party's recent legislative amendments to facilitate greater protection of human rights and give effect to the Convention, including: amendments to the Constitution of Jordan, in September 2011, which strengthen the rule of law; and, amendments to its Labour Code, in August 2010, which enlarged the scope of labour law to include migrant domestic workers.

(5) The Committee notes with appreciation the establishment of the National Human Rights Centre in accordance with the Paris Principles, in 2002.

(6) The Committee notes with interest that since the consideration of the twelfth periodic report of the State party, the latter has acceded to or ratified international instruments, such as:

(a) The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, in June 2009;

(b) The United Nations Convention against Transnational Organized Crime, in May 2009;

(c) The Convention on the Rights of Persons with Disabilities, in March 2008;

(d) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in May 2007;

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

(f) The International Labour Organization (ILO) Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, in April 2000.

C. Concerns and recommendations

(7) While the Committee welcomes the information contained in the report of the State party, the Committee notes the limitations in census information in the State party and wishes to receive additional information on the characteristics and particular situation of the various ethnic groups.

In keeping with its general recommendation No. 8 (1990) concerning the interpretation and application of article 1, paragraphs 1 and 4 of the Convention (identification with a particular racial or ethnic group), and with paragraphs 10 to 12 of the guidelines for the CERD-specific reports to be submitted by State parties under

article 9, paragraph 1, of the Convention (CERD/C/2007/1), the Committee requests the State party to include in its next periodic report disaggregated data, including by ethnic origin, and including on the enjoyment of the right to education and socio-economic development.

(8) The Committee notes that the State party is a monist State and international conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination, have direct effect and primacy in its legal system. However, the Committee remains concerned that there is no clear definition of direct and indirect discrimination in the legislation of the State party (art. 1).

The Committee recommends that the State party introduce a clear definition of direct and indirect discrimination into its administrative, criminal and civil laws. In doing so, the Committee draws the State party's attention to its general recommendation No. 14 (1993) on the definition of racial discrimination.

(9) While noting that article 6 of the State party's Constitution enshrines equality before the law, the Committee notes with concern that the scope and wording of its Constitution is limited to "Jordanians shall be equal before the law" (art. 5).

Recalling its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party consider further amendments to its Constitution to extend the applicability of the Constitution to all persons under Jordanian jurisdiction, including non-Jordanians.

(10) Reiterating its previous concluding observations (CERD/C/304/Add.59, para. 7) the Committee remains concerned that some of the provisions in the Penal Code are not in full conformity with article 4 of the Convention and are limited to groups which constitute the nation, resulting in the provisions of article 4 not being fully implemented and non-citizens not receiving the full protection envisaged in article 5 (a) and (b) of the Convention (arts. 4 and 5).

The Committee recommends that the State party consider amending its Penal Code, in accordance with articles 4, 5 (a) and 5 (b) of the Convention, with a view to ensuring full protection for all persons in the State party's jurisdiction. In doing so, the Committee draws the State party's attention to its general recommendation No. 7 (1985) on legislation to eradicate racial discrimination.

(11) The Committee is concerned that under the Jordanian Nationality Act (Law No. 6 of 1954), children of Jordanian women who are married to non-nationals are precluded from obtaining Jordanian nationality at birth (art. 5).

The Committee recommends that the State party review and amend the Jordanian Nationality Act (Law No. 7 of 1954) in order to ensure that a Jordanian mother married to a non-Jordanian man has the right to confer her nationality to her children equally and without discrimination. In doing so, the Committee draws the State party's attention to its general recommendation No. 25 (2000) on gender related dimensions of racial discrimination.

(12) The Committee notes the State party delegation's information on withdrawal of citizenship from persons originating from the West Bank of the Occupied Palestinian Territory being subject to a verification of the concerned person's possibility to return to the West Bank, and that there is the possibility of appealing against such withdrawals of nationality. However, the Committee remains deeply concerned at the State party withdrawing nationality from its nationals who are of Palestinian origin. The Committee highlights that this is in violation of Jordanian and international law, inter alia, article 24 of the International Covenant on Civil and Political Rights, and article 7 of the Convention on the Rights of the Child; and is gravely concerned that these persons may be rendered

stateless and without rights to education, health care, property, or residency in Jordan. The Committee also notes with concern that children of men whose nationality is revoked automatically lost theirs too, even if they were adults (art. 5).

In accordance with international law and the State party's own legislation on nationality, the Committee urges the State party to discontinue the practice of withdrawing nationality from persons originating from the Occupied Palestinian Territory. It further calls upon the State party to restore nationality to persons that have been affected by previous and current situations of such nationality withdrawal. The Committee also recommends that the State party consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; and, the 1961 Convention on the Reduction of Statelessness.

(13) While noting as positive the State party's 2010 election law which increases the number of seats representing urban districts, where most Jordanians of Palestinian origin reside, the Committee is concerned that the current structure of the State party's parliament remains disproportionately imbalanced in favour of rural districts. The Committee is further concerned that, as non-citizen residents, Jordan's large refugee population remains unable to participate in the political processes and decision-making in the State party. It is also concerned that security forces, whose leadership generally excludes Jordanians of Palestinian descent, continue to exercise significant influence over Jordanian political life in a manner that limits citizens' freedoms of speech and assembly (art. 5 (c)).

The Committee recommends that the State party consider further amendments to its election law and apportionment of parliamentary seats to facilitate proportionate representation of Jordanians of all ethnic origin as well as non-national residents in its politics and decision making. Furthermore, the Committee recommends that the State party consider measures, including minimum quotas, to increase the proportion of persons of Palestinian origin in the leadership of its security forces.

(14) The Committee is concerned at reports that non-Jordanian workers are discriminated against with regard to minimum wage and access to social security. Furthermore, the Committee is concerned that new regulations on migrant domestic workers, issued in August 2009, following the inclusion of domestic workers in the Labor Law in July 2008, restrict some essential rights, including freedom of movement, of migrant domestic workers (art. 5).

In accordance with, inter alia, articles 5 (d) (ix) and 5 (e) (i) and (ii) of the Convention, the Committee recommends that the State party undertake further amendments to its labour laws to bring them into full compliance with the legal obligation to ensure that labour rights are enjoyed by all employed persons in Jordan regardless of national and/or ethnic origin, including migrant domestic workers. Furthermore, the Committee recommends that the State party consider acceding to ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

(15) While noting with appreciation the ongoing efforts to implement measures pursuant to the State party's amendments to its Constitution in September 2011, the Committee remains concerned at the continued absence of a Constitutional Court to oversee the conformity of Jordanian legislation with the Constitution and the Convention. Furthermore, reiterating its previous concern (CERD/C/304/Add.59, para. 10), the Committee remains concerned at the absence of information on the practice in the State party regarding complaints, judgements and compensation awards arising from racist acts, regardless of their nature (art. 6).

Recalling its general recommendation No. 26 (2000) on article 6 of the Convention, the Committee urges the State party to expeditiously establish an operational

mechanism(s) to receive complains on racist acts, investigate them and issue commensurate sanctions and compensation. In doing so, the State party should ensure the provision of adequate human, technical and financial resources for such mechanism(s) to function and systematically compile information on complaints received and the specific actions taken in response to them. It further recommends that this compiled information be analysed to serve as a basis for guiding the State party's policies and programmes in eradicating discrimination and be included in its next report to the Committee.

(16) While noting the establishment of the National Centre for Human Rights, in accordance with the Paris Principles, the Committee notes that the human, financial and technical resources for its proper functioning remain insufficient (art. 6).

Recalling its general recommendation No. 17 (1993) on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party undertake measures to ensure the provision of its National Centre for Human Rights with adequate human, technical and financial resources. In doing so, the State party should also equip the Centre with mechanisms for monitoring and evaluating progress in the implementation of the Convention at the national and local levels as well as to receive, investigate and address complaints. The Committee also recommends that the above be complemented by measures to raise public awareness on the presence of such mechanisms and knowledge on how to effectively access them.

(17) The Committee regrets that with regard to article 7 of the Convention, little further information has been provided by the State party (art. 7).

The Committee urges the State party to undertake a systematic and inter-agency assessment of its existing measures to combat racial prejudice and discrimination. Furthermore, the Committee recommends that the results of such an assessment be used to guide further the State party's policies and programmes to address discrimination in education, culture, media, as well as to facilitate further increase in knowledge of the Convention.

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

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

(20) The Committee notes the actions taken by the State party on follow-up to the Durban Review Conference, including the National Action Plan against Racism and related initiatives. In light of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee recommends that the State party continue to give effect to the Durban Declaration and Programme of Action, adopted in September 2001 at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, taking into account the outcome document of the Durban Review Conference, held in Geneva in April 2009, when implementing the Convention in its domestic legal order.

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

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

(23) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 7, 11 and 19 above.

(24) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 9, 12 and 14, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(25) The Committee recommends that the State party submit its combined eighteenth and twentieth periodic reports in a single document by 6 June 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see the harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

31. **Kuwait**

(1) The Committee considered the fifteenth to twentieth periodic report of Kuwait (CERD/C/KWT/15-20), submitted in one document, at its 2133rd and 2134th meetings (CERD/C/SR.2133 and 2134), held on 16 and 17 February 2012. At its 2147th and 2148th meetings (CERD/C/SR.2147 and 2148), held on 27 and 28 February 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined fifteenth to twentieth periodic reports of the State party. However, the Committee notes that the combined periodic report is not completely in line with all the elements of the Committee's reporting guidelines. It regrets the late submission of the report which has prevented the Committee from conducting an ongoing analysis of the implementation of the Convention for more than a decade.

(3) The Committee welcomes the open and constructive dialogue with the multi-sectoral delegation and expresses its appreciation for the oral presentation and the detailed replies provided by the delegation during the consideration of the report.

B. Positive aspects

(4) The Committee welcomes the State party's ongoing efforts to revise its legislation in order to ensure greater protection of human rights and give effect to the Convention, such as the amendment to the Electoral Act No. 35 of 1962 by Act No. 17 of 2005 which granted Kuwaiti women full rights to vote and to stand for elections.

(5) The Committee notes with interest that since the consideration of the thirteenth and fourteenth periodic reports of the State party, the latter has acceded to or ratified international and regional instruments, such as:

(a) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (26 August 2004);

(b) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (26 August 2004);

(c) ILO Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (15 August 2000);

(d) United Nations Convention against Transnational Organized Crime (12 May 2006);

(e) Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000 (Palermo Protocol) (12 May 2006);

(f) Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime (2000) (12 May 2006).

(6) The Committee also welcomes the State party's efforts to amend its policies, programmes and administrative measures to ensure further the protection of human rights and implementation of the Convention, including:

(a) The issuance of Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector;

(b) The establishment in November 2010 of the Central Bureau for Illegal Residents with a view to resolving the issue of the Bedoun (stateless persons);

(c) The establishment of the Higher Committee for Human Rights by Ministry of Justice Decision No. 104 of 2008, and in particular its International Liaison Committee tasked with the preparation of periodic reports to human rights treaty bodies;

(d) The establishment of a Committee on Human Rights by the Ministry of the Interior in 2001, which is competent to receive individual complaints.

C. Concerns and recommendations

(7) The Committee regrets that the State party's periodic report did not contain statistics regarding the ethnic composition of the persons living in its territory.

In accordance with paragraphs 10–12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party collect and publicize reliable and comprehensive statistical data on the ethnic composition of its population, and its economic and social indicators disaggregated by ethnicity, including on immigrants, from national census or surveys which include the ethnic and racial dimension based on self-identification, to enable the Committee to better evaluate the enjoyment of rights under the Convention in Kuwait. The Committee requests the State party to provide it with such disaggregated data in its next report.

(8) The Committee is concerned that national legislation does not contain a definition of racial discrimination in full conformity with article 1 of the Convention, as well as a general norm of prohibition of racial discrimination according to the Convention (art. 1).

The Committee recommends that the State party amend its legislation to include a definition of racial discrimination in full conformity with article 1 of the Convention.

(9) While taking note of the delegation's explanation that the Convention was enacted by Royal Decree as a part of the Kuwaiti legal system and published in the Arabic language in the Official Gazette, the Committee is concerned whether it is actually applied in courts and administrative acts (arts. 1 and 2).

The Committee requests the State party to provide it with examples of the application of the Convention in courts and administrative acts in its next periodic report.

(10) While noting that the State party has set up by ministerial decree a special committee to establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles, the Committee is concerned that such an institution has not been established to date (art. 2).

Recalling its general recommendation No. 17 (1993), on the establishment of national institutions to facilitate the implementation of the Convention, the Committee recommends that the State party promptly establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles.

(11) The Committee is concerned at the failure of the State party to accede to the 1954 Convention relating to the Status of Stateless persons and to the 1961 Convention on the Reduction of Statelessness (art. 2).

The Committee invites the State party to reconsider accession to the 1954 Convention relating to the Status of Stateless persons and to the 1961 Convention on the Reduction of Statelessness.

(12) Recalling its previous concluding observations, the Committee is concerned at the lack of amendments to the Penal Code to fully comply with the provisions of article 4 of the Convention, and the lack of specific legislation prohibiting dissemination of ideas based on racial superiority or hatred, incitement to racial hatred and discrimination and the lack of legislation banning racist organizations (art. 4 (a) and (b)).

Recalling its general recommendations No. 7 (1985) on legislation to eradicate racial discrimination and No. 15 (1993) on article 4, the Committee reiterates its recommendation that the State party revise the Penal Code to introduce and implement specific legislation in full compliance with article 4 of the Convention that prohibits dissemination of ideas based on racial superiority or hatred, incitement to racial hatred and discrimination and bans racist organizations.

(13) While taking note that a draft Law against Trafficking in Persons and the Smuggling of Migrants has been submitted to the National Assembly, the Committee is concerned that there is no definition of trafficking in persons and that the draft law criminalizing it has not been enacted to date (arts. 2 and 6).

The Committee recommends that the State party define and criminalize trafficking in persons and promptly enact legislation against human trafficking and smuggling of migrants in conformity with international standards.

(14) The Committee is concerned that there has been no amendment to date of the Civil Service Act (Act No. 15 of 1979) concerning the prohibition of discrimination by officials in all administrative bodies of the State among applicants for posts in the public administration on the basis of sex, origin, language and religion (arts. 2 and 4).

The Committee recommends the prompt adoption of the draft bill amending the Civil Service Act (Act No. 15 of 1979) to prohibit discrimination in employment in the public administration on grounds of sex, origin, language and religion.

(15) The Committee is concerned that constraints regarding the establishment and access to places of worship may result in indirect racial discrimination on the basis of ethnicity, especially among non-citizens (art. 5).

The Committee recommends that the State party ensure that all persons in its territory enjoy the right to establish and have access to their places of worship and

that any instances of constraint are dealt with in accordance with international human rights standards, including treaties acceded to or ratified by the State party.

(16) The Committee is concerned at the lack of specific labour legislation that would ensure the protection of foreign and domestic workers and guarantee their rights according to international standards. It is concerned that amendments to the Labour Law, including Law No. 6 of 2010 Governing Labour in the Private Sector, do not cover domestic workers, who are mainly foreigners or of foreign origin, and do not comprehensively regulate their working conditions. It is also concerned that the Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector does not apply to domestic workers (arts. 2, 5 and 6).

In the light of its general recommendation No. 20 (1996) on the non-discriminatory implementation of rights and freedoms, the Committee recommends that the State party adopt specific labour legislation ensuring the protection of foreign and domestic workers and which guarantees their rights according to international standards, including the ILO conventions to which Kuwait is a party. It also recommends that the State party amend the Law Governing Labour in the Private Sector so that it covers domestic workers and comprehensively regulates their working conditions. The Committee recommends that the Ministry of Social Affairs and Labour Ministerial Decree No. 166 of 2007 concerning the Prohibition on Confiscating Travel Documents of Workers in the Private Sector be amended to apply to domestic workers. The Committee recommends that the State party ratify the ILO Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

(17) The Committee is concerned about the situation of the Bedoun (stateless persons), some of whom have lived in Kuwait for a long time, have a strong claim to nationality, have a genuine and effective link to the State or have served or serve in the police, army and other State institutions, as well as with the situation of children born in Kuwait to foreigners and stateless persons. While taking note that a Roadmap has been drawn up and that the Central Bureau for Illegal Residents will submit two lists of candidates for naturalization to the Cabinet, the Committee is concerned at the low rate of naturalizations and in particular by the situation of the unregistered Bedoun who do not have security cards. The Committee is also concerned that not all Bedoun enjoy some basic human rights such as the right to obtain civil documentation, as well as access to adequate social services, education, housing, property, business registration and employment. It is also concerned that they are not always able to return to Kuwait, in contravention of the right to freedom of movement (arts. 2, 5 and 6).

In the light of its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee recommends that the State party implement the existing Roadmap and provide a just, humane and comprehensive solution to the situation of the Bedoun, with respect for their dignity. The Joint Committee on the Granting of Kuwaiti Nationality should consider naturalizing the Bedoun, in particular persons who have lived in Kuwait for a long time, who can prove a genuine and effective link to the State, or have served or serve in the police, army and other State institutions, as well as children born in Kuwait of foreigners and stateless persons. The State party should consider providing residence permits and temporary legal status to non-citizens, including the unregistered Bedoun who do not have security cards. The Committee recommends that the State party issue civil documents to all persons in its territory and provide access to adequate social services, education, housing, property, business registration and employment to the Bedoun. It recommends that the State party ensure that the Bedoun enjoy the right to freedom of movement and are able to return to Kuwait.

(18) The Committee is concerned that current legislation does not allow Kuwaiti women who marry foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men (arts. 2 and 5).

Recalling its general recommendations No. 25 (2000) on gender-related dimensions of racial discrimination, No. 29 (2002) on descent and No. 30 (2004), the Committee recommends that the State party enact amendments to the Nationality Act that would allow Kuwaiti women married to foreigners to pass on their nationality to their children and spouses on an equal footing with Kuwaiti men.

(19) The Committee is concerned that the current sponsorship (Kafala) system for domestic workers continues to be applied. It is concerned in particular about the absence of safeguards for the legal protection of domestic workers under this system as well as at the lack of sufficient accountability and legal responsibility of the employers and recruitment agencies. The Committee is also concerned that domestic workers in dispute with their employers are often deported by administrative decision, without a court order or possibility of appeal (arts. 2, 5 and 6).

The Committee recommends that the State party abolish the sponsorship (Kafala) system and replace it with residency permits for domestic workers issued and overseen by the Government, in conformity with international standards. It also recommends that the State party amend further the Private Sector Employment Act of 23 December 2009 and establish a public body that would regulate the recruitment and employment of workers in the private sector and ensure the implementation of safeguards for the protection of domestic workers and the accountability and legal responsibility of the employers and recruitment agencies. The State party should review the system of administrative deportations of domestic workers and refer such cases to courts of law, with possibility of appeal.

(20) The Committee is concerned that refugees recognized by the Office of the United Nations High Commissioner for Refugees (UNHCR) and asylum seekers who are unable to regulate their status in accordance with the current legal framework regulating the employment of foreigners and the sponsorship system remain without legal residence in the country. It is also concerned that the Ministry of the Interior has reinstated the daily overstay fines for refugees not lawfully staying in Kuwait. The Committee is also concerned that refugees recognized under UNHCR's mandate cannot avail themselves of basic rights, including health services and education for refugee children because of their lack of regularized status (arts. 5 and 7).

In the light of its general recommendations No. 22 (1996) on article 5 and on refugees and displaced persons and No. 30 (2004), the Committee recommends that the State party provide legal residence in the country to refugees recognized by UNHCR and asylum seekers in accordance with the legal framework regulating the employment of foreigners. It also recommends that the Ministry of the Interior annul the daily overstay fines for refugees not lawfully staying in Kuwait as a gesture of support towards them and UNHCR. The Committee recommends that the State party regularize the status of refugees recognized under UNHCR's mandate so that they can avail themselves of basic rights, including health services and education for refugee children.

(21) The Committee is concerned that not all Bedoun children are covered by free compulsory primary education, including by the charitable fund (art. 5).

The Committee recommends that the State party implement free compulsory primary education to all children in its territory and make available and accessible secondary education to the greatest extent possible.

(22) The Committee is concerned that foreign workers, and in particular domestic workers, are not aware of their rights and responsibilities under Kuwaiti law and to whom they can turn if needing assistance (art. 5).

The Committee recommends that the State party provide information to all foreign, including domestic, workers on their rights and responsibilities under Kuwaiti law and to whom they can turn if needing assistance, in languages which they understand.

(23) The Committee is concerned at the abuses suffered by some domestic workers at the hands of police and immigration officials. It is particularly concerned at the type and extent of abuse of some domestic workers by their employers. The Committee is concerned at the situation of domestic workers in untenable abusive situations who can change employers only after three years. The Committee is also concerned at the unavailability of legal remedies to the victims, including access to justice, compensation and reparation (arts. 2, 5, 6 and 7).

