

The International Movement Against All Forms of Discrimination and Racism (IMADR)

Report on the 69th Session of the Committee on the Elimination of Racial Discrimination

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Introduction

The Committee on the Elimination of Racial Discrimination (CERD) met for its Sixty-Ninth Session from July 31st to August 18th 2006 in the Palais des Nations in Geneva. During this Session the Periodic Reports from **Estonia, Yemen, South Africa, Oman, Mongolia, Denmark, Norway and Ukraine** were considered. In addition other states were reviewed under the Urgent Action and Early Warning Procedures, Review Procedure and Follow-Up Procedure. The Periodic Report of **Israel** was due to be considered at this Session but this has been postponed until the next session (Spring 2007) at the request of Israel with the agreement of CERD due to the sensitive situation at the moment.

At the Sixty-Ninth Session **South Africa** made its first appearance before the Committee which many Members felt had special significance in marking the success of the Committee given the fact that part of the reason CERD was created was to combat the Apartheid regime in this State. In addition this Session also saw many other important meetings including a dialogue with the Independent Expert on Minority Issues Ms. Gay McDougall, a discussion on Treaty Body Reform in the presence of a Representative of the High Commissioner for Human Rights Office and also a General Debate on the Situation in **Lebanon**.

This report intends to outline the core issues identified in the above meetings and in the examination of the State Reports. It will also look at the other important events and/or matters that were raised during the Session.

Core Issues Raised By States

1. Specific Groups

Indigenous Peoples and Minority Groups

The status and treatment of indigenous peoples and minority groups was one of the core issues for the Committee and it announced concerns about the way these groups were dealt with by many of the State Parties before CERD at this session.

In particular, **Yemen** was questioned over its claims to be a homogenous society with the Committee noting a discrepancy in the State Report and other reports from NGOs. CERD announced its deep concern over **Yemen's** failure to acknowledge descent-based and/or culturally distinguishable groups such as the **Al-Akhdam**. There were persistent reports of de facto discrimination towards these people made to the Committee despite the Delegation's claims that there is no racial discrimination in **Yemen**. Although the delegation admitted that there were so-called "marginalised groups" in **Yemen** the Head of Delegation spoke of trying to "blend them into Yemeni society" by eliminating their customs and traditions. Mr Boyd, Country Rapporteur for **Yemen** called for the State to do more to protect and acknowledge these groups much to the annoyance of the Delegation who asked him to reconsider his recommendations. In the Concluding Observations CERD requested further information from the State Party specifically on the right of the **Al-Akhdam** to own property and also stated a general concern for the welfare of these groups in **Yemen**.

South Africa also received criticism with regard to property and land rights but in regard to land restitution and post-settlement for returning ethnic communities in particular indigenous peoples including hunter-gatherers, pastoralists and nomadic groups. The Committee noted an absence of information on these groups in the report and requested that this be rectified for next time. Country Rapporteur, Mr Pillai, noted that the Special Rapporteur on Indigenous Rights has commented that indigenous groups in **South Africa** have lower levels of enjoyment and limited education and access to services and there were questions raised as to how the State was addressing these issues. The Delegation from **South Africa** noted that more efforts needed to be made with regard to indigenous and minority groups and pledged that they would have more positive material on these issues in the next report.

There were also some positive measures in the various State reports on indigenous peoples and minority groups such as in **Mongolia** where the Committee commended the Tuva Language Study Programme of 2005 which

is designed to support the Tsaatan minority by protecting their cultural heritage. Similarly in **Norway** the Committee was pleased to acknowledge the establishment of the Romani's People Fund 2004 which aimed at compensating previous assimilation policies which had been detrimental to these people. The Finnmark Act established in 2005 in **Norway** was also well received by the Committee as it grants provisions for the Saami people including recognising their right to land and to participate in the decision-making processes on these issues. There were a few points raised on this however, including concerns that the Finnmark Act was not addressing the special situation of the East Saami. The Committee recommended that the State Party needed to adopt extra measures to ensure this highly vulnerable group was protected and to address this issue in its next report.

With regard to the **Ukraine** there were both positive and negative aspects. It was noted by the Committee that the Bill before Parliament at present to amend the National Minorities Act included recognition of the right of minorities to use their traditional name and languages. It was also noted during the dialogue with the Ukrainian Delegation that there had been good progress made in the education system with regard to the Crimean Tartar and the Roma children. On the negative side however, the Committee remained concerned that a lack of identification documents is depriving Roma in their right to equal access in areas such as the courts, legal aid, employment, housing, healthcare, social security and education. CERD also remained concerned with regard to stereotypes about these groups which leads to racially motivated presumptions following crimes that Roma or other minorities are to blame. The Committee recommended that administrative obstacles be removed and that public awareness campaigns and human rights training for members of the justice system needed to be urgently adopted.

Asylum Seekers, Refugees and Immigrants

There were both positive and negative attitudes towards these people in the State reports examined during this session. The reports from **Ukraine** and **Estonia** both indicated positive developments with regard to the protection of these vulnerable groups. In **Ukraine** there had been huge efforts undertaken in the reintegration of deported persons including Crimean Tartars with the establishment of the Formerly Deported Persons Integration Policy earlier this year. Also in **Ukraine** the time restrictions on asylum applications had been removed allowing people more freedom when applying. There were reports from NGOs in **Ukraine** however, that there were still huge prejudices towards the Crimean Tartars and as such the Committee requested more information in the next report with regard to how these people were being protected.

