

COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

67th session (Geneva, 2-19 August 2005)

The 67th session of the Committee on the Elimination of Racial Discrimination (the "Committee"), which monitors States' implementation of the International Convention on the Elimination of All Forms of Racial Discrimination (the "Convention"), examined reports submitted by Barbados, Georgia, Iceland, Nigeria, Tanzania, Turkmenistan, Venezuela, and Zambia. The Committee considered implementation of the Convention by the following State parties in the absence of a State report: Malawi, Mozambique, Saint Lucia, and Seychelles.

Under its Early-warning and Urgent Action Procedure, the Committee surveyed the situation of the Western Shoshone National Council in the United States of America (USA) and Crimean Tartars in Ukraine. It additionally measured the case of Suriname and issued a Decision in the matter. Under its Follow-up Procedure, the Committee discussed the States of Suriname, Botswana, and Ireland.

Other actions by the Committee included: deliberating on and adopting General Recommendation XXXI on racial discrimination in criminal justice; discussing treaty body reform; holding a thematic discussion on the prevention of genocide and adopting a Decision on Follow-up Procedure to the Declaration on Prevention of Genocide: Indicators of Systematic and Massive Patterns of Racial Discrimination; engaging in a general debate on multiculturalism; and agreeing to a study on individual communications under Article 6.

Overview of the Committee session

Recurring themes of the session included: the rights of indigenous peoples; the situation of refugees; the incorporation of the Convention into domestic law; the equal right to education and employment; the rights of minorities; the legal provision of punishment for racial discrimination; the right of victims of racial discrimination to remedies; reservations to the Convention; and provision by the State parties of statistical data on ethnic composition in the country.

The Chairperson, Mr. Mario Jorge Yutzis, was eager to keep within the time limits and the work of the Committee was, in general, efficient. The Committee made an effort to work constructively with the States. However, the dialogue varied among the different country sessions. For example, Barbados's delegation received much positive feedback as it had submitted a self-critical report and engaged in direct conversation with the Committee. In contrast, Turkmenistan faced more pressure from Committee members since it tended to deny allegations of racial discrimination within its country.

Particular Committee members focused on specific issues and those members also were the most active ones. Mr. Régis De Gouttes, Mr. Kurt Herndl, and Mr. Alexandre Sicilianos focused on legal issues and provisions. Mr. Morten Kjaerum concentrated on asking the State parties about the work of human rights institutions as well as civil society. Mr. Patrick Thornberry's greatest concerns were the equal right to education for everyone and the situation of indigenous peoples. Mr. Ralph F. Boyd consistently raised the concerns expressed by non-governmental organisations (NGOs) during the NGO briefings preceding the examination of the country reports. Mr. Mahmoud Aboul-Nasr and Mr. Nourredine Amir were vague in their interventions and did not contribute substantially to the examination of the country reports. The gender composition of the committee was rather unequal with only two women, Ms. Fatima-Binta Victoria Dah and Ms. Patricia Nozipho January-Bardill. Nonetheless, the issues related to gender were given attention by several of the Committee members (Mr. de Gouttes, Mr. José A. Lindgren Alves, Mr. Sicilianos, and Mr. Kjaerum). Mr. Herndl consistently referred to previous recommendations made to the State party and compared previous State party reports with the present. He often asked the State party if it had followed up on previous recommendations made by the Committee. This process was productive since it gave continuity to the work of the Committee.

The attendance of Committee members was high with the exception of Mr. Boyd, who was absent the entire first week. However, it was disappointing that the Committee members did not seem to take the NGO briefings seriously, as they either did not attend at all or appeared late, while frequently leaving and entering the briefings. While the general mode of the Committee was genial and teamwork-oriented, there were differences among the Committee members on how to interpret and approach important issues of multiculturalism, leading to some tension. Moreover, this dissonance led to an impression of lack of coherence in front of the State parties.

Reports of States

Barbados (8th to 16th periodic reports¹)

¹ CERD/C/452/Add.5.

Overview of the country session

On 5 and 8 August 2005, Barbados appeared before the Committee to present its 8th to 16th reports. The delegation, consisting of four persons, included representatives from the Ministry of Foreign Affairs and Foreign Trade, the Pan-African Commission and the Permanent Mission of Barbados to the United Nations ("UN"). Many of the experts commented that they believed the report to be of a very high standard. One expert even praised it as the best report of recent times. The delegation started the session by responding to a previously sent questionnaire. The responses, also provided in written form, were very satisfactory and therefore the follow-up questioning by the experts tended to be a repetition of what had already been said and explained.

Issues brought up during the Barbadian session covered: Ombudsman and human rights institutions; reconciliation with the colonial past; additional information on the status of amending the Constitution to comport with human rights and the status of the Convention and other human rights instruments in domestic law; the identification of NGOs in Barbados and whether they were consulted in the drafting of the report; ratification of Articles 8 and 14; and provisions on protection and remedies for violations of rights arising from racial discrimination (Article 6), on education (Articles 5 and 7), on denunciation of racial segregation and apartheid (Article 3), and on condemnation of racial propaganda (Article 4).

Themes and issues discussed

During its opening statement, the delegation explained that since the abolishment of slavery in 1838, many steps had been made, but racial discrimination was so deeply rooted in the country's history and culture that it could be difficult to identify and combat. The government believed that the people of Barbados were now ready to engage in society-wide cultural transformation. Several experts asked the delegation about **NGO presence** in the country and their participation in the report. The delegation answered that several academics from the University of the West Indies were included in the drafting process as well as a number of civil society representatives. While there were no NGOs specialising in race relations, there were several dealing with issues related to children's rights, women's rights, and poverty reduction². The role of the Pan-African Commission and restriction of its membership to persons of African descent was questioned. The delegation explained that the Commission was set up in 1998 by the government in order to raise awareness of issues relating to Africa within Barbados and had no restriction on who could participate in its work.

A prominent issue was the implementation of Articles 3 and 4 of the Convention. Many of the members were concerned with the classic yet dominant **"black-white" racial dichotomy** and suggested the use of terms other than "black" and "white" in order to reduce the further internalisation of race categories. Mr. Lindgren Alves did not want to label the situation as institutional racism, as did the delegation, but rather structural racism. He cited South Africa as an example of institutionalized racism, where racism was incorporated into the Constitution and such was not the case with Barbados. The delegation replied that these terms were not used pejoratively, but were the terms which best reflected the dominant racial groups as well as were the cultural terms used within Barbados. On the issue of Amerindians, the delegation answered that according to the statistical department of the 1980 census, there were 14 males and 25 females identifying themselves as Amerindians, but they had now been included in the category "other" in the statistics.

The Committee members expressed concerns about **intercultural education**, initiatives to promote education for blacks, and lack of Constitutional guarantees for the right to free education. The delegation responded that even though the Constitution did not mention the right to free education, there was a deeply rooted social guarantee. Blacks were not regarded as having low education and a number of programs could be described as intercultural. The recommendations in the Durban Declaration and Plan of Action would be implemented, but needed international assistance to do so.

Several experts inquired about the lack of human rights institutions as well as of the **absence of cases of racial discrimination** before the Ombudsman. The delegation replied that the Ombudsman had the mandate to investigate and report when there was a complaint against the State. Extending his mandate to include torture was being considered, but a timeframe for this measure had not yet been adopted. Although no national human rights institution had been established, Ministries and agencies filled the gap. For example, the Ministry of Foreign Affairs acted in an advisory capacity providing policy guidance and recommendations on human rights issues to the Cabinet. The Ministries of Foreign Affairs, Education, and the Government Information Service collaborated on issues of human rights information and education.

On being asked why there had been no cases of racial discrimination brought before the High Court since 1994 and why there had been no cases of racial discrimination brought against the police, the delegation responded that there had been a case of incitement to racial discrimination in 2004 brought before the magistrate's court. Additionally, the lack of such cases could be because of the absence of public awareness on individual rights in relation to racial discrimination and/or

² Paragraphs 86-88 of the State report listed some of the NGOs.

it could relate to the phenomenon of invisible racism, i.e. that the population was so socialised that racism was seen as normal. Mr. de Gouttes stressed that Barbados had a dualistic legal system, and therefore international legal instruments could not generally be invoked directly before the court, but had to be incorporated into domestic law first. Other questions focused on: absence of references to social and cultural rights in the constitution; the Constitutional Review Commission, set up in 2000 by the Committee's recommendation to consider Constitutional amendments; the inclusion of gender in the proposed amendments; and review of **reservations** to Article 14 of the Convention. The delegation replied that their legal customs were influenced by the British legal system, which is based on customary law and therefore not explicit in its listing of rights. However, Barbados does believe that the reformed Constitution should contain clearer language. The revising committee was looking at the possibility of including gender-neutral language and including gender in the definition of the term "discriminatory". The reservation to Article 14 was partly due to the influence of Britain, but would be considered further when the Constitution was re-drafted. Finally, the Committee stressed that Barbados had more than 30 years of freedom, so there was hope that it would remove the reservation regarding Article 4 of the Convention.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

There is little scope for comparison with previous reports of the Committee given that Barbados last appeared before the Committee in 1987. Prior to the appearance before this treaty body, Barbados appeared before the Committee on the Elimination of All forms of Discrimination Against Women (CEDAW) in 2000 and before the Committee on the Rights of the Child (CRC) in 1999.

In the Concluding Observations, the Committee recommends that the State party: consider the establishment of a national human rights institution; create an enabling environment for multiracial organizations; monitor trends which could give rise to segregation; and withdraw its reservation as well as ratify Articles 8 and 14 of the Convention.

NGO concerns

NGOs present during the country session of Barbados were the International Movement Against All forms of Discrimination (IMADR), L'Association mondiale pour l'école instrument de paix (EIP), and Anti-Racism Information Service (ARIS). There was little reference to any specific NGO concerns during the session.

Georgia (2nd and 3rd periodic reports³)

Overview of the country session

On 3 and 4 August 2005, Georgia appeared before the Committee to present its 2nd and 3rd periodic reports. The delegation, consisting of seven persons, included representatives from: the Ministry of Foreign Affairs; the Committee on Human Rights of Parliament; Ministry of Education; Department for Foreign Affairs at the Office of the State Minister on Conflict Resolution Issues; Department on State and Civil Security at the National Security Council; and the Service on Internal Policies and Institutional Settlement at the Administration of the President. The Committee members were pleased with the consistent and timely submission of reports and commended their structure and depth. The dialogue was constructive and frank and the delegation was high-ranking.

