

**International Movement Against all forms of  
Discrimination and Racism (IMADR)**

**72<sup>nd</sup> session of the UN Committee on the Elimination of  
Racial Discrimination**

**18<sup>th</sup> February – 7<sup>th</sup> March 2008**

**Report**

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## **Introduction**

The 72<sup>nd</sup> session of the CERD convened between February 18<sup>th</sup> and March 7<sup>th</sup> 2008. The state reports considered during this session came from Fiji, Italy, the United States, Belgium, Nicaragua, Moldova, and the Dominican Republic. The CERD received reports from other UN agencies during the sessions as well as enjoying a strong level of informational support from non-governmental groups through lobbying in between meetings. The ensuing discussions were productive both in terms of the states concerned but also in terms of the broader problem of racial discrimination and the problems the CERD will have to deal with in future. Of the states mentioned in the review procedure, only one (Gambia) prompted serious discussion due to non-compliance. This must be seen as very positive, with the other states concerned (Monaco, Panama, and the UAE) keen to assure the Committee that their overdue periodic reports were forthcoming. There was also some discussion towards the end of the session of the CERD's contribution to the follow up to the 2001 Durban World Conference Against Racism (WCAR).

This report is structured to reflect the details of the session in accordance with IMADR's core areas of interest.

## **Situation of Roma and other specific minority groups or indigenous peoples**

Issues surrounding indigenous groups and the Roma populations of the European nations arose during of the state reports during the 72<sup>nd</sup> session, with the exception of the Dominican Republic who explained to the Committee that the indigenous population of their island of Hispaniola had been exterminated centuries ago, making them unique in this respect. The ensuing discussions highlighted often subjective definitions of the term "indigenous" even after the enhanced clarification given in the International Labour Organisation's convention 169. Regarding the Roma/Sinti populations of Europe, much valuable information was gleaned about the problems such groups currently face.

### *Fiji*

The Fijian delegation approached the issue of indigenous rights in an unusual manner owing to the dominant position native groups held within Fijian society. In acknowledgement of this, the delegation explained that the usual definitions of the term used in international law may not apply to the state of Fiji, adding that the term applies only in the historical sense, i.e. in reference to the colonial past of the islands. Details were expounded regarding the lands commission, established to ensure that native groups retain possession of much of their ancestral lands, with individuals qualifying through their father. Committee member Mr. Thornberry noted that the state should ensure that affirmative measures such as this are aimed at groups genuinely in need, rather than those only with the appropriate status. Regarding the use of the term indigenous, the Committee concluded that the state should reflect upon the definition and how it relates to international law and human rights.

### *Italy*

The situation of the Roma had been a well publicised issue coming in to the 72<sup>nd</sup> session, with a report by the Special Rapporteur on contemporary forms of racism Mr. Doudou Diène's expressing concern at the rising level of xenophobia in the country which had primarily affected this often poorly integrated group. The delegation informed the Committee that the Roma/Sinti population could be broken

down into three broad groups or “waves.” The first had been in the country for centuries, the second came shortly after the break up of the former Yugoslavia, whilst the third wave had come within then past few months as the EU had been enlarged to include more Eastern European states (particularly Romania in 2007). NGOs had reported instances of forced evictions and expulsions, even including EU citizens under public order measures which Committee member Mr. Kjaerum insisted were intended to be used only against terrorist threats. It was noted, furthermore, that in spite of the incendiary rhetoric of certain politicians, in particular the former (and since re-elected) Prime Minister Silvio Berlusconi who called for zero-tolerance regarding certain immigrant groups, no hate speech cases had been brought before the courts.<sup>1</sup> Concerns were raised by the Committee over the integration of Roma/Sinti groups into Italian society as well as fears expressed over a draft citizenship law which would make it even harder for the members of these groups to attain eligibility. The delegation argued that the transitory nature of these groups made it difficult for them to gain citizenship due to their irregular working patterns; in turn this makes it difficult to gain stay permits which then makes it difficult to access public services such as healthcare and education. It was also revealed that the Roma had failed to meet the settlement criteria which would have seen them included in a 1999 bill for the protection of linguistic minorities. The delegation assured the Committee, however, that steps were being taken to aid the integration of these groups, with 7% of the €50 million earmarked for migrant inclusion in 2007 (set to double in 2008) focussed on the Roma population. Inclusion in education and efforts to counteract housing marginalisation represented a major part of this drive. On a European level, the delegation noted that it had been present at a recent conference on the situation of the Roma people and that it was working with the government of Romania to resolve some of the issues concerning these migrant groups.