In **Estonia** the Committee was heartened by the decisions of the State Supreme Court on the principles of equality and protection of family life where the Court declared unconstitutional several decisions that refused the granting of residence permits on the sole basis of immigration quotas. Similarly in **Yemen** the Committee noted that with regard to immigration

quotas the Government has an open door policy however it criticised the poor standards faced by refugees in Yemen and the failure to implement any legal protections for these groups.

The lack of adequate legislation to protect these people was a problem in other states as well including Oman and Mongolia. Oman claimed that “no distinctions were drawn between citizen and foreigner” as they received equal treatment from the State in all areas. Many Committee Members raised concerns about this especially as foreign workers account for 24% of the population. As such it was recommended that in the next report there needs to be more attention paid to these groups and how their rights are to be guaranteed including considering special measures to promote equality. In Mongolia similarly the Committee expressed concern that the State had yet to enact legislation for the protection of asylum seekers, refugees and immigrants. CERD also regretted the lack of information on these groups in the State report and stressed that in the next report more information should be presented on how these people are being protected and provided for. Mongolia was also invited to consider ratifying the 1951 Convention on Refugees and its 1967 Protocol.

There were also concerns raised about the status of refugees, asylum seekers and immigrants in Denmark with the National Human Rights Institution claiming that there are prejudices in the labour market for immigrants and very often there are linguistic problems. The Human Rights Institution also outlined problems in the asylum centres with applicants being forced to live in limbo for five to six years before a decision is made. During this time they are not allowed to apply for jobs or attend mainstream schools and they are constantly subjected to relocation to other centres. One family was reportedly relocated twelve times during the waiting period allegedly to ensure that they did not become attached to the State in case they had to leave. The Committee was particularly concerned with these issues and recommended that asylum seekers be granted the right to appeal and that the State reviews its policies on asylum seekers, refugees and immigrants.

2. Specific Issues

Caste and Descent-based Discrimination

Caste and descent-based discrimination has always been a particular concern of the Committee and CERD’s stance on this issue was outlined in detail in General Recommendation 29 on descent. At this session the Committee demonstrated concern over the Yemeni Government’s failure to acknowledge the Al-Akhdam people who, Mr Thornberry announced in the dialogue with the Yemeni Delegation, appeared to be a caste or descent-based group. The Committee had been receiving constant reports outlining the discrimination towards these people and was concerned by the failure of the Yemeni Government to acknowledge that a problem even existed.

Country Rapporteur for **Yemen**, Mr Boyd, stated that **Yemen** first needed to acknowledge these people and then needed to address their rights through implementing programmes to promote their welfare and to alter the public mindset of cultural condemnation towards the Al-Akhdam. This was reiterated in the Committee's concluding observations.

Multiple Discriminations

The phenomenon of multiple discriminations has also been addressed by the Committee with for example women and children of certain ethnic or racial groups being targeted as is the case in **South Africa** and **Estonia** where there are problems of human trafficking of women and children belonging to minority groups. At the session the Committee noted that although the Estonian Government had been slow to respond to the problem initially it was now actively tackling the issue and had set up the National Action Plan against Trafficking in Human Beings earlier in the year. In **South Africa**, however, the situation still requires attention from the Government with violence being directed towards women from disadvantaged and poor ethnic groups including issues of trafficking, domestic violence and rapes. CERD noted that there was a failure at present of measures to prevent, combat and punish these crimes in **South Africa** and as such the Committee recommended that the State adopts specific legislation criminalising human trafficking and takes other effective measures to combat the problem.

Citizenship

The issue of citizenship was one of the main themes at this session of CERD especially in **Estonia**, **Oman** and **Norway**. In **Estonia** there are an immense number of non-citizens which is posing a serious problem for the Government. According to the State report as of November 2004 there were 155 820 persons with "undetermined citizenship" in **Estonia**. Many Committee Members recognised that the Government was working to combat this issue but CERD acknowledged that more needed to be done. In the concluding observations the Committee recommended that the Government allow these people to participate in political parties and provide language courses for them amongst other special measures.

With regard to **Oman** there were problems of recognition under the law. The Committee was concerned that the Omani Nationality Law does not grant citizenship to children of Omani women married to non-nationals as it does where the father is Omani. It was felt that this could lead to a situation of statelessness and as such the Committee recommended that **Oman** review its legislation and also bear in mind General Recommendation 30 on non-citizens.

With regard to **Norway** under the Immigration Act any non-citizen suspected of providing a false identity is liable to be detained without a time restriction and there have been complaints that people have been held for this offence for over a year. There were also concerns over equal access to services with claims that non-citizens children were not being given the

same educational opportunities as the children of citizens. The Committee recommended that the new Nationality Act be reviewed because of the serious restrictions it placed on obtaining citizenship and that the issue of detention is reviewed and brought in line with General Recommendation 30.