Points discussed during the country session included issues relating to: the amendment of Article 142 of the Penal Code (Article 4 of the Convention); lack of knowledge of the Georgian language; education in minority languages; the situation of refugees; the situation and treatment of minorities and employment (Article 5); education in human rights (Article 7); and ratification of Article 8, paragraph 6 of the Convention.

Themes and issues discussed

In his introductory statement, the head of the delegation, Deputy Minister for Foreign Affairs Mr. Konstantin Kavtaradze, explained that since the Rose Revolution in 2003, significant reforms and transformation towards democracy and good governance had been made, but the legacy of weak state institutions and a collapsing economy made it a difficult task. Minorities and their increased representation in politics would be a main priority for the President, even though the delegation claimed that racial hatred and discrimination were unknown in Georgia. The delegation pointed out that paragraph 20 of the State report contained a mistake in that the President did not have such powers.

A prominently discussed issue was the lack of knowledge of the Georgian language. The country Rapporteur, Mr. Luis Valencia Rodriguez, raised concerns that this gap led to serious marginalisation of Armenians. Several Committee

³ CERD/C/452/Add.5.

members inquired about the **provision of education in minority languages** and the presence of non-state schools offering minority language teaching. They stressed that failure to provide this kind of education could affect the nation's stability. Mr. Lindgren Alves sympathised with the position of not teaching minority languages since the State could not even afford to teach the Georgian language. The delegation members answered that some minorities did not speak any Georgian; however, there was a shortfall of financing for teaching Georgian and they needed international aid. Minority languages were used, however, among local authorities. The number of schools teaching in minority languages did reflect the number of minorities. The delegation also opined that the propaganda of state language was problematic as it could be seen as trying to assimilate minorities.

The issue of **refugees** was of great interest to many Committee members who asked questions about: legislation which required the registration of asylum-seekers within three days of their arrival in order to be eligible for asylum; appeal of denial to grant refugee status to courts; and ability to go abroad without losing refugee status. The Committee encouraged the delegation to ratify the Convention Relating to the Status of Stateless Persons. The delegation responded that: concerning the three-day time limit for asylum-seekers, measures would be taken to ensure timely registration; people denied refugee status had the right to appeal against the decision in court; they were aware that changes should be made to the current system, under which refugee status was automatically withdrawn when refugees left Georgia; efforts would be made to ratify the Convention relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness; and Georgia had ratified the 1951 Convention Relating to the Status of Refugees, and amendments would be made in spring 2006 to bring domestic legislation in line with this Convention.

Much attention was given to the **treatment of minorities**, particularly the Roma who were not mentioned in the report to the consternation of the Committee. Members inquired into allegations of Roma women being raped. The Committee also raised concerns about the: exclusion of Armenians; lack of Kurdish candidates in Parliament in 2004; Kurds' inability to change their names; Chechens as victims of torture; preparation of a plan of action to facilitate the return of the Meskhetian Turk minority and to obtain nationality for them; influence of non-orthodox religious groups; Georgia's status as a secular State considering its special agreement with the Orthodox Church; and ethnic and political conflicts in Abkhazia and South Ossetia. With respect to the Roma, the delegation replied that: the Roma minority was one of the most successfully integrated populations; most Roma left after Georgia's independence and there now existed only 300, who themselves did not want to be considered Roma; there were rapes occurring but they were strongly punished. On Kurdish matters, the delegation responded that: most Kurds lived in the capital and were highly integrated; they had no problems with the Georgian language; there were 32 Kurds at senior levels in the Ministry of Internal Affairs and in autumn there would be legislation passed to facilitate Kurds changing their name. There had been no complaints received from Chechens since the new authorities came to place after the Rose Revolution. The delegation further stated that the provision of citizenship for the 700 Meskhetian people was under way, but that international help was necessary. There was however political will for change and a draft document for an action plan had been concluded in conjunction with NGOs. The delegation confirmed that there had been violations against Jehovah's Witnesses, but the head of the transgressors was arrested. It affirmed Georgia as a strict secular State, but acknowledged there were special relations with the Orthodox Church – relations which other religions also had the right to develop. Regarding the conflicts in Abkhazia and South Ossetia, the delegation replied that the government had offered far-reaching autonomy to South Ossetia, in hopes of facilitating a peaceful resolution. The integration of minorities would be placed at the heart of the peace process.

Several Committee members raised concerns about the **amendment of Article 142 of the penal code** as not enough to be in line with Article 4 of the Convention. The delegation responded that the government planned to bring an amendment which would be in full compliance with Article 1 of the Convention. Article 7 of the Convention regarding education and training of law enforcement agencies and the judiciary on human rights, particularly minority rights, was given attention by several Committee members. The delegation responded that there are special human rights units in the law enforcement bodies and they were prepared to give further information if requested. Employment and the general economic situation were discussed, especially the situation of women from minority groups and the need for more statistics on employment. The delegation said that a new labour code against discrimination in labour was being formed and would be submitted by the end of 2005. The delegation attributed the main problem of accessibility to language, said that women were mostly employed in low-paid positions, and promised that necessary steps would be taken.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

Even though the State party reports submitted this year referred to the Concluding Observations of the previous report, little had been done in practice with regard to these recommendations, with the exception of the Committee's recommendation in 2001 to ratify Article 14. Therefore, this year's Concluding Observations are largely similar to 2001 recommendations. Repeated concerns in both the initial and the 2nd and 3rd reports are: the ethnic and political conflicts in Abkhazia and South Ossetia; facilitation of the return of Meskhetians; guarantee of full and adequate implementation of Article 4 of the Convention; provisions with regard to stateless persons; education of law-enforcement officials in

human rights; ethnic participation in State institutions; ratification of Article 8 of the Convention; and strengthening of national human rights institutions. Additional concerns and recommendations for this year include: covering detailed information in the next periodic report on the situation of all minority groups including the Roma and ethno-religious minorities; improving the knowledge of Georgian among minority groups and adopting legislation on the status of languages; and ensuring the fundamental rights of non-citizens. Since the Committee recommended to the State party in 2001 to include statistical data on complaints of racial discrimination and since there had been no such cases reported this year, the Committee recommended instead this time to the State to raise public awareness on people's rights and to increase confidence in the police.

The difficult situation of refugees held the attention of the CRC in 2003. The CRC also encouraged the State party to provide education in minority languages as well as in Georgian.

NGO concerns

NGOs present during the country session of Georgia were: the International Federation for Human Rights (FIDH); the Human Rights Information and Documentation Center (HRIDC); ARIS; EIP; and IMADR. FIDH and HRIDC had jointly prepared an alternative report which recommended the following to the Georgian government: to ensure the protection of minorities by adopting a special law and ratifying the European Framework Convention for the Protection of National Minorities; to ensure the appropriate use of Article 142 of the penal code; to encourage balanced economic development; to raise awareness of legal remedies; to increase the representation of national minorities in Parliament and local bodies; to ensure Roma rights; to protect Chechen refugees; to facilitate the return of and the citizenship of Meskhetians; and to guarantee the right to education for national minorities. The Committee members raised all of the NGOs' concerns before the State party. FIDH also presented a separate report on ethnic minorities in Georgia that outlined the legal framework and limits of public policy with regard to the protection minority rights. Their recommendations and conclusions were similar to their joint alternative report.

Iceland (8th to 16th periodic reports⁴)

Overview of the country session

On 10 and 11 August 2005, Iceland appeared before the Committee to present its 17th and 18th periodic reports. The delegation, consisting of three persons, included representatives from the Permanent Mission of Iceland in Geneva, the Ministry of Justice, and the Ministry of Social Affairs. The Chairperson was amazed by the all-female delegation and the country Rapporteur, Mr. Sicilianos, congratulated Iceland on its regularity in submitting reports. The Committee requested the delegation members to provide written answers to the questions sent to them; their oral answers were comprehensive. In its discussion, the delegation was forthcoming, constructive, and highly responsive.

Issues discussed during the country session included: the new provisions contained in the Act on Foreigners; the funding of the Iceland Human Rights Centre; the granting of permits to stay on humanitarian grounds; abuse of immigrant workers; human trafficking; foreign-born students' obligation to prove their financial self-sufficiency (Article 5); and training of border police in human rights (Articles 5 and 7).

Themes and issues discussed

The delegation began by stating that there had been remarkable recent developments regarding human rights provisions and that international human rights conventions were used as models. Ethnic characteristics were slowly changing in Iceland and people with foreign ethnic backgrounds had almost doubled from 1.8% in 1995 to 3.5% in 2003, with about 10,000 foreigners. An issue prominently discussed was the new **Act on Foreigners** (2004), which imposed restrictions on family reunification. Additionally, there were questions about the independence of the Immigration Office, which held responsibility for the implementation of the Act on Foreigners, since there was no possibility of appeal beyond the Ministry of Justice. The delegation answered that: the law was passed to prevent abuse when giving permits; the new provisions restricting the right to family reunification had been drafted to address insufficient existing legislation on combating forced marriages by conducting interviews of persons under 24 years; and regarding the independence of the Immigration Office, neither the Ministry nor the Immigration Office was immune to scrutiny by the courts.

On the issue of granting **work permits** to the employer and not employee, there was apprehension that the employer would abuse employees; the employee might abstain from complaining due to fear of losing the work permit. The delegation replied that temporary work permits issued to employers were issued to the employees themselves after three years. This practice was the best way for the government to oversee the labour market more easily since it was very sensitive to changes. However, foreign workers received a copy of the work permit and they were allowed to change

⁴ CERD/C/476/Add.5.

work during the initial three years. There were also questions about the status and rationale for permits granted to stay on humanitarian grounds, to which the delegation responded that several asylum-seekers had been permitted to stay on humanitarian grounds and that these permits were issued for a period of one year. The fact that the Immigration Office had broad discretion to issue such permits was beneficial for the State as well as for the applicants. Mr. Boyd expressed his concerns about foreign-born students having to prove their financial self-sufficiency after turning 18. The delegation answered that this rule applied only to foreign-born students who did not hold a residence permit by the time they turned 18. Moreover, cases of young people dropping out of high school for this particular reason were very rare. So far, Reykjavik social services had provided assistance to those who needed it.