The Committee recommends that the perpetrators of abuses of domestic workers be investigated, prosecuted and punished and that the victims be compensated and accorded all remedies afforded by the Convention, including reparations for damage. Recalling its general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, the Committee also recommends that quality human rights training be provided to investigating magistrates, law enforcement officials and other public servants. In addition, the Committee recommends that the State party establish a monitoring mechanism such as an Ombudsman for domestic workers or Protector for domestic workers and enable them to receive complaints from and provide protection to domestic workers and enforce the law. It invites the State party to consider amending the law allowing domestic workers to leave their employers only after three years of service which is untenable in abusive situations. Recalling its general recommendation No. 26 (2000) on article 6 of the Convention, the Committee recommends that the State party ensure that victims can avail themselves of legal remedies, including access to justice, compensation and reparation.

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

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

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

(27) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution

47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

(28) The Committee also invites the State party to make a declaration under article 14 of the Convention concerning individual communications.

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

(30) Noting that the State party has not submitted a core document, the Committee encourages the State party to submit a core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

(31) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 13, 14, and 23 above.

(32) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 17, 18 and 21 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(33) The Committee recommends that the State party submit its twenty-first and twenty-fourth periodic reports in a single document by 4 January 2016, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

32. Lao People's Democratic Republic

(1) The Committee considered the sixteenth to eighteenth periodic reports of Lao People's Democratic Republic, submitted in one document (CERD/C/LAO/16-18), at its 2149th and 2150th meetings (CERD/C/SR.2149 and CERD/C/SR.2150), held on 28 and 29 February 2012. At its 2159th and 2160th meetings (CERD/C/SR.2159 and 2160), held on 6 and 7 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined sixteenth to eighteenth periodic reports which comply with the Committee's revised guidelines for the preparation of treaty-specific reports, and of the common core document. The Committee also welcomes the open and frank dialogue with the high-level delegation of the State party, as well as the responses given to the issues raised by Committee members during the dialogue.

B. Positive aspects

(3) The Committee notes the legislative and policy measures taken by the State party which contribute to combating racial discrimination, including:

- (a) The adoption in 2009 of the Prime Minister's Decree on Associations;
 - (b) The adoption in 2009 of the Master Plan on Development of the Rule of Law in Lao People's Democratic Republic toward 2020;
 - (c) The scientific study undertaken on the ethnic composition of the State party's population which has led to the formal recognition of 49 ethnicities classified into 4 ethno-linguistic groups.
- (4) The Committee welcomes the ratification by the State party of the following international instruments since the consideration of the sixth to fifteenth periodic reports:
- (a) The International Covenant on Civil and Political Rights, on 25 September 2009;
 - (b) The Convention on the Rights of Persons with Disabilities, on 25 September 2009;
 - (c) The International Covenant on Economic, Social and Cultural Rights, on 13 February 2007;
 - (d) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, on 20 September 2006;
 - (e) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, on 20 September 2006.
- (5) The Committee further notes the improvement in the representation of smaller ethnic groups in elected and public bodies.

C. Concerns and recommendations

- (6) While noting the provisions of article 176 of the State party's Criminal Code on discrimination against ethnic persons and the various non-discrimination articles contained in other laws, such as the Labour Law and the Law on Health Care, the Committee remains concerned that they do not include all elements of the definition of racial discrimination under article 1 of the Convention (art. 1, para. 2).

The Committee recommends that the State party introduce into its legislation a comprehensive definition of racial discrimination, fully in accordance with article 1 of the Convention, prohibiting discrimination on the basis of race, colour, descent, or national or ethnic origin. The Committee also recommends that the State party define direct and indirect discrimination in its civil and administrative laws.

- (7) The Committee is concerned that the State party has not taken all the necessary legislative measures to incorporate the provisions of the Convention into its domestic law, as provided for by the 2009 Presidential Ordinance on Treaty Making, Participation and Implementation (art. 2).

The Committee urges the State party to review its legislation and take the most appropriate approach for incorporating the Convention's provisions into domestic law, either by adopting a comprehensive law against racial discrimination or amending existing laws. The Committee recommends that the State party take into consideration in this regard the relevant recommendations articulated in the present concluding observations.

- (8) The Committee notes the concern of the State party as regards the lack of resources for the establishment of a national human rights institution. The Committee also notes the variety of bodies tasked with the supervision of the implementation of human rights treaties, as listed in paragraph 65 of the country's core document. The Committee wishes to stress

the crucial role that an independent national human rights institution plays in the protection and promotion of human rights and in combating racial discrimination in particular (art. 2).

Recalling its previous recommendation, the Committee encourages the State party to establish a national human rights institution compliant with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). The Committee invites the State party to seek assistance in this regard from the international community, including the Office of the United Nations High Commissioner for Human Rights.

(9) The Committee regrets the paucity of information provided on the implementation of article 3 of the Convention (art. 3).

Recalling its general recommendation No. 19 (1995) on article 3 on racial segregation, the Committee requests the State party to include in its next periodic report information on any ethnic residential patterns and measures taken to monitor trends and prevent segregation.

(10) While noting the explanation of the State party that article 66 of the Criminal Code on “division of solidarity” was introduced in response to the Committee’s recommendation at the sixty-sixth session in April 2005, the Committee regrets that the said article does not prohibit dissemination of ideas based on racial superiority or hatred and incitement to racial discrimination nor ban organizations or activities promoting racial discrimination, as required by article 4 of the Convention (art. 4, para. 2).

Recalling its general recommendations No. 1 (1972) on States parties’ obligations, No. 7 (1985) on legislation to eradicate racial discrimination and No. 15 (1993) on article 4, which stipulate that the provisions of article 4 are mandatory and preventive in nature, the Committee recommends that the State party incorporate into its Criminal Code provisions giving full effect to article 4 of the Convention. The Committee also recommends that the State party add racist motivation as an aggravating circumstance for crimes in general under article 41 of the Criminal Code. Moreover, the Committee requests the State party to include in its next periodic report information on the application of article 66 of the Criminal Code.

(11) While noting the answer given by the delegation of the State party, notably concerning the investigation conducted on the allegations of killings of young Hmong persons in the Xaisomboune Special Zone in May 2004, the Committee remains concerned that allegations of acts of violence against Hmong people are not properly and impartially investigated (art. 5 (b)).

The Committee urges the State party to investigate promptly, thoroughly and impartially all allegations of acts of violence against members of the Hmong ethnic group. In this regard, the Committee draws the attention of the State party to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system.

The Committee also reiterates its previous recommendation that the State party should invite United Nations bodies for the protection and promotion of human rights to visit the areas where members of the Hmong ethnic groups have taken refuge.

(12) The Committee notes the information provided by the State party in its letter of 2 October 2009 and during the dialogue regarding the conditions of Hmong persons repatriated under an agreement with a neighbouring country. Nevertheless, the Committee expresses concern that some persons, considered by the Office of the United Nations High Commissioner for Refugees (UNHCR) as persons of concern, did not voluntarily repatriate and that international monitors were not allowed access to them upon their arrival in the State party (art. 5 (b)).

The Committee calls upon the State party to ensure that repatriation of persons or groups, considered as persons of concern to UNHCR, is conducted on a genuinely voluntary basis. The Committee also urges the State party to give international monitors unrestricted access to returnees.

(13) While noting the efforts of the State party to combat human trafficking including through regional cooperation, the Committee is concerned that human trafficking, which could affect the rural population and ethnic groups, remains a serious problem (art. 5 (b)).

In addition to the universal periodic review recommendations on measures to combat trafficking which the State party has voluntarily committed to follow, the Committee calls upon the State party to address the root causes of trafficking and to pay attention to any manifestation of vulnerability thereto due to ethnicity or subsequent to relocation.

(14) Taking into account the intersectionality between ethnicity and religion in the State party and referring to the observations of the Special Rapporteur on freedom of religion or belief, the Committee is concerned at the discrimination reportedly experienced by certain ethnic groups in the exercise of their freedom of religion (art. 5 (d)).

The Committee reiterates its previous recommendation that the State party take all necessary measures to ensure that all persons enjoy their right to freedom of thought, conscience and religion, without discrimination, in accordance with article 5 of the Convention.

(15) The Committee expresses concern at the reluctance of the State party to take steps to discourage practices within some ethnic groups, particularly regarding inheritance and early marriages, which are prejudicial to the equal enjoyment and exercise of rights by either sex (art. 5 (d) and (e)).

Recalling the State party's obligation to guarantee the right to equality in the enjoyment of human rights, the Committee calls on the State party to take account in public policies of the need to address discriminatory customs, primarily through education and other culturally sensitive strategies. In this regard, the Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination.

(16) In view of the customs and traditional practices of members of ethnic groups in mountainous areas, the Committee is concerned that the land regime of the State party, whereby land is allotted for housing, farming, gardening and grazing, fails to recognize a link between the cultural identity of ethnic groups and their land (art. 5 (e)).

The Committee calls upon the State party to review its land regime with a view to recognizing the cultural aspect of land as an integral part of the identity of some ethnic groups.

(17) The Committee regrets that it has not been given information during the dialogue as to how communities' free prior and informed consent is ensured in practice in the implementation of projects that affect the use of their lands and resources, in particular in the implementation of development projects, such as the building of hydropower stations, extractive activities or in the context of land concessions and the establishment of economic special zones (art. 5 (e)).

The Committee urges the State party to ensure that the right of communities to free prior and informed consent is respected in the planning and implementation of projects affecting the use of their lands and resources. The Committee calls upon the State party to ensure that communities have the capacity to effectively represent their interests in decision-making processes. The Committee also recommends that the

State party take all measures to ensure that communities have effective access to redress.

Moreover, the Committee calls upon the State party to ensure that the laws and regulations pertaining to consultations, impact assessments, displacement and compensations, such as Prime Minister Decree No. 192/PM of 7 July 2006, fully respect the rights of the members of communities living in the areas where development projects are to be implemented.

(18) The Committee notes the development objective of the relocation policy which aims to cluster and settle scattered ethnic communities of the mountainous areas in lowland villages with better access to public services and infrastructure. The Committee further notes the affirmation by the State party that communities concerned by relocation projects have been consulted prior to resettlement and that these relocations have been made on a voluntary basis. At the same time, the Committee is seriously concerned that the implementation of the policy has uprooted communities who have also been forced to adopt new lifestyles and livelihoods. Moreover, the Committee regrets that it has not received information as to how alternatives to relocation and consideration of ethnic groups' ties to land have been taken into account in the implementation of the policy (arts. 5 (e) and 1).

The Committee reiterates its previous recommendation calling on the State party to consider all possible alternatives to relocation and to pay attention to the cultural ties of certain ethnic groups to their land. Moreover, the Committee recommends that the State party provide opportunities for smaller ethnic groups to define development in their own terms and to contribute to decision-making as to how development is operationalized.

The Committee requests the State party to include in its next periodic report information on the number of persons/villages and their ethnic affiliation which have been relocated as well as information on the impact of the relocation policy on the livelihood and the culture of the persons, villages and ethnic groups concerned.

(19) The Committee notes the political will of the State party to reduce poverty in rural areas and to improve ethnic groups' enjoyment of economic and social rights, as shown by the implementation of policies and programmes, such as the Education Strategy by 2020 and Education for All programmes, and the Strategy Plan in Public Health Sector by 2020, which accord priority to disadvantaged districts. Nevertheless, the Committee is concerned that some ethnic groups do not have equal access to public services, such as in the area of health and education, either because of language barriers or because the provision of these services in remote locations are either of poor quality or inexistent (art. 5 (e)).

The Committee calls upon the State party to continue to address the ethnic and geographical disparities in the delivery of, and access to, public services, and to ensure that these services are culturally adequate. Bearing in mind its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of Racial Discrimination, the Committee requests the State party to include in its next periodic report information on special measures taken to reduce these disparities and information on the outcome of measures taken to overcome the language obstacle in the delivery of services. The Committee also requests that the State party provide in its next periodic report data on the enjoyment of economic, social and cultural rights, disaggregated by ethnic group and rural/urban area.

(20) Notwithstanding the explanation provided by the State that no ethnic group is considered as a minority, the Committee emphasizes the need in a multi-ethnic society to recognize and promote the rights of ethnic groups of smaller size, including the need to protect their existence and their identity so as to prevent forced assimilation and loss of

cultures, as well as to ensure that their concerns are taken into consideration in public policies (arts. 5, 2 and 1).

In line with its previous concluding observations, the Committee calls upon the State party to recognize without discrimination on the ground of ethnic origin all human rights listed in article 5 of the Convention to all members of its ethnic groups that are numerically inferior to the rest of the population, regardless of the name given to these groups in domestic law.

(21) The Committee expresses its concern at the insufficient measures taken to preserve the ethnic languages spoken in the State party, in particular the non-written languages, which are part of the national cultural heritage (art. 5 (e)).

The Committee urges the State party to take the necessary measures to preserve the cultural heritage of ethnic groups, including their languages. In this regard, the Committee recommends that the State party explore all possibilities for capturing and documenting ethnic languages, traditional knowledge and cultures, and develop their teaching in school.

(22) The Committee notes the measures taken, such as the adoption in 2005 of the Law on Complaints and the implementation of the Master Plan on Development of the Rule of Law, to improve access to justice in the State party. Nevertheless, the Committee expresses its concern at the absence of complaints of racial discrimination in the light of the ethnic diversity of its population (art. 6).

Considering that the absence of complaints does not signify a lack of racial discrimination and recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party verify whether the absence of complaints of racial discrimination is not the result of victims' lack of awareness of their rights, fear of reprisals, limited access to remedies, lack of confidence in the police and judicial authorities or the authorities' lack of attention or sensitivity to cases of racial discrimination.

The Committee recommends that the State party review judicial and other remedies available to victims to ensure that they are effective. To this end, the Committee calls upon the State party to pay particular attention to the additional challenges faced by ethnic groups in accessing justice, such as their remoteness and language obstacles. The Committee also recommends that the State party continue to raise awareness of the Convention and of the State party's Criminal Code provisions relating to racial discrimination.

The Committee requests the State party to provide in the next report information on complaints about acts of racial discrimination, received through all mechanisms, including the village mediation units and the National Assembly, as well as information on relevant decisions in penal, civil or administrative court proceedings, including on any restitution or other remedies provided to victims of such acts.

(23) While noting the implementation of the International Law Project initiated by UNDP, the Committee regrets that the information supplied in the State report, the core document and during the dialogue has not enabled it to ascertain to what extent training on the Convention and its provisions has been provided to Government officials, the judiciary, law enforcement officials, teachers, social workers and other public officials (art. 7).

The Committee requests the State party to include in its next periodic report information on measures taken to increase the awareness of the Convention and its provisions among those concerned by its implementation, including civil servants, the judiciary, members of the village mediation units, law enforcement officials, teachers

and social workers. In particular, the Committee draws the attention of the State party to its general recommendation No. 13 (1993) on training of law enforcement officials in the protection of human rights.

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

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

(26) The Committee recommends that the State party initiate and promote a dialogue with civil society organizations working in the area of human rights protection, in particular in the implementation of these recommendations and in the preparation of the next periodic report.

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

(28) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

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

(31) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 7, 8 and 17 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(32) The Committee recommends that the State party submit its combined nineteenth to twenty-first periodic reports in a single document by 24 March 2015, taking into account the specific guidelines for adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-

specific reports, and 60–80 pages for the common core document, shall it consider updating it (HRI/GEN.2/Rev.6, chap. I, para. 19).

33. **Mexico**

(1) The Committee on the Elimination of Racial Discrimination considered the sixteenth and seventeenth periodic reports of Mexico, submitted in a single document (CERD/C/MEX/16-17), at its 2129th and 2130th meetings (CERD/C/SR.2129 and 2130), held on 14 and 15 February 2012. At its 2158th and 2159th meetings (CERD/C/SR.2158 and 2159), held on 6 March 2012, the Committee adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the periodic report submitted by the State party and the delegation's oral responses to its questions, as well as the dialogue between the Committee and the delegation.

(3) The Committee welcomes the active participation of representatives of civil society in preparing and providing valuable input during the consideration of the State party's report.

B. Positive aspects

(4) The Committee commends the State party on the entry into force of the reform of the Constitution of Mexico, particularly as regards amparo, criminal procedure and class actions.

(5) The Committee also commends the State party on giving constitutional rank to the international human rights treaties it has ratified, including the Convention, thereby making them self-executing, although secondary legislation is still needed to fully implement this change.

(6) The Committee welcomes the organization of a second national survey on discrimination in Mexico (2010) to raise the profile of the individuals and groups that suffer from systematic discrimination in the State party.

(7) The Committee welcomes the establishment of programmes and institutions for combating racial discrimination in Mexico, particularly the National Council for the Prevention of Discrimination (CONAPRED), the General Act on the Linguistic Rights of Indigenous Peoples and the Programme for the Development of Indigenous Peoples 2009–2012.

(8) The Committee appreciates the continuous cooperation since 2002 between the State party and the Office of the United Nations High Commissioner for Human Rights, and is pleased to see that such cooperation has become closer over the years.

C. Principal subjects of concern and recommendations

(9) The Committee is greatly concerned that racial discrimination remains so deeply rooted in the State party despite the highly developed institutional framework for combating it. The Committee also notes with concern the lack of information on the real impact and outcomes of that framework and the related programmes, plans and strategies in the State party (art. 2).

The Committee invites the State party to devise methods for measuring the outcomes of public policies so as to enable it to assess the scope of the institutional framework and the measures taken, including the use of human rights indicators. The Committee requests the State party to provide information on the subject in its next periodic report, which should be more substantive and shorter, with tables, data and

information to clarify the progress made in implementing the Committee's recommendations. The Committee recommends that the State party take into account the results of the second national survey on discrimination in designing and mounting effective campaigns against discriminatory and xenophobic behaviour. The Committee recommends that the State party take into account the results of the second national survey on discrimination to design and mount effective campaigns against discriminatory and xenophobic attitudes, and to strengthen the role and capacities of the National Council for the Prevention of Discrimination, so that it will be better equipped to combat racism, xenophobia and related intolerance.

(10) The Committee notes with concern that, notwithstanding its repeated recommendations and requests, little light has been shed on the situation of people of African descent. The Committee regrets that the State party provided no detailed information on people of African descent in its periodic report, despite the Committee's request to that effect in 2006 (art. 1).

In the light of its general recommendation No. 34 on racial discrimination against people of African descent, the Committee reiterates its request that the State party provide information on people of African descent, a vulnerable and small minority that needs all the protections established in the Convention. The Committee invites the State party to consider recognizing people of African descent as an ethnic group and adopting programmes to promote their rights.

(11) Although the State party has carried out important legislative reforms, the Committee notes with concern that the definition of discrimination in the Federal Act on the Prevention and Elimination of Discrimination contains no mention of racial discrimination and is not in line with the Convention. The Committee also expresses its concern that the legislation on matters affecting indigenous peoples varies greatly from one federal state to another and that policies rely heavily on the administration's agenda in each federal state. The Committee reiterates its concern at the absence of domestic legislation that defines as an offence punishable by law all dissemination of ideas based on racial superiority or hatred, incitement to racial discrimination, and all acts of racially motivated violence against, in particular, indigenous people and people of African descent in the State party (art. 1 and art. 4 (a)).

The Committee notes with interest the proposed reform of the Federal Act, which contains a definition of discrimination in line with article 1 of the Convention and which is intended to pave the way for the adoption of local laws across the country, and strongly urges the State party to complete the adoption of the reform. The Committee also recommends that the State party step up its efforts to harmonize the legislation and regulations regarding the rights of indigenous peoples at all levels of the state and that it pass a law specifically to define the various manifestations of racial discrimination as an offence punishable by law, in accordance with article 4 of the Convention.

(12) The Committee takes note of the recognition and application of the indigenous justice system within the local justice system by evoking "usage and customs", particularly in the election of local representatives. However, it expresses its concern at the limited scope for applying the "usage and customs" of indigenous communities (art. 5).

In light of its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee urges the State party to respect the traditional systems of justice of indigenous peoples, in accordance with international human rights standards, including by establishing special indigenous courts.

(13) The Committee takes note with deep concern of the reports on the violence associated with the fight against organized crime in the State party and its possible negative repercussions on the protection of the human rights of the population, including indigenous people and people of African descent, who are often in a particularly vulnerable situation (art. 5 (b)).

The Committee urges the State party to take the necessary steps to end the violence while ensuring the strict observance of human rights.