#### *USA*

The situation of native groups in the United States brought a number of NGOs to the CERD. The US delegation added to the debate begun with Fiji over the use of the term “indigenous,” remarking that there remained no universally accepted definition of the term and stating its disappointment in the outcome of ILO convention 169 which it regarded as unworkable. US representatives, upon being questioned about their refusal to acknowledge the tribal status of native Hawaiians, noted that they currently recognised over 560 tribes. The majority of the debate concerned the reports over unilateral abrogation by the federal government of treaties signed with Native American groups as well as other encroachments onto indigenous land claims. The delegation argued that there were in place open and transparent processes providing for such abrogation when Congress deemed it appropriate, after which appropriate compensation was given to the groups concerned. The Western Shoshone, who were well represented at the session, continued the delegation, were compensated for previous encroachments. The country rapporteur for the United States, Mr Sicilianos, echoed the calls of a shadow report from indigenous groups that all sacred lands be restored to their indigenous owners and full consent be obtained before any further encroachments were made. Addressing the issue of the construction of a fence along the border with Mexico, running through Tonoho O’odham lands, the

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<sup>1</sup> To bring this argument up to date, media reports have detailed the plans of Rome’s newly elected Mayor which include destroying over 80 unauthorised Roma camps around the city; *The Economist*, May 1<sup>st</sup> (2008), via [http://www.economist.com/world/europe/displaystory.cfm?story\\_id=11294657](http://www.economist.com/world/europe/displaystory.cfm?story_id=11294657)

delegation stated this had benefited this group as the reduction in immigrants passing through their lands had reduced crime and environmental damage.

### *Belgium*

The Belgian delegation described the situation of the Roma as precarious regarding their access to work, health and education in the Flemish region. In contrast they spoke at length of the new mediation centres established in the Walloon region since 2001, increasing awareness of the traveller community as well as introducing the travellers themselves to Belgian society. They also described measures to improve the situation of the Roma in the labour market. Members of the Committee, however, commented that they had in fact received more information regarding the positive steps taken in the Flemish region, whereas the information regarding the mediation centres was all that could be found on the integration process in the Walloon region. The delegation also mentioned a new scientific monitoring body which had been established to study social inclusion focussing on travellers, with results expected in 2009. Regarding the definition of these groups, the delegation referred to the groups from Eastern Europe as Roma/Gypsies and those from Western Europe, using caravans for travel, as Roma/Travellers.

### *Nicaragua*

The Nicaraguan report detailed the existence of two autonomous regions for the indigenous populations on the Atlantic/Caribbean coast and mentioned its support of the recent UN Declaration on the Rights of Indigenous Peoples. The devolved nature of the Nicaraguan government allowed for a large degree of regional independence regarding political, administrative, and educational affairs, etc, as well as the freedom to make decisions regarding linguistic, historical, and ecological matters. They argued that the economic disparity between these regions and the rest of the country, which aroused concern from the Committee, had historical underpinnings and had been exacerbated by recent natural disasters. Adding to the topic of defining “indigenous” groups, the Nicaraguan delegation classed the groups present in the region before 1492 as indigenous.

The Committee was anxious to learn about the progress made in demarcating and granting title to the lands of the Awas Tingni after a ruling handed down by the Inter-American Court of Human Rights. The CERD had received a petition from representatives of the group in 2006 and 2007, under its early warning and action procedure, reporting threats made against this indigenous group, unauthorised granting of license to use the natural resources in the aforementioned regions, and a failure to carry out the ruling of the human rights court. The delegation assured the Committee that the demarcation process was more than half way through and would be completed by July 2008.

### *Moldova*

The Roma population in Moldova, which benefited from the support of an active NGO community, was described as 12,271 in the state report (as of 2001) although Mr Amir cited figures of between 50 and 200,000. The delegation described a government decree of 2006 which had specifically targeted this group and its full integration into society; most had received identification documents under the passport system (as of 2007). In particular the Roma education situation was discussed; the delegation argued that although the migratory nature of Roma families tended to interrupt the children’s schooling leading some portions of the Roma

population to conclude that separate schooling may be the best way to address this problem, the government remained suspicious of such plans, however, fearing the segregation of the Roma community. The Committee suggested some form of subsidy for the indirect costs of schooling to help the Roma. Details also emerged of a quota of 15% for disadvantaged groups entering higher education, which included Roma.

### **Discrimination based on descent**

Issues concerning descent based discrimination were not as much of a focus during this session as some other topics, although it must be noted that the topics highlighted within the chapters of this report are not exclusive and most of the issues under discussion can be said to cover a wide range of issues of interest to IMADR. For example, discussion of the treatment of groups of African origin within the Dominican Republic could easily have been detailed under the heading “Immigration Law/Policy.”

#### *Fiji*

There was some concern from the Committee over the use of alternative forms of registration for new-borns, with one kind detailing the descent of the father in order to ascertain eligibility for land schemes. Both Mr Peter and Mr Lindgren worried that separate birth registers may endanger a united Fiji.