Conspicuous in this year's report was the omission of mention of funding for the **Iceland Human Rights Centre**, particularly because the government congratulated itself in the 14th and 16th reports for its formation of this Centre and its increased funding. The Committee noted that the Centre needed earmarked funding as an independent institution in order to work. The delegation answered that the Human Rights Centre was not a national human rights institution within the meaning of the Paris Principles, and there were no plans to establish such an institution.

Regarding reports of **human trafficking**, especially of women coming from Eastern Europe, the Baltic States, and Russia, the delegation replied that the government was well aware of the problem and that an action plan was to be presented at the end of 2005. With respect to training of **border police** in human rights, there was concern that airport police were pre-screening asylum applications for the Directorate of Immigration. The delegation answered that: the police received sufficient training in human rights; a special policeman was appointed in 2001 to serve as a liaison between the police and foreign nationals; and this officer had not received any complaints of discrimination even though he was well-known to foreigners.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

This year's Concluding Observations are as extensive as the previous ones in 2001, but have less emphasis on positive statements and more on concerns and recommendations. One appreciative concluding comment notes the satisfaction of a 2001 recommendation under Article 4 of the Convention regarding punishment under Article 233a of the penal code. The Committee re-addressed the issue of discrimination against non-citizens. Further recommendations this year include: the establishment of a National Human Rights Institution; intensification of efforts to provide training to border guards; reconsideration of the age requirement for foreign spouses or partners to obtain permits to stay as a family member; and introduction of an independent judicial body to review decisions of the Directorate of Immigration concerning the rejection of asylum applications.

Iceland appeared before the Committee Against Torture (CAT) and the CRC in 2003. The CRC expressed concern that further efforts needed to be taken to address issues of racial discrimination; monitor and collect data on racially-motivated acts; and study the situation of immigrant children in municipalities in order to facilitate their integration. Regarding education, the CRC was also concerned about the high drop-out rates of immigrant children at secondary level; it proposed that Iceland include human rights education on religious and ethnic minorities in the curricula of all primary and secondary schools. Iceland appeared before the Committee on Economic, Social and Cultural Rights (CESR) in 2003 and the Human Rights Committee (HRC) in 2005. The HRC paid attention to the issue of human trafficking and recommended in its Concluding Observations that the State implement a national action plan without delay. Apart from this issue, there was no other overlap among the issues addressed by CESR, HRC, and CERD in their Concluding Observations.

NGO concerns

NGOs present during the country session of Iceland were the Iceland Human Rights Center, IMADR, ARIS, EIP, and Friends World Committee for Consultation (QUAKERS). The Director of the Iceland Human Rights Centre, Ms. Gudrun D. Gudmundsdottir, was invited by ARIS and did a presentation before the Committee members prior to the country session. There was focus on three problems, the first one being the discontinuation of official funding to the Iceland Human Rights Centre and support to NGOs monitoring the human rights situation in Iceland. The second involved the incompleteness of the new Act on Foreigners, including provisions in the Act regarding permits to stay based on marriage or cohabitation, which necessitate that the foreigner be 24 years old. The third issue concerned the treatment of asylum applications, the granting of refugee status, and the rationale behind the granting of permits to stay on humanitarian grounds, a provision not clear in its scope. All issues were thoroughly discussed with the Icelandic delegation during the country session.

Malawi (considered in absence of State report)

On 9 August 2005, the Committee reviewed Malawi's implementation of the provisions of the Convention under its review procedure for State parties whose reports are seriously overdue. Malawi has never submitted a report to the

Committee since it ratified the Convention in 1996 and thus the initial to the fifth periodic reports from 1997 to 2005 are all overdue. The review thus took place in the absence of a delegation and report from Malawi. The last time the Committee considered Malawi was in 2003, when Concluding Observations were adopted.

The country Rapporteur, Mr. Amir, did a presentation on the general situation in Malawi, saying that Malawi had received over **one million refugees** from neighbouring countries. The country faced constraints due to a lack of economic resources, but it respected human rights in general. However, there were isolated incidences of human rights violations, especially with regard to detainees who were sometimes tortured by the police. **Violence against women** was also prevalent and women in Malawi were the citizens most discriminated against, even though they were the breadwinners. The country Rapporteur had drafted a list of questions, which would be sent to the country with an indicated time limit for them to respond. In the absence of any response from Malawi, the Committee would proceed with the adoption of Concluding Observations under its review procedure. This process was explained to the country in the cover letter to the questionnaire. The delegation discussed how to proceed in the task of trying to help the State party to implement the Convention by establishing a dialogue with them. Malawi does not have a permanent mission in Geneva, therefore the suggestion from the Chairman was to pay visit to Malawi's permanent mission in New York. Since Mr. Boyd lived near New York, it was suggested that he contact the delegation in New York in order to reassure them and explain to them what the Committee expected from them. Mr. Kjeorum also suggested that he make contact with the Malawi government in Malawi since he was going there in October of this year on another mission. There was another suggestion that this practice be used also for Mozambique.

Mozambique (considered in absence of State report)

On 9 August 2005, the Committee reviewed Mozambique's implementation of the provisions of the Convention under its review procedure. The country Rapporteur, Mr. de Gouttes, stated that Mozambique had submitted only one report since it ratified the Convention in 1983. The Committee examined this report in 1984, in the absence of a delegation. In 1993, the Committee decided to examine the country's implementation of the Convention under the review procedure, which applies to State parties which have already presented a report but whose periodic reports are very late.

Mr. de Gouttes explained that last July, the State party had informed the Secretariat that a report had been drafted, but that it could not be submitted before the Ministry Council. On 3 August 2005, a note verbale had been received from the Mission, indicating that following approval, the report would be submitted before the end of the year. The Committee members discussed the best way to proceed and contemplated two solutions. The first one was to send the State the list of questions already prepared. However, there was concern that this approach would cause further delay since the government, after having received the questions, would want to include them in the report. The second solution, which was agreed upon, was simply to send a letter to the government informing them that the report, including the eleven reports overdue, was welcome and that a list of questions would be sent to them after the report had been submitted before the end of 2005.

Nigeria (14th to 18th periodic reports⁵)

Overview of the country session

The Committee discussed the 14th to 18th periodic reports, submitted in one document, on 15 and 16 August 2005. The examination was originally scheduled for 12 August, however, the delegation was unable to appear before the Committee on the date assigned due to a strike at the London airport. Although twelve delegates were expected, only five appeared, causing some informal speculation that the others were uninterested in attending. The delegation included persons from: the Ministry of Foreign Affairs; the Federal Character Commission; and the Permanent Mission in Geneva. The Committee stressed the importance of Nigeria's place in the world as well as on the African continent as a populous, vibrant, and self-confident nation. However, the report was criticised for its analytical shortcomings. The country Rapporteur, Ms. January-Bardill, indicated that it was necessary to consult shadow reports written by NGOs and reports submitted to other treaty bodies in order to get a fuller picture of the situation in Nigeria. The delegation responded that they were aware of the inadequacy and that the next report would be more exhaustive. The delegation failed to be responsive or candid during the country session, leading to inadequate and insipid dialogue and examination.

Issues discussed included: the status of the Convention in domestic law; the census; the contribution of civil society to the preparation of the report; the right of free movement and freedom of expression; human rights abuses committed by security forces; environmental discrimination, citizenship, and ethnic composition in political representation (Article 5); inter- and intra-ethnic conflicts (Article 2); the definition of racial discrimination (Article 1); the Osu caste system

⁵ CERD/C/476/Add.3.

(Article 3); education in human rights (Article 7); the draft bill on anti-discrimination; and the Human Rights Commission (Article 6).

Themes and issues discussed

The Ambassador and Director of the International Organizations Department at the Ministry for Foreign Affairs of Nigeria, Mr. Aboul Bin Rimdap, expounded that the status of Nigeria as a developing country meant that it could not afford to provide all rights, such as the right to property. However, he described Nigeria as the most hospitable country in the world, where not a single foreigner had ever sought redress. Nigeria has 250 ethnic groups, with diverse cultures and religions. Multiculturalism and national loyalty were promoted so that no single group had power over the others. The fact that the Convention had not yet been domesticated was due to historical circumstances. All of the Committee members that took the floor gave attention to the status of the Convention in national law. The delegation stated that Nigeria was considering the **domestication of the Convention**. On the issue of the census, the Committee members explained that they were flexible in certain cases regarding provision of statistical data and that they did not suggest a uniform model, but some form of **census was strongly recommended**. In its written responses, the delegation answered that the government intended to organise a comprehensive national census by the end of 2005, which would include data disaggregated by gender but not by ethnicity or religion since this measure could fracture unity.

Several Committee members referred to the **Osu-caste system**, which appeared to still be in practice despite being outlawed several years ago. In particular, the Committee asked about: the absence of any comments on this problem in the State report; the size of the Osu population; and steps being taken to eliminate this legacy. The Committee reminded the delegation that a written recommendation had been sent to the State party regarding this issue. In reply, the head of the delegation stated that: he had never heard about the Osu system before, although one of the members of the delegation came from an area where the caste system was practiced; the Committee was putting an undue emphasis on this issue, perhaps due to a lack of understanding of what it actually was; before the introduction of Christianity, Osu were persons dedicated to the service of traditional deities and nobody married them except fellow Osu, as they were regarded as higher than the ordinary people; this system had died out and many of the Osu population now held high positions in society; and with intermarriages and interconnections, it would die out and it was no longer relevant to talk about it.

Another issue much discussed was **environmental racism** and degradation, where indigenous people suffered from exploitation of resources by multinational companies. Committee members pointed out that concerned communities were not consulted and that the environmental degradation in the Delta region and other River States, particularly the Ogoni areas, needed to be addressed. Mr. Boyd also commented that ethnic minorities in the Niger delta had no meaningful representation in the government and were deprived of petroleum sources. The delegation responded that they did not know what was meant by environmental racism, but that it did not apply to Nigeria. The Niger delta received more funds than any other area and there existed a Niger Delta Development Commission (NDDC). Regarding representation, the delegation explained that the country abided by a principle that prevented dominance in the government by one or a few ethnic groups. The nine States from the Niger delta were overrepresented. The delegation also revealed that there were many areas where oil was produced, not only in Ogoni land.