(14) While the Committee takes note of the State party's efforts to reform security and the justice system, it reiterates its concern about the obstacles to access to justice faced by members of indigenous peoples and the alarming number of allegations of irregularities in cases concerning indigenous people, as well as the number of indigenous people in prison. In particular, the Committee expresses concern about the shortage of interpreters and bilingual justice officials familiar with judicial procedures, and also about the availability and quality of federal public defenders. The Committee is concerned that existing interpretation services are withheld on the basis of a superficial evaluation of the accused's knowledge of Spanish. The Committee notes with concern the case of Mr. Hugo Sánchez and welcomes the news that the issue has been taken up by the Supreme Court (art. 5 (a)).

Given that the lack of interpreters could be a reason for the disproportionate number of indigenous persons in prison, the Committee recommends that the State party should:

(a) Guarantee full access for indigenous persons to bilingual public defenders and justice officials in judicial proceedings;

(b) Guarantee full access for indigenous persons to culturally sensitive interpretation services throughout the judicial proceedings, including in cases where the person concerned has some knowledge of Spanish;

(c) Continue providing courses for judges and court officers in order to guarantee effective and equal access to justice for the indigenous population.

The Committee looks forward to the resolution of the case of Mr. Hugo Sánchez, which is before the Supreme Court. The Committee encourages the State party to explore the possibility of investigating reports of alleged irregularities in the trial and sentencing of indigenous persons.

(15) The Committee expresses deep concern about the recent tragic events in which defenders of the rights of indigenous peoples were physically attacked and, in some cases, killed (art. 5 (b)).

The Committee recommends that the State party investigate and punish those responsible for the above-mentioned killings. It also urges the State party to expedite the adoption of legislation that specifically guarantees the protection of human rights defenders, including defenders of the rights of indigenous peoples, and to take timely measures to prevent such acts, inter alia by establishing a special mechanism for the protection of human rights defenders, in line with the Declaration on Human Rights Defenders, adopted by the General Assembly, and the recommendations of the Special Rapporteur on the situation of human rights defenders.

(16) While taking note of the State party's efforts to guarantee the participation of indigenous peoples in the political process, and particularly in representative institutions, the Committee reiterates its concern about the number and level of government posts held by indigenous people, especially women. The Committee notes with concern that, pursuant to article 2, section A.VII, of the Constitution, the right of indigenous peoples to elect their political representatives according to their own laws is limited to the municipal level. It also

notes with concern the lack of information on the political participation of people of African descent (art. 5 (c)).

In the light of its general recommendation No. 23 (1997) on indigenous peoples, the Committee recommends that the State party redouble its efforts to ensure the full participation of indigenous people, especially women, in all decision-making institutions, particularly in representative institutions and those dealing with public matters, and that it take effective measures to ensure that all indigenous peoples participate at every level of the administration. The Committee also exhorts the State party to take steps to ensure the participation of people of African descent in political and public affairs. In both cases, the Committee recommends that the State party take special measures or affirmative action, in accordance with the Convention and general recommendation No. 32 (2009) of the Committee, on the meaning and scope of special measures in the Convention.

(17) The Committee notes that the National Commission for the Development of Indigenous Peoples has a system for consultations with indigenous peoples, based on articles 2 and 26 of the Constitution and the Act on the National Commission for the Development of Indigenous Peoples. However, it is concerned that this consultation system does not incorporate the concept of “free, prior and informed consent”. The Committee expresses its deep concern at the growing tensions between outsiders and indigenous peoples over the exploitation of natural resources, especially mines. The Committee reiterates its concern at reports of conflict on lands traditionally owned by indigenous peoples and at the failure, in practice, to fully respect their right to be consulted before work starts on exploiting the natural resources in their territories. The Committee also notes that there are three proposals for laws on the subject and regrets that it has been given no detailed information on them. The Committee is also concerned about the need for administrative measures to safeguard traditional forms of land tenure and ownership (art. 5 (d) (v)).

In the light of its general recommendation No. 23 (1997), the Committee recommends that the State party should:

(a) **Ensure that effective consultations are carried out at each stage of the process with communities likely to be affected by projects to develop and exploit natural resources, with the aim of obtaining their free, prior and informed consent, particularly in the case of mining projects. It also recommends that everything possible be done to expedite the adoption of a law on the subject, and reminds the State party that the absence of implementing regulations for the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), is no obstacle to holding prior consultations;**

(b) **Promote forums where government representatives can actively participate in different discussion groups with indigenous peoples, ensuring that these lead to concrete, viable and verifiable agreements that are properly implemented; and also encourage the use of alternative dispute-settlement methods in line with international standards in the field of human rights and the rights of indigenous peoples;**

(c) **Ensure, in exceptional cases where it is deemed necessary to relocate and resettle indigenous peoples, compliance with international standards in the relocation process. In this connection, the State party is requested to include in its next periodic report information on indigenous peoples and land tenure, particularly in cases where attempts are being made to exploit the natural resources on the land.**

(18) The Committee is very concerned that, according to the United Nations Development Programme (UNDP) 2010 publication *Informe sobre Desarrollo Humano de*

los Pueblos Indígenas en México, 93.9 per cent of the indigenous population is denied one, and 64.2 per cent at least three, of the following rights: the rights to education, health, social security, housing, basic services and food. Some 70.9 per cent of the indigenous population falls into the category of “living in multidimensional poverty”, defined as the percentage of persons on a low income with at least one social disadvantage. The Committee is also concerned about reports that, in terms of the human development index, the native population of towns in Mexico has lower levels of human development than the non-indigenous population (art. 5 (e)).

The Committee urges the State party to take steps to eliminate the historical, structural discrimination found in Mexico by adopting social inclusion policies to reduce the high level of inequality and the levels of poverty and extreme poverty and thus fully guarantee the rights of all Mexicans, especially indigenous ones, to education, health, social security, housing, basic services and food, while respecting their cultural origins and consulting with the peoples who might be affected by such State initiatives.

(19) The Committee acknowledges the efforts made by the State party to provide health care for indigenous people that takes account of their cultural characteristics. However, it is concerned that the highest figures for maternal and infant mortality are found among the indigenous population. The Committee expresses its concern at the lack of adequate and accessible services for such communities and at the shortage of data on health indicators and on the steps taken to improve those services (art. 5 (e)).

The Committee recommends that the State party draw up, in close cooperation with the communities concerned, a comprehensive and culturally sensitive strategy to ensure that indigenous peoples receive quality health care. The implementation of the strategy should be guaranteed by an adequate allocation of resources, the collection of indicators and transparent monitoring of progress. Particular attention should be paid to improving access to health care for indigenous women and children. The Committee underlines the need for interpreters in this area too, in order to ensure that indigenous people have full access to health services. It is important that the health system recognize, coordinate, support and strengthen indigenous health systems and use them as the basis for achieving more effective and culturally sensitive coverage. The Committee requests the State party to provide clear data on maternal mortality and life expectancy in indigenous communities and among people of African descent. Lastly, the Committee recommends that the State party step up its efforts to improve the sexual and reproductive health of indigenous women and women of African descent.

(20) The Committee remains concerned about the situation of migrant workers, most of whom come from indigenous communities in Guatemala, Honduras and Nicaragua, and migrants in transit, especially with regard to women who are the victims of abuse. The Committee expresses its deep concern at the vulnerability of these communities to kidnapping, torture and murder, and is also extremely concerned that their fear of being subjected to discrimination and xenophobia prevents them from seeking assistance and protection when needed (art. 5 (e) (i)).

Bearing in mind its general recommendation No. 30 (2004) on discrimination against non-citizens, the Committee again recommends that the State party ensure that programmes and measures to protect migrants and their rights are properly implemented in practice. The Committee invites the State party to include in its next periodic report information on the progress made with regard to the situation of migrant workers in Mexico.

(21) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider acceding to the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights.

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

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

(24) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of these concluding observations, on its follow-up to the recommendations contained in paragraphs 10 and 17 above.

(25) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 14, 15 and 18, and requests the State party to provide detailed information in its next periodic report on the specific measures taken to implement them.

(26) The Committee recommends that the State party submit its combined eighteenth to twenty-first periodic reports by 22 March 2016, taking into account the specific guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in these concluding observations. The Committee also invites the State party to update its common core document (HRI/CORE/MEX/2005). The Committee urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (see the harmonized guidelines on reporting contained in paragraph 19 of document HRI/GEN.2/Rev.6).

34. **Portugal**

(1) The Committee considered the combined twelfth to fourteenth periodic report of Portugal (CERD/C/PRT/12-14), submitted in one document, at its 2137th and 2138th meetings (CERD/C/SR.37 and CERD/C/SR.38), held on 20 and 21 February 2012. At its 2155th meeting (CERD/C/SR.2155), held on 2 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee commends the quality of the combined twelfth to fourteenth periodic report submitted by the State party. It welcomes the presence of the delegation and expresses its appreciation for updated information provided orally by the delegation to complement the report, bearing in mind the list of themes identified by the country rapporteur.

(3) The Committee also appreciates the constructive dialogue that ensued and the delegation's extensive responses to Committee members' questions and observations.

B. Positive aspects

(4) The Committee welcomes a number of positive developments and activities undertaken by the State party in fighting racial discrimination and promoting tolerance and diversity, including:

(a) The revision of article 246 of the Criminal Code providing that a person convicted for discrimination (article 240) may be temporarily deprived of his/her active and/or passive electoral capacity;

(b) The amendments introduced to the Portuguese Nationality Act by Organic Law No. 2/2006 of 17 April 2006 allowing second- and third- generation immigrants to acquire Portuguese nationality under certain conditions and shifting towards a *jus soli* regime for nationality;

(c) The adoption of Law No. 27/2008 of 30 June 2008 on Asylum establishing a suspensive effect of the appeal in the admissibility phase of the asylum procedure, as recommended by the Committee in 2004 (CERD/C/65/CO/6, para. 15).

(5) The Committee welcomes the adoption of the following plans and strategies:

(a) The National Action Plans for the Integration of Immigrants developed since 2007;

(b) The Second National Plan against Trafficking in Human Beings (2012–2013);

(c) The Strategy for Inclusion of the Roma communities launched in December 2011;

(d) The creation of an inter-ministerial body aimed at reducing the backlog of overdue reports to treaty bodies.

(6) The Committee welcomes the creation of the High Commission for Immigration and Intercultural Dialogue (ACIDI) by Decree-Law No. 167/2007 of 3 May 2007. Regarding ACIDI programmes, the Committee particularly welcomes the pilot project which helped to place 28 intercultural mediators in 25 public services to enhance intercultural dialogue and combat racial stereotypes and prejudices. The Committee notes also the Commission's work to support and foster intercultural dialogue.

(7) The Committee notes with interest the establishment in 2007 of the Roma Support Office and its associated initiatives.

(8) The Committee particularly commends the innovative policies, laws and actions of the State party regarding the integration of immigrants as confirmed by the United Nations Human Development Report 2009 and the Migrant Integration Policy Index.

(9) The Committee welcomes the ACIDI national telephone information service, "SOS Imigrante", providing information in the languages most common to immigrants in Portugal, and the translation telephone service available free of charge in 60 different languages.

C. Concerns and recommendations

(10) While taking note that the Portuguese Law on Data Protection (art. 7/1 of Law No. 67/98 of 26 October 1998) expressly prohibits the treatment of personal data dealing with racial or ethnic origin, the Committee regrets the lack of statistical disaggregated data on the ethnic composition of the population, both citizens and non-citizens. The Committee notes that while the State party, in paragraph 2 of its periodic report, affirms that there are no ethnic minorities recognized as such, and that immigrants living in Portugal are not

recognized as ethnic minorities but rather as foreigners, the State party does not deny the existence of ethnic and racial groups.

The Committee recalls its general recommendation No. 8 (1990) on the interpretation and application of articles 1 and 4 of the Convention, which states that the identification of individuals as belonging to a particular racial or ethnic group shall be based on self-identification by the individual concerned.

The Committee reiterates its view that the purpose of compiling disaggregated data is to allow States parties to assess achievements and obstacles in fighting racial discrimination experienced both by citizens and by non-citizens residing on its territory. In line with its general recommendation No. 4 (1973) on reporting by States parties and paragraph 8 of the reporting guidelines (CERD/C/2007/1), it invites the State party to compile statistical data on the demographic composition of its population based on anonymous and voluntary ethnic self-identification by those concerned.

(11) While the Committee notes the State party's reference to the principles of the Universal Declaration on Human Rights in its legislation, it is concerned that the relationship between the Convention and domestic law of the State party remains unclear.

The Committee recommends that the State party find legal means to clarify the issue and give prominence to international human rights treaties including the International Convention on the Elimination of All Forms of Racial Discrimination.

(12) The Committee notes the information provided by the State party on the limited number of complaints registered in relation to article 240 of the Penal Code dealing with racial discrimination. It is particularly concerned by the information indicating that this situation may be due, inter alia, to a lack of confidence in the judicial system because of long and complex judicial procedures and lack of awareness regarding such legal remedies (arts. 2 and 6).

Bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party:

(a) **Disseminate existing legislation on racial discrimination in ways that are accessible, and where relevant in various languages, and inform the public, in particular vulnerable groups, on all available legal remedies;**

(b) **Take measures to significantly increase the confidence of the population in the judicial system, shorten judicial procedures where possible and allow victims to access legal remedies.**

The Committee invites the State party to include in its next periodic report updated information on the number of complaints, prosecutions, convictions and sentences for racial discrimination and remedies to victims.

(13) The Committee notes the holistic approach taken by the State party to deal with racial discrimination. While this has many positive aspects, the Committee is concerned that the generality of the approach to dealing with racial discrimination may not give sufficient attention to the concerns of groups of citizens or of immigrants and foreigners who may be susceptible to direct or indirect discrimination (art. 2).

The Committee reiterates its recommendation that the State party take appropriate special measures for vulnerable groups including Ciganos, Roma and people of African descent in line with its general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, in cases where direct or indirect discrimination

affects vulnerable groups disproportionately as well as in accordance with its general recommendations No. 27 (2000) on discrimination against Roma and No. 34 (2011) on racial discrimination against people of African descent.

(14) Despite innovative measures by the State party to promote integration, and to prevent and address racial discrimination against less favoured communities, including the impact of the work of socio-cultural mediators, the Committee is concerned about prevalent racial stereotypes and prejudices against immigrants, foreigners and some citizens. Reports have been received regarding discrimination against Brazilians, as well as against other groups including Chinese, Sub-Saharan Africans, and in particular Ciganos and Roma. The Committee is also concerned at the incidence of racist and xenophobic speech emanating from a few extremist political parties, and manifestations of racism and intolerance in sport towards members of ethnic minorities (arts. 2 and 4).

The Committee urges the State party to take effective measures to prevent and prosecute manifestations of racism, xenophobia and intolerance. It recommends that the State party condemn racist and xenophobic speech by politicians and promote tolerance and diversity, including in sport.

(15) Despite training sessions on human rights organized by the State party and previous recommendations by the Committee, the Committee is concerned about reported cases of discriminatory conduct, and manifestations of racist stereotypes and prejudice towards individuals of foreign origin and other groups vulnerable to racial discrimination by law enforcement officials (arts. 2, 5 and 7).

Bearing in mind the Committee's general recommendation No. 13 (1993) on the training of law enforcement officials in the protection of human rights, the Committee urges the State party to ensure that training sessions organized for law enforcement officials equip them to fully respect and protect the fundamental rights of all persons without discrimination on the basis of race, colour or ethnic or national origin. The Committee requests that the State party include in its next periodic report information on prosecutions of law enforcement or police officers for racial discrimination.

(16) The Committee is conscious that the foreign population, according to available statistics, is overrepresented in prisons. It expresses its concerns regarding possible discrimination against immigrants and ethnic minorities in the judicial system such as reported cases of severe penalties, longer imprisonment and possible ethnic profiling (arts. 2, 5 and 6).

The Committee encourages the State party to assess the situation and take effective measures to combat racial discrimination in the judicial system bearing in mind its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system. The Committee is of the view that further analysis is needed, together with appropriate responses to tackle this issue and provide remedies to victims.

(17) The Committee is concerned about the limited effectiveness of the racial discrimination complaint procedure before the Commission for Equality and Against Racial Discrimination (the competent body dealing with racial discrimination under Law 18/2004 which transposed the European Union Directive on Racial Discrimination). Few decisions have been taken since its creation, a number of cases remain unresolved and the promised review of its procedure, as indicated by the State party, remains pending (art. 6).

The Committee recommends that the State party expedite the revision of Law 18/2004 so as to guarantee remedies to victims of racial discrimination. It encourages the State party to provide additional resources to the Commission for Equality and Against

Racial Discrimination to reduce the backlog of cases and also to raise the awareness of the public regarding legal and administrative remedies available. It invites the State party to include in its next periodic report updated information on steps taken towards increasing the effectiveness of this body.

(18) The Committee notes with concern that immigrant women and women belonging to minority groups face multiple discrimination. For example, according to the Ministry of Labour's 2008 statistics, the average salary of immigrant women is less than that of Portuguese citizens or immigrant men (art. 5).

The Committee draws the attention of the State party to its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and urges it to evaluate and monitor racial discrimination against women, particularly immigrant women and women belonging to minority groups. The State party has the obligation to guarantee the right of everyone to equality in the enjoyment of human rights without discrimination based on gender, race, colour or national or ethnic origin.

(19) The Committee notes efforts to address discrimination against Ciganos and Roma peoples, including the launch in December 2011 of the Strategy for Inclusion of the Roma communities in compliance with European Union requirements and public awareness campaigns regarding non-discrimination against Roma communities. However, it expresses its deep concern that, as confirmed by the State party, Ciganos and Roma are still the most discriminated against and most vulnerable people in Portugal. In addition to housing, there are persistent and continuing concerns with regard to their right to education, health, employment, access to public services or participation in public life (arts. 2, 5 and 7).

The Committee urges the State party to promote the economic, social and cultural rights of the Ciganos and Roma, while respecting their culture in accordance with the principle of equality and ensuring that all actions and policies affecting them are designed, implemented, monitored and evaluated with the full participation of Ciganos, Roma and their organizations, bearing in mind the Committee's general recommendation No. 27 (2000) on discrimination against Roma.

The Committee requests that the State party provide information on the implementation and impact of the Strategy for Inclusion of the Roma communities. In implementing this Strategy, the State party should ensure that concrete measures are taken to improve the living conditions of these communities by improving their access to adequate housing, education, health services, employment and public services.

The Committee would also appreciate information on the impact of public awareness campaigns regarding non-discrimination against these communities as well as efforts by the State party to integrate persons belonging to these communities into the police or other public services. All action taken should take particular account of and target the improvement and realization of the rights of Ciganos and Roma women.

(20) While the Committee is conscious of challenges posed by the economic crisis confronted by the State party, it expresses concern about the negative impact that budget cuts may have on public awareness programmes and on institutions in charge of the promotion and protection of human rights, and fighting racial discrimination, and on support to relevant non-governmental organizations (arts. 2 and 7).

In view of its general recommendation No. 33 (2009) on follow-up to the Durban Review Conference, the Committee draws the attention of the State party to the concern that its responses to the current financial and economic crises should not lead to a situation which would increase poverty and potentially give rise to racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants, persons belonging to minorities and other particularly vulnerable groups. The

Committee urges the State party to continue and redouble its efforts to fight racial discrimination and to promote tolerance and diversity, including through support of relevant non-governmental organizations involved in this work.

(21) The Committee notes that the Ombudsman is the national human rights institution and that the National Human Rights Commission set up by the State party in March 2010 following its universal periodic review by the Human Rights Council has responsibility for coordinating prompt reporting to treaty bodies. The Committee also notes that the Ombudsman mainly deals with complaints rather than the broader range of responsibilities of a national human rights institution (art. 2).

The Committee encourages the State party to change the nomenclature of the National Human Rights Commission in charge of overdue reports to treaty bodies so as to avoid confusion with the National Human Rights Institution. The Committee recommends that the work of the Ombudsman as a National Human Rights Institution with A status under the Paris Principles (annex to General Assembly resolution 48/134) reflect more visibly a wide range of measures in addition to its complaints procedures, particularly with regard to racial discrimination.

(22) The Committee regrets the lack of involvement of non-governmental organizations in the reporting session while noting the verbal commitment of the State party to their inclusion and engagement in the process of developing the next State party report which is currently under way (art. 2).

The Committee invites the State party to continue to encourage the involvement of non-governmental organizations in the preparation of the next periodic report and to facilitate their participation at the next reporting session.

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

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

(25) While bearing in mind the holistic approach to reporting adopted by the State party, the Committee would welcome information on measures to implement the Convention in Madeira and Azores in the next periodic report.