#### *Dominican Republic*

The question of discrimination against the Haitian population in the Dominican Republic was a matter of concern for the Committee. Mr Prosper asked whether the perceived discrimination came as a result of this group’s poverty, its skin colour, or its immigrant status. This problem, felt the Committee, may not be helped by the refusal of the delegation to acknowledge the distinct ethnic groups within the country as well as its maintenance that there exists no systematic racial discrimination in the republic. This attitude struck Mr Lahiri as schizophrenic as the delegation expressed its desire to uphold the principles of the ICERD whilst refusing to admit to its problems. To the contrary, Mr Avtonomov, as country rapporteur, noted a level of structural racism based on European aesthetic trends, whilst Mr Kjaerum saw a hostile political discourse against Haitian immigrants used to amass political power. Such confusion was evident in the contradictory statements emanating from the report which refused to recognise a population of African origin before stating that over 90% of the population were of African lineage. Similarly to Fiji, there were concerns over reports of different coloured birth certificates according to parentage, and even a refusal to grant some any kind of birth certificate. The delegation expressed its disbelief that the Committee found it hard to accept the inclusion of physical characteristics on identification documents, such as the colour of someone’s skin, as a non-discriminatory measure.

### **Multiple discrimination against women belonging to minorities, indigenous women, and migrant women**

Multiple discrimination against women was a topic that arose mainly through brief discussions of trafficking in persons although there was a more substantial covering of the subject during the United States report. Some mention must also be given to the excellent reports given in between sessions by US NGOs, a number of

whom focussed upon this area.

#### *United States*

During the US hearing, there emerged details of a worrying disparity in the sexual and reproductive health of minority women; HIV/AIDS was now said to be the leading cause of death for black women between the ages of 25-34. In their concluding observations the Committee recommended reducing the eligibility barriers to Medicaid, facilitating access to contraception and an increase in sex education. The Committee had also received alarming reports concerning discrimination by law enforcement officials against minority women, including transgendered women. The delegation acknowledged a serious problem within the Native American population of violence toward women, with the Office on Violence Against Women providing over 100 million US dollars to Indian tribal governments since 1996. The Committee urged a full investigation into sexual violence, in particular against minority women. Furthermore, the justice department passed laws in 2006 increasing the powers of police in dealing with domestic violence. The government's civil rights division had seen a 700% increase in the number of human trafficking cases filed in the last seven years.

#### *Nicaragua*

The Committee urged the state to combat maternal mortality rates in the Atlantic autonomous regions and recommended special protections for indigenous women after some reports of double discrimination against Creole women.

#### *Dominican Republic*

Double discrimination also featured in the Dominican hearing as the Committee addressed reports of the absence of labour laws in tax free zones in which women, usually of African descent, were particularly at risk. After having detailed the areas in which most migrants worked, the delegation was warned by Mr Kjaerum that these industries are very often the kind that uses trafficked labour. In response to the reported increase in the level of women trafficked from the republic for prostitution, the delegation assured the Committee that steps were being taken.

### **Right to development**

The development of minority groups was a regular issue at the 72<sup>nd</sup> session, with the equal access to social services, cultural and political enrichment salient topics. The United States report promoted an interesting debate regarding the causality between racial discrimination and underdevelopment.

#### *Fiji*

The Ministry of education, it was reported to the CERD, had launched programmes to eliminate racial discrimination in schools, as those within the Indo-Fijian communities tended to be less integrated. The Committee expressed some concern over the method of punishing discriminatory schools through the removal of funds and public status, fearing that discriminatory schools may simply continue to discriminate with private status. The delegation later added that not all government funds were removed in such cases. Interestingly, despite the dominant position of the indigenous people in Fiji (mentioned earlier), this group showed persistently poor educational performance. There was also some mention of the potentially adverse

effect of current land distribution schemes on the development of non-indigenous groups.

### *Italy*

The education theme continued regarding the Roma group in Italy, worries expressed about the access to schools. The Italian representatives assured that everyone on Italian soil had the same right to educational services, as guaranteed by the Turro-Napolitano immigration law. All students are allowed to stay in school, even without stay permits, and there were currently 600,000 foreign students in Italy.

### *USA*

During the US session it emerged that there had been a 9/11 backlash which had harmed the employment opportunities for persons of Arab, Muslim, Middle Eastern or South Asian descent, with the Equal Employment Commission having received large numbers of complaints from affected people. The delegation was pleased to report that the poverty gap between white and minority groups (African Americans and Hispanics) had narrowed and that the jobless rate for immigrants had, in 2005, dipped below that for American born workers for the first time in a decade. Gaps in educational attainment had also shown signs of narrowing.