The issue of **law enforcement violence** and the use of the army in dealing with religious and minority violence received extensive attention. The delegation replied that: in the few cases where the army had been involved in violence, such confrontation was not based on ethnicity; recruitment for the police and the army was not based on ethnicity; police violations happened everywhere in the world; and the head of the police department was somebody who had written many books on human rights in relation to law enforcement. On issues of **intra- and inter-ethnic conflicts**, the delegation answered that there were no ethnic clashes, but only economically-motivated ones. The NDDC was established to assist in diffusing ethnic tension in the Delta region and in oil-producing areas.

Ms. January-Bardill asked the delegation about the **involvement of NGOs** and civil society in drafting the report. The delegation answered that a Special Advisor on civil society had only recently been appointed and, therefore, had not been involved in writing the report. However, he would be consulted the next time. The Committee raised questions regarding **training in human rights**. It recommended that the State party consult General Recommendation XIII on this issue as well as on comprehensive removal of the caste system. The delegation replied that the government had taken the issue of police training seriously. Committee members raised questions regarding **Sharia law** and Nigeria as a secular State and were concerned that Sharia law was especially discriminatory towards women and failed to conform to international standards. They inquired about the jurisdiction of Sharia law. The delegation replied that only Muslims who wanted to be judged under Sharia law were under its jurisdiction and others were judged under common law.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

Nigeria last appeared before the Committee in 1994, rendering the report more than eight years overdue. The Committee criticised the report for its lack of conformity with the Committee's guidelines, omission of information on practical implementation of the Convention, and non-continuity with previous reports, such as its failure to answer many previous questions in this report. The State party was encouraged to take into account the last discussion and follow-up and to implement the Concluding Observations. This year's Concluding Observations are extensive and include, *inter alia*, recommendations for the State party to: incorporate the substantive provisions of the Convention into domestic law; complete its census as soon as possible; adopt a definition of racial discrimination; protect non-citizens from racial discrimination; improve relations between different ethnic and religious communities; combat environmental racism and degradation, pursuant to General Recommendation XXXIII; provide support and assistance to victims of human trafficking; strengthen efforts regarding human rights education; ratify the amendments to Article 8, paragraph 6 of the Convention; and adopt the optional declaration in Article 14 of the Convention. The Committee directed the State party to submit its 19th and 20th periodic reports on 4 January 2008.

The State party appeared before CRC on 13 April 2005. In its Concluding Observations, CRC noted that the collection of disaggregated data was essential and expressed concern over the State party's view that any initiatives to prevent and combat racial discrimination were unnecessary.

NGO concerns

Several NGOs, including Rencontre Africaine Pour la Défense des Droits de l'Homme (RADDHO), the International Dalit Solidarity Network (IDSN), the Minority Rights Group (MRG), FIDH, the Movement for the Survival of the Ogoni People (MOSOP), the Civil Liberties Organisation, and ARIS, were present at a briefing on Nigeria prior to the country examination. RADDHO talked about discrimination in the caste-based Osu system. The Civil Liberties Organisation covered various issues in its presentation, including the lack of a definition of racial discrimination in Nigeria, discrimination against women, and religious discrimination. Two alternative reports were distributed, one from the RADDHO and one from the Civil Liberties Organisation. There was also a document drafted by RADDHO and IDSN with questions and recommendations for the State party regarding caste-based discrimination. Finally, a document was distributed that addressed the Human Rights Violations Investigation Commission (popularly known as the Oputa Panel after the judge in charge) which worked on Osu issues. The NGO representatives present during the country examination were pleased with the Committee's diplomatic way of addressing the State party, since such conduct meant that the State party would continue its dialogue with the Committee.

Saint Lucia (considered in absence of State report)

On 9 August 2005, the Committee reviewed Saint Lucia's implementation of the Convention under its review procedure for State parties. Saint Lucia ratified the Convention in 1990, but has never submitted a report. Consequently, its first to seventh periodic reports, due respectively from 1991 to 2003, are all overdue.

The country Rapporteur, Mr. Kjaerum, said that the Committee had last reviewed the State in February 2004 and had adopted provisional observations that were transmitted to the Government. The State party replied that racial discrimination was not prevalent in Saint Lucia, and because of administrative and institutional shortcomings, it was not possible to communicate the exact date for submission of the report. During the 66th session, the Committee therefore had adopted Concluding Observations. Mr. Kjaerum said that it would be good to receive information from the State party regarding: the status of the Convention in domestic law as well as information on the legal system in general; remedies available to victims of racial discrimination; complaints received by the Ombudsman; and linguistic and ethnic data. Mr. Kjaerum also stated that there had been reports of child abuse and there were problems with Creole-speaking minorities going to schools, which were only taught in English. Saint Lucia was a party to only three international human rights treaties comprising the Convention, the Convention on the Elimination of All forms of Discrimination Against Women, and the Convention on the Rights of the Child. The Committee would send a list of questions to the State party. A Committee member also proposed drawing the State party's attention to the possibility of availing itself of the technical assistance offered under the advisory services and technical assistance program of the UN Office of the High Commissioner for Human Rights (OHCHR), which could help the State party with the preparation of the periodic report. Mr. Aboul-Nasr suggested that documents prepared on the countries under the review procedure be made official documents. The Chairman remarked that keeping the documents private was a procedure established by the Committee itself and there was no reason to not make them public.

Seychelles (considered in absence of State report)

On 11 August 2005, the Committee reviewed Seychelles' implementation of the provisions of the Convention under its review procedure. The country Rapporteur, Mr. Raghavan Vasudevan Pillai, said that the last periodic report considered by the Committee was the fourth one, which was submitted in 1985 without representation from the State party and

which contained very little information. He said that the Seychelles consisted of 150 islands and that it became independent from the British in 1976.

The Committee decided to send a list of questions to the State party, in order to initiate a dialogue. An accompanying letter would explain that in the absence of a written response to the questions, the Committee would proceed with the adoption of Concluding Observations at the latest by 31 January 2006 under its review procedure. The Committee would also urge the State party to submit its fifth to sixth periodic reports due from 1989 to 2005. In its letter, the Committee would remind the State party of the possibility of accessing technical assistance offered under the advisory services and technical assistance program of OHCHR. However, before adding this advice in the letter, a discussion was raised as to whether it was better to ask OHCHR first if it would be able to assist the State party, since there had been cases where a State party had asked for technical assistance but did not get any because of lack of resources at OHCHR.

Turkmenistan (initial to 5th periodic reports⁶)

Overview of the country session

On 11 August 2005, Turkmenistan appeared before the Committee to present its initial to 5th periodic reports, the initial due in 1995. The delegation consisted of only two persons: the Minister of Foreign Affairs and the Second Secretary of the Department of the International Organization of the Ministry of Foreign Affairs. The Committee members were impressed that the Minister of Foreign Affairs himself had come. However, the session often consisted of **total denials from the State about any problems** within the country, with the delegation frequently replying to criticism by stating, "it does not reflect reality" or "it is difficult to comment on because these things just don't exist". The Committee members were perturbed by the explicit inconsistency between the positive accounts in the report versus the information coming from regional organisations, NGOs and UN organisations, who recounted many problems with the country. Moreover, the delegation seemed to consider the Committee as a judicial entity, rather than a body to help the State party with the implementation of the Convention, leading to an unconstructive dialogue. Only the head of the delegation, Foreign Minister Rashid Meredov, spoke and the other delegate was completely silent. The report was criticised for its vagueness, lack of statistical data, and irrelevance of content.

Points discussed during the country session included issues relating to: the ethnic composition of the population; the status of the Convention in domestic law (Article 2); the general situation of minorities; the education system in regard to language training; freedom of religion; dual citizenship; discrimination in employment; and refugees and displaced persons (Article 5).

Themes and issues discussed

In his opening statement, Mr. Meredov relayed that Turkmenistan had undergone many changes since its independence 15 years ago. On the prominently discussed issue of the situation of minorities, several Committee members requested additional information on the ethnic make-up of the country and were concerned by rapidly **decreasing numbers of minorities** in the past few years. The Committee members also asked about: the Armenian minority; the Balouchi population who were subject to police intimidation; the Uzbeks who faced forced assimilation and displacement; and the participation of minorities in government, the armed forces, and law enforcement. The delegation responded that: the Armenian minority faced no problems whatsoever, but enjoyed the same rights as Turkmen citizens; no Roma remained in the country, although there had been some during the Soviet era; the Balouchi minority had been living in the country for decades as citizens, were hard-working people, and fluent in Turkmen and that there had never been any problems; there was no forced assimilation of Uzbek people; and representatives of different nationalities worked in the State apparatus, including the local elections where there were representatives from 14 different national groups. A question was raised about the repeal of the dual citizenship agreement between Russia and Turkmenistan resulting in the forced exit of those choosing Russian citizenship within two months. The delegation refuted this allegation and stated that they could stay and work in Turkmenistan.

On the issue of education, the Committee emphasised that **minority languages** should be taught in addition to the national language. Mr. Meredov answered that Turkmenistan primary education was carried out in the State language as well as other languages; he claimed that English, German, and French were taught and cited the example of a Russian school. Regarding allegations on the closure of minority schools and the overcrowding of the only Russian school, the government said that information on school closures and the lack of language opportunities did not correspond to reality and if the Committee required more information, it should address the Foreign Ministry directly, who would provide any information immediately and directly. On the **freedom of religion**, Committee members questioned whether an

⁶ CERD/C/441/Add.1.

organisation needed 500 members in order to register, to which the delegation answered that there were no restrictions at all on freedom of association and that the nine non-Muslim religious groups who had registered had no restrictions imposed on them. In total, there were 112 religious groups registered, some with as few as ten members. There was a special group under the Ministry of Justice that worked to ensure the rights of those belonging to a religious organisation. The delegation indicated that no request for registration from the Armenian Orthodox Church had been received.

Several questions emerged about **ethnic discrimination in employment**, especially because of **pronouncements on ethnic purity made by the President**, such as about the need to apply a third-generation Turkmen test on aspirants to higher education or public employment. In one speech, the President stated "...in order to weaken the Turkmen, the blood of the Turkmen was diluted in the past. When the righteous blood of our ancestors was diluted by other blood our national spirit was low....Every person has to have a clean origin. Because of that it is necessary to check the origin up to the third generation⁷". The delegation replied that: if there were allegations of denial of employment on grounds of ethnicity or origin, the Committee should inform the government directly; the Committee could also request to visit the country to see for itself; those who had visited the country changed their minds immediately; and without visiting the country, it was inappropriate to make such allegations. With regard to pay differences between men and women, the State said that there were no differences, as reflected in national law.

