

Overview of the session

At its 68th session, the Committee on the Elimination of Racial Discrimination (the Committee) examined reports submitted by Bosnia Herzegovina, Botswana, El Salvador, Guatemala, Guyana, Lithuania, Mexico, and Uzbekistan. The consideration of South Africa and Israel's State party reports were postponed until the next Committee session in July-August 2006.

The Committee looked at the situation of the Western Shoshone indigenous people in the United States under the urgent action/early warning procedure. Under the review procedure, the Committee transmitted letters and lists of questions to Antigua and Barbuda, Congo, Ethiopia, Mozambique, Nicaragua and Papua New Guinea, regarding their overdue State party reports. Final postponements of report submission were granted to Congo and Mozambique.

Non-governmental organisations (NGO) submitted shadow reports for all the country reports considered in this session, except Uzbekistan. There were also parallel events on the situation of indigenous peoples. The Western Shoshone National Council for instance held briefing sessions with the press and the Committee experts. The interaction between NGOs and Committee members was highly dynamic, in particular for the consideration of El Salvador, Botswana and Guatemala.

Overall, the level of interaction between the Committee experts and State parties was high and discussions were constructive. When considering the report by El Salvador and Guatemala, the level of scrutiny and dialogue was quite high, with questions focusing on the situation of indigenous people and people of African origin in the countries. The Committee appeared to be extremely focused in its queries and urged the countries to follow up on its questions. When examining Botswana, the experts emphasised the situation of indigenous peoples in the Kalahari Central Game Reserve, but the State refused to acknowledge that they were being discriminated against. Similarly, during the consideration of El Salvador's report, the State delegation was unwilling to recognise the existence of a population of African descent in the country.

Country reports

Lithuania (3rd periodic report)

Information submitted to the Committee

Lithuania provided a lengthy report¹, with many statistics and details on programmes aimed at reducing discrimination. However, information on the impact of these programmes, particularly those aimed at improving the situation of the Roma population, was lacking.

The Council of Europe's European Commission on Racism and Intolerance (ECRI) submitted its third country report on Lithuania² on the same day as the Committee's meeting. It highlighted several concerns including: the law on citizenship, which may discriminate against some Lithuanian citizens; access to education; equal opportunities in employment; anti-Semitism; the problems faced by the Roma community (in political participation, education, housing, employment, access to healthcare, citizenship and justice); and the situation of asylum seekers and refugees. Several Committee members referred to this report in their questions, especially on the issue of the law on citizenship.

Themes and issues

The Committee dealt with several topics, among which the legislation on non-discrimination; the situation of asylum seekers, refugees and foreigners; the situation of national minorities, especially the Roma; and incitement to racial violence.

¹ CERD/C/461/Add.2, available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/G04/450/24/PDF/G0445024.pdf?OpenElement>.

² Available at: http://www.coe.int/T/E/human_rights/Ecri/1-ECRI/2-Country-by-country_approach/Lithuania/Lithuania_CBC_3.asp#TopOfPage.

Legislation

Committee members urged Lithuania to ratify Article 14³ of the *International Convention on the Elimination of All Forms of Racial Discrimination* (ICERD), underlining the fact that it was the best avenue for individuals to submit complaints about cases of racial discrimination. The Committee was also concerned by the law on nationality, which discriminates among Lithuanians based on their descent. The delegation explained that a claim of unconstitutionality has been brought before the Constitutional Court regarding this law, but has not been examined yet.

Asylum seekers and refugees

The Committee asked questions about asylum seekers and refugees residing in Lithuania. Some Committee members wondered whether the procedure to obtain refugee status was too complicated. However, the delegation stressed that Lithuania was rarely a country of destination for asylum seekers, and that there were only limited reasons for refusing asylum. Concern was also raised about the alleged automatic detention of asylum seekers for security reasons, but the delegation assured the Committee that this is not the practice in Lithuania.

The Roma

The Committee focused its examination on the situation of the Roma, which constitute a group of 2,500 persons in Lithuania. The Committee asked questions about education, political participation, employment, housing, and alleged ill-treatment by the police. The delegation informed the Committee that a special programme for the improvement of their situation has been carried out from 2000 to 2004. The municipality of Vilnius has taken several measures to improve the living conditions of the Roma, particularly with respect to social assistance, access to school, housing, and employment. However, the delegation admitted that it was not fully satisfied with what had been achieved through these programmes and argued that part of the explanation for this was the attitude of the Roma population, which is reluctant to engage fully in a process of integration into Lithuanian society. The delegation acknowledged that there was also a need for more participation and involvement of this population in the development of Roma-targeted programmes.

Incitement to racial hatred and violence

The Committee was alarmed to note that racist and xenophobic incidents, as well as discriminatory attitudes towards ethnic minorities, are still frequent. These incidents have included racial statements and incitement to racial violence by politicians, as well as the media. The Committee insisted that Lithuania should adopt a criminal provision establishing racist motivation as an aggravating circumstance for the commission of any offence. The delegation explained that a parliamentary group was already examining such a provision, but that the outcome of this process was still unknown.

Conclusions and next steps

The country rapporteur, Mr. Nouredine Amir, expressed his satisfaction regarding the progress realised by Lithuania in the implementation of ICERD. He stressed in particular the amendment of the Law on Education allowing teaching in the minority languages; the new penal criminal code criminalising incitement to racial hatred; the establishment of new institutions such as the Ombudsman on Equal Opportunities; and the granting to all residents, including foreigners, of the right to elect representatives and be elected. Nevertheless, the Committee was not very critical on some issues, in particular of the situation of asylum seekers and refugees. It focused its questions on the Roma, and the State party acknowledged the difficulties it was experiencing in that respect. On this issue, Lithuania informed the Committee that a new programme on Roma integration was being drafted and that the Government hoped to start its implementation during 2006.

The Human Rights Committee (HRC) examined Lithuania at its 80th session in 2004. It expressed similar concerns to the Committee about the social and economic situation of the Roma, notably with regard to discrimination, poverty, unemployment, and lack of participation in public life. The HRC was also concerned about the problems faced by asylum seekers. The Committee on Economic, Social and Cultural Rights (CESCR) examined Lithuania at its 32nd session in 2004 and also expressed concern about the living conditions of the Roma population.

Mexico (15th periodic report)

Information submitted to the Committee

³ This Article calls on State parties to recognise the competence of the Committee to receive and consider communications from individuals or groups of individuals within the jurisdiction of the State claiming to be victims of a violation by that State of any of the rights set forth in the Convention.