The issue of poor development of certain groups was made more pertinent at the 72<sup>nd</sup> session as a large number of NGOs present focussed on the disproportionate damage done to African American communities in the aftermath of Hurricane Katrina. The lack of development in groups can manifest itself through poor access to education and health services, segregated housing and a low rate of home ownership in certain areas. The US delegation admitted that they were vexed by such poor development but felt it important to distinguish between disparate levels of development caused by discrimination and that which may be caused by other variables, such as class, poverty, or culture. Mr Sicilianos responded that it was clearly stated within the ICERD that states should address all types of discrimination, regardless of intention, focussing instead on effects which would include indirect discrimination such as this. Regarding the special measures outlined in ICERD Article 4, the delegation noted that such decisions fell within the remit of the states. This assertion prompted the Committee's response that the US bore the responsibility for the individual states as it constitutes one party within international law.

### *Belgium*

Linguistic issues were a feature of the Belgian presentation. The Committee asked why a country with so many minority languages had not signed up to the European Charter for Regional or Minority Languages, amid reports that learning to speak Dutch was a precondition for receiving social housing in certain areas. The delegation assured the Committee that it actively encouraged the teaching of immigrant groups in their language of origin to retain strong links with their homelands. There was also some discussion of the optional banning of headscarves in Belgian schools, which the Committee warned could lead to *de facto* discrimination against Muslim girls.

### *Nicaragua*

The use of minority languages in education was also a prominent issue in the Nicaraguan session as the delegation highlighted the benefits of their Regional Autonomous Education System which was geared toward comprehensive education

for the indigenous communities. On the Caribbean coast a successful literary drive, “Yo, si puedo” (“Yes, I can!”), has benefited these groups while a bilingual education combining Spanish with Miskito, Ulwa, Creole, or Garifuna is also available, with 5<sup>th</sup> and 6<sup>th</sup> grade texts already available in indigenous languages.

#### *Moldova*

Similarly, in Moldova, a 2001 law has created conditions for the observance of minority rights to education in mother tongues and has promoted scientific research on minority history, culture and languages. Bilingual education is already available in Bulgarian/Moldovan from nursery to secondary school and certain university courses are already available in Bulgarian and Gagauz. Mr Amir did raise some concerns about the absence of schools for the Muslim population.

### **Anti-racism legislation**

Much of the discussion focussed on the desire of states to protect freedom of speech while upholding the ICERD’s article regarding the prohibition of hate speech (Article 4), the Committee assuring the state parties that the two were compatible. The Committee recommended to a number of parties that more comprehensive legislation be implemented.

#### *Fiji*

The Fijian report left the Committee with concerns that there was little specific legislation dealing with ICERD, merely the assurance that the courts were instructed to give due regard to international law. Racially motivated crimes, the Committee heard, are not specifically targeted although allowance for aggravating circumstances is allowed. Regarding the censorship of racist organisations, the Committee stated that there ought to be a balance between censoring free speech and preventing incitement to discrimination.

#### *USA*

In the United States, it was reported, 47 states have hate crime laws. Interestingly, the US delegation argued the federal government was reluctant to restrict freedom of expression as it believed that the lack of intrinsic merit in racist ideas would cause them to fail in a free society. Nevertheless, the Committee recommended that more comprehensive legislation be passed in this area.

#### *Belgium*

Recent legislation in Belgium, in 2003, has recognised incitement to discrimination and racist harassment as forms of discrimination as well as increasing the powers of the Centre for Equal Opportunities and Action to Combat Racism. Racist acts, including racist propaganda, can now result in the suspension of civil and political rights. The recurring issue associated with the burden of proof of discrimination has been alleviated by the admission of statistical data during civil cases. Returning to the theme of free speech vs. racist rhetoric, it was reported that the constitutional court had repealed part of a previous law on the dissemination of discriminatory messages, citing freedom of speech as its justification. The delegation admitted that there was currently no legislation prohibiting racist organisations, although individual prosecutions were possible, adding that the conviction of the chairman of the National Front had been upheld on appeal.

### *Nicaragua*

The Nicaraguan delegation stated that the ICERD takes priority over domestic legislation in its courts or, failing that, a reservation would be made to the Convention. Regarding new legislation to protect indigenous groups, the Nicaraguan report detailed a number of measures. In concordance with the ICERD, the Nicaraguan criminal code contains a definition of discrimination along with the possible sanctions against offenders, including imprisonment. The Committee concluded that the state should still enact specific legislation to ensure indigenous rights as well as criminalising racist organisations.

### *Moldova*

A 2001 law in Moldova provides for the protection of linguistic, ethnic, cultural, and religious identities while a 2004 national human rights action plan incorporates the protection of regional or minority languages set out in the EU Charter. Moldovan law also prohibits the dissemination of extremist material.

### *Dominican Republic*

Following the lead of Nicaragua, the Dominican delegation stated that a draft criminal code before Congress, if successful, would criminalise racial discrimination. It was also remarked that international treaties to which the Republic was a party were considered to supersede national legislation (as in Nicaragua). The delegation claimed to combat hate speech via imprisonment as well as fines, if the action was designed to provoke feelings of hatred within the broader population.