The Committee raised questions on measures to improve the situation of **refugees** and **displaced persons** and was particularly concerned about the deportation of 2000 people pursuant to a decree from the President saying that unworthy people were to be moved to the desert, as documented by the OSCE Rapporteur. Mr. Kjaerum asked the delegation to provide the confidential reports prepared by the OSCE High Commissioner on National Minorities. The delegation retorted that no evidence existed of transfers of populations and asked the Committee to provide proof. On the situation of refugees, the State declared that it had taken specific economic, political, and social measures to protect refugees' rights. However, after the situation improved in Tajikistan, many refugees had decided to return home. Those who had stayed had been granted citizenship and residence permits where appropriate. The delegation did not answer whether national courts could directly invoke the Convention.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

The State party has never appeared before any other treaty body, even though it has ratified the main international instruments in the field of human rights. The Committee reviewed the implementation of the Convention in Turkmenistan in 2002, in the absence of a report, but with the receipt of information from other sources. Two major concerns stated in the 2002 Concluding Observations covered discrimination against minorities in employment and education and discrimination against religious personnel as well as interference in religious activities. This year's Concluding Observations parallel the discussion during the country examination. They include recommendations on: providing information on the ethnic composition of the population; ensuring the domestication of the Convention; abiding by its obligation under Article 4(c), respecting and protecting the existence of all national and ethnic minorities; verifying if "third generation tests" exist; not forcibly displacing populations; considering reopening minority language schools; ensuring the right to freedom of religion; continuing the naturalisation process; and informing victims of their rights, including the remedies available to them.

NGO concerns

Before the country session, the International League for Human Rights (ILHR) held a briefing before the Committee members and had prepared, in cooperation with Turkmenistan NGO Partners, a well-structured shadow report. The Chairman of the Institution for Human Rights, situated outside of Turkmenistan, was also present at the briefing. They stated that a broad-based spectrum of discrimination was taking place in Turkmenistan and that discrimination of minorities was State policy. The State has now assumed the personality of a leader who was projecting his own will onto the nation. He was producing a book equivalent to "Mao's Little Red Book". They NGOs urged the Committee to closely look at the writings in this book. There was forced assimilation of minorities such as Uzbeks taking place, and people who could not be assimilated were forced to emigrate. The situation was worse for the Uzbeks and the Baluchi population. The education system had substantially deteriorated and teaching was performed exclusively in Turkmen. Literature in non-Turkmen had been burned and there were no centres for culture. They also expressed their concern about refugees from Tajikistan; just before the CERD meeting, the President made a high profile statement to grant them citizenship and make them "ethnic Turkmen". The judiciary was under direct control of the President and public fear was rampant in the country. Not a single case had been brought regarding racial discrimination.

⁷ Amnesty International, "Turkmenistan: The Clampdown on Dissent and Religious Freedom Continues", May 2005, p. 2.

United Republic of Tanzania (8th to 16th periodic reports⁸)

Overview of the country session

On 9 August 2005, the United Republic of Tanzania appeared before the Committee to present its eighth to sixteenth periodic reports after a 17-year delay. The delegation consisted of nine persons including: the Minister of State in the Office of the President for Good Governance; the Ambassador of the Permanent Mission of the United Republic of Tanzania to the UN; the Director of Constitutional Affairs and Human Rights at the Ministry of Justice and Constitutional Affairs; the Director of the Refugee Department at the Ministry of Home Affairs; the Principal Immigration Officer at the Ministry of Home Affairs; the Registrar of Association at the Ministry of Labour, Development and Sports; and the Foreign Service Officer at the Ministry of Foreign Affairs. The Committee members congratulated them on their representation of high-level delegates but regretted the brevity of the report. Nonetheless, because the level of responsiveness was high and full explanations were given, the Committee commented that the oral information provided had ameliorated the very brief report.

Points discussed during the country session included: the domestication of the Convention; the situation of refugees; discrimination based on religion; the work of the Human Commission; the ethnic composition of the country; the issue of land rights (Article 5); and female genital mutilation.

Themes and issues discussed

The head of the delegation, Mr. Wilson Masilingi, Minister of State in the Office of the President for Good Governance, explained that tardiness of the reports was not due to neglect, but to a lack of resources. He stated that racial discrimination was not a national problem, but rather a historical one. People think of themselves as Tanzanians, rather than as part of a specific tribe. There was a conscious strategy not to give any priority to disaggregated data.

An issue prominently discussed was the situation of **refugees**. While Tanzania welcomed the most refugees among African States, the Committee was concerned about reports of *non-refoulement* and the failure to recognize the refugee status of many asylum-seekers from Rwanda and Burundi. They also inquired about: options for long-term refugees and refugees who did not want to return to Rwanda; an alleged permit that refugees needed if they wanted to leave the refugee camps; reports of refugees being arrested or even deported when found outside the camps searching for firewood; and problems for women in refugee camps. The delegation answered that: in June 2005 there were 600,000 refugees registered from Burundi, Rwanda, Somalia, Ethiopia, Uganda, and other countries; immediate returns of refugees had occurred but the problem stemmed from multiple institutions dealing with refugees, which led to inconsistency; refugees needed permits to leave the camps but the government had tried to ease the situation so that the refugees could move freely within an area of 4 kilometres from the camps; violence against women had been recognised and steps were being taken such as policing the refugee camps; the national government faced a difficult task and a delicate balance in upholding international standards for refugees and protecting the local population at the same time, especially as the refugees sometimes invaded nearby farms; and the international community was urged to keep their eyes open to these difficulties.

Discrimination based on religion, which could be a result of the tensions between Muslims and Christians in Zanzibar, was identified as an area of concern. The delegation stated that in 1995 some parties used religion as a method of gaining power but that religious tension was an issue of the past. It accredited Article 19 of the Constitution, which designates Tanzania as a secular state, as dealing with the issue. In Zanzibar, the government asked religious leaders to meet and have a dialogue; it acknowledged Zanzibar as having some State institutions connected to religion. The Committee requested information on the demographic composition in Tanzania, especially the size of the nomadic population, and pointed to General Recommendation XXIV as urging State parties to present such information. The delegation took a contrary position and explained that ethnic and religious statistics segmented the country, implied social engineering, and created tensions, especially in poor developing countries. The delegation indicated that even though they did not publish these statistics, they were not ignorant of the situation and were willing to continue this conversation.

In response to questions about the scope of the **Human Rights Commission**, which was established in March 2002, the delegation replied that it had an advisory role, it was chaired by a judge, and seven other Commissioners were appointed in a transparent procedure for a term of three years. The delegation promised to make available the cases dealt with by the commission in a detailed report. The Committee members also wanted to know how the government incorporated the distribution of land into its fight against poverty and what compensation was provided to people who lived on land converted into a national park. The delegation explained that the President was a trustee on behalf of the

⁸ CERD/C/452/Add.7.

citizens according to the 1999 land act and could acquire land for public use. However, decisions by the President were sometimes voided and adequate compensation was paid when the President acquired land.

The Committee was very interested in the **incorporation of the Convention in national law**, especially the lack of legal provisions regarding racial discrimination and the lack of complaints, which was strange as there were 126 ethnic groups in Tanzania. The delegation responded that Parliament's ratification of the Convention was insufficient because an acting and specific law needed to be passed also. Regarding specific laws on racial discrimination, the delegation said that another option was to adopt laws in areas that were prone to racial discrimination and that specific laws could be adopted under certain circumstances. The delegation claimed that the absence of racial discrimination cases simply meant that there were no cases as the Ombudsman, which was established in 1996, would have dealt with those cases. Finally, on the definition of racial discrimination, the delegation explained that the Swahili version of Article 13 of the Constitution was the same definition as in the Convention, but the English translation of the Constitution was a bad translation. The Swahili version of the Constitution was law, not the English version. There was no response to the Committee members' inquiries about female genital mutilation.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

Tanzania has not submitted any reports to this Committee since 1988. However, in 1995 there had at least been a representative present, permitting the possibility of discussing the situation in the country. At that time, the Committee members emphasised: the desire of the State party to build a nation State, despite the persistence of separate ethnic trends; lack of demographic data; discrimination against Asians; problems involving nomadic peoples in the process of nation-building; the situation of Rwandan refugees; and the position of citizens of Zanzibar in the structure of the Union. This year's Concluding Observations include recommendations on: including in the next report an approximation of the ethnic and linguistic composition of the population; adopting specific legislation on racial discrimination; incorporating the Convention into domestic law; ensuring that no refugees are forcibly returned to a country where they may suffer serious human rights violations; and eradicating all forms of ill-treatment by law enforcement officials of refugees. It further recommends that the State party include in its next report detailed information on the practice of female genital mutilation, land expropriation of certain ethnic groups, and the situation of nomadic ethnic groups. The State party appeared before the CRC in 2001.

NGO concerns

No NGOs asked to give a briefing on Tanzania. NGOs present during the country session included IMADR, ARIS, and EIP.

Venezuela (15th to 18th periodic reports⁹)

Overview of the country session

On 2 August 2005, Venezuela appeared before the Committee to present its fourteenth to eighteenth periodic reports, the fourteenth being 9 years overdue. The delegation consisted of 11 members including representatives from the: Permanent Mission of the Republic of Venezuela to the UN; State Agency for Human Rights, Ministry of Exterior Relations; General Director of Human Rights, Ministry of Justice and the Interior; Director of International Relations, National Women's Institute (INAMUJER); Director of Indigenous Education, Ministry of Education and Sport; Ministry of Communication and Information; Office of Multilateral Affairs, Ministry of Exterior Relations; Office of the Vice-Ministry for Africa; and Guaicapuro Mission. The country Rapporteur, Mr. Avtonomov, congratulated the delegation on ratifying Article 14 of the Convention and hoped it would be made public soon. However, the delegation was criticised for its lack of information on the practical implementation of the Convention. Moreover, the report was too concentrated on legal provisions and lacked statistical data. The delegation proposed to have, the following day, an interactive dialogue with visual aids, in the form of a slide show in Spanish where the Committee members were invited to interact with follow-up questions, which made this country examination different and lively in comparison to the others.