(26) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolution 47/111 of 16 December 1992. In this connection, the Committee cites General Assembly resolutions 61/148, 63/243 and 65/200, in which the Assembly General strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(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 18, 19 and 20 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 12, 14 and 15 and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports in a single document, due on 23 September 2015, taking into account the guidelines for the CERD-specific document adopted by the Committee during its seventy-first session (CERD/C/2007/1), and that it address all points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

35. Qatar

(1) The Committee considered the thirteenth to sixteenth periodic reports of Qatar, submitted in one document (CERD/C/QAT/13-16), at its 2151st and 2152nd meetings (CERD/C/SR.21512152), held on 29 February and 1 March 2012. At its 2163rd meeting (CERD/C/SR.2163), held on 8 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined thirteenth to sixteenth periodic reports of the State party. However, it is noted that the periodic report is not completely in line with the Committee's reporting guidelines. The Committee emphasized the importance of the timely submission of the report to ensure a continuous analysis of the implementation of the Convention in the State party.

(3) The Committee welcomes the open and constructive dialogue with the high-level delegation and expresses its appreciation for the oral presentation and replies provided by the delegation during the consideration of the report. The Committee also welcomes the delegation from the National Human Rights Committee and their contribution to the dialogue with the State party.

B. Positive aspects

(4) The Committee notes with satisfaction the State party's continuing efforts to improve its legal framework to ensure greater protection of human rights of its citizens and foreign residents in Qatar, including:

- (a) Adoption of the Permanent Constitution of the State of Qatar in 2004;
- (b) Enactment of Act no 12 of 2008 establishing the Supreme Constitutional Court;
- (c) Enactment of the Labour Code No. 14 of 2004.

(5) The Committee welcomes the recent accession of Qatar to the Convention on the Elimination of All Forms of Discrimination against Women (29 April 2009) and the Convention on the Rights of Persons with Disabilities (13 May 2008).

(6) The Committee notes with satisfaction that, as stated in the oral presentation by the delegation, the Convention has the force of law within the State party thus allowing it to be invoked before the courts of the State party directly in the same manner as national law.

(7) The Committee also welcomes the State party's efforts to ensure stronger protection of human rights and implementation of the Convention, including the establishment of:

- (a) Qatari foundation to Combat Human Trafficking;
- (b) Qatari Foundation for the Protection of Women and Children;
- (c) Doha International Centre for Interfaith Dialogue;
- (d) Doha Centre for Media Freedom.

(8) The Committee notes with satisfaction the establishment of the National Human Rights Committee in 2002 in accordance with the Paris Principles and appreciates its work. The Committee strongly urges the State party to give due consideration to the recommendations made by the National Human Rights Committee.

C. Concerns and recommendations

(9) The Committee regrets the lack of disaggregated and detailed statistical data on the ethnic and racial composition of the population, including Qatari nationals as well as migrant workers in Qatar.

In accordance with its general recommendation No. 4 (1973) on the demographic composition of the population and paragraphs 10 to 12 of its revised reporting guidelines (CERD/C/2007/1), the Committee recommends that the State party provide disaggregated information on the racial and ethnic composition of the population, including non-citizens, as well as statistical data regarding socio-economic status of different groups in its next periodic report in order to assist the Committee to effectively assess the achievements made by the State party in implementing the Convention.

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

Recalling its general recommendation No. 14 (1993) on article 1, the Committee recommends that the State party incorporate into national law a definition of racial discrimination that is in line with article 1 of the Convention.

(11) The Committee notes with appreciation the information provided by the State party on various articles addressing racial and religious discord in Qatari society, including article 47 of the Printing and Publishing Act of 1979, article 2 (11) of the decision issued by the Minister of Information and Culture in 1992 prohibiting the dissemination of ideas based on racial hatred, and article 256 of the Criminal Code. The Committee is, however, concerned that the current provisions are not in line with article 4 of the Convention (art. 4).

The Committee recommends that the State party revise its Criminal Code in order to introduce and implement a specific provision in full compliance with article 4 of the Convention that prohibits dissemination of ideas based on racial superiority or hatred, incitement of racial hatred and discrimination, and prohibition of organizations which promote and incite racial discrimination. In this regard, the Committee draws the attention of the State party to its general recommendations No. 7 (1985) on legislation

to eradicate racial discrimination and No. 15 (1993) on article 4 and reminds the State party of its obligation to ensure that such legislation is effectively enforced.

(12) The Committee notes that article 9 of the Labour Code stipulates that all contracts, other documents and instruments provided for under the Labour Code shall be in Arabic. The Committee is concerned that the majority of workers who are foreigners may have difficulty understanding the documents, which effectively prevents them from making informed consent regarding their employment (art. 5).

The Committee requests clarification of article 9 of the Labour Code and recommends that the State party revise the provision to ensure that contracts and other documents under the Labour Code concerning their employment are provided in the languages of the migrant workers.

(13) The Committee notes with concern that domestic workers are not protected under the Labour Code. The Committee understands that domestic work is regulated under bilateral agreements with sending countries. The Committee is concerned that such bilateral agreements may lead to discrimination prohibited under article 5 of the Convention, including the right to equal pay for equal work (art. 5).

The Committee requests the State party to provide more information on the contents of bilateral agreements with sending countries in its next periodic report. Furthermore, the Committee recommends that the State party ratify the International Labour Organization Convention No. 189 (2011) concerning Decent Work for Domestic Workers.

(14) The Committee also notes the Domestic Workers' Bill, which is to be adopted by the Cabinet in June 2012 but regrets that there is a lack of information regarding the contents of this Bill (art. 5).

The Committee requests that the State party provide it with information regarding the contents of the Bill and the process of its adoption. In this regard, the Committee recalls its general recommendation No. 25 (2000) on gender-related dimensions of racial discrimination and strongly urges the State party to put in place effective measures to address multiple-discrimination against female domestic workers including in their places of work.

(15) The Committee welcomes the efforts made by the State party to improve the sponsorship programme to provide a stronger protection to migrant workers. However, the Committee is concerned that despite the legal provisions prohibiting conduct such as passport and wage withholding by sponsors, the fundamental nature of the sponsorship programme increases the dependency of the migrant workers on sponsors rendering them vulnerable to various forms of exploitation and abuses (arts. 5 and 6).

The Committee recommends that the State party ensure that the legal provisions protecting the rights and freedoms of the migrant workers under the sponsorship programme are fully enforced and provide effective legal remedies to migrant workers whose rights are violated.

(16) The Committee notes with concern the discriminatory provision of the law on nationality, which prevents Qatari women who are married to non-citizens from transmitting Qatari nationality to their children, which has the potential to lead to stateless status of children (art. 5).

Recalling its general recommendation No. 30 (2005) on discrimination against non-citizens and especially its paragraph 16 on reducing statelessness and in particular among children, the Committee recommends that the State party revise its nationality

laws to allow Qatari women to transmit their citizenship to their children without discrimination.

(17) The Committee welcomes the humanitarian spirit demonstrated by the Government of Qatar in helping refugees fleeing Libya during the crisis in the country, as well as its efforts in helping Somali internally displaced populations and other populations needing assistance. However, the Committee notes with concern that Qatar has not ratified the 1951 Convention relating to the Status of Refugees.

In this regard, the Committee recalls its general recommendation No. 22 (1996) on article 5 and on refugees and displaced persons and requests more information on the legal framework protecting refugees and asylum seekers and recommends that Qatar ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocols.

(18) The Committee notes with concern the restrictions imposed on migrant workers and foreign residents in buying and owning property in Qatar (art. 5).

The Committee would like to receive more information on the protection of the right to property of migrant workers. In this regard, the Committee recalls its general recommendation No. 30 (2005) and reiterates that article 5 of the Convention prescribes the obligation of the State party to prohibit and eliminate racial discrimination in the enjoyment of civil, political, economic, social and cultural rights.

(19) While noting with appreciation the efforts made by the State party to sensitize all stake-holders on human rights, including the rights protected under the Convention, the Committee notes with regret the limited information on the complaints received by the various human rights departments regarding racial discrimination. The Committee emphasizes that the lack of complaints by victims of racial discrimination may be indicative of a lack of specific legislation, ignorance of the remedies available, fear of social censure or reprisals or unwillingness due to their vulnerable status to institute legal proceedings on the part of the competent authorities (art. 6).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party continue to raise awareness of legislation on racial discrimination, ensure members of vulnerable groups in particular non-citizens, including migrant workers and domestic workers, are informed of the avenues of legal redress available to them, simplify the available remedies and facilitate access thereto. The Committee further requests that the State party include in its next periodic report comprehensive details of complaints lodged and outcomes of the complaints.

(20) The Committee is concerned that certain political rights are not fully enjoyed by naturalized citizens on an equal basis with citizens born in Qatar. The Committee notes that although such legal restrictions are not practiced in reality, the mere existence of such restrictions poses a threat to the full enjoyment of political rights by all citizens (art. 5).

The Committee recommends that the State party revise its laws regarding political rights, such as the right to vote and the right to stand for election, to guarantee that such rights are fully enjoyed and exercised by all citizens without any discrimination based on race, colour, descent, or national or ethnic origin or any other status.

(21) The Committee notes the measures and initiatives adopted by the State party to guarantee human rights training and raise awareness, including the establishment of the Youth Human Rights Association. However, the Committee is concerned that racist stereotypes persist in Qatar (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, and increase its efforts to raise awareness of the need for tolerance, interracial or inter-ethnic understanding and intercultural relations among law enforcement officials, specifically, police officers and gendarmes, members of the judiciary, prison officers and lawyers, and also among teachers. It also recommends that the State party continue its efforts to raise public awareness and knowledge of the importance of cultural diversity, understanding and tolerance, especially in respect of vulnerable population groups.

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

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

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

(25) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the fourteenth meeting of States parties to the Convention and endorsed by the General Assembly in its resolutions 47/111. In this connection, the Committee cites General Assembly resolutions 61/148 and 63/243, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(27) Noting that the State party has not submitted its core document, the Committee encourages the State party to submit an updated version in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth inter-Committee meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

(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 14, 17 and 18 above.

(29) The Committee also wishes to draw the attention of the State party to the particular importance of the recommendations contained in paragraphs 9, 13, 19 and 23 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(30) The Committee recommends that the State party submit its seventeenth and twentieth periodic reports in a single document by 21 August 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1), and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60-80 pages for the common core document (see harmonized guidelines for reporting contained in document HRI/GEN.2/Rev.6, chap. I, para. 19).

36. Turkmenistan

(1) The Committee considered the sixth to seventh periodic reports of Turkmenistan (CERD/C/TKM/6-7), submitted in one document, at its 2143rd and 2144th meetings (CERD/C/SR.2143 and CERD/C/SR.2144), held on 23 and 24 February 2012. At its 2163rd meeting (CERD/C/SR.2163), held on 8 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the submission of the combined sixth and seventh periodic reports by Turkmenistan in conformity with the Committee's reporting guidelines (CERD/C/2007/1) and appreciates the detailed presentation in the report of the legislative and policy reforms carried out.

(3) The Committee welcomes the open dialogue with the high-level delegation and expresses its appreciation for the oral presentation and replies provided by the delegation during the consideration of the report, which attested to a need for further improvements as regards the implementation of the legislative safeguards and policy measures in order to achieve the effective economic and social integration of ethnic minorities and elimination of all forms of racial discrimination.

B. Positive aspects

(4) The Committee notes with interest the State party's efforts during the period under review to strengthen the legal framework with the aim of enhancing the protection of human rights and give effect to the provisions of the Convention and other international conventions to which Turkmenistan is a party, including:

(a) The adoption of a new version of the Constitution on 26 September 2008; and

(b) The enactment of the Social Security Code (17 March 2007), the Labour Code (18 April 2009), the Code of Criminal Procedure (18 April 2009), the Criminal Code (new version) (10 May 2010), the Women's Equality (State Guarantees) Act (14 December 2007), the Human Trafficking Act (14 December 2007), the Parliamentary Elections Act (10 November 2008), the Education Act (15 August 2009), the Legal Profession and Legal Practice Act (10 May 2010) and the Presidential Elections Act and the People's Council and Local Council Member Elections Act (25 September 2010).

(5) The Committee notes with appreciation that, since the consideration of its initial to fifth periodic reports, the State party has acceded to or ratified international instruments, including:

- (a) The Convention on the Rights of Persons with Disabilities (4 September 2008);
- (b) The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (18 April 2009);
- (c) The Optional Protocol to the Convention on the Rights of Persons with Disabilities (25 September 2010);
- (d) The International Labour Organization Convention No. 182 (1999) concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour (25 September 2010); and
- (e) The 1954 Convention relating to the Status of Stateless Persons (7 December 2011).
- (6) The Committee also welcomes the State party's efforts to amend its policies, programmes and administrative measures to further ensure the protection of human rights and implementation of the Convention, including:
- (a) The establishment of the Interdepartmental Commission on compliance with Turkmenistan's international human rights obligations, pursuant to a presidential order of 24 August 2007;
- (b) The measures to facilitate the return of 7,309 ethnic Turkmens from abroad, between 2006 and 2011, to take up residence in their homeland; and
- (c) The granting of citizenship to more than 13,000 refugees and awarding permanent residence to more than 3,000 other refugees.
- (7) The Committee further appreciates the willingness expressed by the State party to respond to the Committee's recommendations and engage in a dialogue on the implementation thereof.

C. Concerns and recommendations

- (8) While noting that article 19 of the Constitution establishes the equality of citizens with respect to their rights regardless of race, gender, ethnicity or language and is binding on the State authorities and civil servants, the Committee remains concerned that national legislation does not contain a definition of racial discrimination in full conformity with article 1 of the Convention or a general norm prohibiting racial discrimination in line with the Convention (arts. 1, para. 1, and 2, para. 1 (d)).

The Committee recommends that the State party amend its legislation to include a definition of racial discrimination in full conformity with article 1 of the Convention or adopt a general prohibition of racial discrimination in line with the Convention that covers all fields of social life.

- (9) The Committee regrets that the State party's periodic report did not contain disaggregated data on the status of each of the minority groups living in Turkmenistan within the total population of the country and the situation of their members as citizens, with particular reference to the fields of employment, education and health care (art. 2).

Drawing attention to the revised guidelines for reporting under the Convention (CERD/C/2007/1, paras. 10–12), the Committee recommends that the State party collect and publicize reliable and comprehensive statistical data on the ethnic composition of its population, using the indicators of ethnic diversity on the basis of self-identification of persons and groups, in order to enable the Committee to better evaluate the enjoyment of rights under the Convention in Turkmenistan. The Committee recommends that the Government avail itself of the 2012 general

population and housing census to collect the disaggregated data and requests the State party to provide it with such information in its next report.

(10) Drawing attention to the Committee's previous concluding observation on a diminution of the proportion of ethnic and national minorities from 1995 to 2005 in 2005 (CERD/C/TKM/CO/5, para. 9), the Committee reiterates its concern about a lack of information on measures to respect and protect the cultural and ethnic identity of ethnic and national minorities and to avoid any kind of forced assimilation, in particular of the Baluchi minority group (art. 2, para. 2).

The Committee recommends that the State party observe the principle of self-identification of members of ethnic and national minorities and consult their representatives on the issues of concern to them and adopt, as a matter of priority, wherever necessary, special measures to enable the preservation of the language, culture, religious specificities and traditions of such groups, including Baluchis, in accordance with the Committee's general recommendation No. 32 (2009) on the meaning and scope of special measures.

(11) The Committee is concerned by the lack of information on the direct applicability of the Convention in the State party's domestic legal order, including cases illustrating its direct and indirect application by judicial and administrative bodies (arts. 1 and 2).

The Committee requests the State party to provide it with illustrative examples of the application of the Convention in courts and administrative acts in its next periodic report.

(12) Recalling its previous concluding observations, the Committee expresses its concern that the State party applies its obligation under article 2 of the Convention not to sponsor, defend or support racial discrimination only to political parties and organizations and not to all officials of the State and any other person, which may explain the prevalence of hate speech by high-ranking Government officials (arts. 2, para. 1 (b) and 4 (a) and (c)).

Recalling its general recommendation No. 7 (1985) on legislation to eradicate racial discrimination and general recommendation No. 15 (1993) on article 4, the Committee recommends that the State party take immediate measures to effectively investigate and bring to justice perpetrators of reported hate crimes regardless of their official status.

(13) While noting that section 7, paragraph 1, of the Labour Code refers to some of the grounds of discrimination enumerated in article 1, paragraph 1 (a), of the Convention, particularly race, the Committee expresses its concern at the absence of prohibition of discrimination based on colour and national and ethnic origin. The Committee further notes that, while the Labour Code prohibits discrimination on the basis of "other factors unrelated to the abilities and performance of workers", it is unclear whether its section 7, paragraph 1, covers indirect discrimination (arts. 1, para. 1, and 5 (e) (i)).

The Committee recommends that the Government consider amending the Labour Code in order to explicitly prohibit discrimination based on colour and national and ethnic origin, in line with article 1, paragraph 1, of the Convention, and indirect discrimination.

(14) The Committee expresses its concern at the absence of information on the specific legal and policy measures to prohibit and condemn "racial segregation and apartheid" in accordance with article 3 of the Convention (art. 3).

In the light of general recommendation No. 19 (1995) on racial segregation, the Committee recommends that the State party address problems of ethnically related

social exclusion and segregation through the adoption of necessary legislative and policy measures.

(15) Taking into account past reported instances of hate speech against national and ethnic minorities by high-ranking officials, the Committee is concerned that the provisions of article 177 of the Criminal Code and the relevant provisions of the Code of Administrative Offences may not fully respond to the requirements of article 4 of the Convention (art. 4 (a), (b) and (c)).

The Committee recommends that the State party review its legislation so as to cover all aspects of article 4 of the Convention and provide the legal basis for sanctioning all acts as provided therein.

(16) In addition, the Committee expresses its concern at the overly broad provisions of article 177 of the Criminal Code, such as on "enmity" or "offending ethnic pride" which may lead to unnecessary or disproportionate interference with the freedom of expression (arts. 4 and 5 (d) (viii)).

In the light of its general recommendation No. 15 (1993) and drawing attention to the general comment No. 34 (2011) on article 19 (freedom of opinion and expression) of the Human Rights Committee, the Committee recommends that the State party clearly define criminal offences, in particular those in article 177 of the Criminal Code, so as to ensure that they do not lead to unnecessary or disproportionate interference with the freedom of expression.

(17) While noting that there are 20,000 stateless persons in Turkmenistan, the Committee remains concerned about the lack of information about measures to address statelessness and about the outcomes of the registrations in 2007 and 2011 of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness (arts. 2 and 5).

The Committee recommends that the State party take urgent measures to address statelessness and provide statistics on the acquisition of Turkmen citizenship and information on the outcomes of the registrations of persons living in the country who lack valid identity/citizenship documents and who are stateless or at risk of statelessness in its next report. The Committee further encourages the State party to consider acceding to the Convention on the Reduction of Statelessness.

(18) The Committee notes the State party's information that it does not accept dual citizenship and that the agreement with the Russian Federation regarding dual citizenship has been terminated. The Committee is concerned that non-recognition of dual citizenship may lead to statelessness, with all its adverse consequences (arts. 2 and 5).

The Committee recommends that the State party take measures to ensure that the solution of the issues related to citizenship does not increase the number of stateless persons who would thereby be deprived of human rights and freedoms in practice.

(19) Taking due note of the Law on Employment, the Committee expresses concern about the lack of information on the steps taken by the State party to ensure equal opportunities and treatment of all individuals living in the country in all aspects of private and public employment, including election to parliamentary posts and recruitment to posts in the State administration or judicial bodies, without distinction on grounds of race and national origin (arts. 2 and 5).

The Committee recommends that the Government take measures to ensure in practice equal opportunities and treatment of all individuals living in the country in all aspects of private and public employment, including election to parliamentary posts and recruitment to posts in the State administration or judicial bodies, without distinction

based on race and national origin, and provide the Committee with the information thereon in the next periodic report.

(20) The Committee is concerned that children belonging to ethnic minorities continue to have limited possibilities to study and receive education in their mother tongue as there is a limited number of schools and textbooks in minority languages. In addition, the Committee is concerned that women and girls from such groups remain in a vulnerable position and face double discrimination as women and as members of minorities in education, health care and employment (arts. 2 and 5).

The Committee urges the State party to take the necessary measures to increase access for children belonging to ethnic and national minorities to instruction in and study of their mother tongue, including through the establishment of schools and provision of textbooks in minority languages. The State party should also take all measures to improve the situation of minority women and girls by enhancing their access to education, health care and employment.

(21) The Committee reiterates its concern about the lack of information on the involvement of minority groups in cultural activities and efforts to preserve and develop their culture, in order to maintain their cultural identity as guaranteed by law (arts. 5 (e) (v) and 7).

The Committee urges the State party to take specific measures for the preservation and development of cultures of minority groups so that they may be enabled to maintain their cultural identity.

(22) Taking note of the State party's information that no case of racial discrimination has been referred to the courts, the Committee is concerned at the practical lack of availability of legal remedies to victims of racial discrimination, including reparation or satisfaction (arts. 2, 4, 5, 6 and 7).