## **National human rights commissions/ombudspersons**

The Committee was anxious to find out about the presence of or potential plans for independent national human rights commissions/ombudspersons. The 72<sup>nd</sup> session revealed that this is an aspect of the ICERD that many countries have yet to address. Details were given of other bodies established to uphold and monitor human rights although the majority had not yet reached the requirements specified within the treaty.

The opening day of the 72<sup>nd</sup> session saw a presentation from Gianni Magazzeni, coordinator of the National Institutions Unit of the Office of the United Nations High Commissioner for Human Rights (OHCHR), on the interaction between national human rights institutions and UN human rights treaty bodies. He outlined the strategy of the OHCHR over the past year of ensuring the support and integration of treaty body recommendations within the office and providing subsequent support to national level human rights institutions. The office commended the allowance of the 'A' status accredited national human right institutions to participate in Committee sessions. It was reported that accreditation to the International Coordinating Committee of National Institutions for the Promotion of Human Rights (ICC) was encouraged amongst all the states being reviewed at this session, in accordance with the Paris Principles. One expert enquired as to why OHCHR offices were needed in countries which already had strong national human rights institutions, to which Mr Magazzeni responded that there indeed had been problems with a lack of communication between these organisations in the past and that the OHCHR offices now worked with 'A'-accredited institutions as part of an exit strategy in order to focus their effort elsewhere and avoid the needless duplication of work.

### *Fiji*

Fiji reported the recent establishment of the Standing Committee on Human Rights and Equal Opportunities which was now responsible for enforcing the ICERD, amongst other human rights treaties. There was an interesting debate over the withdrawal of EU funds from the government's race relations unit, with Mr Kjaerum asserting that this may have been as a result of the human rights commission's bias toward the coup-makers of 2006. The head of delegation responded that this was inaccurate, that the human rights commission was independent of the government and that all EU funding was withdrawn across the board following the coup with the race relations unit receiving no special treatment. Mr Kjaerum maintained that the human rights commission needed to re-establish its previous impartiality to meet the guidelines of the 1993 Paris Principles.

### *Italy*

Similarly, the Italian delegation detailed its newest human right institution, the Italian Office Against Racial Discrimination within the Ministry of Rights and Equal Opportunities, with the Committee lauding such measures whilst urging further steps towards the independent body envisioned in the ICERD. The delegation described the Committee against discrimination and anti-Semitism, based within the ministry of the interior, as responsible for monitoring risks and proposing preventative measures. The Committee maintained, however, that these bodies were not a replacement for a truly independent human rights institution; for example, they would be unable to bring legal action against the government whilst being part of it. One member of the delegation gave an intriguing argument concerning the formation of such bodies, claiming that genuinely independent human rights bodies were a rarity, remarking that only in Ireland could there be found such a quasi-judicial body and also that the independent commission in the United Kingdom had been 30 years in the making.

### *USA*

In a similar vein, the US reported that it had a number of specialised agencies, as opposed to one centralised institution to secure human rights. It added that the body most closely resembling the type of organisation required by the ICERD was the Civil Rights Commission which examined the adequacy of US non-discrimination laws, monitored other government agencies and reported back to the President and Congress. Nevertheless, the Committee recommended a fully-fledged independent human rights institution.

### *Nicaragua*

The Nicaraguan delegation reported positively on the establishment of a specific office for the protection of ethnic and indigenous communities by the human rights ombudsman, with permanent offices in each of the autonomous regions. The special ombudsman, it was revealed, could receive and investigate complaints as well as initiating their own investigations. The Committee welcomed this news and suggested that ombudsmen's offices also be set up in the central and northern regions.

### *Moldova*

The Bureau of Inter-Ethnic relations in Moldova serves to uphold the rights regarding ethnic and cultural identities as enshrined in the Moldovan constitution. The Committee recommended elevating the status of Moldova's Centre for Human Rights

to that of a national human rights institution in compliance with the Paris Principles.

### **Immigration law/policy**

Many of the states engaged in discussion concerning the establishment of asylum and integration centres. Italy and the Dominican Republic stood out as countries in which immigration was a prevalent political issue.

#### *Fiji*

The Fijian delegation gave detail of efforts to increase immigration to Fiji after a high rate of migration, particularly of the Indo-Fijian population, resulting from the instability of recent years. Permanent resident status is being offered to former citizens who wish to invest in Fiji. The Committee expressed some concern that the practice of issuing visas only to those who can prove their descent may be construed as discriminatory.

#### *Italy*

Italian immigration policy constituted a major part of their discussion in light of recent events, with public discourse in the country dominated by the irregular entry of foreigners. The Amato Ferrero draft bill, under discussion in parliament at the time of the session aimed to properly manage flows of immigration to move in sync with the labour market. The delegation defended the move as a structural rather than an emergency measure. The bill will also develop the inclusion of migrants into society and implement repatriation mechanisms for failed migrants. Members of the Committee later expressed concern about the safety of those unsuccessful migrants who returned to Libya and Egypt. Legislation from 2005 simplified the refugee procedure and has created a Centre for Identification of Asylum Seekers ensuring healthcare, legal aid, interpreters, etc. However, the Committee was concerned about the conditions in new temporary stay centres urging that they be brought in line with international standards. Some Committee experts spoke about the current difficulty Africans experienced in gaining an Italian visa, suggesting bilateral arrangements with African countries might better manage the problem. The Committee also recommended that Italy sign up to the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.