Ethnic Compilation and Socio-Economic Indicators

It is often the case that ethnic groups are not granted the same access to education and services as other members of society and this can lead to these vulnerable groups being among the poorest of a state's population and having numerous socio-economic problems. The link between poverty and ethnic and racial groups is a widely recognised notion and as such CERD and other human rights organs strive to promote equality in all areas even if this requires affirmative action.

At the session the Committee noted positive and negative aspects of the State's policies in regard to equal opportunity. In the case of **Yemen** the Committee praised the National Poverty Reduction Strategy for 2003-2005 which improved living conditions for some marginalised and vulnerable groups. However, the poor living conditions for refugees were highlighted as a major problem in **Yemen**. They included a lack of access to education, employment, healthcare and a failure to protect from physical abuse and maltreatment. CERD requested that the State remove the obstacles that prevented refugees having the equal access to services and fully investigate reports of physical abuse and maltreatment so that anyone responsible for such crimes can be punished under the law.

Hate Speech/Hate Crime

In many states including **South Africa**, **Denmark** and **Ukraine** the Governments are attempting to tackle problems relating to hate speech and hate crimes. In **South Africa** the Government is still working to shake the legacy of Apartheid and is attempting to slowly change the public mindset. Several Committee Members praised **South Africa** for their efforts and commented that the State report was very frank about the problems the Government are facing and how they are trying to change the status quo. The Committee emphasised that there was a long way to go to deconstruct the legacy of apartheid and requested that the Government adopt legislation in order to prevent, combat and punish hate speech. Similarly in **Ukraine** the Committee requested that the Government explicitly prohibit organisations which promote discrimination or hate speech under the Citizens Associations Act.

In the case of **Denmark** the Committee had to tread quite sensitively due to the recent Cartoons episode with the publication by a Danish newspaper of a cartoon which depicted the Muslim Prophet Mohammed in a negative light. This resulted in debates across the globe on the need to strike a balance between the right to freedom of expression and the need to prohibit hate speech. In **Denmark** the Committee applauded the numerous public awareness campaigns which had been launched to combat hate speech

including “Show Racism the Red Card”. However, in its concluding observations CERD requested that the Government increase its efforts to combat hate speech and hate crimes and in particular remind prosecutors of the need to take a strong stand against these acts which undermines the social cohesion of the State.

3. Legal Issues

Legal Redress

The need for a strong system of legal redress in instances of racial discrimination is imperative to demonstrate the State’s tough stance to the public. As such the Committee was concerned about the lack of an explicit anti-discrimination law in some of the states. In **Estonia** the Committee expressed concern over the absence of a resolution for racial discrimination in the private sphere as there were severe limitations on the Chancellor of Justice. The Chancellor’s decision is only binding when both parties have agreed to the proceedings and although he is held in high esteem in Estonian society it was felt by the Committee that a stronger system of redress was required. As such CERD recommended the establishment of a more effective National Human Rights Institution to combat this situation. It was also questioned whether there could be another Draft Bill going before Parliament to create a specific anti-discrimination law as a previous Bill had been dropped due to political differences. The Committee was pleased to note the Government’s announcement that the same Bill would be resubmitted to Parliament.

With regard to **Yemen** the Committee was pleased to note that the State had been undertaking education and awareness campaigns amongst the judiciary, the Department of Public Prosecutions and law enforcement agencies. However, CERD was concerned over the apparent lack of legal protection for refugees and as such requested information in the next report on prosecutions launched and penalties imposed on racial discrimination towards these people.

In **South Africa** it was acknowledged that a strong system was in place but there were still problems in the mindset amongst members of the legal system. The Committee acknowledged the Government’s efforts so far in combating racial discrimination and stressed the need to ensure education and sensitivity of the members of the justice system.

In **Ukraine** the Committee expressed a deep concern over the reported lack of funding and awareness for the Office of the Ukrainian Parliamentary Commissioner for Human Rights with claims that people did not even know of its existence. The statistics on this Institution also raised worries over problems of access with only 0.5 percent of complaints received by the Commissioner dealing with minority rights. The Committee recommended that **Ukraine** ensure adequate funding for the Institution with a view to

strengthening its expertise in all areas of human rights. The State should also enhance the access from minority groups at all levels.

There were also problems identified in the **Ukraine** on the treatment of the Roma, Crimean Tartars, asylum seekers and non-citizens. It was reported to the Committee that there were strong prejudices towards these people by both members of the law enforcement and the general public. In cases of crimes there were often racially motivated presumptions especially with regard to the Roma and Crimean Tartars. There were reports of arbitrary arrest, searches and pre-trial abuse based on a presumed guilt. As such the Committee in its concluding observations advised that intense human rights training amongst police officers was necessary along with a better system to report problems of police abuse. The Committee also requested that the next state report include information on the number and nature of cases brought, convictions obtained and sentences brought as well as compensation to the victims of such acts.

National Human Rights Institutions

The Committee at this session was pleased to note the growing presence of National Human Rights Institutions and Ombudsmen who are able to provide alternative angles on situations at times and are crucial in aiding the Committee to see the whole picture. The Committee have been pushing for these institutions to be involved in the collaboration of the State reports and also where possible to attend the session to give a short statement on the situation as they see it during the dialogue between CERD and their State. Of the States before CERD at this session **Oman** has yet to create a National Human Rights Institutions and was urged to do so by the Committee in line with the Paris Principles.