Issues discussed included: the status of the Convention in national law (Article 2); the composition of the population; the meaning of multicultural education; the work of the Human Rights Commission; discrimination against indigenous peoples and people of African descent (Article 5); and punishment and remedies available (Articles 4 and 6).

Themes and issues discussed

⁹ CERD/C/476/Add.4.

The head of the delegation, Raquel Poitevien Cabral, Deputy Permanent Representative of the Permanent Mission of Venezuela to the UN in Geneva, explained that Venezuela had undergone profound changes since 1999 and the basic institutional and philosophical structure of the state had changed, and thus was the reason why the reports were submitted late. Key issues were related to **discrimination against indigenous peoples**, such as: disaggregated data on the number of different groups and languages within the indigenous population; the interrelation of these different groups; indigenous languages and provision of interpretation services when contacting authorities; separate imprisonment of indigenous peoples; statistics on indigenous prisoners; remedies available to indigenous people; guarantee of political rights, such as participation in Parliament and government; measures to avoid pollution of indigenous land; and strategies to improve their health problems. The delegation answered that: some languages were endangered, but the Ministry of Education was trying to revitalise these languages; dictionaries were available and intercultural education existed where indigenous people lived; there were 34 different groups; some indigenous people only spoke Spanish or their native language, whereas others were bilingual; indigenous people had the right to use their own language to provide evidence in court and indigenous lawyers were available; many important documents were translated; there was a program to give special grants to encourage bilingual teachers; literacy programs were also available for indigenous people's languages and Spanish; there were agreements dating back to imperialism between the government and Catholic missions regarding special prisons in order to show respect for indigenous peoples so that they could exercise their culture and religion; there were 169 indigenous people imprisoned in the entire country out of 500,000; indigenous people had a number of cultural and economic rights which could be invoked by the courts and the Ombudsman for remedies; the Constitution provided for special courts and indigenous people's customary law was recognised; in criminal proceedings, the prosecutor was trying to set up a group of prosecutors with specialisation in indigenous people's issues; judges usually had good knowledge of indigenous laws; and ILO Convention 169, which Venezuela ratified, guided the resolution of conflicts and in indigenous courts there were indigenous Ombudsmen. On the question of giving back land to indigenous people, the delegation responded that in such case they would have to give back all of Latin America and there existed a historic debt. The recognition of indigenous people was based on their recognition as the first people in the country.

In response to the Committee's surprise about the absence of **information on black communities**, the delegation answered that the State had never asked about people with African backgrounds. There were events catering to the needs of the Afro-Venezuelan population, such as the 11th of May where heroes of African descent were recognised. The population size in Venezuela was 24,600,000, with 67% mixed, 21% white, 10% of African descent, and 2% indigenous people. However, the delegation remarked that more specific statistics on ethnic background were unavailable. When asked to elaborate on the meaning of **multicultural education** as mentioned in the State party report, the delegation replied that Venezuela was an intercultural State and therefore it tried to ensure that non-indigenous people received intercultural education. The most minor languages were used in municipalities and education was fully bilingual. There was willingness to preserve indigenous people's culture and non-indigenous people were solicited to become part of the indigenous people's culture. The Committee also posed questions regarding the inactivity of the Human Rights Commission and the workings of and means of accessing the Ombudsman's office. The delegation explained that while the Human Rights Commission was established in 1996 to adopt a human rights plan, in 1999 the Ombudsman took over the commission's function and new laws would have to be passed to revive the Human Rights Commission, which would nonetheless exist with more limited functions.

On questions regarding the **status of the Convention and other international treaties in national law**, the delegation stated that Venezuela was undergoing transition and that the hierarchy of human rights was enshrined in the Constitution. Article 23 of the Constitution provides that treaties which Venezuela signs have Constitutional standing and can be directly invoked before courts. The Committee also inquired about punishment and lack of court decisions on racial discrimination. The delegation stated that very few people reported human rights violations. Instead, complaints from indigenous people centred mainly on collective property, healthcare, and economic customs. While the delegation gave two examples of cases of alleged racial discrimination, no cases in which racial discrimination had been proven were cited. Punishment for inhuman treatment with extreme suffering comprised 11 to 15 years. The State recognised cases where the International Court ruled in favour of the advocate and reparations were usually monetary. The delegation explained that before the 1999 Constitution, there was an authoritarian regime and police and officials enjoyed impunity. However, now the government had determined that human rights were going to be respected and implemented.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

The Committee noted that the report did not address some of the concerns and recommendations raised in the previous Concluding Observations in 1996. This year's Concluding Observations include recommendations to the State party on: including in its next periodic report disaggregated data on Afro descendants; ensuring that the identity document for indigenous persons be based upon self-identification; adopting the draft criminal code as soon as possible; improving the economic and social rights situation of Afro descendants and indigenous people; and ensuring the rights of indigenous peoples to own, develop, control, and use their lands, territories, and resources. The Committee

recommended that the State party submit its 19th and 20th reports in a single report, due on 4 January 2008. Venezuela appeared before the Committee Against Torture in 2002.

NGO concerns

The Red de Organizaciones Afrovenezolanas held a briefing before Committee members before the country session. The briefing was in Spanish and only three Committee members were present. Issues discussed related to the situation of indigenous populations and people of African descent. The Red de Organizaciones Afrovenezolanas prepared a list of questions based on the State party report, which they recommended posing to the delegation. The list of questions covered: the demographic composition of the country; the legal definition of racial discrimination; whether the Human Rights Commission had restarted its activities, and in what capacity; separate prisons for indigenous people; how many deputies were indigenous people; complaints received by the Ombudsman and access to legal recourse for victims of racial discrimination; implementation of the law on violence against women; and consultation of NGOs during preparation of the report. Other NGOs present at the country session were the Lutheran World Federation (LWF), EIP, ARIS, and IMADR.

Zambia (12th to 16th periodic reports¹⁰)

Overview of the country session

On 4 and 5 August 2005, Zambia appeared before the Committee to present its 12th through 16th periodic reports. A large delegation of 11 persons attended, consisting of representatives from: the Permanent Mission of Zambia to the UN in Geneva; the Ministry of Labour and Social Services; the Ministry of Community Development; the Office of the Commissioner for Refugees under the Ministry for Home Affairs; the Ministry of Education; the Ministry of Information; the Zambian Police; Zambian Immigration; and civil society in Zambia led by the Chairman of the Zambian Human Rights Commission (ZHRC). As only the State party has the mandate to speak during an examination of a country report, the Zambian delegation had to give its consent in order for the ZHRC to also speak – a new practice that recently emerged during the examination of the Irish State party report in February 2005. The ZHRC contributed to the dialogue by making a brief presentation of its history and work and announced that there were various elements in the report that it disagreed with. It was also given the opportunity to answer some questions. The delegation had not received the list of questions sent by the country Rapporteur, but had prepared written answers to all the questions by the following morning. The delegation was congratulated on their attentiveness in listening to the Committee members and on the quality and frankness of their report. The atmosphere was positive.

Major issues discussed during the country session included: the situation of refugees, the contribution of civil society, the ZHRC, and the Ombudsman (Article 5); the concept "One Zambia One nation" and its impact on cultural and ethnic diversity (Article 2); the prohibition of organisations which promote racial discrimination (Article 4b); and education in human rights (Articles 5 and 7).

Themes and issues discussed

Ms. Gertrude M. K. Imbwe, Permanent Secretary of the Ministry of Justice of Zambia, said in the introductory statement that Zambia prided itself on being a cosmopolitan State where problems of racial discrimination were not prevalent. She also said that competing and demanding social needs sometimes made it difficult to effectively guarantee human rights. An issue much discussed was the situation of refugees. Even though Zambia had a good record for hosting and providing for a large number of **refugees**, several Committee members inquired about: measures taken to improve the situation of long-term refugees with regard to their health and integration; consideration of adoption of new laws to give refugees an opportunity to apply for citizenship; and removal of reservations to the 1951 Geneva Convention on the Status of Refugees. Delegation members informed the Committee of a Zambian initiative which addressed issues of increased demand for education, health, food, and issues of xenophobia in regions hosting large populations of refugees. There were no immediate plans to consider integration of long-term refugees into national society and Zambian legislation does not provide for dual citizenship. The State had no plans to withdraw its reservations, however the Refugee Control Act was currently being reviewed.

Although the Committee welcomed the creation of the **Zambian Human Rights Commission**, it questioned its relationship vis-à-vis the Ombudsman and the lack of complaints brought before the Ombudsman. The delegation referred the Committee to the ZHRC for further information, but stated that one of the fundamental tasks of the ZHRC consisted of ensuring the elimination of all forms of racial discrimination in the new Constitution. The Commission only had the power to make recommendations. The delegation attributed the low number of complaints to lack of

¹⁰ CERD/C/452/Add.6/Rev.1.

awareness of the Ombudsman's office by public workers since it only existed in the capital and Ndola. However, efforts were being made to expand the office to the periphery. The ZHRC said that the relationship between itself and civil society was very important since it helped to reach out to all sectors of society. Several Committee members asked about the participation of civil society in preparation of the report and in the development of policies and laws, to which the delegation replied that civil society was consulted in general and was part of the team that drafted the report and input their observations. In regard to plans to disseminate and publicise Zambia's State report and the Concluding Observations, the delegation outlined that copies of the report had been given to all stakeholders and recognised the need to disseminate the report and Concluding Observations through the media.

An issue that raised concern among a large number of the Committee members was Zambia's **integrationist approach of "One Zambia One Nation"**, which they feared conflicted with cultural diversity in general and led to discrimination in languages in particular. The Committee inquired about the social and cultural activities that encompassed "One Zambia One Nation". The delegation answered that the government had a policy of preservation, development, and promotion of folk culture, arts, and cultural industries by, *inter alia*: supporting traditional ceremonies; organising debates on cultural matters, land rights, rituals, and inheritance in the House of Chiefs; endorsing inter-marriages; and fostering cultural industry programs. Regarding languages, the delegation answered that the seven major languages as well as English were used at lower basic schools and that parents and pupils were consulted on this matter.