#### *USA*

In a busy session there was little time to discuss US immigration although some attention was given to US policy since 9/11, including the detention of immigrants, as well as some concern expressed over the construction of the fence on the Mexican border. The US delegation responded that 9/11 had not had disproportionate affects on the immigration rates from the Middle East or South Asia.

#### *Belgium*

Much of the Belgian discussion focussed on the procedures for dealing within unaccompanied minors seeking asylum. The delegation now assured that the previous system had been improved upon, with guardians now assigned to ensure the safety of minors. The Walloon region exercises a voluntary integration program for immigrants including French language training. The Flemish region has a similar program with emphasis placed on the independence and civil integration of immigrants. Despite these measures, the Committee went on to recommend that a

more positive social policy toward migrants be encouraged, with continued moves to improve integration.

#### *Nicaragua*

A new Nicaraguan law promises to provide new avenues for migrants to obtain legal status, with a reported 1,300 Salvadorian refugees in the country without regularised status. The delegation also stated that a bi-national agreement with Costa Rica was in progress to better manage migrant flows between the two states. A number of new offices had also been set up to inform migrants of their rights whilst in Nicaragua.

#### *Dominican Republic*

The Dominican delegation was keen to stress that the problems caused by waves of illegal immigrants (emphasising the problems caused by six maritime and one land border) had exceeded the government's capacity to deal with them. The issue of repatriation was a concern for the Committee, with reports received of arbitrary and forced removal of large numbers of people fitting certain racial profiles. The delegation stated that the repatriation mechanism was a practice carried out in co-operation with the Haitian authorities, different (more humane) than deportation in that there were fewer legal ramifications for those repatriated. It was also revealed that those who had been with a Dominican partner for 10 years, or those who had children living in the Republic for over 10 years could not be removed. Citizenship was also reportedly unavailable to those classed as "in transit", although the Committee cited reports of individuals still classed under this category after residing within the country for more than 10 years. The Committee recommended naturalisation in these circumstances. Mr Kemal posited the positive aspects of migration, including a large and ready supply of labour, arguing that the state should try to focus on these aspects.

### **Racism in the administration of justice**

Racism in the administration of justice mainly concerned police malpractice, under-representation of minority groups in law enforcement organisations and racial disparities in prosecutions.

#### *Italy*

Continuing with the focus on the Roma/Sinti groups in Italy, the Committee voiced concerns over this group's representation on the police forces as well as the absence of statistics detailing the number of Roma in the prison population (which had been requested in the previous session attended by Italy). The delegation was informed of reports received by the CERD of illegal force used by police forces against the Roma. The Committee, in its concluding observations, stated that the government must ensure that everyone is aware of their legal rights, adding that the small number of racial discrimination prosecutions in the country may well be due to a general lack of awareness.

#### *USA*

The US presentation, and the subsequent debate, focussed largely on the topic of racism in the administration of justice, with the NGO contingent particularly

vociferous on this subject. The delegation mentioned that proof of intent was required by the Supreme Court in claims made against public employers, a policy which Mr Sicilianos argued made the process very hard for the claimant, urging a sharing of the burden of proof in such cases. It was also asked if the US might consider withdrawing its reservations regarding discrimination in the private sphere, to which the delegation responded it could not do as this reservation protected what are held to be key individual freedoms (harking back to the balance between freedom of speech and protection from discrimination discussed in previous topics).

The US report led to an interesting debate over the use of racial profiling and its positive and negative aspects. After reports heard by the Committee of negative racial profiling used by law enforcement groups in the US, the delegation stated that guidelines were given to federal law enforcement groups regarding racial profiling, prohibiting their use as a proxy for criminality. When asked why any kind of profiling was needed the delegation responded that it was obviously still necessary for basic identification purposes; federal funds were removed, however, from those found guilty of negatively using racial profiles. The Committee argued that, intentional or not, the racial disparities in the prison population were an indication of racial discrimination in the administration of justice, despite the delegation's assertion that recent data had shown the growth of African Americans in incarceration to be below that of Hispanic and white non-Hispanic groups.

Furthermore, contrary to NGO reports, the delegation denied any statistical evidence in support of racism during the capital punishment process. The Committee had also received alarming reports concerning the sentencing of young black males to life without parole, some sources giving figures as high as 90% of the total, which led to a recommendation during the Committee's concluding observations that this practice be stopped. Questions were also raised over the potentially discriminatory results of higher sentences for crack cocaine offences, an issue which was reportedly being examined by Congress. The practice in many states of disenfranchisement for those with criminal convictions (estimated at 5.3 million black males) also concerned the Committee who recommended that this only apply to the most serious offences and that voting rights be restored upon release. The Committee concluded by recommending an independent body for monitoring abuses by law enforcement groups.