Estonia's Chancellor of Justice was seen as inadequate due to the severe limitations on his power and as such the Committee expressed a wish to see the establishment of a proper National Human Rights Institution in line with the guidelines set out in the Paris Principles. **Yemen, Mongolia and South Africa** all have National Human Rights Institutions but they did not attend the session. In the case of **South Africa** a representative had been scheduled to attend but due to personal problems had been unable to attend at the last minute. **Norway, Denmark and Ukraine** all had representatives of their National Human Rights Institutions and/or Ombudsmen present at the session which was looked upon very favourably by the Committee.

Incorporation of ICERD

As already noted in this report the Committee encourages the creation of specific anti-discrimination legislation in all State parties in order to send a strong message to the population and also to ensure that all aspects of ICERD are incorporated in domestic law. During this session CERD called upon **Estonia** and **Oman** to introduce prohibitions of discrimination in specific domestic legislation. The Committee also expressed concern at the definition of racial discrimination under **Oman's** existing law as it does not

include “race”, “descent” or “national or ethnic origin” among the list of prohibited grounds for discrimination. In this regard the Committee recommended that the State review its definition to bring it in line with the definition under Article 1 of ICERD.

In **Mongolia** although it was noted by the Country Rapporteur, Mr Tang, that the prohibition of discrimination could be found in over twenty legislative instruments it was observed that the focus was too much on individual liability and that there were not enough provisions for organisations or groups who are guilty of discrimination. There were also concerns raised over popular stereotypes within society which need to be dispelled. The Committee recommended that the adoption of a specific anti-discrimination law would be useful to combat all of these problems and stressed the importance of raising public awareness about ICERD.

In **Norway** there were many positive points and it was felt by the Committee that the State had made a genuine commitment to incorporate ICERD into domestic law and to protect vulnerable and minority groups. The discrimination legislation was praised as was the establishment of a National Human Rights Institution as well as a Discrimination Ombudsman and an Equality and Anti-Discrimination Tribunal all established earlier this year. There was a concern flagged however, over the lack of “race” within the definition of racial discrimination and although the Committee understood the reluctance of the State to use such a term it also emphasised that all aspects of discrimination need to be prohibited under domestic law.

Other Business

Review Procedure and the Resulting Proposals

Malawi

The delegation from Malawi presented their written responses to questions sent by CERD. These questions were sent in advance of the meeting due to the absence of a state report. Many Committee Members expressed interest in the issues highlighted in these responses such as remedies for acts of racial discrimination, human rights education, the legal protection for refugees and the influence of the justice system. It was noted at the session that Malawi had not been before the Committee for a very long time and the delegation stated that this was mainly due to a lack of human resources and financial means. The Country Rapporteur for Malawi, Mr Amir, suggested that the delegation could with the help of technical assistance from the Office of the High Commissioner for Human Rights adapt the written responses into a full report to be submitted before the Committee. This would allow the state to fulfil its obligations under ICERD and was a notion greatly received by both the delegation and other Committee members. It was agreed that Malawi would request technical assistance and the Committee will await the submission of the state report.

Saint Lucia

The periodic report for Saint Lucia was announced to be still overdue and the Country Rapporteur for Saint Lucia, Madame Dah, stated that the situation remained unchanged and that there was nothing new to report. The State Party has been under the review procedure previously in 2004 and 2005 and the Committee was awaiting the submission of the initial through to the eighth periodic reports. Several issues in Saint Lucia remained of concern to the Committee including a lack of information on the racial composition of the population, the status of the Convention in domestic law, specific anti-discrimination law in the State Party, and remedies for discrimination claims with regard to the mediator for racial discrimination complaints. It was decided that the Committee should send a letter of reminder to the State Party concerning its overdue reports. The Committee is also intending to explore the possibility of working with the UNDP to try to re-establish dialogue with the State Party.

Namibia

The delegation from Namibia stated that the Government had taken great lengths to combat racial discrimination and that the law prohibited racial discrimination. The Government was also undertaking special measures to promote equality and restore the balance such as its land reform programme where the Government purchased white-owned farms to resettle black families without land. The Country Rapporteur for Namibia, Mrs January-Bardill, acknowledged these efforts but stated that the

Government's San Development Programme did not address the social and economic discrimination of the San people and that they still had no access to land. Mrs January-Bardill welcomed the amendment to the criminal act which criminalised the dissemination of ideas based on racial superiority following reports of politicians making derogatory remarks about minority groups. The Committee decided to request Namibia to submit its overdue periodic reports by 30 June 2007.