Many Committee members asked the delegation why no person had been prosecuted for **racial propaganda** and wanted to know if Zambian legislation prohibited organisations that promoted racial discrimination. The delegation responded that Zambia acknowledged that its legislation did not extend to organisations promoting racial discrimination and that the government would consider this issue even though racial propaganda had never arisen in Zambian society. The State party also observed that victims of incidences of racial discrimination rarely report such matters to appropriate authorities. In response to several questions about the provision of **human rights education**, the delegation said that measures were put in place ten years ago. Human rights education had been introduced in the school curriculum from grades 1-12 and had been incorporated into the police training manual used at police colleges. The ZHRC stated that there was a need to increase and enhance human rights education at places of work.

Comparisons with previous reports and recent appearances before other treaty-monitoring bodies

This year, the Concluding Observations include recommendations on: facilitating the constitutional review process, especially regarding Article 23(4) of the Constitution to ensure full implementation of the prohibition of racial discrimination; proceeding with the incorporation of the Convention into domestic law; reviewing its current refugee policy; ensuring that participation in organisations promoting racial discrimination is made a punishable offence; including statistical information on complaints of racial discrimination in the next report; strengthening the awareness of people on their rights; increasing the effectiveness of the ZHRC, particularly through budget allocations; ratifying the optional declaration provided for in Article 14 and the amendments to Article 8 of the Convention. The last time the State party appeared before the Committee was in 1993.

This year Zambia also appeared before CESR, whose Concluding Observations also addressed the Human Rights Commission's lack of resources and facilitation of the constitutional review process, especially revision of Article 23(4) of the Constitution. Zambia appeared before CRC in 2003, however, there was little overlap with this Committee's Concluding Observations except for the request to empower the ZHRC. Of note are CESCR's and CRC's recommendations to strengthen efforts to develop a system for the collection of disaggregated data, which this Committee did not mention.

NGO concerns

NGOs represented during the country session were ARIS, QUAKERS, EIP, and IMADR. Also present were civil society actors from Zambia including the media, the Legal Resource Foundation, and Women in Law. Unfortunately, there was no NGO briefing organised before the country session, so it was difficult to know what the major NGO concerns were.

Early-warning and Urgent Action Procedure

Early-warning measures are directed at preventing existing problems from escalating into conflicts and urgent action procedures respond to problems requiring immediate attention to prevent or limit serious violations of the Convention. On 15 August, the head of the working group discussing requests of action under this procedure, Ms. January-Bardill, stated that the working group had convened three times during which four cases had been considered and decisions made.

The Western Shoshone National Council had made a communication in relation to the USA. Representatives from the Western people of the Timbisha Shoshone Tribe, Winnemucca Indian Colony, and Yomba Shoshone Tribe (the "Shoshone people") met with several Committee members during a NGO briefing on 8 August 2005. The Shoshone people explained their difficulties regarding **land-sharing and land privatisation** and complained about being given the worst land and having to apply for fishing licenses. They indicated their preferences for continuing their traditional practices, which had worked for the last 4000 years. The request for early-warning measures and urgent action procedures was in the form of two written reports given to the Committee, with one prepared by the Western Shoshone National Council and one prepared with the assistance of the University of Arizona, Indigenous Peoples Law and Policy Program, which sent a representative to assist in the request. The Committee members proposed that the Shoshone people address the issue to the Human Rights Committee. They also remarked that they could consider the issue under their follow-up procedure, but it was not a case for the urgent action procedure. NGOs present during the briefing included: IMADR, ARIS, QUAKERS, and Hawaii Institute for Human Rights (HIHR).

The working group reached a consensus that the Committee needed to have a dialogue with the UN American representative. A meeting took place between Ms. January-Bardill and the American delegation based in Geneva to discuss the matter. A letter was also sent to the State party with a series of questions to be answered 31 December 2005.

The second request discussed in the working group concerned the Crimean Tartars in Ukraine. The Research and Support of Indigenous Peoples of Crimea Foundation held a briefing on 9 August where a report on the situation of Tartars in Ukraine was distributed which included a series of photos to provide evidence on the problems they faced. These problems mainly related to the **deportation of Tartars** and their problems in returning to their homeland Ukraine. Today 250,000 Tartars still live in exile and are not allowed to return to Ukraine. The working group decided to send a letter to the Ukrainian government, asking them to respond to a list of questions by 31 December 2005 in order to be considered at the 68th session.

The third case discussed under this procedure was the case of Suriname. As there had been no State response to the follow-up procedure prepared during the last session of CERD (see below), the working group considered it necessary to take action and on 18 August 2005 the Committee adopted a decision (Decision 1(67), CERD/C/DEC/SUR/2) on early warning measures and urgent action procedures concerning Suriname. The unedited version of the decision recalled that Decision 3(66) of March 2005 expressed concern about the **draft Mining Act**, which was approved by Suriname's Council of Ministers at the end of 2004 and which may not be in conformity with the Committee's recommendation adopted in March 2004 (A/59/18). It further stated that the Committee deeply regretted that it had not received any comment on the follow-up procedure from the State party on the above assessment of the draft law, as requested in Decision 3(66). Therefore, the Committee directed the State party to its General Recommendation 23 (1997) on the rights of indigenous peoples and urged it to ensure that the revised draft Mining Act was in line with the Convention. The Committee especially urged the State party to: ensure legal acknowledgement of the **rights of indigenous and tribal peoples to their communal land**; strive to reach agreements with peoples concerned; and ensure that indigenous and tribal peoples were granted the right of appeal to the courts. The decision also urged the Secretary-General of the UN to draw the attention of the competent UN bodies to the alarming situation of indigenous peoples in Suriname.

The working group had also discussed the procedure on the matter of **genocide**, coming to the conclusion that rather than amend the 1993 working paper, whose content was already well-known, it would be more strategic to develop a new document. Mr. Kjaerum and Mr. Shahi would draft this paper and an open-ended working group would discuss this draft before it was sent to OHCHR (see below).

CERD Follow-up Procedure

The mandate of the follow-up Coordinator, Mr. Kjaerum, is to report to the Committee at each session on the countries under review during that session. On 5 August 2005, the follow-up procedure considered the countries of Suriname, Botswana, and Ireland. The discussion on the draft report was postponed to a later date.

Suriname

On 9 March 2005, the Committee had issued Decision 3(66) (CERD/C/DEC/SUR/1) on Suriname under its follow-up procedure. The Committee had recommended, *inter alia*, that the proposed Mining Act ensure **indigenous and tribal peoples** the right of appeal to courts to uphold their traditional rights and their right to be consulted before concessions were granted. Additionally, they were to be fairly compensated for any damage. Decision 3(66) stated that a revised Mining Act likely to be adopted in the next few months could be inconsistent with the Committees' recommendations. It therefore invited Suriname to comment on this issue by 11 April 2005 and recommended that the State ensure compliance of the revised Mining Act with the Convention and its recommendations. Mr. Kjaerum stated that the State party had not replied to this request. As the Constitution had been amended, the Committee felt that it could not take

much action, but it should write a letter to the State party. The Mining Act posed considerable threats to indigenous people. Since the State party had shown no willingness to discuss the draft Mining Act, Mr. Kjaerum suggested that the Committee adopt a decision on early warning measures and urgent action procedure (see above).

Botswana

On 23 September 2004, the Committee requested comments on amendments to the Constitution which did not conform to the Convention. On 10 March 2005, the Committee addressed a letter to Botswana welcoming information on the implementation of a particular paragraph of the Committee's last recommendations to the State party (A/57/18, August 2002). The Committee reiterated its position on the **discriminatory effect of a number of legislative Acts**. The Committee had received no State party reply. Mr. Kjaerum stated that Botswana previously has shown willingness for dialogue, and such dialogue should be encouraged. He suggested that the Committee should: decide to schedule the next consideration of the State party report for March 2006; demand copies of the new draft bill; and meet with the permanent representative of Botswana.

Ireland

Mr. Kjaerum relayed that the Irish government had expressed determination to follow-up on the recommendations given at the last session. He believed that the positive experience of the Irish government on the implementation and follow-up of recommendations would serve as a **model for developing guidelines** and strategies on follow-up procedures.

Draft General Recommendation XXXI on the Prevention of Racial Discrimination in the Administration and Functioning of the System of Criminal Justice

On 8, 9 and 16 August 2005, the Committee discussed the draft of General Recommendation XXXI¹¹, which was the first document that dealt with **racial discrimination in criminal justice**. The General Recommendation outlines steps to be taken by State parties to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system, including the search for indicators attesting to such discrimination. It also includes strategies to be developed to prevent racial discrimination with regard to victims of racism and to accused persons who are subject to judicial proceedings. This recommendation should be addressed to governments and authorities, but also to those who teach human rights.

Some organisations such as Amnesty International, QUAKERS, the Sub-Commission, the International Court of Justice (ICJ), and the OHCHR had given their input into the draft, which had been taken into account. A Committee member stated that this draft would help countries fight injustice in the penal system. Privileged groups who often went unpunished, such as the armed forces, bankers, and clergy, would now be easier to punish. General comments made on the text were that it was well-structured and well-written, but that it could be made clearer as well as shorter since it was not a standard-setting resolution but a routine resolution. It was also decided that a working group should be created to deal with the text. Amendments focused on making the text clearer. The Committee adopted by consensus the General Recommendations. The document will be published in the Annual report and the bureau would discuss whether, how, and when to send it to the State parties.

Treaty body reform

Treaty body reform was discussed on two occasions: 17 and 19 August 2005. The reform discussions attracted many NGOs, including IMADR, Indigenous World Association, Centre-Europe Tiers-Monde (CETIM), World Organisation Against Torture (OMCT), Minnesota Advocates, Geneva for Human Rights, FIDH, and ARIS. The Committee members expressed frustration and criticism towards the proposed treaty body reform. The Chairperson, Mr. Yutzis, explained that there had been an Inter-Committee meeting in June where the High Commissioner on Human Rights, Ms. Louise Arbour, had provided a good summary of the reform. The Committee's discussion focused on the document by the High Commissioner on the proposed reform presented in her plan of action, namely the **establishment of a unified standing treaty body**. An unofficial group in the Committee who had been working on the issue outlined the objectives of the reform as ensuring visibility, greater functioning of the body, and unification of the work methods of the body. A Committee member identified **problems with the reform** as including: marginalisation of certain instruments, including this Committee, because of the single report that would be created by one single body; less expertise due to a unified body perhaps having fewer experts; and a period of stagnation in report submission during the transition. He also suggested some **alternatives** to the proposed reform, including to: not to reform at all; adopt an additional protocol with set deadlines; introduce different chambers; have one single chamber dealing with individual

¹¹ CERD/C/GC/0031/Rev.2.

communications; strengthen the follow-up procedure; and clarify the relationship between the treaty bodies and the Human Rights Council and its proposed peer review.