### *Belgium*

Belgium, by contrast, gave details of its Parliamentary Committee on Police Oversight which stands completely independent of the police force. Referring to a 2005 study by the National Institute on Criminal Statistics and Criminology that found foreigners were treated more harshly by judges and prosecutors, Mr Kjaerum was anxious to know if plans for multicultural and diversity training had been implemented. The delegation did comment that the percentage of foreign born federal policemen had risen from 10-12% between 2003 and 2006.

### *Moldova*

Mr Amir asked the Moldovan delegation about reports of racial profiling by law enforcement officials concerning Africans, Asians and Gypsies who appear different than the majority, questioning why no such cases had been brought to court. The delegation assured that any observations of harsher treatment against the Roma came as a result of the type of offence concerned. Associated was the Committee's concern that there was a lack of serious penalties for racist offences in the country, for

example racist organisations suspended rather than banned (as required by Article 4, paragraph (b), of the Convention). The Committee recommended that a legal definition of discrimination be adopted, that the burden of proof in civil racial discrimination cases be shared, and also that there should be more training within the justice system for those applying criminal law to racist organisations.

### **Development in the working methods of the Committee, including partnership with NGOs and other UN bodies**

The 72<sup>nd</sup> session saw an excellent contribution from NGOs, with a particularly large number coming from the United States. The delegation from Fiji announced its recognition of the Committee to receive complaints from Fijian NGOs under Article 14 of the Convention; the Committee urged non-compliant countries to recognise this article. In an intriguing debate, a number of Committee experts raised their objections to the practice of placing reservations upon a state's recognition of ICERD, an issue which came up again during the review process. Mr Peter later expressed his concern that the ICERD was no longer water tight and suggested a protocol ought to be drawn up to help the Convention keep up with the ever-changing nature of racism, with the CERD acting as a think-tank for the UN on this issue. Religion, in particular was a popular topic raised. This, however, prompted others to respond that their position as independent experts, as opposed to state representatives, placed the alteration of the ICERD beyond their remit. Mr Kemal raised the problem of the delay between the receipt of reports and their consideration during which time many of the details therein have gone out of date. The Committee also heard further reports from representatives of the OHCHR and the ILO concerning new measures for the elimination of indigenous groups and the protection of indigenous rights.

#### *OHCHR*

Julian Burger briefed the Committee on the recent General Assembly Declaration on the Rights of Indigenous Peoples. He argued that the two major themes within this declaration were those of self-determination and non-discrimination, making strong recommendations to states as to what should be done to rectify the situation of indigenous groups (something which Mr Burger recognised as unusual for a declaration). Mr Burger highlighted a number of features he felt would be of interest to the CERD, many of which were in fact relevant during the 72<sup>nd</sup> session. He noted the declaration's recognition of the right to self-determination of indigenous groups, which could be interpreted as a right to self-government or autonomy, as well as the introduction of the notion of "free, prior, and informed consent," associated with the forcible dispossession of indigenous lands which was an issue discussed during the US presentation (noted as different from the "consultation" set out in ILO convention 169). The OHCHR felt the main benefit of the declaration would be to provide a framework for negotiation between government and indigenous groups on an equal footing. It also includes articles addressing indigenous groups' spiritual relationship with the land and the right to an impartial land demarcation process, relevant to the Nicaraguan report. Mr Burger added that there were 300 to 400 million indigenous peoples living in 60-70 states around the world, with up to 40% now living in urban environments

#### *ILO*

Martin Oelz of the International Labour Organisation (ILO) spoke to the

Committee of new promotional materials developed by the ILO, particularly a booklet entitled “Eliminating discrimination against indigenous and tribal peoples,” providing details on how to identify discrimination in the workplace. Mr Oelz regretted to report, however, that of the four core labour standard issues addressed by the organisation, the one which had received the least funding was racial discrimination, resulting in no specific plan for discrimination at the ILO. An expert expressed concern that ILO conventions were out of date with current understanding. Mr Oelz believed the new Declaration on the Rights of Indigenous Peoples was complimentary to ILO convention 169.

#### *Follow-up process*

The review procedure for this session of the CERD was originally intended to consider five states parties. However, the overdue reports from Bulgaria, Panama, and Monaco had either been received or were in the process of being produced. This left only the United Arab Emirates and Gambia to be considered. The UAE sent a delegation to Geneva to assure the Committee that it intended to report to the CERD soon, and that it had every intention of fulfilling its obligations under the Convention.