Seychelles

Due to the absence of a delegation for the state the Country Rapporteur, Mr Pillai, outlined the current position of Seychelles and CERD. It was noted that the report was seriously overdue with the last report being received in 1988 and that even then the report had been considered in the absence of a State Party delegation. In addition the State Party had been considered under the review procedure previously in 2005 and had failed to respond to a list of questions sent by CERD to be answered by 31st January 2006. However, many Committee Members noted that efforts had been made by Seychelles to incorporate the Convention and that the problems stemmed not necessarily from unwillingness but from a lack of means to submit regular reports and send delegations to Geneva. In this regard it was suggested that a list of Draft Confidential Concluding Observations should be drawn up and sent to the state and if no response is received then these Observations could be formally adopted at the next session. It was also proposed that the Committee use the assistance of the UNDP to encourage the State Party to respond to CERD and to provide technical and financial support.

Resulting Proposals

Under the review procedure of Seychelles it was identified that the Committee needed to develop a strategy for dealing with states who repeatedly failed to submit periodic reports. In addition it was recognised that some states lacked the necessary financial and technical means to submit reports, such as Seychelles, and to send delegations to Geneva. As a result of this it was proposed that the Committee hold a third session in New York specifically designed for states that do not have a delegation in Geneva and whose lack of financial capacity contributes to their failure to submit reports to CERD. It was also proposed that with the question of follow-up the Committee should seek the cooperation of other UN human rights bodies to further develop strategies to benefit these states. It was decided that a letter should be sent to the High Commissioner for Human Rights requesting a meeting with the Chairperson of CERD to discuss the proposal for a session in New York. The President of the Human Rights Council was also to be contacted to discuss establishing more effective cooperation between CERD and the Council.

Follow-Up Procedure

Mr Kjaerum, Coordinator for Follow-Up announced that since the last session in March CERD had received responses to its concluding observations from

Australia and Lao PDR. There had also been one follow-up mission to the Republic of Ireland. A response was also received from France on the morning of the discussion on follow-up and so Mr Kjaerum was not able to comment on this as he had not had time to go through it. Reminders were sent out from the Committee to Bahrain and Azerbaijan that their responses were overdue.

The two responses received in advance of the session were considered by the Rapporteur for Follow-Up with the Country Rapporteurs for Australia and Lao PDR. With regard to Australia it was decided that a letter should be sent from the Committee thanking the Government for their detailed and timely response. It should also include:

1. A wish expressed by the Committee to be kept informed with regard to any changes in the structure of the Human Rights and Equality Commissions. Any changes would also need to be in line with the Paris Principles.
2. With regard to the abolition of Aboriginal and Torres Strait Islander Commission the Committee reiterated the importance of dialogue between the Government and the indigenous peoples.
3. The Committee wished to be kept informed of any reforms relating to the Native Title.
4. The Committee wished to make clear its view on informed consent as detailed in General Recommendation 28.

The Committee would not request any information before the next periodic review in four years time.

With regard to Lao PDR again it was agreed that a letter should be sent thanking the Government for their detailed and timely response. It should also include:

1. Concerns expressed by the Committee that the revision of Article 176 of the Penal Code does not fulfil the requirements of concluding observation number 10 as the Penal Code only refers to ethnicity and neglects other areas of discrimination.
2. The Committee requests additional information on humanitarian aid and expresses the need for the Government to have a dialogue with the Hmung community.
3. The Committee remains concerned over the poverty and limited development of some groups and more information is requested in the next report.

The Committee requests the information in points 1 and 2 to be submitted before the next periodic report.

With regard to the visit to Ireland following the invitation from the Government, a report is now available and Mr Kjaerum requested that a copy be sent to the Irish Government as soon as possible.

It was also announced that at the conclusion of this session the follow-up procedures would be due for: Georgia, Nigeria, Tanzania, Turkmenistan, Venezuela, Zambia and Barbados.

Early warning and Urgent Action Procedures:

At this session there were more requests for states to be considered under this procedure than ever before and the number of states also put forward had also increased. At this session six states were considered under the procedure: Suriname, Lao PDR, Nicaragua, Peru and the Democratic Republic of Congo.

Suriname

It was alleged that the lands and resources of indigenous and tribal peoples were being exploited illegally. A letter was drafted by the Committee referring to General Recommendation 23 on indigenous peoples and requesting Suriname to respond to this issue in its next periodic report due in April 2007. It was also agreed that a letter on this complaint should be forwarded to the Office of the High Commissioner for Human Rights.

Nicaragua

The Awas Tingni indigenous community in Nicaragua claimed to be suffering due to the non-enforcement of the August 2001 judgement by the Inter-American Court of Human Rights which found that Nicaragua had violated the community's rights when it granted a logging concession in Awas Tingni territory without consent. The Committee had already decided to consider Nicaragua in its review procedure and had requested the State to submit a report by 30 September 2006. It was agreed that the Chairperson should write to the State Party and include a copy of the NGO report asking them to respond in the September report.

Lao PDR

There are complaints regarding the Hmung community in Lao PDR pending at the Working Group on the Early Warning and Urgent Action Procedure. This is not the first time the State has appeared before the Committee in this regard; at its August session in 2003 CERD adopted a decision under the Early Warning and Urgent Action Procedure and in 2005 the Committee requested Lao PDR to provide information within a year on follow-up. The response from Laos was that there was no conflict between the Lao and Hmung communities. The Committee Members at this session were also informed that a decision had been taken on the situation under the follow-up procedure. It was agreed by the Committee that issues should not be pursued under both the follow-up and the early warning and urgent action procedure should not be carried out at the same time. As a result it was decided that the case would be considered under the follow-up procedure and that the Working Group on the Early Warning and Urgent Action Procedure should collaborate with the Working Group on Follow-Up Procedure to this end.