Recalling its general recommendation No. 26 (2000) on article 6, the Committee recommends that the State party ensure that victims of racial discrimination can avail themselves of legal remedies, including reparation or satisfaction and that the general public is informed about such remedies. Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee also recommends that the State party include in its next report information on the number and nature of acts of racial discrimination and prosecutions, convictions and sentences of their perpetrators.

(23) While noting that the application of the Criminal Code remains central to combating racial discrimination, the Committee expresses concern at the lack of instruments of civil and administrative liability, including sanctions, which are also essential for the prevention of racial discrimination and effective recourse to justice by victims of such acts (art. 6).

The Committee recommends that the State party amend its Civil Code and Code of Administrative Offences to establish civil and administrative liability for acts of racial discrimination and to guarantee remedies, including compensation to victims of such acts.

(24) While noting the operation of the National Institute for Democracy and Human Rights under the President of Turkmenistan, the Committee is not clear regarding the current efforts to establish an independent national human rights institution, in conformity with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) (art. 2).

Recalling its general recommendation No. 17 (1993) on establishment of national institutions to facilitate implementation of the Convention, the Committee

recommends that the State party promptly establish an independent national human rights institution for the protection and promotion of human rights in conformity with the Paris Principles. The Committee also recommends that the State party establish a mechanism of consultation with representatives of minority groups on issues of concern to them.

(25) The Committee is concerned at the reported limitations on access to the Internet for non-governmental organizations involved in the promotion of human rights, mainly concerning minority groups, and restrictions on the operation of websites, blogs or any other Internet-based information in violation of the freedom of expression as provided for by international law (art. 5 (d) (viii)).

The Committee recommends that the State party take the necessary measures to avoid arbitrary impediments to receiving and disseminating information through the Internet, in accordance with the provisions of the Convention and other international human rights instruments; and refrain from restricting the operation of websites, blogs or any other Internet-based information in violation of the freedom of expression as provided for by international law.

(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, such as the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families and the International Convention for the Protection of All Persons from Enforced Disappearance.

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

(28) The Committee recommends that the State party consult and expand its dialogue with civil society organizations working in the area of human rights protection, in particular in combating racial discrimination, in connection with the implementation of the present concluding observations and the preparation of the next periodic report.

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

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

(31) The Committee encourages the State party to regularly update its core document (HRI/CORE/TKM/2009) submitted in 2009 in accordance with the harmonized guidelines on reporting under the international human rights treaties, in particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

(32) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information,

within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 9, 15 and 17 above.

(33) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 8, 10, 13 and 25 above and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement those recommendations.

(34) The Committee recommends that the State party submit its eighth to eleventh periodic reports in a single document by 29 October 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).

37. Viet Nam

(1) The Committee considered the tenth to fourteenth periodic reports of Viet Nam (CERD/C/VNM/10-14), submitted in one document, at its 2139th and 2140th meetings (CERD/C/SR.2139 and SR.2140), held on 21 and 22 February 2012. At its 2159th meeting (CERD/C/SR.2159), held on 6 March 2012, it adopted the following concluding observations.

A. Introduction

(2) The Committee welcomes the combined periodic report submitted by the State party. Noting that the report was considerably overdue, the Committee requests the State party to be mindful of the deadline set for the submission of future reports in order to meet its obligations under the Convention.

(3) The Committee also welcomes the supplementary information provided orally by the high-level delegation, as well as the resumption of constructive dialogue with the State party since the consideration of the previous periodic report (CERD/C/357/Add.2) in 2001.

B. Positive aspects

(4) The Committee welcomes the following legislative and other measures taken by the State party:

- (a) The adoption of the Law on residence (2006);
- (b) The adoption of the Law on gender equality (2006);
- (c) The amendment to the Law on nationality (2008);
- (d) The establishment of the Ethnic Council under the Law on the organization of the National Assembly in 2002;
- (e) The implementation of Programme 135 on the Socio-Economic Development of Communes with Special Difficulties (1998–2010) and of the National Target Programme on Poverty Reduction (2006–2010);
- (f) The implementation of Decision 82/2010/QD-TTg, Decision 134/2004/QD-TTg and Decision 167/2008/QD-TTg on special measures for the poorest ethnic minorities in the fields of housing, education and language learning.

(5) The Committee takes note with appreciation of the allocation of 100 billion dong from the State budget for the support of five ethnic groups, namely Si La, Pu Peo, O du, Brau and Ro Man.

(6) The Committee welcomes the ratification by the State party of the two Optional Protocols to the Convention on the Rights of the Child, on the involvement of children in armed conflict and on the sale of children, child prostitution and child pornography, on 20 December 2001. The Committee also welcomes the consideration being given by the State party to acceding to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

C. Concerns and recommendations

(7) The Committee is concerned that the Convention has not been fully incorporated in domestic law, particularly in the light of the absence of a definition of racial discrimination. The Committee notes with concern that the State party has not yet adopted a dedicated and comprehensive anti-discrimination law (arts. 1 and 2).

Recalling its previous recommendations (A/56/18, paras. 414 and 415), the Committee recommends that the State party incorporate the Convention into its domestic law by, inter alia, adopting a comprehensive anti-discrimination law that includes a definition of racial discrimination in accordance with article 1, paragraph 1, of the Convention and that covers all rights protected by the Convention.

(8) The Committee notes with appreciation that international treaties to which Viet Nam is a party prevail over domestic law in case of conflict. The Committee nevertheless regrets the absence of cases of application of the Convention before domestic courts (arts. 2 and 7).

The Committee recommends that the State party strengthen efforts to make the Convention more widely known, in particular through training courses and seminars for the judiciary, so as to foster its application by the courts. Furthermore, the State party should provide an update on cases illustrating the application of the Convention in its next periodic report.

(9) The Committee is concerned about the lack of information on complaints about acts of racial discrimination lodged with courts and other relevant authorities, despite persistent reports of de facto discrimination against members of certain minority groups. Furthermore, while taking note of the Committee for Ethnic Minority Affairs, the ministerial-level agency responsible for the overall development of strategies and implementation of government policies on ethnic minorities, the Committee regrets the lack of a comprehensive, effective and independent complaints mechanism in the State party (arts. 2, 4, 5 and 6).

The Committee recommends that the State party:

(a) Assess the reasons for the low number of complaints relating to racial discrimination, including whether it may be due to victims' lack of awareness of their rights, language barriers, fear of reprisals, limited access to available mechanisms, or the authorities' lack of attention or sensitivity to cases of racial discrimination;

(b) Actively assist victims of racial discrimination seeking remedies, and inform the public, in particular law enforcement officials and minority groups, about legal remedies in the field of racial discrimination;

(c) Establish a comprehensive, effective and independent complaints mechanism;

(d) Provide, in the next periodic report, updated information on complaints of racial discrimination and on relevant decisions in court proceedings, including statistical data on complaints, prosecutions and sentences for acts prohibited under article 4 of the Convention.

(10) The Committee is concerned about the lack of effective implementation of the existing legal, policy and institutional frameworks to combat racial discrimination. It also notes with concern the broad and imprecise wording of certain provisions, inter alia, article 87 of the Criminal Code, and the possible misuse of those provisions against some ethnic minorities (arts. 2 and 4).

Recalling its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system, the Committee recommends that the State party take more effective measures to ensure the effective implementation of the existing anti-discrimination provisions and the effective investigation and persecution of racially motivated offences. The Committee also recommends, in accordance with its general recommendation No. 15 (1993) on article 4, that the State party conduct a comprehensive review of the existing legislation, bring it in full conformity with the provisions of article 4 (a) and (b) of the Convention, and consider revising article 87 of the Criminal Code to clarify that its primary purpose is to protect ethnic minorities and others vulnerable to discrimination.

(11) The Committee regrets the overall absence of concrete actions and time frames for the establishment of a national human rights institution in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles). It also notes with appreciation the oral commitment made by the delegation to actively consider the establishment of such institution in the near future (arts. 2 and 6).

The Committee encourages the State party to promptly establish a well-financed and adequately staffed independent human rights institution, in compliance with the Paris Principles, with a broad human rights mandate and a specific mandate to address all forms of discrimination.

(12) While the State party supported the adoption of the United Nations Declaration on the Rights of Indigenous Peoples, the Committee notes the State party's reluctance to engage in open and inclusive discussions on the recognition of indigenous peoples. The Committee welcomes the commitment made by the delegation that the State party would consider comments by its members on the need to promote the right to self-identification of such peoples in accordance with international standards (arts. 2 and 5).

The Committee recommends that the State party respect and protect the existence and cultural identity of all ethnic groups within its territory. In particular, recalling its general recommendations No. 21 (1990) on the right to self-determination and No. 23 (1997) on indigenous peoples, the Committee invites the State party to pay greater attention to the principle of self-identification by individuals concerned, including Khmer Krom and Degar (Montagnard), and to consider ratifying International Labour Organization Convention No. 169 (1989) concerning Indigenous and Tribal Peoples in Independent Countries.

(13) While noting various measures taken by the State party to reduce poverty, including Programmes 134 and 135, and its outstanding achievement of economic development, the Committee remains concerned that not all communities benefit in practice from the economic growth. The Committee is deeply concerned at the sizeable socio-economic gap between disadvantaged ethnic minorities and the majority Kinh, even when they live in the same mountain area, and at its negative impact on the enjoyment of economic, social and cultural rights by indigenous and minority groups, particularly in the fields of employment, education and health care (art. 5 (e)).

The Committee recommends that the State party strengthen its efforts in combating poverty among marginalized groups and discrimination on grounds of ethnicity with

regard to the enjoyment of economic, social and cultural rights. The State party should take measures to promote equal opportunities for all persons and stimulate economic growth and development for the ethnic minority groups and the indigenous communities, especially with regard to employment, education and health care. Furthermore, the Committee recommends that the State party ensure the active involvement of targeted beneficiaries through adequate consultation and participation in the decisions relating to their rights and interests.

(14) The Committee is concerned at disparities in the access to and quality of education, as well as in education outcomes, between majority Kinh students and ethnic minority students. The Committee also regrets the high illiteracy and school dropout rates among members of ethnic minorities, in particular minority women and girls. Furthermore, the Committee is concerned at the limited access to mother-tongue-based education for ethnic minorities (art. 5 (e)).

The Committee recommends that the State party take vigorous measures to ensure equal enjoyment of the right to education by, inter alia, increasing the financial assistance provided for students from economically disadvantaged families in all communities, and improving the quality of teaching and the curriculum. Furthermore, the State party should: increase the provision of bilingual education programmes for ethnic minority children and of training in local languages for Kinh teachers in ethnic minority areas; recruit more ethnic minority teachers; allow ethnic minority languages to be taught and used as a medium of instruction in schools; and support education programmes on the culture of ethnic minority groups.

(15) The Committee notes with concern the displacement of minorities and the confiscation of ancestral lands without prior consent and appropriate compensation for confiscated lands (art. 5).

The Committee calls on the State party to adopt measures to safeguard indigenous rights over ancestral lands and pursue efforts, together with communities affected, towards adequate resolution of land disputes, including the provision of appropriate compensation, giving due consideration in this respect to general recommendation No. 23.

(16) The Committee takes note of the State party's assurance that the right to freedom of belief and religion of ethnic minorities is well protected under article 70 of the Constitution and other relevant laws and policies (arts. 2, 4 and 5 (a), (b) and (d)). The Committee is nevertheless concerned at:

(a) Numerous and consistent reports of discrimination and restriction on religious practices faced by some Christian and Buddhist denominations among Khmer Krom, Degar (Montagnard) and Hmong, through legislation, registration requirements, surveillance and imprisonment;

(b) Provisions that appear to be discriminatory on both ethnic and religious grounds, including articles 8 and 15 of the Ordinance on belief and religion (2004), which forbid religious activities deemed to "violate national security" and "negatively affect the unity of the people or the nation's fine cultural traditions";

(c) The household registration system (*hộ khẩu*), which results in discrimination against ethnic minorities belonging to "unrecognized" religious groups in the fields of employment, social security, health services, education and the right to freedom of movement;

(d) Incidents of violent attacks and threats against religious groups and activities, for example, the alleged attacks against the Bat Nha monastery, referred to by the Special

Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (A/HRC/15/53, para. 10).

Taking into account the intersectionality between ethnicity and religion, as explained in general recommendation No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee recommends that the State party take measures to address the phenomenon of double discrimination faced by ethnic minorities belonging to unrecognized religious groups and ensure the rights of all persons to freely profess and practice their religion in public or in private regardless of registration status, by, inter alia:

- (a) **Considering the amendment of the household registration system;**
- (b) **Reviewing the Ordinance on belief and religion, in particular articles 8, paragraph 2, and 15, and Decree No. 22 on religion, which impose strict controls on religions, in order to ensure full conformity with article 5 (d) of the Convention;**
- (c) **Immediately and thoroughly investigating reports of threats and attacks against ethnic and religious minorities, and providing updates in the next periodic report on the outcome of the investigations and any punishments or sanctions imposed on those responsible, as well as on remedies provided for victims.**

(17) The Committee is concerned at: (a) persistent reports of arrests and arbitrary detention of minority groups for activities that constitute their peaceful practice of religion and freedom of expression, and of their ill-treatment in custody, including cases taken up by several special procedures mandate holders (see, for example, A/HRC/16/52/Add.1, para. 249); (b) the lack of effective investigation into those allegations; and (c) the lack of effective remedies provided for victims. In that regard, the Committee notes with concern some legal documents, inter alia, Ordinance No. 44 on regulating administrative justice, which authorizes suspected “national security” offenders to be placed under administrative detention for up to two years without trial, Decree 38/2005/ND-CP on public order, which prohibits demonstrations outside State agencies and public buildings, and Circular 09/2005/TT-BCA, which prohibits gatherings of more than five people without State permission (arts. 2 and 5 (b), (d)).

The Committee recommends that the State party review its regulations and policies relating to the protection of the rights to freedom of expression, peaceful assembly and association in full compliance with the requirements of article 5 (d) of the Convention. Furthermore, in the light of the recommendation by the Independent Expert on minority issues (A/HRC/16/45/Add.2, para. 97), the Committee calls on the State party to consider releasing those in detention for activities that would, under international standards, constitute the peaceful exercise of the aforementioned rights.

(18) The Committee is concerned at the lack of legal provisions on protection for refugees or asylum seekers as well as at reports about the forced repatriation, in collaboration with the Governments of neighbouring countries, of members of indigenous peoples and of ethnic minorities seeking refuge. The Committee notes with regret article 91 of the Criminal Code, which criminalizes “fleeing abroad or defecting to stay overseas with a view to opposing the people’s administration”, which is incompatible with article 68 of the Vietnamese Constitution and article 5 of the Convention (art. 5 (d)).

The Committee recommends that the State party review the current refugee policy with a view to better protecting the rights of members of indigenous peoples and of ethnic minorities seeking refuge or asylum, and that it establish national asylum legislation, as well as procedures related to the protection of refugees and asylum seekers, in line with international human rights standards. Furthermore, the

Committee encourages the State party to consider acceding to the 1954 Convention relating to the Status of Stateless Persons, the 1961 Convention on the Reduction of Statelessness, and the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.

(19) The Committee is deeply concerned about the lack of acknowledgement, by governmental officials and the general public, of the existence of racial discrimination and inequality between ethnic groups, as well as the persistence of negative societal attitudes and stereotypes against persons of minority ethnic origin (art. 7).

The Committee recommends that the State party take effective steps, including educational campaigns, to eradicate misperceptions and discriminatory stereotypes that stigmatize and marginalize ethnic minorities, in order to enhance the capacity of government officials to better protect the rights and interests of minority groups.

(20) Bearing in mind the indivisibility of all human rights, the Committee encourages the State party to consider ratifying those international human rights treaties which it has not yet ratified, in particular the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

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

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

(23) Welcoming the information provided by the delegation regarding the consideration being given by the State party to making the optional declaration provided for in article 14 of the Convention recognizing the competence of the Committee to receive and consider individual complaints, the Committee encourages the State party to make the declaration without delay.

(24) The Committee recommends that the State party ratify the amendments to article 8, paragraph 6, of the Convention, adopted on 15 January 1992 at the Fourteenth Meeting of States Parties to the Convention and endorsed by the General Assembly in its resolution 47/111. In this connection, the Committee cites General Assembly resolutions 61/148 and 63/243, in which the Assembly strongly urged States parties to accelerate their domestic ratification procedures with regard to the amendment to the Convention concerning the financing of the Committee and to notify the Secretary-General expeditiously in writing of their agreement to the amendment.

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

(26) The State party is invited to submit its common core document in accordance with the harmonized guidelines on reporting under the international human rights treaties, in

particular those on the common core document, as adopted by the fifth Inter-Committee Meeting of the human rights treaty bodies held in June 2006 (HRI/GEN.2/Rev.6, chap. I).

(27) In accordance with article 9, paragraph 1, of the Convention and rule 65 of its amended rules of procedure, the Committee requests the State party to provide information, within one year of the adoption of the present concluding observations, on its follow-up to the recommendations contained in paragraphs 12, 15 and 17 above.

(28) The Committee also wishes to draw the attention of the State party to the particular importance of recommendations 13, 14 and 16 above, and requests the State party to provide detailed information in its next periodic report on concrete measures taken to implement these recommendations.

(29) The Committee recommends that the State party submit its fifteenth to seventeenth periodic reports in a single document by 9 July 2015, taking into account the specific reporting guidelines adopted by the Committee at its seventy-first session (CERD/C/2007/1) and addressing all the points raised in the present concluding observations. The Committee also urges the State party to observe the page limit of 40 pages for treaty-specific reports and 60–80 pages for the common core document (HRI/GEN.2/Rev.6, chap. I, para. 19).

IV. Follow-up to the consideration of reports submitted by States parties under article 9 of the Convention

38. In 2012, Mr. Thornberry served as coordinator for follow-up to the consideration of reports submitted by States parties.

39. Terms of reference for the work of the coordinator on follow-up⁴ and guidelines on follow-up to be sent to each State party together with the concluding observations of the Committee⁵ were adopted by the Committee at its sixty-sixth and sixty-eighth sessions, respectively.

40. At the 2163rd meeting (eightieth session), held on 8 March 2012, the coordinator on follow-up presented a report on his activities to the Committee.

41. Since the closing of the seventy-ninth session, follow-up reports on the implementation of those recommendations regarding which the Committee had requested information were received from the following States parties: Estonia (CERD/C/EST/CO/8-9/Add.1), Lithuania (CERD/C/LTU/CO/4-5/Add.1), Morocco (CERD/C/MAR/CO/17-18/Add.1), Netherlands (CERD/C/NLD/CO/17-18/Add.1 and Corr.1) and Uzbekistan (CERD/C/UZB/CO/6-7/Add.2).

42. At its eightieth session, the Committee considered the follow-up reports of Australia, Denmark, Estonia, France, Netherlands and Uzbekistan and continued the constructive dialogue with these States parties by transmitting comments and requesting further information.

⁴ For the terms of reference of the work of the coordinator on follow-up, see *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV.

⁵ For the text of the guidelines, see *Official Records of the General Assembly, Sixty-first Session, Supplement No. 18 (A/61/18)*, annex VI.