The review of Gambia’s situation was extremely interesting with Mr Ewomsan, as rapporteur, noting that the state had not sent any reports since its initial offering in 1980. As this was the third such review procedure regarding this state, Mr Ewomsan suggested that a list of issues be sent in order to re-establish a dialogue between the state party in question and the Committee. This suggestion provoked an interesting assertion from Mr Lindgren that the sending of such a list would simply condone the actions of states in non-compliance with the treaty; he questioned the recent working methods of the Committee in this respect. Madame Dah, as chairperson, stated that the sending of questions was indeed an agreed upon approach to such instances, as well as the sending of a list of late states within the CERD report sent to the General Assembly. Mr Prosper argued that the Committee should send a warning to the state and ought to begin to consider methods to penalise such states, perhaps publicly labelling them as in breach of their treaty obligations. He was particularly concerned that many states simply sign up to similar conventions, gain the recognition and the praise of the international community, and make no efforts to actually live up to the subsequent obligations. Mr de Gouttes reminded the Committee that the review procedure without the input of the state was in fact intended as the penalty.

#### *Discussion on contribution of the Committee to follow up on the World Conference Against Racism*

The Committee discussed its latest contribution to preparations for the Durban Review Conference to be held in 2009. This conference will follow up on implementation of the Declaration and Programme of Action adopted at the 2001 WCAR. The discussion focused on a newly prepared summary of the CERD’s work over the past 8 years, generated in response to a questionnaire on implementation of the Programme of Action since 2001. It detailed many states lack of political will and implementation strategies which had blighted the progress of the CERD. This had also resulted in the failure to adhere to the goal of universal ratification of the CERD as set out in the Durban plan of action; currently 20 states short of full ratification two years after the deadline. The document highlighted racial profiling and multiple discrimination as emerging forms of racial discrimination. Mr Thornberry and Mr Diaconu felt that the document should not make it appear that the Committee was not comfortable with its own achievements. The Committee, with these amendments,

agreed to adopt the main body of the report, which was later submitted to the Durban Review Conference's Preparatory Committee, for its consideration when drafting the outcome document for the upcoming Review Conference.

### **Next session**

The CERD is next scheduled to meet between the 28<sup>th</sup> July and the 15<sup>th</sup> August 2008. During this time it will consider reports from Ecuador, Switzerland, Sweden, the Federal Republic of Germany, Austria, Togo, Namibia, and the Russian Federation.

### **References**

The full text of state reports (in English, although all are also available in Spanish, Russian, and French) can be found through the following links:

#### *Fiji*

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/400/26/PDF/G0740026.pdf?OpenElement>

#### *Italy*

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/411/25/PDF/G0641125.pdf?OpenElement>

#### *USA (follow hyperlink to Word document)*

<http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>

#### *Belgium*

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/441/74/PDF/G0644174.pdf?OpenElement>

#### *Nicaragua*

<http://www2.ohchr.org/english/bodies/cerd/docs/AdvanceVersions/CERD.C.NIC.14.pdf>

#### *Moldova*

CERD/C/MDA/7 (6 September 2006)

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/452/14/PDF/G0645214.pdf?OpenElement>

#### *Dominican Republic*

<http://daccessdds.un.org/doc/UNDOC/GEN/G07/423/48/PDF/G0742348.pdf?OpenElement>

Links to the CERDS concluding observations (English only) can be found below;

#### *Fiji*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-FJI-CO-17.pdf>

*Italy*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-ITA-CO-15.pdf>

*USA*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-USA-CO-6.pdf>

*Belgium*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-BEL-CO-15.pdf>

*Nicaragua*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-NIC-CO-14.pdf>

*Moldova*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-MDA-CO-7.pdf>

*Dominican Republic*

<http://www2.ohchr.org/english/bodies/cerd/docs/co/CERD-C-DOM-CO-12.pdf>

Links can also be found to information on other sessions of the CERD, as well as links to NGO contributions to the 72<sup>nd</sup> session through the CERD homepage;

<http://www2.ohchr.org/english/bodies/cerd/cerds72.htm>

Finally, for additional information on international treaties and conventions mentioned in the above text, see the following links

International Convention on the Elimination of all forms of Racial Discrimination

<http://www2.ohchr.org/english/law/cerd.htm>

*ILO Convention 169*

<http://www.unhchr.ch/html/menu3/b/62.htm>

*Paris Principles*

<http://www2.ohchr.org/english/law/parisprinciples.htm>

*European Charter for Regional or Minority Languages*

<http://conventions.coe.int/treaty/en/Treaties/Html/148.htm>

*International Coordinating Committee of National Institutions for the Promotion of Human Right (ICC)*

<http://www.unhchr.ch/Huridocda/Huridoca.nsf/TestFrame/299be499c13a36798025666e0033a651?Opendocument>

*International Convention for the Protection of the Rights of All Migrant Workers and Members of Their Families*

<http://www2.ohchr.org/english/bodies/cmw/cmw.htm>