Peru

There had been complaints raised by the indigenous Andean communities of Tacna who claimed they were suffering from poverty and hunger because the Government was refusing to protect their groundwater. The Permanent

Representative of Peru in Geneva in discussions with the Working Group explained that the project for providing water to both cities and indigenous peoples had begun 30 years ago. Unfortunately it was undertaken without an appropriate environmental impact assessment which led to consequences. A recent assessment carried out by the local Government concluded that financial and other compensation was owed to the indigenous community however; it also determined that the land in question did not belong to these communities.

The Committee was divided as to whether or not this issue should be considered under the Early Warning and Urgent Action Procedure with some Members feeling the situation did not justify it whilst others claimed that land issues were always potentially inflammatory. It was acknowledged that the Human Rights Committee was also considering this case under its Individual Communications Procedure and due to the differences of opinion between Committee Members it was decided that a letter should be sent to Peru requesting further information. Following the response from Peru a decision can then be made as to whether this is situation warrants consideration under the Early Warning and Urgent Action Procedure.

Democratic Republic of Congo

There had been concerns raised by seven submitting organisations regarding the treatment of indigenous peoples there with the granting of logging rights and the establishment of national parks without their consultation. There were also concerns about the non-recognition of their rights to own, control and use their lands, territories and resources as well as the lack of legal guarantees to this end.

Congo last appeared before the Committee in 1996 where CERD expressed grave reservations regarding the situation of the Batwa. Ms January-Bardill suggested that as the next periodic report had now been received the Committee should bring forward its consideration to March 2007 and send a letter to the Government requesting on the status of these people to be considered in conjunction with the report. This was supported by the rest of the Committee.

Other States:

Ms January-Bardill reminded the Committee that the USA had been requested to respond by the end of July on the Western Shoshone case and had not done so. In addition information had been received from the UK on the Roma as requested however, the Committee had not yet had time to consider it during the present session.

Follow-Up on Individual Communications

Mr Sicilianos, Special Rapporteur for Follow-Up to Opinions on Individual Communications, recalled that in 2005 the Committee had decided to establish a procedure to follow-up its opinions on individual communications. Members were presented with a draft report on the status of individual

communications which was drawn up to be included in the annual report. The Committee were informed that the draft contained an annex listing all the cases in which CERD had found violations of the Conventions or provided suggestions or recommendations in cases of no violations. It also contained all information received from the complainant and the State Party up to 16 August 2006.

In the main body of the report was a more concise table showing follow-up replies from State Parties up to 16 August 2006. It highlighted the status of cases where the Committee had found violations of the Convention or made suggestions where there was no violation. On 16 August the Committee had adopted final opinions on 22 cases finding violations in 9 of them and making suggestions and recommendations in the others.

The report was adopted by the Committee.

Situation in the Non-Self-Governing Territories

In 2005 the Committee had decided to follow-up on the situation from 1991 onwards relating to Article 15 of ICERD. Following Timor-Leste being granted independence only 16 territories were considered. These were American Samoa, Anguilla, Bermuda, the British Virgin Islands, Cayman Islands, Falkland Islands (Malvinas), Gibraltar, Guam, Monserrat, New Caledonia, Pitcairn, Saint Helena, Tokelau, Turks and Caicos Islands, the United States Virgin Islands and Western Sahara. One of these is a United Nations-administered area and the others are governed by the UK, US, France and New Zealand. Mr Pillai observed that in many instances these territories were geographically larger and more populated than some states. The populations of these areas were also very mixed, however, there was no evidence of and no cases brought about racial discrimination. The Committee was informed however that there was a lack of awareness about the provisions of the Convention. As such the Committee decided that the State Parties should take measures to raise awareness of the Convention and also the States should include information on Article 15 in their reports.

Follow-Up on the Durban Programme of Action

The Committee reviewed highlights of the discussion in the Fourth Session of the Intergovernmental Working Group on the Effective Implementation of the Durban Declaration and Programme of Action held in January 2006 which focused on racism on the internet, complementary international standards and globalisation and racism. One of the main issues was how the identified procedural gaps in ICERD could be addressed and how the Convention could be strengthened.

Ms January-Bardill who was present at the January meeting said it had been noted that multiple and aggravated forms of racial discrimination such as genocide, defamation of religious symbols and hate speech were not adequately covered in State Party reports. In the January meeting some

State Parties had felt that complementary standards were necessary to fill the gaps whereas others felt that regional bodies such as the European Union could take charge of this role. The problem of uneven implementation was also raised due to the fact that the Committee's recommendations are non-binding and there was also a wish expressed for greater clarity with regard to the definition of cultural rights under Article 5 of ICERD.

Mr Pillai was also present at the January meeting and he claimed that a need had been expressed for the Committee to conduct country visits and to establish a uniform and tougher monitoring procedure for follow-up on its recommendations.