V. Review of the implementation of the Convention in States parties the reports of which are seriously overdue

A. Reports overdue by at least 10 years

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

Sierra Leone	Fourth periodic report due since 1976
Liberia	Initial report due since 1977
Gambia	Second periodic report due since 1982
Somalia	Fifth periodic report due since 1984
Papua New Guinea	Second periodic report due since 1985
Solomon Islands	Second periodic report due since 1985
Central African Republic	Eighth periodic report due since 1986
Afghanistan	Second periodic report due since 1986
Seychelles	Sixth periodic report due since 1989
Saint Lucia	Initial report due since 1991
Malawi	Initial report due since 1997
Burkina Faso	Twelfth periodic report due since 1997
Niger	Fifteenth periodic report due since 1998
Swaziland	Fifteenth periodic report due since 1998
Burundi	Eleventh periodic report due since 1998
Iraq	Fifteenth periodic report due since 1999
Gabon	Tenth periodic report due since 1999
Haiti	Fourteenth periodic report due since 2000
Guinea	Twelfth periodic report due since 2000
Syrian Arab Republic	Sixteenth periodic report due since 2000
Holy See	Sixteenth periodic report due since 2000
Zimbabwe	Fifth periodic report due since 2000
Lesotho	Fifteenth periodic report due since 2000
Tonga	Fifteenth periodic report due since 2001
Mauritius	Fifteenth periodic report due since 2001

B. Reports overdue by at least five years

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

Sudan	Twelfth periodic report due since 2002
Bangladesh	Twelfth periodic report due since 2002
Eritrea	Initial report due since 2002
Belize	Initial report due since 2002
Benin	Initial report due since 2002
Algeria	Fifteenth periodic report due since 2003
Sri Lanka	Tenth periodic report due since 2003
San Marino	Initial periodic report due since 2003
Equatorial Guinea	Initial report due since 2003
Hungary	Eighteenth periodic report due since 2004
Cyprus	Seventeenth periodic report due since 2004
Egypt	Seventeenth periodic report due since 2004
Timor-Leste	Initial report due since 2004
Jamaica	Sixteenth periodic report due since 2004
Honduras	Initial periodic report due since 2004
Trinidad and Tobago	Fifteenth periodic report due since 2004
Mali	Fifteenth periodic report due since 2005
Comoros	Initial report due since 2005
Uganda	Eleventh periodic report due since 2005
Ghana	Eighteenth periodic report due since 2006
Libya	Eighteenth periodic report due since 2006
Côte d'Ivoire	Fifteenth periodic report due since 2006
Bahamas	Fifteenth periodic report due since 2006
Saudi Arabia	Fourth periodic report due since 2006
Cape Verde	Thirteenth periodic report due since 2006
Saint Vincent and the Grenadines	Eleventh periodic report due since 2006
Lebanon	Eighteenth periodic report due since 2006

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

45. At its forty-second session, the Committee, having emphasized that the delays in reporting by States parties hampered it in monitoring implementation of the Convention, decided that it would continue to proceed with the review of the implementation of the provisions of the Convention by States parties whose reports were overdue by five years or more. In accordance with a decision taken at its thirty-ninth session, the Committee agreed that this review would be based upon the last reports submitted by the State party concerned and their consideration by the Committee. At its forty-ninth session, the Committee further decided that States parties whose initial reports were overdue by five years or more would also be scheduled for a review of the implementation of the Convention. The Committee agreed that in the absence of an initial report, the Committee would consider all information submitted by the State party to other organs of the United Nations or, in the absence of such material, reports and information prepared by organs of the United Nations. In practice the Committee also considers relevant information from other sources, including from non-governmental organizations, whether it is an initial or periodic report that is seriously overdue.

VI. Consideration of communications under article 14 of the Convention

46. Under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, individuals or groups of individuals who claim that any of their rights enumerated in the Convention have been violated by a State party and who have exhausted all available domestic remedies may submit written communications to the Committee on the Elimination of Racial Discrimination for consideration. A list of 54 States parties which have recognized the competence of the Committee to consider such communications can be found in annex I, section B.

47. Consideration of communications under article 14 of the Convention takes place in closed meetings (rule 88 of the Committee's rules of procedure). All documents pertaining to the work of the Committee under article 14 (submissions from the parties and other working documents of the Committee) are confidential.

48. At the time of adoption of the present report the Committee had registered, since 1984, 49 complaints concerning 54 States parties. Of those, 1 complaint was discontinued and 17 were declared inadmissible. The Committee adopted final decisions on the merits on 28 complaints and found violations of the Convention in 12 of them. Three complaints were pending consideration.

49. During its eightieth session, on 6 March 2012, the Committee considered communication No. 46/2009 (*Dawas and Shava v. Denmark*), which concerned the attack, involving material damages and injuries as well as insults by 35 Danish youngsters against a family of Iraqi citizens recognized as refugees in Denmark. The petitioners, who were injured, insulted and had parts of their property damaged in the event, denounced the offenders who were consequently investigated by the police. The criminal proceedings resulted in a light penalty excluding the racially motivated nature of the act. The petitioners claimed to be victims of a violation by Denmark of article 6, read in conjunction with article 2, paragraph 1 (a), and of articles 3 and 4 of the Convention.

50. The Committee considered that in circumstances as serious as those in this case, where the petitioners were subjected, in their own house, to a violent assault by 35 offenders, some of them armed, enough elements warranted a thorough investigation by public authorities into the possible racist nature of the attack against the family. The Committee recalled its jurisprudence, according to which when threats of violence are made, and especially when they are made in public and by a group, it is incumbent upon the State party to investigate with due diligence and expedition. This obligation is a fortiori applicable in the circumstances of the present case, where 35 individuals actually participated in an assault on the family. The Committee therefore found a violation of article 6 and article 2, paragraph 1 (d) of the Convention. It also recommended that the State party review its policy and procedures concerning the decision to prosecute in cases of alleged racial discrimination, in the light of its obligations under article 4 of the Convention.

VII. Follow-up to individual communications

51. At its sixty-seventh session,⁶ following a discussion based on a background paper prepared by the Secretariat (CERD/C/67/FU/1), the Committee decided to establish a procedure to follow up on its opinions and recommendations adopted following the examination of communications from individuals or groups of individuals.

52. At the same session, the Committee decided to add two new paragraphs to its rules of procedure setting out details of the procedure.⁷ On 6 March 2006, at its sixty-eighth session, Mr. Sicilianos was appointed Rapporteur for follow-up to opinions, succeeded in 2008 by Mr. de Gouttes with effect from the seventy-second session. The Rapporteur for follow-up to opinions regularly presents a report to the Committee with recommendations on further action to be taken. These recommendations, which are annexed to the Committee's annual report to the General Assembly, reflect all cases in which the Committee found violations of the Convention or otherwise provided suggestions or recommendations.

53. The table below provides an overview of follow-up replies received from States parties. Wherever possible, it indicates whether follow-up replies are or have been considered satisfactory or unsatisfactory, or whether the dialogue between the State party and the Rapporteur for follow-up continues. Such categorization is not always easy. In general, replies may be considered satisfactory if they reveal willingness by the State party to implement the Committee's recommendations or to offer an appropriate remedy to the complainant. Replies which do not address the Committee's recommendations or only relate to certain aspects of these recommendations are generally considered unsatisfactory.

54. At the time of adoption of the present report, the Committee had adopted final opinions on the merits with respect to 28 complaints and found violations of the Convention in 12 cases. In nine cases, the Committee provided suggestions or recommendations although it did not establish a violation of the Convention.

⁶ See *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV, sect. I.

⁷ *Ibid.*, annex IV, sect. II.

Follow-up received to date for all cases of violations of the Convention and cases in which the Committee provided suggestions or recommendations in cases of no violation

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory or incomplete response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Denmark (6)	10/1997, Habassi	X (A/61/18)	X			
	16/1999, Kashif Ahmad	X (A/61/18)	X			
	34/2004, Mohammed Hassan Gelle	X (A/62/18)	X (A/62/18)			
	40/2007, Er	X (A/63/18)	X (A/63/18)			
	43/2008, Saada Mohamad Adan	X (A/66/18) 6 December 2010 28 June 2011	X partly satisfactory			X
	46/2009, Mahali Dawas and Yousef Shava	Not yet due				X
Netherlands (2)	1/1984, A. Yilmaz-Dogan				X (never requested by the Committee)	
	4/1991, L.K.				X (never requested by the Committee)	
Norway (1)	30/2003, The Jewish Community of Oslo	X (A/62/18)				X
Serbia and Montenegro (1)	29/2003, Dragan Durmic	X (A/62/18)				X
Slovakia (2)	13/1998, Anna Koptova	X (A/61/18 A/62/18)				X
	31/2003, L.R. et al.	X (A/61/18 A/62/18)				X

Petitions in which the Committee found no violations of the Convention but made recommendations

<i>State party and number of cases with violation</i>	<i>Communication, number, author and location</i>	<i>Follow-up response received from State party</i>	<i>Satisfactory response</i>	<i>Unsatisfactory response</i>	<i>No follow-up response received</i>	<i>Follow-up dialogue still ongoing</i>
Australia (3)	6/1995, Z.U.B.S.				X (never requested by the Committee)	
	8/1996, B.M.S.				X (never requested by the Committee)	
	26/2002, Hagan	X 28 January 2004				
Denmark (4)	17/1999, B.J.				X (never requested by the Committee)	
	20/2000, M.B.				X (never requested by the Committee)	
	27/2002, Kamal Qiereshi		X			
	41/2008, Ahmed Farah Jama					X
Norway (1)	3/1991, Narrainen				X (never requested by the Committee)	
Slovakia (1)	11/1998, Miroslav Lacko				X (never requested by the Committee)	

VIII. Action taken by the General Assembly at its sixty-sixth session

55. The Committee considered this agenda item at its eightieth session. For its consideration of this item, the Committee had before it General Assembly resolution 66/144 of 19 December 2011 in which the General Assembly had, inter alia: (a) reaffirmed that universal adherence to and full implementation of the International Convention on the Elimination of All Forms of Racial Discrimination are of paramount importance for the fight against racism, racial discrimination, xenophobia and related intolerance, and for the promotion of equality and non-discrimination in the world; (b) expressed grave concern that universal ratification of the Convention has not yet been reached, despite commitments under the Durban Declaration and Programme of Action, and called upon those States that had not yet done so to accede to the Convention as a matter of urgency; (c) expressed concern at the serious delays in the submission of overdue reports to the Committee on the Elimination of Racial Discrimination, which impeded the effectiveness of the Committee, made a strong appeal to all States parties to the Convention to comply with their treaty obligations, and reaffirmed the importance of the provision of technical assistance to requesting countries in the preparation of their reports to the Committee; (d) invited States parties to the Convention to ratify the amendment to article 8 of the Convention on the financing of the Committee, and called for adequate additional resources from the regular budget of the United Nations to enable the Committee to discharge its mandate fully; (e) urged all States parties to the Convention to intensify their efforts to implement the obligations that they have accepted under article 4 of the Convention, with due regard to the principles of the Universal Declaration of Human Rights and article 5 of the Convention; (f) recalled that the Committee holds that the prohibition of the dissemination of ideas based on racial superiority or racial hatred is compatible with the right to freedom of opinion and expression as outlined in article 19 of the Universal Declaration of Human Rights and in article 5 of the Convention; (g) welcomed the work of the Committee in combating racism, racial discrimination, xenophobia and related intolerance in the follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the measures recommended to strengthen the implementation of the Convention as well as the functioning of the Committee; (h) called upon Member States to do their utmost to ensure that their responses to the current financial and economic crisis did not lead to increased poverty and underdevelopment and, potentially, a rise in racism, racial discrimination, xenophobia and related intolerance against foreigners, immigrants and persons belonging to national or ethnic, religious and linguistic minorities all over the world; (i) reaffirmed that deprivation of citizenship on the basis of race or descent is a breach of State Parties obligations to ensure non-discriminatory enjoyment of the right to nationality.

IX. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference

56. The Committee considered the question of follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference at its eightieth session.

57. Mr. Kemal participated at the high-level meeting of the General Assembly to commemorate the tenth anniversary of the adoption of Durban Declaration and Programme of Action, which took place on 22 September 2011.

58. Mr. Murillo Martínez participated at the high-level thematic debate convened by the Secretary-General on 6 December 2011, at the United Nations Headquarters in New York on the occasion of the closure of the 2011 International Year for People of African Descent.

59. During its 2165th meeting (eightieth session), the Committee adopted a statement on its contribution to the Programme of Action for the Decade for People of African Descent (see annex VII).

X. Thematic discussions and general recommendations

60. Following the General Assembly resolution 64/169 of 18 December 2009, proclaiming the year beginning on 1 January 2011 the International Year for People of African Descent, the Committee at its seventy-eighth session held a thematic discussion on the subject of racial discrimination against people of African descent. Participants of the thematic discussion included representatives from States parties to the Convention; international organizations including UNESCO, UNHCR and the Economic Commission for Latin America and the Caribbean; and non-governmental organizations. Summary records of the thematic discussion can be found in documents CERD/C/SR.2080 and 2081.⁸

61. At the same session, the Committee decided to embark upon the task of drafting a new general recommendation on racial discrimination against people of African descent, in the light of the difficulties in the realization of the rights of people of African descent observed during the examination of reports and as part of the activities of the Committee to contribute to the International Year of People of African Descent. At its seventy-ninth session, the Committee adopted general recommendation No. 34 (2011) on racial discrimination against people of African descent.

62. At its eightieth session, the Committee decided to hold a thematic discussion on racist hate speech during its eighty-first session, to be held in Geneva from 6 to 31 August 2012. The Committee appointed Mr. Diaconu and Mr. Thornberry as Rapporteurs of the thematic discussion.

⁸ An informal summary prepared by the Secretariat can be found on the OHCHR webpage at www2.ohchr.org/english/bodies/cerd/AfricanDescent.htm.

XI. Working methods of the Committee

63. The working methods of the Committee are based on its rules of procedure, adopted in accordance with article 10 of the International Convention on the Elimination of All Forms of Racial Discrimination, as amended,⁹ and the Committee's established practice, as recorded in its relevant working papers and guidelines.¹⁰

64. At its seventy-sixth session, the Committee discussed its working methods and the need to improve its dialogue with States parties. The Committee decided that, instead of sending list of questions before the session, the Country Rapporteur would send to the State party concerned a short list of themes with a view to guiding and focusing the dialogue between the State party's delegation and the Committee during the consideration of the State party's report. Such a list of themes does not require written replies.

65. At its seventy-seventh session, on 3 August 2010, the Committee held an informal meeting with representatives of non-governmental organizations to discuss ways and means of strengthening cooperation. The Committee decided to hold informal meetings with non-governmental organizations at the beginning of each week of its sessions when States parties' reports are being discussed.

66. At its seventy-seventh session, the Committee discussed its working methods and, in particular, possible ways and means of addressing its increasing workload. While noting with appreciation that the high workload of the Committee was a result of the improved reporting rate for periodic reports submitted by States parties, as well as the high number (175) of States parties to the Convention, the Committee expressed concern at the persisting backlog of reports awaiting consideration. Taking into account General Assembly resolution 63/243 of 24 December 2008 on the International Convention on the Elimination of All Forms of Racial Discrimination, which allowed the Committee to meet for one additional week per session, with effect from August 2009 until 2011, and the large number of periodic reports of the States parties received, the Committee, having been advised of related financial implications, decided to request the General Assembly to approve one additional week of meeting time per session starting in 2012. The General Assembly granted the Committee an additional week of meeting time for the year 2012.

67. At its seventy-ninth session, on 25 August 2011, the Committee held its third informal meeting with States parties which was attended by 78 States parties, including those delegations of States parties based in New York without offices in Geneva via a video link. The meeting sought to update States parties on the Committee's methods of work, improve dialogue between the Committee and States parties and promote the engagement of States parties with the Committee throughout the reporting cycle.

68. The Committee appreciates the additional meeting time granted by the General Assembly, which facilitated consideration of the backlog of reports awaiting response.

⁹ Compilation of rules of procedure adopted by Human Rights Treaty Bodies (HRI/GEN/3/Rev.3).

¹⁰ This includes in particular the overview of the methods of work of the Committee (*Official Records of the General Assembly, Fifty-first Session, Supplement No. 18 (A/51/18)*, chap. IX); the working paper on working methods (*Official Records of the General Assembly, Fifty-eighth Session, Supplement No. 18 (A/58/18)*, annex IV); the terms of reference for the work of the coordinator on follow-up to the Committee's observations and recommendations (*Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, annex IV); and the guidelines for the Committee's early warning and urgent action procedure (*Official Records of the General Assembly, Sixty-second Session, Supplement No. 18 (A/62/18)*, annex III).

Annexes

Annex I

Status of the Convention

A. States parties to the International Convention on the Elimination of All Forms of Racial Discrimination (175) as at 9 March 2012^a

Afghanistan, Albania, Algeria, Andorra, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belgium, Belize, Benin, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cuba, Cyprus, Czech Republic, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Estonia, Ethiopia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Holy See, Hungary, Honduras, Iceland, India, Indonesia, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kuwait, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Lebanon, Lesotho, Liberia, Libyan Arab Jamahiriya, Liechtenstein, Lithuania, Luxembourg, Madagascar, Malawi, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Oman, Pakistan, Panama, Paraguay, Papua New Guinea, Peru, Philippines, Poland, Portugal, Qatar, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, Somalia, South Africa, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Thailand, the former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

B. States parties that have made the declaration under article 14, paragraph 1, of the Convention (54) as at 9 March 2012

Algeria, Andorra, Argentina, Australia, Austria, Azerbaijan, Belgium, Bolivia (Plurinational State of), Brazil, Bulgaria, Chile, Costa Rica, Cyprus, Czech Republic, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Liechtenstein, Luxembourg, Malta, Mexico, Monaco, Montenegro, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Republic of Korea, Romania, Russian Federation, San Marino, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain,

^a The following States have signed but not ratified the Convention: Bhutan, Grenada, Nauru and Sao Tome and Principe.

Sweden, Switzerland, the former Yugoslav Republic of Macedonia, Ukraine, Uruguay and Venezuela (Bolivarian Republic of).

C. States parties that have accepted the amendments to article 8, paragraph 6, of the Convention adopted at the Fourteenth Meeting of States Parties^a (43) as at 9 March 2012

Australia, Bahamas, Bahrain, Belize, Bulgaria, Burkina Faso, Canada, China, Colombia, Costa Rica, Cuba, Cyprus, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Guinea, Holy See, Iceland, Iran (Islamic Republic of), Iraq, Ireland, Liberia, Liechtenstein, Luxembourg, Mexico, Netherlands (for the Kingdom in Europe and the Netherlands Antilles and Aruba), New Zealand, Norway, Poland, Republic of Korea, Saudi Arabia, Seychelles, Slovakia, Sweden, Switzerland, Syrian Arab Republic, Trinidad and Tobago, Ukraine, United Kingdom of Great Britain and Northern Ireland, Zimbabwe.

Annex II

Agenda of the eightieth session (13 February–9 March 2012)

1. Solemn declaration by the newly elected members of the Committee under rule 14 of the rules of procedure.
2. Election of officers, according to rule 15 of the rules of procedure.
3. Adoption of the agenda.
4. Organizational and other matters.
5. Prevention of racial discrimination, including early warning measures and urgent action procedures.
6. Consideration of reports, comments and information submitted by States parties under article 9 of the Convention.
7. Submission of reports by States parties under article 9, paragraph 1, of the Convention.
8. Consideration of communications under article 14 of the Convention.
9. Follow-up procedure.
10. Follow-up to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance and the Durban Review Conference.
11. Universal periodic review procedure of the Human Rights Council.
12. Report of the Committee to the General Assembly at its sixty-seventh session.

Annex III

Opinion of the Committee under article 14 of the Convention adopted at the eightieth session

Opinion concerning communication No. 43/2008

<i>Submitted by:</i>	Mahali Dawas and Yousef Shava (represented by counsel)
<i>Alleged victim:</i>	The petitioners
<i>State party:</i>	Denmark
<i>Date of communication:</i>	16 June 2009 (initial submission)

The Committee on the Elimination of Racial Discrimination, established under article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Meeting on 6 March 2012,

Having concluded its consideration of communication No. 46/2009, submitted to the Committee on the Elimination of Racial Discrimination by Mahali Dawas and Yousef Shava under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination,

Having taken into account all information made available to it by the petitioners of the communication, their counsel and the State party,

Adopts the following:

Opinion

1.1 The petitioners are Mahali Dawas and Yousef Shava, Iraqi citizens recognized as refugees in Denmark, born in 1959 and 1985, respectively. Mr. Dawas has eight children, including the co-petitioner, Mr. Shava. The petitioners claim to be victims of violations by Denmark of article 2, paragraph 1 (d), article 3, article 4 and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination. They are represented by counsel, Niels Erik Hansen.

1.2 In conformity with article 14, paragraph 6 (a), of the Convention, the Committee transmitted the communication to the State party on 21 December 2009.

The facts as submitted by the petitioners

2.1 On the evening of 21 June 2004, a group of 15 to 20 youths attacked the petitioners' house in the town of Sorø. Windows were broken, and the front door damaged. One of the trespassers managed to break into the house, and both petitioners were subjected to violence, including beatings. Other attackers outside the house shouted "go home!",^a as well as other slogans of an offensive nature. After this attack, the family, including all eight

^a The petitioners specify that this meant "Go back to Iraq", as they were already inside the house.

children, had to flee the house and seek permanent alternative accommodation from the municipality.

2.2 A police investigation was carried out and resulted in a criminal trial before the District Court of Sorø. On 26 January 2005, the Court convicted four perpetrators on counts of violence, vandalism, and illegal possession of weapons. However, only light suspended jail sentences were ordered, no compensation was granted to the victims, and the possible racist element of the attack was not addressed.

2.3 The petitioners thereafter initiated a civil action for torts resulting in moral damage, and included the racist motive as an aggravating factor. Among other elements, the petitioners stressed the fact that a sign saying “no blacks allowed” had been placed near their house shortly before the incident. The petitioners also testified that one of the perpetrators had called another offender by phone prior to the incident, asking him to join him because he “had problems with some *perkere*”.^b

2.4 On 11 September 2007, the District Court of Naestved delivered its judgement, in which it found that there was no evidence establishing the racist character of the attacks against the petitioners. The Court further found that the level of violence and harm suffered was not of such degree to establish a violation of the Danish Act on Torts.