Mexico's report⁴ focuses mainly on legal provisions pertaining to racial discrimination. The Committee members welcomed the detailed and comprehensive written replies of Mexico to their preliminary questions. These written replies are confidential. The report deals with the protection of Mexican migrants in the United States; Mexico's accession to the *International Convention on the Protection of the Rights of Migrant Workers and Their Families*; and the protection of migrants in Mexico. On issues affecting indigenous peoples, the report looks at the progress made in assessing the proportion of the indigenous population in Mexico, as well as their social indicators; measures taken to settle land disputes; legislative measures to combat discrimination against indigenous peoples; as well as mechanisms established to promote political representation and freedom of expression among that segment of the population. Finally, the report addresses measures taken to strengthen a culture of non-discrimination in the country, with an emphasis on human rights education.

A Mexican NGO, the Consejo de Pueblos Nahuas del Alto Balsas Guerrero, submitted a brief report that points out three main issues: the generalised racial discrimination against indigenous peoples; the question of land rights; and forced sterilisation of indigenous women.

Themes and issues

The Committee's main concern was the on discrimination against indigenous peoples. However, other groups were dealt with during the discussion, especially persons of African descent and migrants.

Indigenous peoples

The Committee identified a number of concerns relating to the discrimination against indigenous peoples, who constitute more than 10% of the whole population of Mexico. The Committee first referred to reports in the Mexican press about serious human rights violations in the context of the **Chiapas** conflict, particularly affecting the indigenous population. The *San Andrés Agreements*, signed in 1996 to put an end to the conflict, granted the right to self-determination and land rights to indigenous peoples. However, they have not been implemented. One of the reasons for this is that there are differences between what had been agreed upon and President Fox's proposals on indigenous issues. The situation in Chiapas therefore remains unchanged and a major source of concern.

Other issues relating to political and civil rights were raised. Among them was the **lack of consultation** of indigenous peoples in the constitutional reform process in 2001, which concerned them directly. This has led to criticism, including by the International Labour Organisation (ILO), because this absence of consultation violates ILO *Convention No.169 concerning Indigenous and Tribal Peoples in Independent Countries* (ILO Convention No.169), which has been ratified by Mexico. The Committee insisted that the constitutional reform be implemented in close cooperation with the indigenous peoples. Another issue was the **right to self-determination**. The delegation stressed that indigenous groups could elect representatives and participate in the management of public affairs at local level. However, the Committee noted that this was a restrictive interpretation of the principle of self-determination, which should be exercised at every political level⁵.

There were also questions about the **administration of justice** and indigenous peoples. The delegation clarified some aspects of its report, especially regarding "indigenous courts". These courts resolve local disputes according to traditional customs, provided that their decisions are in accordance with the Constitution and federal laws. Following questions and comments from Committee members, the delegation also explained that the Government had provided training to participants in judicial proceedings, including bilingual defenders, in order to help indigenous peoples in their dealings with the justice system.

The Committee also expressed concern about discrimination against indigenous peoples with regard to the enjoyment of **economic, social and cultural rights**, insisting that there should be improvements in the socio-economic situation of indigenous peoples. An important issue in this regard is the question of **land rights**, as there have been many serious land disputes, which are crucial for indigenous peoples working on these lands. The Mexican Government claimed to deal with those conflicts through the implementation of a programme to resolve land disputes. Nevertheless, indigenous communities in some regions still do not benefit from legal security with regard to land tenure. The Committee also questioned the delegation on the status of **indigenous languages**, asking whether they could be used at the national level and if they could be used to access public services, e.g. health or legal services. The delegation stressed that indigenous

⁴ CERD/C/473/Add.1, available at: <http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.473.Add.1.pdf>.

⁵ The Committee referred to its general comment 21 on the right to self-determination, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/dc598941c9e68a1a8025651e004d31d0?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/dc598941c9e68a1a8025651e004d31d0?Opendocument).

languages have the same status as Spanish. Another concern was the **forced sterilisation of indigenous women**. The Committee inquired whether there was any State control over this reported practice, and whether there were any fair and effective remedies available to the victims. The Mexican National Commission on Human Rights adopted a general recommendation in 2002 condemning this practice. However, it is not clear if any investigation of cases of forced sterilisation has been effective.

Other issues

The Committee sought information on the situation of **persons of African descent**, noting that the Mexican report did not make reference to discrimination against those persons. However, in practice this group seems to be a particular target of discrimination. The delegation explained that members of this minority had asked for specific recognition as an ethnic group and that public policies were being designed to combat discrimination against this community.

Concerning discrimination against **migrants**, it was noted that Mexico is at the same time a country of origin, transit and destination of migrants. The Committee asked whether there were mechanisms established to help migrants, in particular undocumented immigrants and agricultural workers. The delegation informed the experts that Mexico has developed memoranda of understanding with neighbouring countries, as well as with the International Organisation for Migration (IOM), to ensure a better protection of migrants.

Finally, the Committee also took note of the existence of the **National Council for Prevention of Discrimination** and of the **National Human Rights Commission**, and sought further information about their mandates, functions and complementarity. The delegation explained that the Council dealt with complaints from citizens on discrimination issues, whereas the Commission dealt with alleged violations of human rights by civil servants.

Conclusion and next steps

The Committee addressed most of the issues that were relevant in the Mexican context, insisting on the situation of indigenous groups. The delegation acknowledged the importance of the concerns raised, but insisted that it was doing what it could to improve the situation. However, prejudices are still very important and limit access of indigenous peoples to many areas of social and economic life. Another example of their continuing difficulties is the Chiapas conflict, which is still not resolved.

In its analysis, the Committee referred to recent visits in Mexico by several mandate holders of UN special procedures, such as the Special Rapporteur on the human rights of migrants (in 2002) and the Special Rapporteur on the rights of indigenous peoples (in 2003). The latter had identified seven priority concerns for indigenous peoples in Mexico that were for the most part considered by the Committee (e.g. land disputes, the justice system, the conflict in Chiapas, and the constitutional reform). The Special Rapporteur had indicated in his report that the constitutional reform had not respected the principles of ILO Convention No.169.

The Committee expressed its satisfaction about Mexico's declaration under Article 14 of ICERD, which recognises its competence to receive and consider communications from individuals or groups of individuals.

The HRC also expressed concern about the situation of indigenous peoples in Mexico when it considered the State party's report in 1999, arguing that the Mexican Constitution only protects certain categories of indigenous peoples' rights. CESCR also focused its attention on indigenous peoples when examining Mexico's 4th periodic report in May 2006. It referred to the lack of consultation of indigenous peoples on projects that affect them and to their poor socio-economic situation.