The Committee members expressed concerns such as that: one single body might become bureaucratic with no, or very few, experts; a standing body would become highly political and some issues would become marginalized; and the transition period would be long and problematic. There was confusion as to whether the reform would revise the treaties themselves or just create a single body. There was a consensus that there should be a focus on the objectives, that is, only do things that would lead to greater efficiency, coherence, and visibility and that racial discrimination should be highlighted, not diluted. Ms. Dah stated that the High Commissioner probably wanted a technical answer but that the answer would be highly political and Mr. Kjeaurum urged the Committee members not to undermine the existing system since they might end up still using it.

On 19 August, Ms. Maria-Francisca Ize-Charrin, Officer-in-Charge of the OHCHR and Chief of the Treaties and Commission Branch, was present to listen to the Committee and its general comments regarding the reform. She explained that the High Commissioner viewed the treaty body system as the cornerstone of human rights in the UN and that in her plan of action she proposed to unify the seven treaty bodies. On behalf of the Committee, Mr. Sicilianos stated that any reform should move toward strengthening and not weakening the human rights mechanisms and instruments that exist. He suggested having broad consultations with treaty bodies, member States, NGOs, national institutions, and civil society. He said also that the Committee agreed with Ms. Arbour regarding the objective of the reform, however, doubts existed about the means to reform. There was a fear of marginalisation of the work of the Committee. He relayed that the general stance of the Committee towards the creation of a unified body was sceptical. To improve the system, the Committee suggested the following:

- Continue with the current approach of a core document and targeted reports;
- Broaden the agenda of the chairpersons and implement as quickly as possible their recommendations of the different Committees in order to get results more rapidly;
- Create chambers or groups to absorb the burden of reports;
- Deal with the backlog of complaints through a special group dealing with individual complaints;
- Create a unified body dealing with individual communications;
- Strengthen the follow-up procedures; and
- Clarify the relationships between the different Committees and the future Human Rights Council.

Ms. Ize-Charrin verbalised her pleasure at the interest shown by the Committee. She explained that proposals for a unified standing treaty body represented a move for enhanced protection of groups and individuals at the national level and for greater efficiency of the treaty monitoring system. The Committee's concern that due attention might no longer be given to the issue of racial discrimination in a unified standing treaty body system would be taken extremely seriously. She also said that a broad consultation was crucial and would be sought before any decisions, and a clear assessment of the current system must be the base for the reform. A concept paper would be available to all stakeholders by early 2006. The Committee members wanted to know if a cost plan would be set out in the concept paper, since the cost of the system was a very important factor when considering the prospects of reform as the States, who pay, are probably quite sensitive to this issue. There was also a question as to whether NGOs had been consulted, and if so, what their views were. Ms. January-Bardill commented on the five problems that were identified by the plan of action:

- States think it is too much work to submit reports to all of the different Committees. The solution was one core document and this remedy was already under way.
- The reports were submitted late or not at all.
- There was not enough time to consider the reports. This Committee only had six weeks per year.
- Concluding observations lacked impact. However, it was up to the State parties to take them seriously.
- Human rights treaties work on a shoestring but the responsibility was in the hands of the States since they were the ones funding the system.

She also explained that some States may have a problem of coordination within the State and, therefore, a single body may not lead to greater efficiency either for the State or the Committee. Her conclusion was that the existing problem did not rest within the treaty bodies themselves, but elsewhere. Structural changes were not a good solution.

Mrs. Ize-Charrin tried to answer some of the concerns put forward by the Committee members. While she knew the cost of the existing system, there were no estimates regarding the costs of a reformed system. The modalities about the Human Rights Council were not clear. She also said that there was broad agreement to avoid revising treaties. Regarding the dialogue with States as well as NGOs, she said that this dialogue had just started with States and many of them had expressed interest in targeted reports. There had been no dialogue with civil society as yet, but NGOs were

very interested in being consulted. Finally, she believed that there was currently a special momentum which had to be used.

Thematic discussion on Genocide and the Decision on Follow-up Procedure to the Declaration on Prevention of Genocide¹²

On 10 August 2005, the Committee held a thematic discussion on the prevention of genocide. On 11 March 2005, it had adopted a Declaration on the Prevention of Genocide for consideration by State parties, the Special Advisor to the Secretary-General on the Prevention of Genocide, the Secretary General, and the Security Council. The prime motivation for the Declaration was to guarantee stronger measures to prevent genocide. Mr. Shahi hoped that this Declaration would receive some attention in the General Assembly and that there would be a discussion among State leaders about what they were prepared to do. The Committee desired to develop a set of indicators related to genocide and strengthen and refine its early warning and urgent action as well as follow-up procedures for situations where indicators suggested the increased possibility of violent conflict and genocide. The Committee supported the creation of an open-ended working group on the matter. Mr. Sicilianos reminded the Committee that a preliminary list had been drawn up last March. The European Union had annexed a list of indicators and the Minority Rights Group had also drawn up a useful list of indicators. He suggested that the Committee start to revise its own list of indicators based on those two lists. He also recommended that it ask for the report by Mr. Juan Mendez, the Special Advisor to the Secretary General on the Prevention of Genocide, who had a desire to cooperate with the Committee. The Committee discussed issues of terminology. Mr. Amir and Mr. de Gouttes stressed that the term genocide should not be watered down and Mr. Kjaerum felt that the legal definition of the term was limited, perhaps warranting the use of another term. Mr. Aboul-Nasr declared that he did not want to take part in the discussion since the term had not been defined. Mr. Shahi reminded his colleagues that the Genocide Convention of 1948 clearly defined genocide. The Chairperson suggested that the Committee focus on establishing a working methodology.

On 19 August 2005, the working group on genocide presented a Decision on Follow-up Procedure to the Declaration on Prevention of Genocide: Indicators of Systematic and Massive Patterns of Racial Discrimination. The text, a clear and accessible document of four pages, consisted of two parts. The first part contained a list of 15 key indicators, which would serve as a **tool for the Committee** when examining the situation in a State party under one of its procedures. The Decision states further that if one or more of the indicators are present, this should be clearly stated in the Concluding Observations, and the Committee shall recommend that the State party report to the Committee, within a fixed deadline, under the follow-up procedure as to what it intends to do to improve the situation. Mr Kjaerum explained that in the second part of the document there was an example of the **methodology** that should be used by the Committee for addressing these procedures. The Committee members proposed a few amendments to the text, which were approved. Mr. Sicilianos said that the Special Advisor to the Secretary General on the Prevention of Genocide, Mr. Mendez, had given his feedback on the document and that there had been consensus in the working group about the document. It could therefore be adopted by consensus.

Other debates and discussions

General debate on multiculturalism

On 17 August 2005, the Committee held a constructive debate on multiculturalism proposed by Mr. Lindgren Alves, who had prepared two documents¹³. This debate seemed pertinent in light of the different views and **interpretations of multiculturalism** that Committee members harboured as seen during the country examinations, such as with Tanzania, Nigeria, and Zambia. Some Committee members (Mr. Kjaerum, Mr. Thornberry, and Ms. January-Bardill) stressed the need for disaggregated data on different ethnic groups and minority language provisions, while Mr. Lindgren Alves believed that the Committee needed to be more flexible with regard to this demand since it might disturb the commitment in Africa to foster unity. He thought the intention to be good, but opposed imposing a European model of protection of minorities on the rest of the world which could instigate fragmentation.

In his presentation, Mr. Lindgren Alves described the concept of multiculturalism as the world becoming globalised, not only in terms of economics, but also in terms of culture. While there was a need to accept differences, there were different ways of doing so. The Convention instructs that in order to reach equality, sometimes treating people differently was necessary, such as with affirmative action. Because countries were so different, the use of a certain standard could be good for one situation but devastating for another. He stated that the Convention, in Article 2 (e), promotes integration and that the aim of the Committee was to integrate societies. The idea that cultures were

¹² CERD/C/67/Misc.8.

¹³ CERD/C/66/Misc.8 and CERD/C/67/Misc.5.

monolithic and could not change or evolve was wrong and only created fundamentalism towards immigrants and other people.

Mr. Thornberry stated that the Convention was integrationist and that the Committee had not found this approach incompatible with multiculturalism. However, integration had to be distinguished from assimilation, which was contrary to international human rights standards. He stated that the Committee needed to look at the substance and not at the concept and that the Committee was not against nation-building as long as it was consistent with human rights. Regarding statistics, the Committee was already quite flexible. However, statistics play an important role for the indicators of genocide, which the Committee was drawing up. How could a State know the scope of problems if there were no clues about how large the minority group was? And how could a State target its beneficiaries without knowing the spectrum of the minorities in that country? Regarding the balance between minority languages and the national language, he stated that the Committee had to take a reasonable approach.

The Committee concluded that it had to be flexible and adopt **different approaches** towards different countries. It was also agreed that the discussion on multiculturalism needed to take place regularly. Mr. Shahi further suggested that the Committee should adopt a general recommendation on multiculturalism. He stated that the Committee itself needed to adopt some kind of standards or principles, which could serve as a guideline for the Committee in regard to multiculturalism. He suggested that Mr. Thornberry and Mr. Lindgren Alves should work together on drawing up some recommendations and it was agreed that all Committee members would receive a summary of the discussion.

The study of individual communications in relation to Article 6

On 11 August 2005, Mr. Sicilianos stated that the Committee had received a letter from a member of the Sub-Commission on Human Rights, Ms. Iulia-Antoanella Motoc, proposing that the Sub-Commission could carry out a study for the Committee on effective **remedies** regarding Article 6 of the Convention. Committee members supported the suggestion and said that a broader study regarding the administration of justice was welcomed. Closer cooperation with the Sub-Commission would be useful and different views and approaches were always encouraged. Mr. Thornberry suggested that part of the study could cover indigenous peoples and that future studies could be included into this one. Mr. Aboul-Nasr asked the Committee if it was necessary to ask someone else to make a study on "our Convention" or if it was not better if the Committee did the study itself. However, the Chairperson believed that a majority decision favoured responding positively to the letter and reminded the Committee members that this working method was supported by proposals at the Durban Conference.