2.5 On 3 October 2008, the High Court of Eastern Denmark upheld the judgment of the District Court of Naestved, and the petitioners were ordered to pay legal costs amounting to 20,000 Danish kroner (DKr).^c On 12 December 2008, the petitioners were denied leave to appeal to the Danish Supreme Court. Consequently, they claim to have exhausted domestic remedies.

The complaint

3.1 The petitioners claim that by failing to investigate the racist character of the attack they suffered and to offer them an effective legal remedy for the violations suffered, the State party deprived them of their right to redress for the pain and humiliation suffered, in breach of article 6, read in conjunction with article 2, paragraph 1 (d).^d

3.2 They further contend that the violent attack and vandalism suffered, as well as the related racist motive and intent to have the family leave and take up residence in another municipality are tantamount to a breach by the State party of article 3 and article 4 of the Convention.

State party’s observations on the admissibility and merits

4.1 On 22 March 2010, the State party submitted observations on the admissibility and merits of the communication. It argues that the petitioners have failed to establish a prima facie case for the purposes of admissibility. Subsidiarily, it contends that the petitioners’ allegations are ill-founded, and should be rejected on the merits.

4.2 Regarding the facts, the State party recalls that the police was called to the petitioners’ place of residence on 21 June 2004, after the latter reported the incident, whereby a group of youths had gathered in front of their house, acting aggressively. When

^b Danish pejorative slang for “foreigners”.

^c Approximately 2,700 euros.

^d The petitioners also refer to the Committee’s general recommendation No. 26 (2000) on article 6. See *Official Records of the General Assembly, Fifty-fifth Session, Supplement No. 18 (A/55/18)*, annex V, sect. B.

the police reached the petitioner's residence, the group of offenders had already left.^e The police undertook a preliminary investigation, and commenced a full-scale investigation the following day. The police met with Mr. Shava at his residence on 22 June 2004, and on that occasion, they could see broken windows in the front of the house and in the front door. The police interviewed witnesses and the victims, including Mr. Shava, who reported that a group of young Danes had forced their way into the entrance hall, that a full plant pot had been thrown at his father's leg, and that he himself had received a punch to his face, and had also been struck with a bat-like instrument on his right arm. The group of offenders had alleged that the petitioners' family had stolen a necklace from them, and that the youngest members of the family had damaged a motorcycle helmet belonging to a member of the group. According to the petitioners, all the allegations were false.

4.3 The police interviewed a number of witnesses, including O.R., who testified on 23 June 2004 that he was a friend of the petitioners, who called him for help during the incident since he spoke Danish and could assist them. O.R. was told by one of the youths that the petitioners had stolen his necklace and damaged his motorcycle helmet. O.R. asked the group to wait until the police arrived, but they refused, arguing that they wanted to solve the problem on their own, and expressed the wish to beat the family. O.R. then asked the family to call the police. According to O.R., when the police was called the first time, the call was disconnected, as the police did not want to speak to Mr. Shava. When O.R. himself called the second time, he had the feeling that the police was not interested in the case. While O.R. was speaking to the police, the group of youths were trying to force their way into the petitioners' house. O.R. asked the police to send a patrol. After he ended the call, he was told by the offenders that they intended to seize items from the petitioners' house as compensation for the loss of their belongings, and that alternatively the family could give money as compensation. The group also declared that the family was staying in the house free of charge and was receiving assistance without providing anything in return.

4.4 Mr. Dawas repeated on 25 June 2004 that his family had been living at the place of the incident for more than one year, and had had several problems with two young Danish neighbours, including R.L., who lived at the other end of the building.^f The family never confronted these individuals, but sought the help of the Municipality of Sorø, which contacted the neighbours. Although the situation improved for a few days after, the incidents resumed.^g Mr. Shava, also interviewed by the police, mentioned that in response to the family's complaint to the local authorities, a sign was placed on the two neighbours' doors, which read "No blacks allowed". The State party also specifies that suspect K.B, upon interrogation by the police, affirmed that on the day of the offence he had been in contact with R.L., who had told him that he had "problems with some perkere". R.L. then asked if he could meet him and proceeded towards the petitioners' residence, along with one of his friends. An individual approached the victims, saying that they should either return the stolen items, or give the youths money. R.L.'s friend said that they were Danes, and the ones in charge, that the victims had nothing to say, and that they had been "thrown out" of their country of origin.

^e The State party does not specify the timeline for the events and police intervention.

^f Such as noise-related nuisances, fireworks thrown close to the family's windows, pebbles thrown at the family's children, etc.

^g No dates are specified. Two of the family's children were stopped in the street and accused of damaging a motorcycle helmet, which the children denied, claiming they had seen their neighbour R.L. and his friends damaging the helmet on the lawn in front of R.L.'s house. Shortly after, two men came to the family's residence and raised the same issue. More people joined, and the incident described above started.

4.5 According to the State party, the violent behaviour of the group reached a peak when the youths discovered that Mr. Shava's sister had recorded a video of the incident from a roof window. More people joined the group, which at one point exceeded 35 individuals. The group demanded the videotape, and managed to force their way into the entrance hall. R.L. took a flower bowl from the stairs and threw it at Mr. Dawas. Another man hit Mr. Shava on the face and the chest with his fist, and subsequently struck his right arm with a bat that he had been carrying. The offenders then left the house, leaving Mr. Dawas lying on the floor, almost unconscious. The group remained in front of the house, screaming, and smashed a double-pane window on the front door, as well as three other double-pane windows. The group finally left the premises, leaving the family in a state of shock and fear. The police arrived approximately 20 minutes later, and interrogated a number of witnesses, as well as the victims.

4.6 The State party reports that, as regards objective findings, a forensic medical certificate issued for Mr. Shava revealed that he had an almond-size haematoma on the outer edge of his left eyebrow, and slight swelling above the fifth metacarpal bone, combined with indirect soreness in connection with the medical examination. A medical certificate issued for Mr. Dawas indicated that he was found to be very anxious and in a state of shock. His left ankle was sore and slightly swollen, with two abrasions. Mr. Dawas also suffered from stomach acidity, for which he had previously been treated, although the incident may have aggravated his condition.

4.7 On 30 July 2004, a request for a Court hearing against four suspects^h was submitted to the District Court of Sorø, on charges of joint violence under section 245 (1) of the Criminal Code,ⁱ and for having gained unauthorized access to another person's house, under section 264 (1)(i) of the Criminal Code.^j Defendants K.B. and R.H. were also charged with a violation of section 291 (1) of the Criminal Code, for having allegedly smashed windows in the petitioners' dwelling.^k

4.8 On 20 August 2004, the Documentation and Advisory Centre on Racial Discrimination (DRC)^l wrote to the Ringsted Police on behalf of the petitioners, requesting them to consider a potentially racist motive of the offenders. The DRC also asked the police whether the Danish Security and Intelligence Service had been notified of the incident.^m On 25 August 2004, the Prosecution Service replied to the DRC that the police had investigated the incident based on statements collected, and that the Court would have the opportunity to take section 81 (1)(vi) of the Criminal Code into account during the proceedings,ⁿ should the facts reveal that the offenders' acts were racially motivated. The

^h R.L. (17 years old), M.N. (15 years old), R.H. (16 years old), and K.B. (16 years old).

ⁱ Section 245 (1) of the Criminal Code provides: "Any person who commits an assault of a particularly heinous or brutal or dangerous nature, or is guilty of cruelty, is liable to imprisonment for a term not exceeding six years. If any such assault has significantly injured another person or his or her health, it shall be considered a particularly aggravating circumstance".

^j Section 264 (1) of the Criminal Code provides: "Any person who (i) gains unauthorized access to another person's house or any other place not open to the public, or (ii) wrongfully fails to leave another person's land, having been requested to do so, is liable to a fine or imprisonment for a term not exceeding six months".

^k Section 291 (1) provides that "any person who destroys, damages or removes items belonging to another person is liable to a fine or imprisonment for a term not exceeding one year and six months".

^l The petitioners' counsel in this case.

^m The State party makes a reference to the Memorandum of the Security and Intelligence Service on notification of potentially racially or religiously motivated criminal incidents.

ⁿ Section 81 (1)(vi) provides that "in determining the sentence, it is generally an aggravating circumstance that (...) the offence was based on the ethnic origin, faith, sexual orientation or the like of others".

Prosecution also informed the DRC that the incident would be reported to the Security and Intelligence Service. A supplementary request for a court hearing was submitted on 15 September 2004, in which defendant K.B. was also charged with a violation of the Executive Order on Weapons and Ammunition for possessing a wooden bat.

4.9 On 21 September 2004, a first court hearing was held, during which the video recording of the incident was played, and statements were delivered by suspects along the same line as those they had initially given to the police. On 1 November 2004, the Prosecution asked Counsel whether the case could be processed as summary proceedings. On 2 November 2004, the prosecution requested the Court to fix a new hearing date, for the case to be prosecuted as summary proceedings based on the defendants' guilty pleas, and with revised charges, from a violation of section 245 (1) to a violation of section 244 of the Criminal Code.^o By judgement of 26 January 2005, the District Court of Sorø found the four defendants guilty, based on their guilty pleas.^p All defendants were sentenced to 50 days' imprisonment. Considering their young age and personal circumstances,^q the Court found it appropriate to suspend the sentences on the condition that they did not violate any law for a period of one year, and accepted their supervision by the local authorities, as far as K.B., R.H. and M.N. were concerned, and by the Prison and Probation Service for R.L.

4.10 On 26 January 2005, the petitioners claimed 57,000 DKr in damages from the defendants,^r corresponding to the amount of a loan contracted by the family for moving expenses in order to change municipality following the incident of June 2004. The petitioners also claimed payment of 15,000 DKr from two of the defendants on behalf of Mr. Dawas, and 15,000 DKr on behalf of Mr. Shava from one of the defendants. According to the State party, the court records fail to establish whether the claim for damages was adjudicated, and the judgement makes no reference to payment of damages to petitioners, which must accordingly be deemed to have been referred to civil proceedings by the Court.

4.11 The State party further informs the Committee that in applications received by the Criminal Injuries Compensation Board on 21 February 2005, the petitioners requested compensation for pain and suffering resulting from the incident of 21 June 2004. In a letter of 2 February 2006 to their lawyer, the Compensation Board requested medical evidence supporting the petitioners' claim, based on section 3 of the Liability for Damages Act, which sets out that an injured person is only eligible for compensation if she or he has been medically ill. According to the State party, the lawyer did not respond to the Compensation Board's request.

4.12 On 23 May 2006, the petitioners instituted civil proceedings, requesting before the District Court of Naestved that the four defendants in the case be ordered to pay 30,000 DKr to each of the petitioners as compensation for non-pecuniary damages. In support of their claim, the petitioners argued that they suffered from physical and mental injuries pursuant to the attack of 21 June 2004. Mr. Dawas, who was already traumatized from past political persecution in Iraq, saw his condition further deteriorate since the assault. His

^o Section 244 provides: "Any person who commits violence against another or otherwise attacks another person is liable to a fine or imprisonment for a term not exceeding three years". Charges were also changed to refer only to each act of violence respectively committed by defendants: R.H. was charged with violence under section 244 of the Criminal Code for having allegedly hit Mr. Sawas in the face with his fist; M.N. was charged with a violation of section 244 for having allegedly hit Mr. Shava with a fist; and K.B. was charged with complicity in violence pursuant to section 244, acting in a threatening manner with a bat, and inciting members of the group to violence. R.H. and K.B. were further charged with a violation of the weapons legislation (for possession of a wooden bat).

^p The State party does not specify if the defendants were present at trial.

^q The State party does not specify which personal circumstances.

^r The State party does not indicate before which jurisdiction the proceedings took place.

spouse also had a nervous breakdown since the incident. Although the local authorities of Sorø allowed them to move to another municipality, the family had to bear all related costs. According to the State party, in their civil action for damages, the petitioners relied on the Liability for Damages Act,^s read in the light of articles 4 and 6 of the Convention, given the racist nature of the acts, which they found highly offensive and detrimental to their reputation. The evidence provided by the defendants corresponded to the statements they had earlier provided to the police and at trial. The petitioners reiterated that a racist sign had been posted on two offenders' doors; that one of the offenders mentioned that they should not come to Denmark and "take jobs"; and that members of the group spoke of them in a derogatory manner and referred to them as "Pakis", in a way detrimental to their public reputation, in addition to the physical assault inflicted.

4.13 On 11 September 2007, the District Court of Naestved rejected the petitioners' application, on the ground that they had failed to substantiate that the assault committed was racially motivated, or otherwise undertaken on the specific ground of the petitioners' race, nationality or ethnic origin. The Court further considered that although the acts resulted in serious insecurity and anxiety, there was no wrongful violation of their rights such as to give rise to a basis for compensation for non-pecuniary damages under the Liability for Damages Act. Considered on appeal by the High Court of Eastern Denmark, the decision was confirmed on 3 October 2008. On 16 December 2008, the Appeals Permission Board denied the petitioners permission to appeal the decision for a third-instance review.

4.14 Turning to the petitioners' complaint before the Committee, the State party submits that the communication should be declared inadmissible because the latter failed to establish a *prima facie* case for the purpose of admissibility under article 14 of the Convention.^t To fall within the scope of the Convention, the assault of 21 June 2004 should be an act of racial discrimination *vis-à-vis* the petitioners. According to the State party, which was also the opinion formed by domestic courts, there is no evidence that the assault was racially motivated, and it is not the role of the Committee to review the interpretation and use of Danish law by independent and competent judicial bodies.^u The State party adds that in all witness statements given to the police and in court, including the petitioners' statements, no reference was made to the petitioners' ethnic origin as the reason for the assault, and the courts found that it had not been proven that the neighbour was the person who posted the sign saying "no blacks allowed". Mr. Shava's statement to the police, for example, reveals that he presumed that the reason for the offenders' conduct was the family's complaint to the local authorities for their noisy behaviour. It also appears from almost all statements that the offenders blamed the family for having stolen a necklace and damaged a motorcycle helmet. The offenders became more aggressive upon realizing that a member of the petitioners' family was video recording the incident. The State party also mentions that although the case was referred by the police to the Security and Intelligence

^s Section 26 (1) provides that "a person liable for wrongful violation of another's liberty, peace, character or person shall pay compensation to the victim for non-pecuniary damage". Section 26 (3) further states that "even if no non-pecuniary damage has been suffered, the person liable for wrongful violation of another person's rights shall pay compensation to the victim if the violation was committed by means of an offence involving a particularly aggravated assault on another person or liberty". The State party specifies that non-pecuniary damages must be understood as an injury to the self-esteem and defamation of character, i.e. a person's perception of his or her own worth and reputation.

^t The State party refers to communication No. 5/1994, *C.P. and M.P. v. Denmark*, inadmissibility decision adopted on 15 March 1995, paras. 6.2 and 6.3.

^u The State party refers to communication No. 3/1991, *Narrainen v. Norway*, Views adopted on 15 August 1994, paras. 9.4 and 9.5.

Service, as required by the Memorandum on notification of potentially racially or religiously motivated criminal incidents, this does not constitute evidence that the assault was racially motivated, as the Memorandum only requires notification of any potentially racially/religiously motivated criminal acts. It was thus not considered at trial that conditions were met for section 81 (1)(vi) of the Criminal Code to be taken into account in the determination of the sentence. It is the State party's contention that there is no reason to contest this finding, which was subsequently confirmed in the civil proceedings instituted by the petitioners. For these reasons, the State party reiterates that the communication should be declared inadmissible under article 14 of the Convention and rule 91 of the Committee's rules of procedure, as the petitioners failed to establish a prima facie case.

4.15 The State party rejects the petitioners' contention that the assault should be considered as falling under article 3 of the Convention, as "racial segregation and apartheid". The petitioners' allegation that the assault was undertaken so as to have them leave the area has not in any way been substantiated by the facts. The State party also claims that the petitioners have failed to invoke this argument under article 3 of the Convention before national courts, and have thus failed to exhaust domestic remedies on this count.

4.16 The State party also rejects the petitioners' claim under article 4 of the Convention as inadmissible for lack of substantiation, as nothing supports their claim in this regard.

4.17 Subsidiarily, on the merits, the State party considers that no violation of the Convention has taken place, as the petitioners had access to an effective remedy in accordance with article 6 of the Convention. Both the police and judicial instances diligently and effectively pursued the offence of violent assault against the petitioners. The fact that the petitioners' civil action did not reach the outcome they desired, i.e. compensation, is immaterial, as the Convention does not guarantee a specific outcome in cases of alleged racial discrimination. Immediately after the petitioners reported the incident on 21 June 2004, the police commenced its investigation and interviewed witnesses, to find that there was no possible inference to be made that the assault was racially motivated. The offenders were prosecuted and sentenced to 50 days of suspended imprisonment each. Consequently, the State party reaffirms that the way in which public authorities, both police and courts, handled the case meets the requirements of article 2, paragraph 1 (d), and article 6 of the Convention.

Petitioners' comments on the State party's submission

5.1 On 31 May 2010, the petitioners contested the State party's claim that the assault did not have a racist motive. They reiterate that a sign saying "no blacks allowed" had been posted in the vicinity of their house, that the group had shouted "go home" and that one of their neighbours had affirmed, in a phone conversation with another offender prior to the assault, that he had "problems with some perkere". According to the petitioners, the police clearly understood the racist implications of the attack from their interviews of witnesses and the letters received from the petitioners' counsel.^v Accordingly, the police reported the incident to the Security and Intelligence Service as a possible racially motivated crime. The petitioners also reject the State party's argument that the threshold for such reporting is as low as "any potentially racially/religiously motivated criminal acts",^w referring to a

^v The petitioners refer to two letters, annexed to the complaint, dated 16 August 2004 and 20 August 2004, in which Counsel for the petitioners, inter alia, informed the police that a sign saying "blacks not allowed" had been posted next to the petitioners' house before the assault, and asked the Sorø police to be informed about their investigation of the crime as a racially motivated crime.

^w See para. 4.14 above.

homicide case in 2008 involving an attack by young Danes against a foreign victim,^x following which the Chief Inspector of Homicide of Copenhagen Police explicitly rejected that the manslaughter was motivated by racism and religion, and thus refused to report the incident to the Security and Intelligence Service. Consequently, the petitioners contend that in this case there is no doubt that the police realized the racist nature of the crime at stake, but nevertheless failed to investigate it properly as a hate crime, in breach of articles 2, 3, 4 and 6 of the Convention.

5.2 Regarding the State party's contention that the petitioners failed to exhaust domestic remedies as they did not invoke article 3 of the Convention before domestic courts, the petitioners affirm that they did not have the possibility to invoke the Convention during the criminal proceedings.

5.3. According to the petitioners, the public authorities wished to reach a speedy conclusion of the proceedings in the case, and thus opted for a fast judicial track based on the defendants' "full confession". The police arrived late at the scene of the offence, only after the attack had ceased, and thus failed to protect the family. Only four suspects, out of 35 offenders, were interviewed and charged for their participation in the racist attack. The offenders were not asked by the Prosecutor to confess the racist element in the crime, and were requested only to admit violence, vandalism, and possession of illegal weapons.

5.4 The petitioners also stress that the criminal proceedings took place in their absence, and that they were thus denied the opportunity to testify before the District Court of Sorø. The civil proceedings subsequently litigated before the District Court of Naestved failed to give them satisfaction. Furthermore, a number of witnesses and defendants, such as defendant K.B., did not appear at the hearing before the District Court of Naestved, nor on appeal before the High Court of Eastern Denmark. It was thus not possible to interrogate him on the phone conversations he had prior to the assault.^y The petitioners therefore challenge the State party's assertion that the evidence provided in court by the defendants coincided with the statements they had given to the police,^z as one of the defendants was not present at trial. According to the petitioners, in such circumstances, the District Court of Naestved should have ruled in their favour.

5.5 Regarding the State party's argument that the petitioners failed to properly pursue their application before the Criminal Injuries Compensation Board,^{aa} the petitioners submit that this procedure was superfluous, as they would have needed a favourable criminal or civil court decision as a basis for a valid claim for damages. As their claims were rejected in both the criminal and civil proceedings, the Compensation Board could not offer redress to the petitioners.

5.6 In conclusion, the petitioners reaffirm that the State party breached article 6 in their regard, in relation to article 2, paragraph 1 (d), as well as article 3 and article 4 of the Convention.^{bb} They reiterate that they were denied an effective remedy for the acts of racist violence suffered, including their right to adequate reparation and satisfaction for the

^x According to the petitioners, the attacker in that case was carrying a baseball bat and reportedly shouted at the victim "what are you looking at *perker svine?*" (Danish pejorative slang for "foreigner").

^y See paras. 2.3, 4.4 and 5.1 above.

^z See para. 4.9 above.

^{aa} See para. 4.11 above.