Bosnia and Herzegovina (6th periodic report)

Information submitted to the Committee

Bosnia and Herzegovina's (BiH) report⁶ provided an overview of its complex constitutional and legislative framework. However, the report lacked relevant and up-to-date data: the last census was completed in 1991, i.e. before the tragic war that took place in BiH. Although the report pointed out some of the existing problems, in particular the disastrous socio-economic situation of the Roma community, it did not provide much overview or analysis of programmes for the improvement of the situation of the different national and ethnic minorities. The report acknowledged that there is no record of cases of racial discrimination and no

⁶ CERD/C/464/Add.1, available at: <http://daccessdds.un.org/doc/UNDOC/GEN/G05/438/33/PDF/G0543833.pdf?OpenElement>.

established methodology for monitoring them, which is clearly a hindrance when reporting on racial discrimination. The Committee noted these concerns in its concluding observations. Some Committee members also regretted the lack of interaction with NGOs in the preparation and implementation of this report.

The Benjamin N. Cardozo School of Law Human Rights and Genocide Clinic and Minority Rights Group International submitted an alternative report. This report insisted on the right to participation in elections, which is based on the *Dayton Peace Agreements*. The report concludes that there is particular discrimination in terms of political rights against Serbs, Bosniaks and Croats living in areas where they constitute a minority, as well as against all other minority groups, which are not eligible for election. It also highlights that a deprivation of political rights leads to further deprivation of civil, social and economic rights.

The NGO European Roma Rights Centre submitted an alternative report called “The Non-Constituents – Rights Deprivation of Roma in Post-Genocide Bosnia and Herzegovina”⁷. It stresses five main problems with regard to the situation of the Roma community in BiH. Roma are excluded from the highest levels of political participation. They have difficulties in accessing personal documents and citizenship, which threatens their access to basic public services. Violence against Roma is an important problem, specifically as perpetrated by police officers. There are violations of housing and property rights, in particular because many Roma are still internally displaced and live in precarious settlements. Finally, Roma encounter obstacles in exercising their rights to employment, social aid, healthcare and education.

One Committee member, Mr. Morten Kjaerum, referred to Amnesty International’s report on Bosnia and Herzegovina published in January 2006, “Behind closed gates: ethnic discrimination in employment”⁸. This report shows that discrimination in employment particularly affects minority and returnee communities.

Themes and issues

The Committee discussed several concerns, including the constitutional framework of BiH and its impact on the political rights of minorities; the situation of the Roma community; and racial discrimination in the enjoyment of economic and social rights.

The constitutional framework and its impact on political rights of minorities

The Constitution of BiH was adopted with the 1995 *Dayton Peace Agreements*, which ended the four-year-long war. These agreements constitute the institutional and political framework of the State of BiH, which is a federal State divided in two entities, the Bosniak and Croat Federation of BiH and the Serb Republika Sprska. Specific political provisions were designed in order to settle the conflict between the main communities. These provisions reserve access to the top political positions (i.e. the tripartite presidency and the parliament of BiH) to Bosniaks and Croats living in the Federation, and to Serbs living in the Republika Sprska. This means that Bosniaks and Croats living in the Republika Sprska and Serbs living in the Federation are excluded from election. It further means that all persons that do not belong to one of these three communities (the “constituent peoples”), notably the Roma, are excluded as well. This concept of “**constituent peoples**” was of particular concern to the Committee as it goes against the basic principles of ICERD (notably Articles 2 and 5). The delegation explained that there was consensus among political parties in BiH to amend the Constitution and the electoral law, but that this had to be done quickly, before 1 April 2006, in order to be applicable for the next general elections in October 2006. However, this political consensus for change did not mean that it would be possible to find a political compromise between all ethnic communities within the next month.

The situation of the Roma community

The Committee inquired about several issues relating to the situation of the Roma people in BiH. The Roma community is the most vulnerable minority in **economic and social** terms. Committee members asked about the role and results of the advisory board created for the Roma community. This board identifies problems faced by Roma and refers cases to competent bodies for their resolution. The Committee was also particularly concerned about education of Roma children; the access of displaced Roma people to their property; the housing conditions of many Roma living in informal settlements and confronted with forcible evictions; and the lack of identification documents. The delegation explained that education problems were linked to the fact that some parents prevented their children from going to school. The enrolment rate has however increased in the last years, and the problem is now how to provide education in the Romani language, as there are not enough qualified teachers to do this. Other issues remained unanswered,

⁷ Available at <http://www.errc.org/db/00/28/m00000028.pdf>.

⁸ Available at <http://web.amnesty.org/library/Index/ENGEUR630012006?open&of=ENG-BIH>.

although it should be stressed that the delegation was willing to respond and clarify the complex problems faced by BiH.

Racial discrimination in the enjoyment of economic, social and cultural rights

A particular group suffering from discrimination in this regard is **refugees and internally displaced persons**. The Committee urged the Government to provide programmes and enforcement mechanisms to protect them from discrimination.

On **access to education**, Committee members were concerned about segregated schools and curricula, which contribute to the persistence of prejudices between different communities. The delegation explained that a new legislation had been adopted, providing for the right to education for all, and paving the way for further improvement. It notably provides for the integration of children of returnees, abolition of segregated schools, and special assistance to children with special needs. However, the institutional framework in the education area in BiH is particularly complicated, with 13 decentralised ministries of education in the country. This leads to a lack of coordination and funding problems. Despite the new legislation, and because of these institutional difficulties, the delegation acknowledged that there were still 52 mono-ethnic schools, which the Government intends to eliminate in the next years.

Finally, discrimination in **employment** was also dealt with, with the Committee asking questions about plans for instituting affirmative action, in particular for Roma people and returnees of ethnic minorities.

Conclusions and next steps

Overall, the Committee examined the main human rights issues relating to racial discrimination in BiH. Most of the concerns expressed by NGOs were dealt with during the discussion. The delegation was willing to address the problems faced, but most of the time it had to acknowledge financial and material difficulties. It also stressed the fact that a short time has passed since the war, and as a result ethnic tensions are still very much present. The delegation argued that this explained why it was difficult to address issues of ethnic or racial discrimination. In this respect, the Committee was able to appreciate the progress made in ten years, since the last consideration of BiH before CERD in 1995, although there is still much to improve.

BiH submitted reports and was examined in the last months by CESCR (35th session), the Committee on the rights of the child (CRC) (39th session) and the Committee against torture (CAT) (35th session). The first two committees raised similar concerns to CERD regarding discrimination against the Roma community. CESCR also expressed concern about the discrimination faced by returnees, particularly those of ethnic minorities, with regard to their enjoyment of economic, social and cultural rights.