General Debate on the Situation in Lebanon

Due to the concern of several Committee Members it was decided in the opening session that a General Debate should be held to discuss the situation in Lebanon. Some of the Committee Members were annoyed that Israel had postponed the dialogue on its periodic report until the next session especially at such short notice. It was felt that the situation was too severe to ignore; Mr Lindgren claimed that if the Committee was prepared to neglect the most serious human rights situation of the moment then there was no point in holding the session as CERD was failing under its obligations as a human rights instrument. The Chairman however, issued a cautious warning that the Committee needed to ensure it stayed within its mandate and reminded the Members that the situation was more in the realm of the Security Council, General Assembly and the Secretary-General.

During the general debate held on 3rd August several Committee Members expressed doubts as to whether the situation was actually within CERD's mandate, especially given the lack of factual evidence as to exactly what human rights abuses have been and are being committed. Mr Thornberry and other Members claimed that the Committee could be seen as having a dual mandate with a narrow one on racial discrimination and a broader one as a human rights instrument of the United Nations. Under the broader mandate it was decided the Committee could voice its concern about the situation and the Members also voiced support for the position taken by other UN organs clamouring for peace. Many CERD Members expressed concerns that the conflict could lead to an increase in global terrorism and hatred of different groups. The Chairman also observed that as the Committee was meeting at a time when an area of civil society is severely suffering then it would be wrong to say nothing. It was decided that CERD should voice its solidarity with other bodies and send them a copy of the minutes of the general debate to help them in their decision making process.

However, due to differences between the Committee Members the statement on the situation in Lebanon was not adopted until over a week after the debate on the 11th August. Some members such as Mr Amir and Mr Lindgren felt that more should be done by the Committee and that a firmer stance should be taken. Other members such as Mr Kjaerum, Mr Pillai and Mr

Thornberry warned of overstepping the Committee's mandate and urged for caution with regard to the statement's content. The final statement eventually went to a vote in which several Committee members abstained as they felt the decision came too late and should have been issued at the start of the session. In the statement the Committee expressed a worry that the continuation of the conflict may intensify racial discrimination and hatred in the region and in the wider world. CERD also announced full support for the statements made by the Secretary-General and by the High Commissioner for Human Rights in this regard.

Discussion on Treaty-Body Reform and Other Meetings

The Committee was given an outline of the three meetings held this year to discuss the proposals for the on-going treaty reform. The Chairman or Mr Sicilianos represented the Committee at these meetings which were:

1. Inter-Committee Meeting held on the 19th - 21st June
2. Chairpersons' Meeting held on the 22nd - 23rd June
3. Malbun Meeting in Liechtenstein held on the 14th - 16th July

The Inter-Committee Meeting 19th - 21st June

CERD was informed that at the meeting all the proposals for reform were considered including the suggestion by the High Commissioner for Human Rights to unify the treaty bodies. There was little support for this idea but many other notions were more successful and so the Secretary-General requested that the dialogue be continued. The proposal from CERD for a unified body for individual communications was one of the more successful proposals along with the suggestion from CEDAW for the harmonisation of the work of the treaty bodies. This would involve the creation of a working group consisting of one member from each Committee and would aim at unifying the existing system rather than overhauling it. The proposal from CERD followed a discussion of the Committee in August last year and was included in the 2005 CERD Annual Report to the General Assembly in Paragraph 478. It involves creating a unified body for individual communications and was popular at the Inter-Committee Meeting with requests for more information at the Liechtenstein Meeting.

Also at the Inter-Committee Meeting CERD representatives outlined the Follow-Up Procedure, the links with the National Human Rights Institutions and NGOs, the revival of its Early Warning and Urgent Action as well as the Committee's reservations to a Human Rights Treaty. There were several other issues debated at the Meeting including the work of the Human Rights Council and its relationship with the treaty bodies, the importance of establishing a unified terminology amongst the different committees and the role of other institutions such as the National Human Rights Institutions and NGOs. It was proposed that a meeting between these organisations and the treaty bodies would be helpful to establish how they could aid the different committee's sessions.

The Chairpersons' Meeting held on the 22nd - 23rd June

CERD was informed that at this meeting the conclusions of the Inter-Committee Meeting were approved and there was also a review of the meeting with the Human Rights Council. It was decided in this regard that the treaty bodies should collaborate with the Human Rights Council but the independence of the bodies should be respected.

At the Meeting there was an unusually high level of Government Representatives present with around 19 in attendance all of whom insisted on the need to improve on the existing system. Many speakers expressed reservations over the High Commissioner's proposal for a unified treaty body and requested more time for it to be considered. However, other proposals were more successful and there was a more positive reaction to CEDAW's suggestion for a harmonised system and a Draft of Harmonised Guidelines was adopted.

The proposal by CERD was also well received including by the High Commissioner who announced it was a good step in the right direction. Russia was the only state to criticise the proposal as they claimed it was legally difficult to implement the Optional Protocol, however, they subsequently dropped their objections in the Liechtenstein Meeting. Other reservations were also expressed with the President of the Human Rights Council stating that the CERD proposal was in its preliminary stages and should first be considered by the other treaty bodies.