^{bb} Article 4 is claimed for the violent attack and vandalism; article 3 for the intention to have the family leave the place; and article 6 for the lack of effective remedies.

damage caused by the discrimination suffered, in addition to the punishment of perpetrators.^{cc}

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee on the Elimination of Racial Discrimination must decide, pursuant to article 14, paragraph 7 (a), of the Convention, whether or not the communication is admissible.

6.2 The Committee first observes that the petitioners have failed to substantiate, for the purposes of admissibility, their allegation that the offenders' intent to have them leave the municipality qualified as an act of racial segregation or apartheid, within the meaning of article 3 of the Convention. This part of the communication is therefore inadmissible under article 14, paragraph 1 of the Convention. Having reached this conclusion, the Committee need not examine the State party's contention that the petitioners failed to exhaust domestic remedies on this count, on the ground that they did not invoke article 3 of the Convention before domestic courts.

6.3 The Committee has taken note of the State party's argument that the petitioners failed to establish a prima facie case for the purposes of admissibility, as the assault does not qualify as an act of racial discrimination under the Convention. The Committee however considers that the question of whether such assault constituted or resulted in discrimination vis-à-vis the petitioners on the basis of their national origin or ethnicity, and if so, whether they were offered an effective remedy in this regard, relates to the substance of the communication and, for this reason, should be considered on the merits. Accordingly, the Committee finds that the petitioners have sufficiently substantiated their claims under article 2, paragraph 1 (d), article 4 and article 6 of the Convention, for the purposes of admissibility, and proceeds to their examination on the merits, in the absence of any further objections to the admissibility of the communication.

Consideration of the merits

7.1 Acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, the Committee has considered the information submitted by the petitioners and the State party.

7.2 The issue before the Committee is whether the State party fulfilled its positive obligation to properly investigate and prosecute the assault suffered by the petitioners on 21 June 2004, having regard to its duty, under article 2 of the Convention, to take effective action against reported incidents of racial discrimination. The Committee recalls that it is not its role to review the interpretation of facts and national law made by domestic courts, unless the decisions were manifestly arbitrary, or otherwise amounted to a denial of justice.^{dd} In the present case, the Committee observes that further to the investigation of the offence by the police, the Prosecution requested that criminal proceedings against four suspects be undertaken as summary proceedings based on the defendants' guilty pleas, and decided to revise charges from a violation of section 245 (1), which criminalizes specific acts of a particularly heinous, brutal or dangerous nature, and which incurs a maximum penalty of six years' imprisonment, to a violation of section 244 of the Criminal Code, which criminalizes general acts of violence and incurs a lighter penalty of maximum three

^{cc} The petitioners refer to the Committee's general recommendation No. 26.

^{dd} See communication No. 40/2007, *Er. v. Denmark*, Opinion adopted on 8 August 2007, para. 7.2.

years. The defendants were finally sentenced to 50 days' imprisonment (suspended). The Committee observes that because of the summary proceedings and revised charges, the possibly racist nature of the offence was already set aside at the level of the criminal investigation, and was not adjudicated at trial. The Committee further observes that on 11 September 2007, the District Court of Naestved rejected the petitioners' application for moral damages, on the ground that they had failed to provide sufficient evidence that the assault committed was racially motivated, or otherwise undertaken on the specific ground of the petitioners' race, nationality or ethnic origin.

7.3 The Committee observes that it is undisputed that 35 offenders attacked the petitioners' house on 21 June 2004, and that the petitioners were on several occasions exposed to offensive language of a racist nature both within and outside the context of their assault. Nor is it contested that the police reported the incident to the Security and Intelligence Service, pursuant to the Memorandum on notification of potentially racially or religiously motivated criminal incidents. The Committee notes that the State party failed to submit any information on the outcome of this notification, in particular whether any investigation was undertaken to ascertain whether the attack qualified as incitement to, or an act of racial discrimination.

7.4 The Committee is of the view that in circumstances as serious as those in this case, where the petitioners were subjected, in their own house, to a violent assault by 35 offenders, some of them armed, enough elements warranted a thorough investigation by public authorities into the possible racist nature of the attack against the family. Instead, this possibility was set aside at the level of the criminal investigation, thereby preventing the issue from even being adjudicated at the criminal trial. The Committee considers that the onus was on the State party to initiate an effective criminal investigation, instead of giving the petitioners the burden of proof in civil proceedings. The Committee recalls its jurisprudence, according to which when threats of violence are made, and especially when they are made in public and by a group, it is incumbent upon the State party to investigate with due diligence and expedition.^{ee} This obligation is a fortiori applicable in the circumstances of the present case, where 35 individuals actually participated in an assault on the family.

7.5 Although, on the basis of information before it, and given that facts are contested between parties, the Committee is not able to find an independent violation of article 4 (a) of the Convention, it is of the view that the investigation into the events was incomplete. In the light of such failure to effectively protect the petitioners from an alleged act of racial discrimination, and to carry out an effective investigation, which consequently deprived the petitioners from their right to effective protection and remedies against the reported act of racial discrimination, the Committee concludes that article 6 and article 2, paragraph 1 (d), have been violated.

8. In the circumstances, and with reference to its general recommendation No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system,^{ff} the Committee on the Elimination of Racial Discrimination, acting under article 14, paragraph 7 (a), of the International Convention on the Elimination of All Forms of Racial Discrimination, is of the opinion that the facts as submitted disclose a violation of article 2, paragraph 1 (d), and article 6 of the Convention by the State party.

^{ee} Communication No. 4/1991, *L.K. v. Netherlands*, Opinion adopted on 16 March 1993, para. 6.6.

^{ff} *Official Records of the General Assembly, Sixtieth Session, Supplement No. 18 (A/60/18)*, chap. IX.

9. The Committee on the Elimination of Racial Discrimination recommends that the State party grant the petitioners adequate compensation for the material and moral injury caused by the above-mentioned violations of the Convention.

10. The Committee further recommends that the State party review its policy and procedures concerning the prosecution in cases of alleged racial discrimination or racially motivated violence, in the light of its obligations under article 4 of the Convention.⁸⁸ The State party is also requested to give wide publicity to the Committee's Opinion, including among prosecutors and judicial bodies.

11. The Committee wishes to receive, within 90 days, information from the State party about the measures taken to give effect to the Committee's Opinion.

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

⁸⁸ See *L.K. v. the Netherlands* (note ee above), para. 6.8.

Annex IV

Follow-up information provided in relation to cases in which the Committee adopted recommendations

This annex compiles information received on follow-up to individual communications since the last annual report,^a as well as any decisions made by the Committee on the nature of those responses.^b

State party	Denmark
Case	<i>Saada Mohamed Adan, 43/2008</i>
Opinion adopted on	13 August 2010
Issues and violations found	Lack of effective inquiry to determine whether the petitioner has suffered discrimination on the base of race: violation of article 2, paragraph 1 (d), and article 4 of the Convention. The failure to effectively investigate the petitioner's complaint under article 266 (b) of the Criminal Code constitutes a separate violation under article 6 of the Convention.
Remedy recommended	The Committee recommended the State party to grant the petitioner adequate compensation for the moral injury caused by the above-mentioned violations of the Convention. The Committee recalled its general recommendation No. 30 which recommends that States parties take "resolute action to counter any tendency to target, stigmatize, stereotype or profile, on the basis of race,

^a *Official Records of the General Assembly, Sixty-sixth session, Supplement No. 18 (A/66/18).*

^b It should be mentioned that in its last concluding observations to the State party in August 2010 (CERD/C/DNK/CO/18-19), the Committee noted the following:

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

"The Committee recommends that the State party should limit the powers of the Director of Public Prosecutions by establishing an independent and multicultural oversight body to assess and oversee the decisions taken by the Director of Public Prosecutions with regard to cases under section 266b to ensure that discontinuance of cases does not discourage victims from lodging complaints or promote impunity by perpetrators of hate crimes. In line with general recommendation 31 (2005), the Committee urges the State party to resist calls to repeal section 266b which will compromise the efforts and gains that the State party has achieved in combating racial discrimination and hate crimes."

	<p>colour, descent, and national or ethnic origin, members of 'non-citizen' population groups, especially by politicians ..." Taking into account the Act of 16 March 2004, which, inter alia, introduced a new provision in section 81 of the Criminal Code whereby racial motivation constitutes an aggravating circumstance, the Committee recommended that the State party should ensure that the existing legislation is effectively applied so that similar violations do not occur in the future. The State party was also requested to give wide publicity to the Committee's opinion, including among prosecutors and judicial bodies.</p>
Date of examination of report/s since adoption	The State party's eighteenth and nineteenth periodic reports were examined in August 2010; the twentieth and twenty-first reports are due in 2013.
Due date for State party response	25 February 2011
Date of reply	13 December 2010, 27 June 2011
State party's observations	<p>The State party informs the Committee that its Government has found it reasonable to pay compensation for any equitable costs a petitioner may have had to pay for legal assistance during the complaints procedure. Act No. 940 on Legal Aid for the Submission and Conducting of Complaints before International Treaty Bodies under Human Rights Conventions (December 1999) guarantees legal aid to cover equitable costs in all cases where the international complaints body requests the State party to provide observations on a complaint. The petitioner in the present case has received Dkr 45,000, i.e. approximately 8,300 US dollars.</p> <p>The State party explains that its Government is ready to pay compensation for any pecuniary damage the petitioner may have suffered, in accordance with the general principle on such compensation under Danish law. In this case, however, the petitioner did not suffer any such damage. As to compensation for non-pecuniary damage, including for moral damages, the State party explains that, after careful consideration, its Government has found that the alleged discrimination acts against the petitioner are not of such nature to require payment of compensation. In reaching this conclusion, the Government has attached great importance to the fact that, unlike in previous cases (<i>L.K. v. the Netherlands</i> or <i>Habassi v. Denmark</i>), in the present case the statements made by Mr. Espersen in a radio broadcast did not target the petitioner personally. The State party contends that in the present case the findings of the Committee constitute a sufficient and just satisfaction for the petitioner.</p> <p>The State party further refers to the follow-up procedure in connection to the case of <i>Mohamed Hassan Gelle v.</i></p>

Denmark (No. 34/2004) and recalls that there also it decided not to pay compensation for non-pecuniary damage, inter alia because the discrimination actions were not aimed at the petitioner personally. In the case of Mr. Gelle, the Committee has found the State party's reply to be satisfactory and concluded the scrutiny under the follow-up procedure.

On the effective application of existing legislation, the State party points out that, according to section 99 of the Administration of Justice Act, the Director of Public Prosecutions is superior to the rest of the prosecutors and supervises them. Thus, he is entitled to issue rules regarding the prosecutors' work, and can also intervene in particular cases and give orders whether to have the matter prosecuted or not. The Director of the Public Prosecutions has issued Instruction No. 9/2006 on the handling of cases concerning violations of, inter alia, section 266b of the Danish Criminal Code. The Instruction stipulates that all complaints under section 266b of the Criminal Code rejected by the police, on the ground that there is no basis for initiating an investigation or continuing with investigations already opened, must be submitted to the Regional Prosecutor. Decisions of the Regional Prosecutor to uphold the police conclusions may be appealed before the Director of the Public Prosecutors. According to the Instruction, all cases in which a preliminary charge has been laid are submitted to the Director of the Public Prosecutors for determination of the final charges. The State party explains that the Director of the Public Prosecutions is currently evaluating whether there is a need to modify Instruction No. 9/2006. The Public Prosecutions Director was provided with the Committee's opinion in the present case, with a request to take it into consideration when revising the said instruction.

Finally, the State party reports that, in addition to the Director of Public Prosecutions, the Committee's opinion has also been forwarded to the Regional Public Prosecutor of Copenhagen and the Chief of the Police in Copenhagen, i.e. the three authorities of the Public Prosecution Service involved in the case.

The Committee's opinion was also sent to the Danish National Police and the Danish Court of Administration, and thus the prosecution and the judicial bodies have been informed of the Committee's findings. The State party has also informed the petitioner's representative of the measures taken to give effect to the Committee's recommendations.

Petitioner's comments

The petitioner's representative provided his comments to the State party's observations on 28 February 2011. He notes, firstly, that the State party's refusal to grant compensation in the present case is not a precedent, and

that in the cases of Mr. Gelle, communication No. 34/2004, and Mr. Murat Er, communication No. 40/2007, the situation was similar, and no non-pecuniary damages were compensated.

Counsel considers the State party's argumentation on the payment of legal aid in the present case to be irrelevant to the Committee's recommendation for a compensation for damages, and points out that no redress can be obtained through legal aid. Secondly, the State party's refusal to grant compensation for non-pecuniary damages, on the basis that the nature of the alleged discrimination in the present case does not permit a payment of compensation, shows, according to the counsel, that the State party confuses two issues. According to the counsel, it is irrelevant to verify whether the radio speech of Mr. Espersen targeted the petitioner personally. The moral damages suffered by the petitioner were not due to the speech itself, but to the State party's failure to react effectively. Mr. Espersen's speech, in substance, was never examined by a court. And, as established by the Committee in its opinion, the State party has failed to fulfil its positive obligations to take effective action in the matter. Therefore, according to counsel, the moral damages suffered by the petitioner are imputable to the State party.

Counsel adds that the State party has failed to give any consideration to the Committee's conclusions on the merits of the case, in particular the Committee's conclusion that the petitioner is also a victim of a violation of his rights by the State party, under article 6 of the Convention. As to the previous cases quoted by the State party as examples of satisfactory follow-up replies, the counsel notes that the term "satisfactory" here should be understood as implying that no further correspondence is needed, without necessarily meaning that the Committee was satisfied with the measures taken.

On the issue of the effective application of existing legislation and no occurrence of similar violations in future, counsel notes that the Director of the Public Prosecution has informed him that Instruction No. 9/2006 is currently being revised and that the Committee's opinion would form part of the considerations in this respect. The counsel explains however, that he is unaware of the envisaged changes, but notes that the Committee's opinions in *Mohammed Hassan Gelle v. Denmark* or *Saada Adan v. Denmark* also could, but have not, served as a basis to avoid similar subsequent violations to occur.

On the publicity of the Committee's opinion, counsel notes that the State party has circulated the opinion to the Police, prosecutors and the Central Court of Administration. According to him, however, this does not correspond to the Committee's request, i.e. to have the opinion widely

disseminated, including, but not limited to, judicial bodies.

Counsel requests the Committee to intervene and explain to the State party that its reply is unsatisfactory and that the measures taken are insufficient to comply with its recommendations.

Additional reply by the State party

On 27 June 2011, the State party reiterates the information contained in its previous reply of December 2010 on the measures taken to give effect to the Committee's opinion. On the issue of compensating the petitioner, the State party recalls that legal aid for an amount of 45,000 Dkr (8,300 US dollars) was paid in the present case.

Additional comments from the author

On 20 July 2011, petitioner's counsel notes that the State party has only repeated its previous observations of December 2010. Counsel considers that the State party has failed to provide any valid legal argument for not paying compensation. He considers that the State party's position is due to political considerations and asks the Committee to continue the follow-up dialogue with the State party.

Action taken by the Committee

The counsel's latest submission was sent to the State party on 2 August 2011.

Proposed further action and/or Committee's decision

The Committee discussed the case at its seventy-ninth session (August 2011). It welcomed the measures taken so far by the State party, but considered that legal aid cannot be considered as a payment of compensation. It invited the State party to explore ways to provide the complainant with compensation, and a note verbale was sent to the State party on 15 September 2011 in this connection. Follow up dialogue ongoing, pending receipt of further information.

Annex V

**Country Rapporteurs for reports of States parties considered
by the Committee and for States parties considered under the
review procedure at the eightieth session**

<i>Periodic reports considered by the Committee</i>	<i>Country Rapporteur</i>
Canada Nineteenth and twentieth periodic reports (CERD/C/CAN/19-20)	Mr. Kemal
Israel Fourteenth to sixteenth periodic reports CERD/C/ISR/14-16)	Mr. Kut
Italy Sixteenth to eighteenth periodic reports (CERD/C/ITA/16-18)	Mr. Amir
Jordan Thirteenth to seventeenth periodic reports (CERD/C/JOR/13-17)	Mr. Thornberry
Kuwait Fifteenth to twentieth periodic reports (CERD/C/KWT/15-20)	Mr. Avtonomov
Lao People's Democratic Republic Sixteenth to eighteenth periodic reports (CERD/C/LAO/16-18)	Mr. De Gouttes
Mexico Sixteenth and seventeenth periodic reports (CERD/C/MEX/16-17)	Mr. Murillo
Portugal Twelfth to fourteenth periodic reports (CERD/C/PRT/12-14)	Ms. Crickley
Qatar Thirteenth to sixteenth periodic reports (CERD/C/QAT/13-16)	Mr. Calí Tzay
Turkmenistan Sixth and seventh periodic reports (CERD/C/TKM/6-7)	Mr. Diaconu
Viet Nam Tenth to fourteenth periodic reports (CERD/C/VNM/10-14)	Mr. Huang

Annex VI

List of documents issued for the eightieth session of the Committee^a

CERD/C/80/1	Provisional agenda and annotations of the eightieth session of the Committee
CERD/C/80/2	Status of submission of reports by States parties under article 9, paragraph 1, of the Convention for the eightieth session of the Committee
CERD/C/SR.2126, 2128-2165 and Add.1	Summary records of the eightieth session of the Committee
CERD/C/CAN/19-20	Nineteenth and twentieth periodic reports of Canada
CERD/C/ISR/14-16	Fourteenth to sixteenth periodic reports of Israel
CERD/C/ITA/16-18	Sixteenth to eighteenth periodic reports of Italy
CERD/C/JOR/13-17	Thirteenth to seventeenth periodic reports of Jordan
CERD/C/KWT/15-20	Fifteenth to twentieth periodic reports of Kuwait
CERD/C/LAO/16-18	Sixteenth to eighteenth periodic reports of Lao People's Democratic Republic
CERD/C/MEX/16-17	Sixteenth and seventeenth periodic reports of Mexico
CERD/C/PRT/12-14	Twelfth to fourteenth periodic reports of Portugal
CERD/C/QAT/13-16	Thirteenth to sixteenth periodic report of Qatar
CERD/C/TKM/6-7	Sixth and seventh periodic report of Turkmenistan
CERD/C/VNM/10-14	Tenth to fourteenth periodic reports of Viet Nam

^a This list only concerns documents issued for general distribution.

Annex VII

Text of statements adopted by the Committee in the reporting period

Statement on the contribution to the Programme of Action for the Decade for People of African Descent

The Committee on the Elimination of Racial Discrimination,

Welcoming resolution 66/144 of the General Assembly,

Recalling General Assembly resolution 64/169, which proclaimed 2011 as the International Year for People of African Descent,

Emphasizing its general recommendation No. 34 (2011) on racial discrimination against people of African descent,

Recognizes that the proclamation of the International Year for People of African Descent represented added value in the efforts of the States and the international community as a whole to ensure recognition, justice and development for people of African Descent at national, regional and international levels, and that, given the structural nature of the problems that affect them, the Decade of People of African Descent is an opportunity to intensify the actions deployed.

In this regard, the Committee on the Elimination of Racial Discrimination considers that the terms “recognition, justice and development” are sufficiently broad to describe the themes of the Decade for People of African Descent and recommends to the Working Group of Experts on People of African Descent that, in the formulation and adoption of the Programme of Action for the Decade for People of African Descent, it consider the following actions:

1. To promote the effective implementation of the International Convention on the Elimination of All Forms of Racial Discrimination as well as to take into account the Committee’s following general recommendations: No. 34 on racial discrimination against people of African descent; No. 32 (2009) on the meaning and scope of special measures in the International Convention on the Elimination of All Forms of Racial Discrimination; and No. 31 (2005) on the prevention of racial discrimination in the administration and functioning of the criminal justice system; and to call upon States parties to put them into effect, paying particular attention to issues related to women and children of African descent; poverty eradication; full and effective enjoyment of economic, social and cultural rights; political participation; special measures; effective access to justice; preventing racial discrimination in the administration of justice system; and promoting greater knowledge and respect for their culture and heritage;
2. To propose the elaboration of a declaration regarding the promotion and full respect of the human rights of people of African descent;
3. To promote the development of studies regarding the themes of the Decade for the People of African Descent by United Nations organs, bodies and specialized agencies, such as the Food and Agriculture Organization, the World Bank Group, the International Labour Organization, the World Health Organization, United Nations Educational, Scientific and Cultural Organization, and United Nations programmes and funds such as the United Nations Development Programme and the United Nations Children’s Fund, and the Office

of the United Nations High Commissioner for Human Rights. Additionally, during the forthcoming decade, the specialized agencies, programmes and funds should be encouraged to make the issue of the people of African descent a principal theme of their respective global studies;

4. To invite the General Assembly to consider convening a world summit on people of African descent involving the States, the United Nations specialized agencies, programmes and funds and representatives of civil society focusing on the rights of people of African descent, in order to assess the progress achieved during the Decade for People of African Descent.