Guyana (initial to 14th periodic report)

Information submitted to the Committee

Guyana submitted a detailed report consisting of a summary of legal provisions aimed at illustrating how the State is combating discrimination⁹. The Committee commended the delegation on a comprehensive report, but emphasised that specific information on the situation of the Amerindian population was lacking. It should be noted that previous concluding observations by the Committee have also emphasised the need to provide further information on ethnic communities.

The Amerindian Peoples Association of Guyana (APA) and The Forest Peoples Programme (FPP) submitted a combined shadow report. This report's main aim was to request the adoption of a decision under the Committee's urgent action procedure in relation to the Government's plans to adopt racially discriminatory legislation. The shadow report focuses on three main issues: discrimination in the health and education sector accompanied by increasing poverty; State laws and indigenous peoples (the National Constitution and the Amerindian Acts); and the controversial 2005 *Amerindian Bill*, which largely discriminates on land and resources rights. The report included newspaper articles referring to the increase in abuse against the Amerindians population.

Themes and Issues

⁹ CERD/C/472/Add.1 available at:

[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/655aa087fcf77d63c125702700391022/\\$FILE/G0540900.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/655aa087fcf77d63c125702700391022/$FILE/G0540900.pdf).

The country Rapporteur, Mr. Mario Jorge Yutxi, was thorough in his introductory remarks concerning the State party report and mainly focused his concerns on the indigenous Amerindian population in the country. He stated that ethnic polarisation in Guyana was a huge concern to the international community because this ethnic divisiveness had been translated in the political arena and had eventually led to civil war. Numerous other Committee experts also addressed the question of ethnicity in the country and more particularly the situation of Amerindians.

Ethnic-driven politics

The Committee's main concern was to what extent indigenous peoples are represented in the political arena, notably through representation in political groups. The delegation provided a detailed answer to these concerns, explaining that for racial politics to be understood it was essential to take into account the historical background of the country. The delegation indicated that while the People's Progressive Party was largely seen as dominated by the Indo-Guyanese population, there were also coalitions with other ethnic parties such as the People National Congress, which represents the Afro-Guyanese population. However, not all ethnic groups had political parties, like the Portuguese, Chinese and the Amerindians, but measures were being taken to promote inter-party initiatives.

Definition of an Amerindian

Several Committee experts expressed their concern about the delegation's assertion that the Government would allow anyone who wished to consider himself or herself indigenous, as defined by the ILO, to be defined as such. The delegation explained that Guyana had both a definition of what constituted an Amerindian person, but also of who was a resident of Amerindian communities, which was determined by the communities themselves. This procedure allowed for all persons who were residents of these communities to benefit from assistance, and also granted power to the communities over the allocation of that assistance.

Land rights

On the subject of land rights for the Amerindians, the Committee was told that there were mechanisms in place allowing persons occupying land to acquire absolute individual title. It was interesting to note that all of the Amerindian lands were still communally held. The Government recognised that certain lands were reserved for the Amerindians under *ILO Convention No.169*. The delegation explained that a new process of land demarcation was being undertaken and had already led to two titles of roughly 3,000 square miles being issued in 2004. All of the Amerindians communities were now on board the demarcation project, with ten new claims currently being considered.

Village councils

It was noted that the only Amerindian governing bodies to be recognised by the State were the local village councils. Under the new legislation, the Government had delegated some of the State's authority to those councils and the rules formulated by the councils applied to all Guyanese citizens, whether Amerindian or not. Of course, these rules had to conform to the Constitution. The village councils also acted as local magistrates and could impose fines for the violation of their rules.

Ethnic imbalances in the police and armed force

The delegation explained that efforts were being undertaken to address the ethnic imbalance in the police and armed forces. At present, the Guyanese police force consisted approximately of 60% of Afro-Guyanese and mixed, 20% of Amerindians, and 19% of Indo-Guyanese. It was interesting to note that the percentage of Amerindians was much higher than that in the whole population. This was due to the fact that recruitment was focused on the disadvantaged hinterlands and that military careers were not attractive to the East Indian population.

The Racial Hostility Act

In answer to the Committee's inquiry about the *Racial Hostility Act*, the delegation explained that the Act had never had any criminal cases prosecuted under it. This was because it was difficult for the people to face the task of appearing before a court and testifying. Nonetheless this did not mean that issues of discrimination were not addressed. The delegation stressed that the Act was only adopted in 1997 and that this could explain the lack of cases. The delegation added that under the *Prevention of Racial Discrimination Act*, a number of cases had been brought forward and were pending.

Conclusions and next steps

In the concluding observations, the Committee urged the Government to ensure minorities adequate opportunities to participate in public affairs at all levels and asked for statistical information on the percentage, functions and seniority of minority representatives holding public and governmental positions.

The experts also noted that the *Amerindian Act* of 2006 systematically referred to indigenous peoples as 'Amerindians' and urged the State party to clarify which term the communities actually preferred, while still taking into account the criteria laid down in *ILO Convention No.169* and the Committee's General Comment No.8.

On the question of village councils, the Committee noted that decisions taken by indigenous village councils were subject to approval by the competent minister and that communities without land or title were not permitted to have a village council. The Committee urged the State party to remove these discriminatory laws. Concerning the sensitive issue of indigenous land rights, the Committee was deeply concerned about the lack of legal recognition of their rights over lands they had traditionally occupied, as well as the practice of granting them land titles excluding water and subsoil resources. It was recommended that the Government in consultation with the indigenous communities should strive to demarcate the lands in question and establish adequate and just procedures to resolve land claims within the limits of the domestic legal system.

Lastly on the ethnic imbalances in the armed and police forces, the Committee noted the special recruitment measures in favour of indigenous people, but remained concerned about the overall ethnic composition of the forces, and encouraged the Government to continue and intensify efforts to ensure a balanced ethnic representation.

Guyana has submitted reports to the HRC in 2000, the Committee on the Elimination of Discrimination Against Women in 2005, CESCR in 1997 and the CRC in 2004. The HRC was concerned at insufficient attention being paid to the need for multi-ethnicity within the police force, and at reports of considerable ethnic tension and at manifestation of incitement to discrimination, hostility or violence on racial grounds. The HRC also noted that members of the indigenous Amerindian minority do not enjoy fully the right to equality before the law. The CRC was concerned at the living conditions of Amerindian children, especially with regard to the degradation of their natural environment and the fact that they are not taught in their own languages.