The Malbun Meeting in Liechtenstein held on the 14th - 16th July

Jane Connors, Senior Human Rights Officer at the Office of the High Commissioner for Human Rights, remarked that there were over 70 participants at the meeting and it demonstrated that there is a level of acceptance of the diagnosis of the treaty bodies system but many different opinions as to the correct cure. CERD was informed that at this meeting again the proposal by the High Commissioner was met somewhat unfavourably with no unanimous agreements over reform amongst the members due to differing views on the feasibility of the suggestions. With regard to the proposal by CERD it was generally felt that this could be implemented and no objections were raised as they had been at the Chairpersons' Meeting. The consensus was that the proposal would improve consistency and visibility and as such these benefits were not outweighed by one or two minor technical difficulties. Jane Connors stated that all proposals are still being considered including the High Commissioner's idea as well as suggestions from CERD, CEDAW and CRC and that any other suggestions were welcome.

The Committee Members raised several questions following the information on the three meetings. Mr Kjaerum voiced concerns over the suggested development of the Follow-Up Procedure and he stressed that although he wanted to see this area expanded upon it could not be done without first providing more resources and supports. Ms Connors agreed with this and announced that significant work was being done to strengthen the Follow-Up Procedure including new posts and an expanded budget which will be advertised shortly. Mr Amir and Mr Thornberry both commented on the

importance of a unified terminology but Mr Thornberry warned that “General Recommendations” should not be neglected and Mr Amir wished for the Committee to agree on terminology before there was a wider debate on this subject. Ms Connors again agreed with these statements and announced that the report on terminology and standardisation was to be resubmitted to the treaty bodies for their comments before confirmation. Overall it appeared that CERD were pleased their proposal had been warmly received and both Ms Connors and the Committee Members appeared to view the reform as still very much on-going and open to suggestion.

Dialogue with the United Nations Independent Expert on Minority Issues, Ms Gay McDougall

During its sixty-ninth session the Committee met with the newly-appointed United Nations Independent Expert on Minority Issues to try to find ways the Committee and Ms McDougall can cooperate with each other and pool resources to strengthen similar aspects of their work. The Committee was acknowledged by Ms McDougall as having a long and distinguished history on minority issues which she described as a key resource for others working in the field. It was also acknowledged that the Independent Expert could benefit CERD by attempting to fill the gaps in population statistics and disaggregated data which were lacking in many state periodic reports. Mr Sicilianos observed that many states were receiving mixed signals with regard to these statistics such as Ukraine who were criticised by the Advisory Committee to the Council of Europe for attempting to collect segregated data. Many people and Governments feel it is inappropriate to make these distinctions in the first place by collecting such data, however the Committee stressed that they were more effective when they had such information at their disposal. It was recommended that the Independent Expert could work closely with the Committee on this issue and try to provide help and support in collecting information.

Ms McDougall’s mandate is to uphold integrity and prevent genocide, to protect the right to identity through language and culture, to affirmatively ensure that there are effective measures of non-discrimination and to ensure the participation of minority groups in political life. In order to fulfil these directives the Independent Expert is focusing on promoting development programmes for poverty and social inclusion, which are issues intrinsically linked to the situation faced by many minorities. Through direct communication with Governments, conducting state visits and utilising CERD’s General Recommendations Ms McDougall hopes to be able to improve areas relating to education, early warning procedures, indicators of genocide and in obtaining data on population composition. The Independent Expert stressed that these were all areas she could work with CERD to improve.

In the conclusion to the dialogue it was decided that the Independent Expert would cooperate with the Committee’s Working Group on the Early Warning and Urgent Action Procedure to try and get more results in this area. Due to

the focus on education and the link between minorities and poverty the Committee considered holding a general thematic debate on education with regard to minority issues; in particular how discrimination in access to education was further entrenching minorities into poverty. It was also suggested that studies on the links between minority groups and poverty be further explored and the Independent Expert was to work with the Committee to try to assist in the collection of data on population composition.

Details of the Next Session

The Seventieth Session of CERD is due to be held in February-March 2007 in Geneva. At this session the periodic reports from Israel, Liechtenstein, Czech Republic, Former Yugoslav Republic of Macedonia, India, Canada, Antigua and Barbuda and the Democratic Republic of Congo will all be considered.

In addition the following states will be considered under the Review Procedure: Ethiopia, Nicaragua, Congo, Papua New Guinea and Togo. There are no general discussions or debates scheduled at this time.

References

State Reports:

Estonia

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CERD.C.465.Add.1.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CERD.C.465.Add.1.En?OpenDocument)

Yemen

<http://daccess-ods.un.org/TMP/8369867.html>

South Africa

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Oman

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Mongolia

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Denmark

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Norway

<http://www.ohchr.org/english/bodies/cerd/docs/CERD.C.497.Add.1.pdf>

Ukraine

<http://daccess-ods.un.org/TMP/4977498.html>

Alternative Reports:

The alternative reports for all the states can be found on the CERD webpage on the following link:

<http://www.ohchr.org/english/bodies/cerd/cerds69.htm>

Concluding Observations:

Concluding Observations for Estonia

<http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/estonia69.pdf>

Concluding Observations for Denmark

<http://www.ohchr.org/english/bodies/cerd/docs/AdvanceVersion/denmark69.pdf>

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