El Salvador (9th to 13th periodic reports)

Information submitted to the Committee

El Salvador presented a report to the Committee that detailed the State policies that have been created to address racial discrimination. It was noted in the report that the delay in submission was due to the political developments that have taken place in El Salvador in the past decade in the wake of the prolonged armed conflict that ended in 1992. The country Rapporteur, Ms. Fatimata-Binta Victoire Dah, expressed several concerns about the report, which did not provide more detailed information about the country's ethnic composition than the State party's previous report. The report also claimed that there were no groups with differing racial characteristics or any black population in the country. Ms. Dah also mentioned that some of the paragraphs in the report were in clear contradiction with others and some references, such as a mention of the Organisation of Indigenous Communities, were not understandable in view of the report's claim that there are no racially different groups in El Salvador. Ms. Dah was frank in stressing that a spirit of contradiction dominated the report and that this gave her a sense of unease about the State's policies.

An alternative report authored by numerous civil society actors from El Salvador was submitted under the guidance of the World Lutheran Foundation¹⁰. The report deals with issues that were pointed out in the Committee's previous recommendations, but have been overlooked by the State, notably the situation of vulnerable groups, such as indigenous peoples and migrants.

Themes and Issues

Land and ownership rights

It was noted that El Salvador had a land property registry and detailed land ownership laws. Today in accordance with Salvadoran law, indigenous peoples were subject to the same laws of land ownership as everyone else. Previously, the country had gone through a process of land redistribution, where many large landholdings were reformed into cooperatives owned by peasants, including indigenous peoples. The delegation pointed that this had had unexpected consequences. Large agricultural producers went into a slump. The peasants or indigenous peoples who had acquired land under the reform began selling it back to the large groups so that the large landholders built up their holdings again. In some cases, State lands had

¹⁰ They are Consejo de Sacerdotes Mayas de El Salvador, Fundacion AMA, Cofradia Maria Asuncion de Izalco, ASDEIS Canton Pushtan, Caritas El Salvador, Museo de la Palabra e Imagen and Comunidad Lenca Yucuaiquin.

been illegally handed over to certain people, and the State was trying to recover those areas. Also, some land had been ceded by the Government to people who were affected by recent natural disasters, such as hurricanes and earthquakes.

ILO Convention ratification

The Committee asked why El Salvador has not yet ratified *ILO Convention No.169*, as this allows the State party to avoid providing information on consultations between the indigenous population and Government authorities over decisions that affected them. The delegation explained that they had been unable to ratify the *ILO Convention No.169*, owing to a contradiction between the Convention and number of provisions in the Salvadoran Constitution. Nevertheless, the delegation confirmed that the Government was studying the possibility of ratifying that Convention.

Situation of migrants

In response to the Committee's concern that there was insufficient data on the situation of migrants, the delegation indicated that migrants were normally from Guatemala, Nicaragua and Honduras. The delegation added that a proposal was being considered, which would give migrants a year to regularise their legal status.

The black population and indigenous communities

The explanation given for the lack of a black population in the country was attributed to the lack of an Atlantic Coast. The Committee pointed out that under that logic, the presence of people of European descent would also be inexplicable. In answer to that, the delegation simply re-asserted that there was no black population in El Salvador and recognised that while the country Rapporteur may be dissatisfied with the explanation for this absence, this fact remained true. While some Blacks had recently migrated to the country for economic reasons, they had chosen to keep the nationality of their parents.

On the issue of discrimination against indigenous communities, the delegation said that if they had not been specifically recognised in the report, the intention had been to acknowledge them implicitly. The Government did not deny their existence, but such populations had been declining in number and had become so dispersed that they had started to blend into the general population. They did not have distinct clothes or features to set them apart, as in other Central American countries. The process of technological development and globalisation had accelerated this process, leading to indigenous groups becoming fully absorbed in the whole population.

Conclusions and next steps

Overall, the dialogue between the State party and the Committee was relatively unsatisfactory. It was obvious that the experts were highly concerned by the refusal of the delegation to recognise the indigenous peoples as a separate entity with separate rights. Other major points of concern were the delegation's claim that the lack of any black population in the country was due to its geographical position in the region and their assertion that there was no racial discrimination in the country because there were no different racial group. On numerous occasions the experts gave the example of Guatemala's self-critical approach to its examination by the Committee, yet it seemed that the delegation was unwilling to take that into consideration for its future reports. The Committee therefore asked the Government to grant legal recognition to indigenous peoples and to ratify *ILO Convention No.169*.

Furthermore, some of the specific questions, notably on the access to justice for indigenous people and the investigations into the peasants rising of 1932 and the crisis of 1980 were not addressed properly by the delegation. In the Concluding Observations, the Committee once again requested the State party to supply disaggregated statistical information on the ethnic breakdown of the population in its' next periodic report, as it already had in its previous recommendations.

El Salvador has been examined by the HRC, CEDAW and the CRC, but these Committees did not raise similar issues to the ones raised by the Committee on the Elimination of Racial Discrimination.

Guatemala (8th to 11th periodic reports)

Information submitted to the Committee

Guatemala presented a report that adopted a largely self-critical approach to State policies on discrimination and the rights of indigenous people¹¹. The head of the delegation, Mr. Ricardo Cajas Mejia¹², opened the presentation of the State party report by admitting that 'Guatemala is not racist, but very racist', hence acknowledging that large-scale awareness-raising would be required to effect change in attitudes in the future. The report provides a general overview of the political structure of the country, highlighting the numerous State laws on coordination in the area of human rights and in particular racial discrimination. The Committee noted that there was significant data missing concerning some of the ethnic groups, notably those of African descent.

An alternative report, produced by the Santiago Development Project, the Lutheran World Foundation and many indigenous Guatemalan civil society organisations of Mayan and Mestizo origins, was presented at the meeting. The shadow report provides an overview of the status of discrimination of indigenous people in the country by looking at various articles of ICERD and their application in Guatemala.

Themes and Issues

In his preliminary remarks, the country Rapporteur said that he was encouraged to see that the Government had established new mechanisms to ensure greater access by indigenous people to justice. He noted that overall, the Government demonstrated that it was committed to the creation of a multi-cultural, multi-lingual and multi-ethnic society. Nonetheless, the country Rapporteur noted that the need for greater protection regarding land tenure remained a major concern and would therefore be emphasised in the Committee's concluding observations. The situation of the indigenous peoples was the main area of focus of the country Rapporteur and other Committee members. Questions revolved around issues of land rights, access to the legal system, and rehabilitation of victims of discrimination.

Discrimination

The delegation explained that the Presidential Commission on Racism and Discrimination against Indigenous Peoples in Guatemala was at the centre of the anti-discrimination campaign in Guatemala. The Commission is made up of five commissioners representing the three indigenous peoples, Mayas, Garifunas, and Xincas. The Commission's mandate includes provision of assistance to Government and NGOs to develop effective mechanisms to combat racism against indigenous peoples; formulation of public policy in this area; liaison between indigenous organisations and the Government; registration of discrimination claims and direction of those claims to competent bodies; and launching of awareness-raising campaigns. The delegation indicated that the absence of targeted legislation on racial discrimination in Guatemala was owing to the fact that other groups had demanded their inclusion in any such legislation. Racial discrimination had therefore been included as one of many categories of discrimination that were prohibited by Article 202 of the Criminal Code. Once the existing tools at the Government's disposal with regard to racial discrimination had been implemented, the Government would be able to assess whether it was necessary to draft more targeted legislation. In 2005, 74 complaints of discrimination were lodged with the Commission. In the month of February 2006 alone, 15 complaints were lodged. That increased reporting reflected that the programmes in place to disseminate information on the Commission were effective.

Land tenure

The Committee reminded the delegation that although the Parliament had approved an act in 2005 to regularise the land situation of indigenous people, the issue had not been successfully addressed and *de facto* discrimination prevailed. The delegation was quick to indicate that negotiations were under way in cases involving land rights, but that to understand the situation it was vital to know the historical background of this issue. There had been a great deal of internal displacement in the country due to the civil conflict and the land registry system had totally broken down. It was often the case that five or six entries of ownership were registered for one plot of land. The Land Fund, which is a sort of exchange market for land, was the sole device for the State to address the situation. The Land Fund was a form of restitution and compensation mechanism for those who had lost land. The delegation explained that most of the land in question was forest and not agricultural land. In addition, there was also a draft act on land registration that would address the lack of adequate records, thereby addressing the actual situation on the ground. The Committee was informed that the Land Information Registration and the *Framework Peace Agreement* were the basis for the current laws regarding land rights. The delegation further indicated that there was no explicit register for indigenous communities, only a general one, and that courts for land disputes were in the process of being established.

¹¹ CERD/C/469/Add.1 available at:

<http://daccessdds.un.org/doc/UNDOC/GEN/G05/415/26/PDF/G0541526.pdf?OpenElement>.

¹² He is the Coordinator of the Presidential Commission to Combat Racism against Indigenous People.

Access to justice

The Committee was informed that the Commission to Investigate Illegal Bodies and Clandestine Security Apparatuses addressed the issue of access to and administration of justice for indigenous people by effectively combating illegal bodies and organised crime, which prevent indigenous peoples' enjoyment of their legal rights under the justice system. Furthermore, Article 66 of the Constitution recognised the traditional social structures of indigenous societies, as well as indigenous justice, although only on *ad hoc* basis. In February 2006, the Supreme Court ruled that all previous applications of indigenous law would become part of the institutional policy on indigenous peoples.

Rehabilitation of victims of discrimination

The delegation reported that a National Programme for the Compensation of Victims of the Internal Armed Conflict of Guatemala had been established, under a National Commission currently headed by an indigenous woman, which provided financial compensation, as well as psychological support to victims.

Conclusions and next steps

Overall, the delegation strove to answer the Committee's questions, displaying a self-critical stance with regard to the State's policies on racism and discrimination. However, not all the Committee's questions were properly addressed, notably on issues such as gender equality and reforms for indigenous women; mining licenses granted on indigenous lands; customary law and its application with regard to land rights; and the need for disaggregated data on indigenous communities and other minorities. The Committee suggested that the delegation might wish to respond to these questions in writing. The Committee expressed its satisfaction at the fact that the Government recognised Guatemala's problems concerning racial discrimination and was trying to take measures to tackle the problem in conformity with ICERD. One expert found it refreshing that a post-conflict country like Guatemala was willing to accept its flaws in front of the Committee and argued that the State party should be seen as an example by the other countries in the region.

The Committee was concerned that Guatemala's statistics on indigenous people were incomplete, and that no statistics were kept on the population of African descent. It also expressed concern at the extent of racism and discrimination against the Maya, Xinka and Garifuna peoples. The Committee therefore urged the Government to adopt the proposed policy entitled 'Towards harmonious intercultural coexistence' and to undertake special measures in favour of indigenous and person of African descent. The experts also noted that while progress had been made in preventing discrimination in the administration of justice, there were still many problems with regard to access to the justice system.

On land rights, the Committee called on the Government to take steps to recognise and protect the rights of indigenous peoples to own, develop, control and use their communal lands and territories. It was also recommended that measures should be taken to return lands traditionally owned by indigenous communities and adopt a national land register to ensure that such community lands are properly identified and demarcated.

When examining the State party's second periodic report in 2001, the HRC expressed similar concerns to the Committee. The HRC notably argued that not all indigenous peoples' rights were being recognised and expressed its regret at the State party's failure to adopt targeted and comprehensive legislation guaranteeing indigenous peoples' human rights. The HRC also noted with concern the low level of participation of women in political life.

Uzbekistan (3rd to 5th periodic reports)

Information submitted to the Committee

Uzbekistan's long-overdue report¹³ provides a brief summary of the State party's policies and measures with regard to each article of ICERD. The report provides detailed data on the ethnic composition of the Uzbek population, as well as information on two surveys concerning the level of tolerance of the Uzbek population. Despite this information, there is no real assessment of the scope of discrimination in Uzbekistan. It is clear from the report that implementation of ICERD has not taken place through the adoption of specific and targeted legislation. Instead the report mainly refers to provisions in the Constitution and other foundational

¹³ CERD/C/463/Add.1, available at:

[http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1cd8e2de7ea17622c12570dc0028ea26/\\$FILE/G0543828.pdf](http://www.unhcr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/1cd8e2de7ea17622c12570dc0028ea26/$FILE/G0543828.pdf).

legislation such as the Criminal Code. As a result, the report does not allow for an assessment of the scope and extent of discrimination in Uzbekistan or of the impact of Governmental measures in this respect.

NGOs did not present any shadow reports or organise parallel events on Uzbekistan.

Themes and Issues

Mr. Luis Valencia Rodriguez served as the country Rapporteur. In his introductory remarks, Mr. Rodriguez gave a brief overview of the country, noting that it was a multiethnic country with a large population. He raised his concerns over a number of issues such as the absence of any information on the **Roma community** in Uzbekistan; **gender discrimination**; the situation of **minorities**; and the issue of **refugees** present in the country; the alarming increase in number of **extremist Muslim organisations**; and the **right of freedom of religion and conscience**.

In response to questions on the **Roma community** living in Uzbekistan, the delegation explained that no information was added in the report because this community was no longer nomadic and most Roma people had settled in different communities such as the Tajik communities. Inter-marriage had also taken place between the Roma and other ethnic groups in the country. On the **issue of gender equality**, the delegation indicated that in the recent parliamentary elections, 21 women had been elected and now made up 6% of Parliament. Furthermore, 15 of the 100 senators were women. Article 46 of the Constitution addressed the issue of gender equality, but so far no cases of gender discrimination had been brought forward. The women participated actively in elections and were represented in administrative and business sphere. The Committee on Women played a crucial role in addressing gender issues and was highly active. The delegation stressed that having a woman as Ombudsman for Human Rights demonstrated Uzbekistan's constant progress on gender issues.

In response to questions relating to **minorities**, the delegation reported that a sizable Arab minority existed, concentrated in two regions of the country. There was also a large Korean community of over 300,000 persons, who had been deported there during Soviet times. According to the delegation, the Korean population had integrated extremely well with the Uzbek population. The delegation also mentioned the small Uighar population, explaining that they had cultural centres all over Uzbekistan. Commenting on questions of perceptions concerning the Russian minority in the country, the delegation argued that it was not helpful to take a negative attitude in their regard and that it was preferable to consider the many close ties that existed for a long time between the two countries. The delegation also indicated that there were many Russian cultural centres in Uzbekistan that promoted Russian culture and language, as well many programmes, including joint programmes between Russian cultural centres and the Government to prepare Russian language textbooks to be used in the schools.

Concerning the **presence of refugees**, the delegation explained that due to the instability in Afghanistan and Tajikistan, there had been a large influx of people to Uzbekistan from those two countries. The Government in cooperation with United Nations High Commissioner for Refugees (UNHCR) had repatriated these groups, especially Tajik nationals. It was estimated that between 1993 and 1997 more than 17,000 Tajik refugees were sent back to their country. According to UNHCR, there were currently 2,008 refugees in Uzbekistan, mainly residing in Tashkent. They had been in the territory for over a decade now and were highly integrated in the labour force, but most had maintained their refugee status. It was stressed that any repatriation was voluntary or undertaken in cooperation with UNHCR, and there had been no cases of forcible repatriation from Uzbekistan.

The delegation admitted that there had been an increase in the number of **Muslim organisations** with extreme tendencies. One such organisation was the Fighters of the Islamic Organisation of Uzbekistan, which was defined as a terrorist organisation under State legislation. Such groups had made the border region unstable, and had come into conflict with the Uzbek army. The delegation explained that the inhabitants of those regions had been cut off from social services and had therefore exceptionally been relocated with the help of UNHCR, the International Committee of the Red Cross and other international organisations. In 1999, the Government adopted a law against terrorism that provided a guarantee that all human rights of the population would be safeguarded in the context of the fight against terrorism.

Regarding **freedom of religion and conscience**, the delegation replied that claims of discrimination against Muslim groups were completely unfounded and that such acts were in fact prohibited by law. Since 1990, the number of religious organisations and mosques had increased dramatically and there was a Committee on Religious Affairs to protect and promote religious freedom. The delegation further indicated that over 90 per cent of the population was Muslim in Uzbekistan.

Regarding the events that occurred in Andijan on 12 and 13 May 2005, the delegation claimed that they were terrorist acts, carried out by several armed individuals, which had resulted in the death of 187 people. Those events were not part of an uprising or national rebellion, as several international NGOs had claimed, and the death toll did not reach the thousands. The Government of Uzbekistan had immediately declared its commitment to undertake a transparent and objective investigation and an independent parliamentary commission and international task force on monitoring and investigation were set up. Western international observers had been invited to participate, but had declined. Furthermore, the delegation argued that those events were a purely domestic affair and had never represented a threat to regional peace and stability.

Conclusions and next steps

Overall, the dialogue between the Committee members and the delegation was fruitful and positive. The Committee commended the new legislation on NGOs, which had resulted in the registration of many new NGOs, including organisations representing various ethnic groups. Nonetheless, concern was expressed over the absence of any NGOs from Uzbekistan for this Committee session.

The delegation did not answer the Committee's question on the absence of a definition of racial discrimination in the Constitution. The Committee stressed its concern in this regard and urged the State party to undertake reforms in line with ICERD. The Committee also expressed its worry about the absence of legislation on refugees, in particular the lack of legal safeguards against forcible removal from the country. The Committee recommended that the Government elaborate a legislative framework for refugee protection and create a mechanism to permit appeals against decisions to remove aliens. The Committee also asked for more detailed information about the Roma community in the State party's next report and recommended that the Government adopt a strategy with a view to protect the Roma against discrimination.

In 2005, Uzbekistan presented its report to CESCR. Similar issues of concern were raised, such as the situation of minorities; gender issues; the compulsory registration system; the independence of the judiciary; and the lack of legislation on refugees. It is interesting to note that in both reports the Roma Community was hardly mentioned. In 2005, Uzbekistan was also examined by the HRC, which expressed its concern about the lack of legislation governing expulsion of foreigners from Uzbekistan.

Botswana (3rd to 5th periodic reports)

Information submitted to the Committee

Botswana's report¹⁴ provided a brief overview of the political, economic and social structure of the country and highlighted the most important State legislation dealing with human rights. Figures and statistics were also provided in the relevant sections. The report gave a detailed analysis of the implementation of Articles 2 to 7 in Botswana under the policy Vision 2016, which sets out a vision of the kind of society the country could have in the year 2016 when it will celebrate 50 years of independence. It was stressed by the delegation that among the seven Vision 2016 goals, several of them are directly relevant to the implementation of ICERD.

An alternative report was submitted by DITSHWANELO - The Botswana Centre for Human Rights, with the support of the International Federation for Human Rights. The NGO report is a detailed document on the situation of various sensitive ethnic groups. The emphasis is on the rights of the indigenous peoples, illegal immigrants, and refugees and how the death penalty and access to justice and education affect their situation in Botswana. The report stresses that Botswana's international legal commitments such as ICERD should play a bigger role in the future.

Themes and Issues

In his introductory remarks, Mr. Linos Alexandre Sicilianos, the country Rapporteur for Botswana, mentioned that while the delegation and the Committee have not always seen eye to eye, he was pleased to observe that the delegation had shown some flexibility in various areas of concern, such as cooperation with United Nations special rapporteurs. Among the many issues discussed were the plight of **refugees, immigrants and asylum seekers**; the situation of the **Baswa people of the Kalahari Central Game Reserve**; the **Constitutional Reform process**; and the **Chieftainship Act**.

The situation of refugees

¹⁴ CERD, Report submitted under article 9 of the Convention, 23RD March 2005, CERD/C/495/Add.1 at <http://daccessdds.un.org/doc/UNDOC/GEN/G05/438/38/PDF/G0543838.pdf?OpenElement>.

Mr. Sicilianos observed that there were many problematic areas that needed to be addressed in relation to refugees. These included the long time taken for asylum seekers to be granted refugee status; the systematic and protracted detention of refugees, including minors; the preclusion by law of refugees from work in the formal sector of employment and from HIV anti-retroviral programmes; and the alleged ill-treatment of Zimbabwean refugees by the police. The country Rapporteur also noted that there was a provision in immigration law that allowed for certain immigrants to be prohibited by presidential decree. The delegation responded to these questions by arguing that asylum seekers were processed as soon as possible, but that in some cases, further investigations were required to establish all the facts. The 28-day limit for determining refugee status set out in the Refugee Act was to help the Government in the organisation of their work, but if the necessary information could not be gathered within this time limit, nothing could be done. If further investigations were necessary it would not be proper to grant asylum without that information, and during that process the asylum-seeker remained in custody. The delegation claimed that that it was not true that refugees were precluded by law from working in the formal sector. A recognised refugee was allowed to work if there was employment. Refugees were however excluded from anti-retroviral programmes, because of insufficient resources and because of the uncertainty regarding refugees' continued use of anti-retroviral treatment after departure from Botswana. Regarding the ill-treatment of immigrants and refugees, the delegation insisted that it was not State policy to ill-treat anyone. Where such acts had taken place, appropriate measures had been taken. At present, there was a case before the courts involving police officers and members of the Botswana Defence Force. The delegation added that it was possible to appeal a presidential decree on immigrant status.

Constitutional reforms

A few of the experts raised questions regarding the definition of discrimination in Botswana's Constitution. Mr. Sicilianos drew attention to the fact that discrimination was prohibited in the Constitution, but that it failed to cover all types of racial discrimination identified in Article 1 of ICERD. Section 15 contained many exceptions to that prohibition, such as a provision indicating that customary law could introduce distinctions on a tribal basis in its application. This appeared to be in direct contradiction with ICERD. The delegation refused to accept that the Constitution allowed customary law to discriminate, arguing that everyone in that tribe or community was subject to that customary law. This provision was meant to protect the cultures of various communities rather than to discriminate against them. Further, the delegation stressed that customary law did not deal directly with discrimination, as it was the Penal Code, which was enforceable in customary courts, which dealt with such issues. The delegation indicated that there was a right of appeal to decisions of a customary court to higher customary courts or even to the High Court, although on a restricted basis.

The Chieftainship Act

Under Botswanan legislation, tribal codes of conduct are determined largely by the controversial *Chieftainship Act*. This Act limits the definition of a tribe to only eight Tswana¹⁵ tribes, where as all others are considered as communities. This situation was confirmed by the High Court's Kamanakao judgement in which it was acknowledged that the terms 'chief' and 'tribe' are defined only to refer to the eight Tswana tribes. This designation has far reaching consequences affecting not only membership of the House of Chiefs, but also land rights. The country Rapporteur indicated that these consequences called for a reform of the Chieftainship Act, as already stressed in previous concluding observations. The delegation indicated that the Constitution had been amended to remove such inequalities and that the Chieftainship Act was also being reviewed to bring it in line with these amendments.

The Basarwa of the Central Kalahari Game Reserve

The pending complaint before the High Court regarding the forced relocation of the Basarwa people was mentioned on numerous occasions. In addition, there were reports of abuse and restrictions of social services to these communities. It was hard for the experts to comprehend how a solution could not be reached, given that there were only 2,500 persons to be relocated and the reserve in question was some 52,000 square kilometres. The delegation indicated that the Basarwa were relocated out of the reserve after a decade of negotiations with them. There had been informed consent among those relocated, the move had been voluntary and those relocated were duly compensated. Those who had refused to leave were not forced to do so. The relocation process was completed in 2002, but some of those who had been voluntarily relocated had returned in breach of their agreement. According to the delegation, only very few inhabitants of the reserve had exercised their right to take the case to the High Court. Among the reasons for relocation, the delegation identified an unsustainable budget due to the scattered settlements of the people in the reserve and the incompatibility of the people and the wildlife in the reserve.

Conclusions and next steps

¹⁵ Tswana refers to the dominant ethnic group in Botswana with Sestwana as their main language.

Overall, the Committee welcomed the frank discussion with the State delegation, which was very thorough at times. In its closing remarks, the delegation indicated that it was willing and desirous to work with the Committee in order to move forward and fulfil the Vision 2016 goals, but stressed that the pace of change would have to be slow so as not to put undue strain on the new country.

The issue of the Basarwa people was of enormous concern to the Committee, which time and again raised detailed questions on their situation. While the delegation claimed that the Basarwa were not being discriminated against, it was clear that the experts were not satisfied with the information being provided. In its concluding observations, the Committee noted with high concern the strong discrepancy between the information provided by the State party on the relocation of inhabitants of the Kalahari Game Reserve and the persistent allegations that residents were forcibly removed. The Committee recommended that the Government resume negotiations with the residents, as well as the NGOs involved.

On the issue of Constitutional reform, the Committee was concerned that the State's objective to build a nation based on the principle of equality had been implemented in a detrimental way to the protection of ethnic and cultural diversity. The Committee noted the State's reluctance to recognise the existence of indigenous people on its territory and urged them to respect and protect such vulnerable groups. While it was noted that the State party was willing to ensure better representation of indigenous communities in the House of Chiefs, the experts remained concerned that the proposed *Chieftainship Act* actually reproduced discriminatory rules of the participation of ethnic groups in that institution. The Committee therefore reiterated its recommendation that the *Chieftainship Act* and the Tribal Territories Act be amended in order to remove their discriminatory character against minority ethnic groups.

With regard to refugees, the Committee recommended that asylum seekers only be detained when necessary and for a limited period of time. The Committee also urged the State party to recognise the right of asylum seekers to appeal the decision denying them refugee status before a judicial body. The Committee also insisted that any person declared as a 'prohibited immigrant' be granted an effective remedy before a judicial body.

Botswana has only submitted a report to one other treaty-monitoring body, the CRC, to which it submitted its initial periodic report in 2004. The CRC expressed similar concerns to the Committee with regard to the protection of non-discrimination in the Constitution.